### 1st Off

#### Interpretation and violation: Targeted killings are strikes carried about against pre-meditated, individually designated targets---signature strikes are distinct

Kenneth Anderson 11, Professor at Washington College of Law, American University, Hoover Institution visiting fellow, Non-Resident Visiting Fellow at Brookings, “Distinguishing High Value Targeted Killing and ‘Signature’ Attacks on Taliban Fighters,” August 29 2011, http://www.volokh.com/2011/08/29/distinguishing-high-value-targeted-killing-and-signature-attacks-on-taliban-fighters/

From the US standpoint, it is partly that it does not depend as much as it did on Pakistan’s intelligence. But it is also partly, as a couple of well-publicized incidents a few months ago made clear, that sharing targeting decisions with Pakistan’s military and ISI runs a very considerable possibility of having the targets tipped off (as even The Onion has observed). The article notes in this regard, the U.S. worries that “if they tell the Pakistanis that a drone strike is coming someone within Pakistani intelligence could tip off the intended target.” However, the Journal’s reporting goes from there to emphasize an aspect of targeted killing and drone warfare that is not sufficiently appreciated in public discussions trying to assess such issues as civilian collateral damage, strategic value and uses, and the uses of drones in counterterrorism and counterinsurgency as distinct activities. The article explains:¶ The CIA carries out two different types of drone strikes in the tribal areas of Pakistan—those against so-called high-value targets, including Mr. Rahman, and “signature” strikes targeting Taliban foot-soldiers who criss-cross the border with Afghanistan to fight U.S. forces there.¶ High-value targets are added to a classified list that the CIA maintains and updates. The agency often doesn’t know the names of the signature targets, but it tracks their movements and activities for hours or days before striking them, U.S. officials say.¶ Another way to put this is that, loosely speaking, the high value targets are part of a counterterrorism campaign – a worldwide one, reaching these days to Yemen and other places. It is targeted killing in its strict sense using drones – aimed at a distinct individual who has been identified by intelligence. The “signature” strikes, by contrast, are not strictly speaking “targeted killing,” because they are aimed at larger numbers of fighters who are targeted on the basis of being combatants, but not on the basis of individuated intelligence. They are fighting formations, being targeted on a mass basis as part of the counterinsurgency campaign in Afghanistan, as part of the basic CI doctrine of closing down cross-border safe havens and border interdiction of fighters. Both of these functions can be, and are, carried out by drones – though each strategic function could be carried out by other means, such as SEAL 6 or CIA human teams, in the case of targeted killing, or manned aircraft in the case of attacks on Taliban formations. The fundamental point is that they serve distinct strategic purposes. Targeted killing is not synonymous with drone warfare, just as counterterrorism is analytically distinct from counterinsurgency. (I discuss this in the opening sections of this draft chapter on SSRN.)¶ This analytic point affects how one sees the levels of drone attacks going up or down over the years. Neither the total numbers of fighters killed nor the total number of drone strikes – going up or down over months – tells the whole story. Total numbers do not distinguish between the high value targets, being targeted as part of the top down dismantling of Al Qaeda as a transnational terrorist organization, on the one hand, and ordinary Taliban being killed in much larger numbers as part of counterinsurgency activities essentially part of the ground war in Afghanistan, on the other. Yet the distinction is crucial insofar as the two activities are, at the level of truly grand strategy, in support of each other – the war in Afghanistan and the global counterterrorism war both in support of the AUMF and US national security broadly – but at the level of ordinary strategic concerns, quite distinct in their requirements and conduct. If targeted killing against AQ leadership goes well in Pakistan, those might diminish at some point in the future; what happens in the war against the Afghan Taliban is distinct and has its own rhythm, and in that effort, drones are simply another form of air weapon, an alternative to manned aircraft in an overt, conventional war. Rising or falling numbers of drone strikes in the aggregate will not tell one very much without knowing what mission is at issue.

#### Vote neg --- signature strikes and targeted killings are distinct operations with entirely separate lit bases and advantages---they kill precision and limits

Kenneth Anderson 11, Professor at Washington College of Law, American University, Hoover Institution visiting fellow, Non-Resident Visiting Fellow at Brookings, “Efficiency in Bello and ad Bellum: Targeted Killing Through Drone Warfare,” Sept 23 2011, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=1812124

Although targeted killing and drone warfare are often closely connected, they are not the same and are not always associated with each other. We need to disaggregate the practices of targeted killing from the technologies of drone warfare.¶ Targeted killing consists of using deadly force, characterized by the identification of and then strike against an individual marked to be killed. It is distinguished, among other things, by making an individualized determination of a person to be killed, rather than simply identifying, for example, a mass of enemy combatants to attack as a whole. Since it is a practice that involves the determination of an identified person, rather than a mass of armed and obvious combatants, it is a use of force that is by its function integrated with intelligence work, whether the intelligence actors involved are uniformed military or a civilian agency such as the CIA.¶ Targeted killing might (and does) take place in the course of conventional warfare, through special operations or other mechanisms that narrowly focus operations through intelligence. But it might also take place outside of a conventional conflict, or perhaps far from the conventional battlefields of that conflict, sufficiently so operationally to best be understood as its own operational category of the use of force – “intelligence-driven,” often covert, and sometimes non-military intelligence agency use of force, typically aimed at “high value” targets in global counterterrorism operations. It might be covert or it might not – but it will be driven by intelligence, because of necessity it must identify and justify the choice of target (on operational, because resources are limited; or legal grounds; or, in practice, both).¶ Targeted killing might use a variety of tactical methods by which to carry out the attack. The method might be by drones firing missiles – the focus of discussion here. But targeted killing – assassination, generically – is a very old method for using force and drones are new. Targeted killing in current military and CIA doctrine might, and often does, take place with covert civilian intelligence agents or military special operations forces – a human team carrying out the attack, rather than a drone aircraft operated from a distance. The Bin Laden raid exemplifies the human team-conducted targeted killing, of course, and in today’s tactical environment, the US often uses combined operations that have available both human teams and drones, to be deployed according to circumstances.¶ Targeted killing is thus a tactic that might be carried out either by drones or human teams. If there are two ways to do targeted killing, there are also two functions for the use of drones – targeted killing as part of an “intelligence-driven” discrete use of force, on the one hand, and a role (really, roles) in conventional warfare. Drones have a role in an ever-increasing range of military operations that have no connection to “targeted killing.” For many reasons ranging from cost-effectiveness to mission-effectiveness, drones are becoming more ramified in their uses in military operations, and will certainly become more so. This is true starting with their fundamental use in surveillance, but is also true when used as weapons platforms.¶ From the standpoint of conventional military operations and ordinary battlefields, drones are seen by the military as simply an alternative air weapons platform. One might use an over-the-horizon manned aircraft – or, depending on circumstances, one might instead use a drone as the weapons platform. It might be a missile launched from a drone by an operator, whether sitting in a vehicle near the fighting or farther away; it might be a weapon fired from a helicopter twenty miles away, but invisible to the fighters; it might be a missile fired from a US Navy vessel hundreds of miles away by personnel sitting at a console deep inside the ship. Future air-to-air fighter aircraft systems are very likely to be remotely piloted, in order to take advantage of superior maneuverability and greater stresses endurable without a human pilot. Remotely-piloted aircraft are the future of much military and, for that matter, civil aviation; this is a technological revolution that is taking place for reasons having less to do with military aviation than general changes in aviation technology.¶ Missiles fired from a remotely-piloted standoff platform present the same legal issues as any other weapons system – the law of war categories of necessity and proportionality in targeting. To military professionals, therefore, the emphasis placed on “remoteness” from violence of drone weapons operators, and presumed psychological differences in operators versus pilots, is misplaced and indeed mystifying. Navy personnel firing missiles from ships are typically just as remote from the fighting, and yet one does not hear complaints about their indifference to violence and their “Playstation,” push-button approach to war. Air Force pilots more often than not fire from remote aircraft; pilots involved in the bombing campaign over Serbia in the Kosovo war sometimes flew in bombers taking off from the United States; bomber crews dropped their loads from high altitudes, guided by computer, with little connection to the “battlefield” and little conception of what they – what their targeting computers - were aiming at. Some of the crews in interviews described spending the flights of many hours at a time, flying from the Midwest and back, as a good chance to study for graduate school classes they were taking – not Playstation, but study hall. In many respects, the development of new sensor technologies make the pilots, targeters, and the now-extensive staff involved in a decision to fire a weapon from a drone far more aware of what is taking place at the target than other forms of remote targeting, from Navy ships or high altitude bombing.¶ Very few of the actors on a technologically advanced battlefield are personally present in a way that makes the destruction and killing truly personal – and that is part of the point. Fighting up close and personal, on the critics’ psychological theories, seems to mean that it has greater significance to the actors and therefore leads to greater restraint. That is extremely unlikely and contrary to the experience of US warfighters. Lawful kinetic violence is more likely to increase when force protection is an issue, and overuse of force is more likely to increase when forces are under personal pressure and risk. The US military has known since Vietnam at least that increased safety for fighting personnel allows them greater latitude in using force, encourages and permits greater willingness to consider the least damaging alternatives, and that putting violence at a remove reduces the passions and fears of war and allows a coolly professional consideration of what kinds, and how much, violence is required to accomplish a lawful military mission. Remote weapon systems, whether robotic or simply missiles launched from a safe distance, in US doctrine are more than just a means for reducing risk to forces – they are an integral part of the means of allowing more time to consider less-harmful alternatives.¶ This is an important point, given that drones today are being used for tasks that involve much greater uses of force than individualized targeted killing. Drones are used today, and with increasing frequency, to kill whole masses of enemy columns of Taliban fighters on the Pakistan border – in a way that would otherwise be carried out by manned attack aircraft. This is not targeted killing; this is conventional war operations. It is most easily framed in terms of the abstract strategic division of counterinsurgency from counterterrorism (though in practice the two are not so distinct as all that). In particular, drones are being deployed in the AfPak conflict as a counterinsurgency means of going after Taliban in their safe haven camps on the Pakistan side of the border. A fundamental tenet of counterinsurgency is that the safe havens have to be ended, and this has meant targeting much larger contingents of Taliban fighters than previously understood in the “targeted killing” deployment. This could be – and in some circumstances today is – being done by the military; it is also done by the CIA under orders of the President partly because of purely political concerns; much of it today seems to be a combined operation of military and CIA.¶ Whoever conducts it and whatever legal issues it might raise, the point is that this activity is fundamentally counterinsurgency. The fighters are targeted in much larger numbers in the camps than would be the case in “targeted killing,” and this is a good instance of how targeted killing and drone warfare need to be differentiated. The targets are not individuated, either in the act of targeting or in the decision of who and where to target: this is simply an alternative air platform for doing what might otherwise be done with helicopters, fixed wing aircraft, or ground attack, in the course of conventional counterinsurgency operations. But it also means that the numbers killed in such operations are much larger, and consist often of ordinary fighters who would otherwise pile into trucks and cross back into Afghanistan, rather than individualized “high value” targets, whether Taliban or Al Qaeda.

#### Signature Strikes are a distinct strategy with unique targeting methods and a goal of territorial denial—artificially lumping the two together leaves the concept of targeted killing incoherent and indefensible.

Anderson ‘13

[Kenneth Anderson, Professor at Washington College of Law, “Denial of Territory to Terrorist Groups in US Counterterrorism Strategy,” Hoover Institute at Stanford, January 25, 2013, <http://www.advancingafreesociety.org/the-briefing/denial-of-territory-to-terrorist-groups-in-us-counterterrorism-strategy/> // wyo-ch]

The Obama administration has not so far been willing to admit that this is what is really going on, preferring instead to treat signature strikes as part of targeted killing programs, presumably because of the perceived political risks of attempting to explain the distinction. Whatever political difficulties making the distinction poses for the administration, however, over the longer term the deliberate conflation of two distinct situations of targeting risks political and legal delegitimation of the crucial paradigm of individualized targeted killing through drones. Signature strikes, whether direct US military operations or conducted by a local government with US support, are not a form of targeted killing; they are part of territorial denial.

### 2nd Off

#### The Executive Branch of the United States should ban signature strikes carried out by Remotely-Piloted Vehicles. The President should adhere to this regulation.

#### Self-Restraint solves signature strikes

Zenko 13 (Micah, Dr. Zenko is a Douglas Dillon fellow in the Center for Preventive Action (CPA) at the Council on Foreign Relations (CFR), he worked for five years at Harvard University’s Kennedy School of Government, and in Washington, DC, at the Brookings Institution, Congressional Research Service, and State Department's Office of Policy Planning, Council Special Report No.65, January 2013, Reforming US Drone Strike Policies, i.cfr.org/content/publications/attachments/Drones\_CSR65.pdf)

History shows that how states adopt and use new military capabilities is often influenced by how other states have—or have not—used them in the past. Furthermore, norms can deter states from acquiring new technologies.72 Norms—sometimes but not always codified as legal regimes—have dissuaded states from deploying blinding lasers and landmines, as well as chemical, biological, and nuclear weapons. A well-articulated and internationally supported normative framework, bolstered by a strong U.S. example, can shape armed drone prolifera- tion and employment in the coming decades. Such norms would not hinder U.S. freedom of action; rather, they would internationalize already-necessary domestic policy reforms and, of course, they would be acceptable only insofar as the limitations placed reciprocally on U.S. drones furthered U.S. objectives. And even if hostile states do not accept norms regulating drone use, the existence of an international norma- tive framework, and U.S. compliance with that framework, would pre- serve Washington’s ability to apply diplomatic pressure. Models for developing such a framework would be based in existing international laws that emphasize the principles of necessity, proportionality, and distinction—to which the United States claims to adhere for its drone strikes—and should be informed by comparable efforts in the realms of cyber and space. In short, a world characterized by the proliferation of armed drones—used with little transparency or constraint—would under- mine core U.S. interests, such as preventing armed conflict, promoting human rights, and strengthening international legal regimes. It would be a world in which targeted killings occur with impunity against anyone deemed an “enemy” by states or nonstate actors, without accountability for legal justification, civilian casualties, and proportionality. Perhaps more troubling, it would be a world where such lethal force no longer heeds the borders of sovereign states. Because of drones’ inherent advantages over other weapons platforms, states and nonstate actors would be much more likely to use lethal force against the United States and its allies. Much like policies governing the use of nuclear weapons, offensive cyber capabilities, and space, developing rules and frameworks for innovative weapons systems, much less reaching a consensus within the U.S. government, is a long and arduous process. In its second term, the Obama administration has a narrow policy window of opportunity to pursue reforms of the targeted killings program. The Obama admin- istration can proactively shape U.S. and international use of armed drones in nonbattlefield settings through transparency, self-restraint, and engagement, or it can continue with its current policies and risk the consequences. To better secure the ability to conduct drone strikes, and potentially influence how others will use armed drones in the future, the United States should undertake the following specific policy recommendations. The president of the United States should ■■ limit targeted killings to individuals who U.S. officials claim are being targeted—the leadership of al-Qaeda and affiliated forces or individ- uals with a direct operational role in past or ongoing terrorist plots against the United States and its allies—and bring drone strike prac- tices in line with stated policies; ■■ either end the practice of signature strikes or provide a public account- ing of how it meets the principles of distinction and proportionality that the Obama administration claims; ■■ review its current policy whereby the executive authority for drone strikes is split between the CIA and JSOC, as each has vastly different legal authorities, degrees of permissible transparency, and oversight; ■■ provide information to the public, Congress, and UN special rappor- teurs—without disclosing classified information—on what proce- dures exist to prevent harm to civilians, including collateral damage mitigation, investigations into collateral damage, corrective actions based on those investigations, and amends for civilian losses; and ■■ never conduct nonbattlefield targeted killings without an account- able human being authorizing the strike (while retaining the poten- tial necessity of autonomous decisions to use lethal force in warfare in response to ground-based antiaircraft fire or aerial combat).

### 3rd Off

#### Executive war power primacy now—the plan flips that

Posner 13

[Eric Posner, 9/3/13, Obama Is Only Making His War Powers Mightier, www.slate.com/articles/news\_and\_politics/view\_from\_chicago/2013/09/obama\_going\_to\_congress\_on\_syria\_he\_s\_actually\_strengthening\_the\_war\_powers.html]

President Obama’s surprise announcement that he will ask Congress for approval of a military attack on Syria is being hailed as a vindication of the rule of law and a revival of the central role of Congress in war-making, even by critics. But all of this is wrong. Far from breaking new legal ground, President **Obama has reaffirmed the primacy of the executive** in matters of war and peace. **The war powers of the presidency remain as mighty as ever**.

It would have been different if the president had announced that **only Congress can authorize** the use of military force, as dictated by the Constitution, which gives Congress alone the power to declare war. **That would have been** worthy of notice, **a reversal of the ascendance of executive power over Congress**. **But the president said no such thing**. He said: “I believe I have the authority to carry out this military action without specific congressional authorization.” Secretary of State John Kerry confirmed that the president “has the right to do that”—launch a military strike—“no matter what Congress does.”

Thus, the president believes that the law gives him the option to seek a congressional yes or to act on his own. He does not believe that he is bound to do the first. He has merely stated the law as countless other presidents and their lawyers have described it before him.

The president’s announcement should be understood as a political move, not a legal one. His motive is both self-serving and easy to understand, and it has been all but acknowledged by the administration. If Congress now approves the war, it must share blame with the president if what happens next in Syria goes badly. If Congress rejects the war, it must share blame with the president if Bashar al-Assad gases more Syrian children. The big problem for Obama arises if Congress says no and he decides he must go ahead anyway, and then the war goes badly. He won’t have broken the law as he understands it, but he will look bad. He would be the first president ever to ask Congress for the power to make war and then to go to war after Congress said no. (In the past, presidents who expected dissent did not ask Congress for permission.)

People who celebrate the president for humbly begging Congress for approval also apparently don’t realize that his understanding of the law—that it gives him the option to go to Congress—maximizes executive power vis-à-vis Congress. If the president were required to act alone, without Congress, then he would have to take the blame for failing to use force when he should and using force when he shouldn’t. If he were required to obtain congressional authorization, then Congress would be able to block him. But if he can have it either way, he can force Congress to share responsibility when he wants to and avoid it when he knows that it will stand in his way.

#### Congressional restraints spill over to destabilize all presidential war powers.

Heder ’10

(Adam, J.D., magna cum laude , J. Reuben Clark Law School, Brigham Young University, “THE POWER TO END WAR: THE EXTENT AND LIMITS OF CONGRESSIONAL POWER,” St. Mary’s Law Journal Vol. 41 No. 3, <http://www.stmaryslawjournal.org/pdfs/Hederreadytogo.pdf>)

This constitutional silence invokes Justice Rehnquist’s oftquoted language from the landmark “political question” case, Goldwater v. Carter . 121 In Goldwater , a group of senators challenged President Carter’s termination, without Senate approval, of the United States ’ Mutual Defense Treaty with Taiwan. 122 A plurality of the Court held, 123 in an opinion authored by Justice Rehnquist, that this was a nonjusticiable political question. 124 He wrote: “In light of the absence of any constitutional provision governing the termination of a treaty, . . . the instant case in my view also ‘must surely be controlled by political standards.’” 125 Notably, Justice Rehnquist relied on the fact that there was no constitutional provision on point. Likewise, there is **no constitutional provision** on whether Congress has the legislative power to **limit, end, or otherwise redefine the scope of a war**. Though Justice Powell argues in Goldwater that the Treaty Clause and Article VI of the Constitution “add support to the view that the text of the Constitution does not unquestionably commit the power to terminate treaties to the President alone,” 126 **the same cannot be said about Congress’s legislative authority** to terminate or **limit a war** in a way that goes beyond its explicitly enumerated powers. There are no such similar provisions that would suggest Congress may decline to exercise its appropriation power but nonetheless legally order the President to cease all military operations. Thus, the case for deference to the political branches on this issue is even greater than it was in the Goldwater context. Finally, the Constitution does not imply any additional powers for Congress to end, limit, or redefine a war. The textual and historical evidence suggests the Framers purposefully **declined to grant Congress such powers**. And as this Article argues, granting Congress this power would be **inconsistent with the general war powers structure of the Constitution.** Such a reading of the Constitution would **unnecessarily empower Congress** and **tilt the scales heavily in its favor**. More over, it **would strip the President of his Commander in Chief authority** to direct the movement of troops at a time **when the Executive’s expertise is needed.** 127 And fears that the President will grow too powerful are unfounded, given the reasons noted above. 128 In short, the Constitution does not impliedly afford Congress any authority to prematurely terminate a war above what it explicitly grants. 129 Declaring these issues nonjusticiable political questions would be the most practical means of balancing the textual and historical demands, the structural demands, and the practical demands that complex modern warfare brings . Adjudicating these matters would only lead the courts to engage in impermissible line drawing — lines that would both confus e the issue and add layers to the text of the Constitution in an area where the Framers themselves declined to give such guidance.

#### That goes nuclear

Li ‘9

[Zheyao, J.D. candidate, Georgetown University Law Center, 2009; B.A., political science and history, Yale University, 2006. This paper is the culmination of work begun in the "Constitutional Interpretation in the Legislative and Executive Branches" seminar, led by Judge Brett Kavanaugh, “War Powers for the Fourth Generation: Constitutional Interpretation in the Age of Asymmetric Warfare,” 7 Geo. J.L. & Pub. Pol'y 373 2009 WAR POWERS IN THE FOURTH GENERATION OF WARFARE

1. The Emergence of Non-State Actors]

Even as the quantity of nation-states in the world has increased dramatically since the end of World War II, the **institution** of the nation-state has been in decline over the past few decades. Much of this decline is the direct result of the waning of major interstate war, which primarily resulted from the introduction of nuclear weapons.122 The proliferation of nuclear weapons, and their immense capacity for absolute destruction, has ensured that **conventional wars** remain limited in scope and duration. Hence, "both the size of the armed forces and the quantity of weapons at their disposal has declined quite sharply" since 1945.123 At the same time, concurrent with the decline of the nation-state in the second half of the twentieth century, non-state actors have increasingly been willing and able to use force to advance their causes. In contrast to nation-states, who adhere to the Clausewitzian distinction between the ends of policy and the means of war to achieve those ends, non-state actors do not necessarily fight as a mere means of advancing any coherent policy. Rather, they see their fight **as a life-and-death struggle**, wherein the ordinary terminology of war as an instrument of policy breaks down because of this blending of means and ends.124 It is the existential nature of this struggle and the disappearance of the Clausewitzian distinction between war and policy that has given rise to a new generation of warfare. The concept of fourth-generational warfare was first articulated in an influential article in the Marine Corps Gazette in 1989, which has proven highly prescient. In describing what they saw as the modem trend toward a new phase of warfighting, the authors argued that: In broad terms, fourth generation warfare seems likely to be widely dispersed and largely undefined; the distinction between war and peace will be blurred to the vanishing point. It will be nonlinear, possibly to the point of having no definable battlefields or fronts. The distinction between "civilian" and "military" may disappear. Actions will occur concurrently throughout all participants' depth, including their society as a cultural, not just a physical, entity. Major military facilities, such as airfields, fixed communications sites, and large headquarters will become rarities because of their vulnerability; the same may be true of civilian equivalents, such as seats of government, power plants, and industrial sites (including knowledge as well as manufacturing industries). 125 It is precisely this blurring of peace and war and the demise of traditionally definable battlefields that provides the impetus for the formulation of a new theory of war powers. As evidenced by Part M, supra, the constitutional allocation of war powers, and the Framers' commitment of the war power to two co-equal branches, **was not designed** to cope with the current international system, one that is characterized by the persistent machinations of international terrorist organizations, the rise of multilateral alliances, the emergence of **rogue states**, and the potentially wide proliferation of easily deployable **w**eapons of **m**ass **d**estruction, **nuclear and otherwise.** B. The Framers' World vs. Today's World The Framers crafted the Constitution, and the people ratified it, in a time when everyone understood that the state controlled both the raising of armies and their use. Today, however, the threat of terrorism is bringing an end to the era of the nation-state's legal monopoly on violence, and the kind of war that existed before-based on a clear division between government, armed forces, and the people-is on the decline. 126 As states are caught between their decreasing ability to fight each other due to the existence of nuclear weapons and the increasing threat from non-state actors, it is clear that the Westphalian system of nation-states that informed the Framers' allocation of war powers is no longer the order of the day. 127 As seen in Part III, supra, the rise of the modem nation-state occurred as a result of its military effectiveness and ability to defend its citizens. If nation-states such as the United States are unable to adapt to the changing circumstances of fourth-generational warfare-that is, if they are unable to adequately defend against low-intensity conflict conducted by non-state actors-"**then clearly [the modem state] does not have a future in front of it**.' 128 The challenge in formulating a new theory of war powers for fourthgenerational warfare that remains legally justifiable lies in the difficulty of adapting to changed circumstances while remaining faithful to the constitutional text and the original meaning. 29 To that end, it is crucial to remember that the Framers crafted the Constitution in the context of the Westphalian system of nation-states. The three centuries following the Peace of Westphalia of 1648 witnessed an international system characterized by wars, which, "through the efforts of governments, assumed a more regular, interconnected character."' 130 That period saw the rise of an independent military class and the stabilization of military institutions. Consequently, "warfare became more regular, better organized, and more attuned to the purpose of war-that is, to its political objective."' 1 3' **That era is now over**. Today, the stability of the long-existing Westphalian international order has been greatly eroded in recent years with the advent of international terrorist organizations, which care nothing for the traditional norms of the laws of war. This new global environment exposes the limitations inherent in the interpretational methods of originalism and textualism and necessitates the adoption of a new method of constitutional interpretation. While one must always be aware of the text of the Constitution and the original understanding of that text, that very awareness identifies the extent to which fourth-generational warfare epitomizes a phenomenon unforeseen by the Framers, a problem the constitutional resolution of which must rely on the good judgment of the present generation. 13 Now, to adapt the constitutional warmarking scheme to the new international order characterized by fourth-generational warfare, one must understand the threat it is being adapted to confront. C. The Jihadist Threat The erosion of the Westphalian and Clausewitzian model of warfare and the blurring of the distinction between the means of warfare and the ends of policy, which is one characteristic of fourth-generational warfare, apply to al-Qaeda and other adherents of jihadist ideology who view the United States as an enemy. An excellent analysis of jihadist ideology and its implications for the rest of the world are presented by Professor Mary Habeck. 133 Professor Habeck identifies the centrality of the Qur'an, specifically a particular reading of the Qur'an and hadith (traditions about the life of Muhammad), to the jihadist terrorists. 134 The jihadis believe that the scope of the Qur'an is universal, and "that their interpretation of Islam is also intended for the entire world, which must be brought to recognize this fact peacefully if possible and through violence if not."' 135 Along these lines, the jihadis view the United States and her allies as among the greatest enemies of Islam: they believe "that every element of modern Western liberalism is flawed, wrong, and evil" because the basis of liberalism is secularism. 136 The jihadis emphasize the superiority of Islam to all other religions, and they believe that "God does not want differing belief systems to coexist."' 37 For this reason, jihadist groups such as al-Qaeda "recognize that the West will not submit without a fight and believe in fact that the Christians, Jews, and liberals have united against Islam in a war that will end in the complete destruction of the unbelievers.' 138 Thus, the adherents of this jihadist ideology, be it al-Qaeda or other groups, will continue to target the United States until she is destroyed. Their ideology demands it. 139 To effectively combat terrorist groups such as al-Qaeda, it is necessary to understand not only how they think, but also how they operate. Al-Qaeda is a transnational organization capable of simultaneously managing multiple operations all over the world."14 It is both centralized and decentralized: al-Qaeda is centralized in the sense that Osama bin Laden is the unquestioned leader, but it is decentralized in that its operations are carried out locally, by distinct cells."4 AI-Qaeda benefits immensely from this arrangement because it can exercise direct control over high-probability operations, while maintaining a distance from low-probability attacks, only taking the credit for those that succeed. The local terrorist cells benefit by gaining access to al-Qaeda's "worldwide network of assets, people, and expertise."' 42 Post-September 11 events have highlighted al-Qaeda's resilience. Even as the United States and her allies fought back, inflicting heavy casualties on al-Qaeda in Afghanistan and destroying dozens of cells worldwide, "al-Qaeda's networked nature allowed it to absorb the damage and remain a threat." 14 3 This is a far cry from earlier generations of warfare, where the decimation of the enemy's military forces would generally bring an end to the conflict. D. The Need for Rapid Reaction and Expanded Presidential War Power By now it should be clear just how different this conflict against the extremist terrorists is from the type of warfare that occupied the minds of the Framers at the time of the Founding. Rather than maintaining the geographical and political isolation desired by the Framers for the new country, today's United States is an international power targeted by individuals and groups that will not rest until seeing her demise. The Global War on Terrorism is not truly a war within the Framers' eighteenth-century conception of the term, and the normal constitutional provisions regulating the division of war powers between Congress and the President do not apply. Instead, this "war" **is a struggle for survival** and dominance against forces that threaten to destroy the United States and her allies, and the fourth-generational nature of the conflict, highlighted by an indiscernible distinction between wartime and peacetime, necessitates an evolution of America's traditional constitutional warmaking scheme. As first illustrated by the military strategist Colonel John Boyd, constitutional decision-making in the realm of war powers in the fourth generation should consider the implications of the OODA Loop: Observe, Orient, Decide, and Act. 44 In the era of fourth-generational warfare, **quick reactions**, proceeding through the OODA Loop rapidly, and disrupting the enemy's OODA loop are the keys to victory. "In order to win," Colonel Boyd suggested, "we should operate at a **faster tempo** or rhythm than our adversaries." 145 In the words of Professor Creveld, "[b]oth organizationally and in terms of the equipment at their disposal, the armed forces of the world will have to adjust themselves to this situation by changing their doctrine, doing away with much of their heavy equipment and becoming more like police."1 46 Unfortunately, the existing constitutional understanding, which diffuses war power between two branches of government, necessarily (by the Framers' design) slows down decision- making. In circumstances where war is undesirable (which is, admittedly, most of the time, especially against other nation-states), the deliberativeness of the existing decision-making process is a positive attribute. In America's current situation, however, in the midst of the conflict with al-Qaeda and other international terrorist organizations, the existing process of constitutional decision-making in warfare may prove a **fatal hindrance** to achieving the initiative **necessary** for victory. As a **slow-acting**, deliberative **body**, Congress does not have the ability to adequately deal with **fast-emerging situations** in fourth-generational warfare. Thus, in order to combat transnational threats such as al-Qaeda, the executive branch **must** have the ability to operate by taking offensive military action even without congressional authorization, because **only the executive branch** is capable of the swift decision-making and action necessary to prevail in fourth-generational conflicts against fourthgenerational opponents.

### 4th Off

#### Obama is pushing and maintaining compromise with the GOP now-pressure key to CIR

Epstein 11-13

(Reid, White House reporter for Politico. “Obama: Don't let ACA problems stop immigration” 11-13-13 http://www.politico.com/story/2013/11/obama-obamacare-problems-immigration-99834.html//wyoccd)

President Barack Obama gave immigration reform advocates a simple message Wednesday: Don’t let Obamacare get you down.¶ In an Oval Office meeting with eight Christian faith leaders, the president said he remains engaged on immigration legislation and hopes the reform effort can get a fair hearing despite his other political problems, several faith leaders told POLITICO.¶ “He said he doesn’t want other debates that are going on to hurt this,” said Jim Wallis, the president and CEO of the Christian social justice agency Sojourners. “He doesn’t want all the other debates going on to prevent this from passing. It’s caught up in all the other debates and he wants this to be looked at on his own merits.”¶ (CARTOONS: Matt Wuerker on immigration)¶ Obama’s exhortation came during a meeting just hours before his administration released the first batch of Affordable Care Act enrollment numbers – a figure the White House had for weeks telegraphed as far lower than expected.¶ Much of Obama’s Oval Office conversation with the faith leaders, Biden and top aides Valerie Jarrett, Cecilia Munoz and Melissa Rogers centered around the idea that contemporary Washington politics is blocking reform efforts, the faith leaders said.¶ Obama, they said, didn’t make a direct ask for them to press Congress to back the reform effort, as Vice President Joe Biden implored Catholic leaders to do during a call Tuesday night. Instead he asked for their input on how the current immigration system is harming their communities and echoed the urgency to pass reform legislation by the end of the year.¶ ¶ But with House Speaker John Boehner (R-Ohio) announcing earlier in the day that he has “no intention of ever going to conference on the Senate bill,” it was clear to all in the room that immigration reform has lost momentum it had after the Senate immigration bill passed.¶ “This can be a companion issue that also deserves some attention because we’ve come so far on this issue and we can’t let it get lost in the battle du jour,” said Joel Hunter, the senior pastor at Northland Church in suburban Orlando. “I think all of us are hoping that the headlines of the daily accusations don’t bury what is a very important and urgent issue in our time.”¶ And still, Obama told the faith leaders he remains optimistic there will be progress by the end of December.¶ “I did get the sense that he was wanting to reassure us that this is a priority for him,” said Russell Moore, the president of the Southern Baptist Ethics and Religious Liberty Commission. “He actually does want to work with Congress to get a bill, not to just to have an issue.”¶ ¶ White House officials declined to comment on specifics of the meeting. In an official readout, the White House said Obama once again blamed House Republicans for blocking a vote.¶ “The president and the leaders discussed their shared commitment to raise the moral imperative for immigration reform and said they will continue keeping the pressure on Congress so they can swiftly pass commonsense reform,” the statement said. “The president commended the faith leaders for their tireless efforts in sharing their stories with Congress. He noted there is no reason for House Republicans to continue to delay action on this issue that has garnered bipartisan support.¶ Moore, a conservative evangelical leader, said he warned Obama not to make immigration a partisan political issue.¶ “I did say to the president that I think he needs to take seriously that the Republicans in Congress are operating out of what I believe to be good motives and that there needs to be a sense of cooperation and not divisiveness on this issue,” Moore said. “I think that was well received. I think the president seemed to indicate that that’s what he wants to do.”¶ Wallis said there was a discussion during the meeting that the upcoming holiday season could give a boost to the reform efforts as families and churches gather.¶ “The holiday season now happens to be coming in the end game. Here are the holidays, religious holidays, maybe there is something there,” Wallis said. “We are hearing a president say, ‘I don’t want politics to prevent this. How can we transcend and reach people to make this not just political. What can you do to help us get this beyond the politics?’”¶ Biden on Tuesday night told Catholic officials to make their opinions known forcefully to House Republicans. He said they can’t repeat the mistakes of the gun control fight, when opponents of expanding background checks on gun purchases outnumbered White House allies in calls and e-mails to senators debating the legislation.¶ “

#### Fighting to defend his war power will sap Obama’s capital, trading off with rest of agenda

**Kriner, 10** --- assistant professor of political science at Boston University

(Douglas L. Kriner, “After the Rubicon: Congress, Presidents, and the Politics of Waging War”, University of Chicago Press, Dec 1, 2010, page 68-69)

**While congressional support leaves the president’s reserve of political capital intact, congressional criticism saps energy from other initiatives on the home front by forcing the president to expend energy and effort defending his international agenda. Political capital spent shoring up support for a president’s foreign policies is capital that is unavailable for his future policy initiatives**. Moreover, any weakening in the president’s political clout may have immediate ramifications for his reelection prospects, as well as indirect consequences for congressional races.59 Indeed, Democratic efforts to tie congressional Republican incumbents to President George W. Bush and his war policies paid immediate political dividends in the 2006 midterms, particularly in states, districts, and counties that had suffered the highest casualty rates in the Iraq War. 60 **In addition to boding ill for the president’s perceived political capital and reputation, such partisan losses in Congress only further imperil his programmatic agenda, both international and domestic.** Scholars have long noted that President Lyndon **Johnson’s dream of a Great Society also perished in the rice paddies of Vietnam. Lacking** the requisite funds in a war-depleted treasury and **the political capital needed to sustain his legislative vision, Johnson gradually let his domestic goals slip away** as he hunkered down in an effort first to win and then to end the Vietnam War. In the same way, **many of** President **Bush’s highest second-term domestic proprieties, such as Social Security and immigration reform, failed perhaps in large part because the administration had to expend so much energy and effort waging a rear-guard action against congressional critics of the war in Iraq.**61 **When making their cost-benefit calculations, presidents surely consider these wider political costs of congressional opposition to their military policies.** If congressional opposition in the military arena stands to derail other elements of his agenda, all else being equal, the president will be more likely to judge the benefits of military action insufficient to its costs than if Congress stood behind him in the international arena.

#### Immigration reform is key to generate jobs and attract high skilled workers that solves for competitiveness and the econ

Johnson 13

(Simon Johnson, former chief economist of the International Monetary Fund, is the Ronald A. Kurtz Professor of Entrepreneurship at the M.I.T. Sloan School of Management and co-author of “White House Burning: The Founding Fathers, Our National Debt, and Why It Matters to You.” “How Immigration Reform Would Help the Economy” 6-20-13 http://economix.blogs.nytimes.com/2013/06/20/how-immigration-reform-would-help-the-economy//wyoccd)

The assessment is positive. This precise immigration proposal would improve the budget picture (see this helpful chart) and stimulate economic growth. The immediate effects are good and the more lasting effects even better. If anything, the long-run positive effects are likely to be even larger than the C.B.O. is willing to predict, in my assessment. (I’m a member of the office’s Panel of Economic Advisers but I was not involved in any way in this work.)¶ The debate over immigration is emotionally charged and, judging from recent blog posts, the Heritage Foundation in particular seems primed to dispute every detail in the C.B.O. approach – and to assert that it is underestimating some costs (including what happens when illegal immigrants receive an amnesty and subsequently claim government-provided benefits, a point Heritage has emphasized in its own report).¶ There is good reason for the C.B.O.’s careful wording in its analysis; it operates within narrow guidelines set by Congress, and its staff is wise to stick to very well-documented points. Still, as the legislation gains potential traction, it is worth keeping in mind why there could be an even larger upside for the American economy.¶ In 1776, the population of the United States was around 2.5 million; it is now more than 316 million (you can check the real-time Census Bureau population clock, but of course that is only an estimate).¶ Think about this: What if the original inhabitants had not allowed immigration or imposed very tight restrictions – for example, insisting that immigrants already have a great deal of education? It’s hard to imagine that the United States would have risen as an economy and as a country. How many United States citizens reading this column would be here today? (I’m proud to be an immigrant and a United States citizen.)¶ The long-term strength of the United States economy lies in its ability to create jobs. For more than 200 years as a republic (and 400 years in total) immigrants have not crowded together on a fixed amount of existing resources – land (in the early days) or factories (from the early 1800s) or the service sector (where most modern jobs arise). Rather the availability of resources essential for labor productivity has increased sharply. Land is improved, infrastructure is built and companies develop.¶ Most economic analysis about immigration looks at wages and asks whether natives win or lose when more immigrants show up in particular place or with certain skills. At the low end of wage distribution, there is reason to fear adverse consequences for particular groups because of increased competition for jobs. In fact, the C.B.O. does find that income per capita would decline slightly over the next 10 years before increasing in the subsequent 10 years: “Relative to what would occur under current law, S. 744 would lower per capita G.N.P. by 0.7 percent in 2023 and raise it by 0.2 percent in 2033, according to C.B.O.’s central estimates.”¶ And it is reasonable to ask who will pay how much into our tax system – and who will receive what kind of benefits. This is the terrain that the C.B.O. and the Heritage Foundation are contesting. (See, too, a letter to Senator Marco Rubio, Republican of Florida, from Stephen Gross, the chief actuary of the Social Security Administration. Mr. Gross said immigration reform would be a net positive; of the current 11.5 million illegal immigrants, “many of these individuals already work in the country in the underground economy, not paying taxes, and will begin paying taxes” if the immigration legislation are adopted. New illegal immigration would decline but not be eliminated.)¶ But the longer-run picture is most obviously quite different. The process of creating businesses and investing – what economists like to call capital formation – is much more dynamic than allowed for in many economic models.¶ People will save and they will invest. Companies will be created. The crucial question is who will have the ideas that shape the 21st century. (See, for example, the work of Charles I. Jones of Stanford University on this point and a paper he and Paul Romer wrote for a broader audience.)¶ This is partly about education – and the proposed legislation would tilt new visas more toward skilled workers, particularly those in science, technology, engineering, and math (often referred to as STEM).¶ But it would be a mistake to limited those admitted – or those allowed legal status and eventual citizenship – to people who already have or are in the process of getting a university-level education. To be clear, under the new system there may well be more low-wage immigrants than high-wage immigrants, but the transition to a point system for allocating green cards is designed to increase the share of people with more education and more scientific education, relative to the situation today and relative to what would otherwise occur.¶ Many people have good ideas. The Internet has opened up the process of innovation. I don’t know anyone who can predict where the next big technologies will come from. I also don’t know who will figure out how to organize production – including the provision of services – in a more effective manner.¶ We are competing in a world economy based on human capital, and people’s skills and abilities are the basis for our productivity. What we need more than anything, from an economic point of view, is more people (of any age or background) who want to acquire and apply new skills.¶ Increasing the size of our domestic market over the last 400 years has served us well. Allowing in immigrants in a fiscally responsible manner makes a great deal of sense — and the reports from the Joint Committee on Taxation and C.B.O. are very clear that this is now what is on the table. If the children of immigrants want to get more education, we should welcome the opportunity that this presents. When you cut off the path to higher education, you are depriving people of opportunity – and you are also hurting the economy.¶ The deeper political irony, of course, is that if the Heritage Foundation and its allies succeed in defeating immigration legislation, there are strong indications that this will hurt the Republican Party at the polls over the next decade and beyond. Yet, even so, House Republicans seem inclined to oppose immigration reform. That would be a mistake on both economic and political grounds.¶ We are 316 million people in a world of more than 7 billion – on its way to 10 billion or more (read this United Nations report if you like to worry about the future).¶ We should reform immigration along the lines currently suggested and increase the supply of skilled labor in the world. This will both improve our economy and, at least potentially, help ensure the world stays more prosperous and more stable.

**Nuclear war**

**Harris and Burrows ‘9**

**(**Mathew, PhD European History at Cambridge, counselor in the National Intelligence Council (NIC) and Jennifer, member of the NIC’s Long Range Analysis Unit “Revisiting the Future: Geopolitical Effects of the Financial Crisis” <http://www.ciaonet.org/journals/twq/v32i2/f_0016178_13952.pdf>, AM)

Of course, the report encompasses more than economics and indeed believes the future is likely to be the result of a number of intersecting and interlocking forces. With so many possible permutations of outcomes, each with ample Revisiting the Future opportunity for unintended consequences, there is a growing sense of insecurity. Even so, **history may be more instructive than ever**. While we continue to believe that **the Great Depression** is not likely to be repeated, the **lessons** to be drawn from that period **include the harmful effects on fledgling democracies and multiethnic societies** (think Central Europe in 1920s and 1930s) **and** on the **sustainability of multilateral institutions** (think League of Nations in the same period). **There is no reason to think that this would not be true in the twenty-first as much as in the twentieth century.** For that reason, the ways in which **the potential for greater conflict could grow** would seem to be even more apt **in a constantly volatile economic environment** as they would be if change would be steadier. In surveying those risks, the report stressed the likelihood that terrorism and nonproliferation will remain priorities even as resource issues move up on the international agenda. **Terrorism’s appeal will decline if economic growth continues in the Middle East and youth unemployment is reduced.** For those terrorist groups that remain active in 2025, however, the diffusion of technologies and scientific knowledge will place some of the world’s most dangerous capabilities within their reach. **Terrorist groups** in 2025 **will** likely be a combination of descendants of long established groups\_inheriting organizational structures, command and control processes, and training procedures necessary to conduct sophisticated attacks\_and newly emergent collections of the angry and disenfranchised that **become self-radicalized, particularly in the absence of economic outlets that would become narrower in an economic downturn. The most dangerous casualty of any economically-induced drawdown of U.S. military presence would** almost certainly **be the Middle East**. Although Iran’s acquisition of nuclear weapons is not inevitable, **worries** about a nuclear-armed Iran **could lead states in the region to develop new security arrangements with external powers, acquire additional weapons, and consider pursuing their own nuclear ambitions**. It is not clear that the type of stable deterrent relationship that existed between the great powers for most of the Cold War would emerge naturally in the Middle East with a nuclear Iran. Episodes of low intensity **conflict** and terrorism taking place under a nuclear umbrella **could lead to an** unintended escalation **and broader conflict** if clear red lines between those states involved are not well established. **The close proximity of potential nuclear rivals** combined with underdeveloped surveillance capabilities and mobile dual-capable Iranian missile systems also **will produce inherent difficulties** in achieving reliable indications and warning of an impending nuclear attack. The lack of strategic depth in neighboring states like Israel, **short warning and missile flight times, and uncertainty** of Iranian intentions **may place more focus on preemption** rather than defense, potentially **leading to** escalatingcrises**.** 36 Types of **conflict** that the world continues to experience, such as **over resources, could reemerge**, particularly if protectionism grows **and there is a resort to neo-mercantilist practices. Perceptions** of renewed energy scarcity will drive countries to take actions to assure their future access to energy supplies. In the worst case, this **could result in interstate conflicts if government leaders deem assured access to energy resources,** for example, to be **essential for** maintaining domestic stability and the **survival of their regime**. Even actions short of war, however, will have important geopolitical implications. Maritime security concerns are providing a rationale for naval buildups and modernization efforts, such as China’s and India’s development of blue water naval capabilities. **If** the **fiscal stimulus focus for** these **countries indeed turns inward, one of the most obvious funding targets may be military. Buildup of regional** naval **capabilities could lead to increased tensions, rivalries, and counterbalancing moves**, but it also will create opportunities for multinational cooperation in protecting critical sea lanes. **With water** also **becoming scarcer in Asia and the Middle East, cooperation to manage changing water resources is likely to be increasingly difficult both within and between states in a more dog-eat-dog world.**

## Solvency

### 1NC

#### Prez will circumvent-

#### [1.] Obama invokes state secrets privileges-cases get dismissed

Bauman 2010

[Nick Bauman, Senior Editor, December 7th, 2010, Judge Dismisses Anwar al-Awlaki Targeted Killing Lawsuit,http://www.motherjones.com/mojo/2010/12/judge-dismisses-anwar-al-awlaki-targeted-killing-lawsuit, uwyo//amp]

Even if Bates had ruled in the plaintiff's favor on standing, though, the case would still have had major obstacles. While Bates doesn't officially reach the matter of the so-called "state secrets" privilege (the government asked him to rule on state secrets only as a last resort), he does indicate that he would have ruled in the government's favor on that question if he had. The message to the ACLU and CCR is clear: even if you had resolved your standing issues, you would have still lost to the government's trump card. Here's the full decision (PDF) and the AP story. One of the more interesting details in this ruling is that Bates bought the government's argument that the younger al-Awlaki has meaningful access to the US legal system: supposedly, he can just go to the US embassy or email potential lawyers without fear of assassination. But as Marcy notes, even if Anwar al-Awlaki did turn himself in, Bates' promise to rule against him on state secrets grounds would mean he would still have no effective way to challenge his presence on the Obama administration's reported "target list."

#### [2.] will withhold documents

AP 2013

[AP, February 5th, 2013, Congress looks to limit drone strikes, <http://www.cbsnews.com/8301-250_162-57567793/congress-looks-to-limit-drone-strikes/>, Congress looks to limit drone strikes, uwyo//amp]

The Senate Foreign Relations Committee likely will hold hearings on U.S. drone policy, an aide said Tuesday, and Chairman Robert Menendez, D-N.J., and the panel's top Republican, Sen. Bob Corker of Tennessee, both have quietly expressed concerns about the deadly operations. And earlier this week, a group of 11 Democratic and Republican senators urged President Barack Obama to release a classified Justice Department legal opinion justifying when U.S. counterterror missions, including drone strikes, can be used to kill American citizens abroad. Without those documents, it's impossible for Congress and the public to decide "whether this authority has been properly defined, and whether the president's power to deliberately kill Americans is subject to appropriate limitations and safeguards," the senators wrote. It was a repeated request after receiving last June an unclassified Justice Department memo, which fell short of giving the senators all the information they requested. First detailed publicly by NBC News late Monday, the memo for the first time outlines the Obama administration's decision to kill al Qaeda terror suspects without any evidence that specific and imminent plots are being planned against the United States.

#### Signature strikes being eliminated under Obama

Herb 13  
[Jeremy, "Fewer drone strikes likely result of new Obama policy, analysts say" May 27, 2013, The Hill, [http://thehill.com/blogs/defcon-hill/policy-and-strategy/301965-fewer-drone-strikes-the-likely-result-of-new-obama-policy-analysts-say](http://thehill.com/blogs/defcon-hill/policy-and-strategy/301965-fewer-drone-strikes-the-likely-result-of-new-obama-policy-analysts-say~~) //uwyo-baj]President Obama’s new guidelines on drone strikes abroad are likely to curtail the number of attacks the United States carries out, according to defense experts. The White House’s codified policy signed by the president this week requires a “continuing, imminent” threat before terrorists are targeted. The directive also requires “near-certainty” that civilians will not be harmed in the strike. Defense analysts say that the emphasis on avoiding civilian casualties will reduce — or perhaps eliminate altogether — the use of “signature” strikes, where unidentified people are targeted on the basis of suspicious activities. “The announcement that they’ll avoid civilian casualties to the greatest extent possible — what that says is no more signature attacks,” said James Lewis, an analyst at the Center for Strategic and International Studies. “The signature attacks are probably the source of a lot of the civilian casualties.”

#### Signature strikes are good and don’t risk civilian casualties – key to pace of attack that prevents organization of operations and more likely to kill high value targets

Greg Miller, Washington Post, “CIA seeks new authority to expand Yemen drone campaign,” April 18, 2012.

Proponents of the plan said improvements in U.S. intelligence collection in Yemen have made it possible to expand the drone campaign — and use signature strikes — while minimizing the risk of civilian casualties. They also pointed to the CIA’s experience in Pakistan. U.S. officials said the agency killed more senior al-Qaeda operatives there with signature strikes than with those in which it had identified and located someone on its kill list. In Pakistan, the CIA “killed most of their ‘list people’ when they didn’t know they were there,” said a former senior U.S. military official familiar with drone operations. The agency has cited the Pakistan experience to administration officials in arguing, perhaps counterintuitively, that it can be more effective against al-Qaeda’s Yemen affiliate if it doesn’t have to identify its targets before an attack. Obama, however, ruled out a similar push for such authority more than a year ago. Increasing focus on Yemen The CIA, the National Security Agency and other spy services have deployed more officers and resources to Yemen over the past several years to augment counterterrorism operations that were previously handled almost exclusively by the U.S. Joint Special Operations Command. The CIA began flying armed drones over Yemen last year after opening a secret base on the Arabian Peninsula. The agency also has worked with the Saudi and Yemeni intelligence services to build networks of informants — much the way it did in Pakistan before ramping up drone strikes there. The agency’s strategy in Pakistan was centered on mounting a drone campaign so relentless that it allowed no time between attacks for al-Qaeda operatives to regroup. The use of signature strikes came to be seen as critical to achieving that pace. The approach involved assembling threads of intelligence from multiple sources to develop telltale “signatures” of al-Qaeda activity based on operatives’ vehicles, facilities, communications equipment and patterns of behavior. A former senior U.S. intelligence official said the CIA became so adept at this that it could tell what was happening inside an al-Qaeda compound — whether a leader was visiting or explosives were being assembled, for example — based on the location and number of security operatives surrounding the site.

#### Congress won’t enforce – no durable fiat.

Druck, JD – Cornell Law, ‘12

[Judah, 98 Cornell L. Rev. 209]

Of course, despite these various suits, Congress has received much of the blame for the WPR's treatment and failures. For example, Congress has been criticized for doing little to enforce the WPR in using other Article I tools, such as the "power of the purse," n76 or by closing the loopholes frequently used by presidents to avoid the WPR [\*221] in the first place. n77 Furthermore, in those situations where Congress has decided to act, it has done so in such a disjointed manner as to render any possible check on the President useless. For example, during President Reagan's invasion of Grenada, Congress failed to reach an agreement to declare the WPR's sixty-day clock operative, n78 and later faced similar "dead-lock" in deciding how best to respond to President Reagan's actions in the Persian Gulf, eventually settling for a bill that reflected congressional "ambivalence." n79 Thus, between the lack of a "backbone" to check rogue presidential action and general ineptitude when it actually decides to act, n80 Congress has demonstrated its inability to remedy WPR violations. Worse yet, much of Congress's interest in the WPR is politically motivated, leading to inconsistent review of presi-dential military decisions filled with post-hoc rationalizations. Given the political risk associated with wartime deci-sions, n81 Congress lacks any incentive to act unless and until it can gauge public reaction - a process that often occurs after the fact. n82 As a result, missions deemed successful by the public will rarely provoke "serious congressional con-cern" about presidential compliance with the WPR, while failures will draw scrutiny. n83 For example, in the case of the Mayaguez, "liberals in the Congress generally praised [President Gerald Ford's] performance" despite the constitutional questions surrounding the conflict, simply because the [\*222] public deemed it a success. n84 Thus, even if Congress was effective at checking potentially unconstitutional presidential action, it would only act when politically safe to do so. This result should be unsurprising: making a wartime decision provides little advantage for politicians, especially if the resulting action succeeds. n85 Consequently, Congress itself has taken a role in the continued disregard for WPR enforcement. The current WPR framework is broken: presidents avoid it, courts will not rule on it, and Congress will not enforce it. This cycle has culminated in President Obama's recent use of force in Libya, which created little, if any, controversy, n86 and it provides a clear pass to future presidents, judges, and congresspersons looking to continue the system of pas-sivity and deferment.

#### Military will backlash, prevents implementation

Yoo, professor of law – U California, Berkeley, ‘9

[John, 58 Duke L.J. 2277]

As conditions worsened in Iraq after the fall of Saddam Hussein's regime, the military became more critical of Sec-retary Rumsfeld. Military officers anonymously criticized the Secretary for refusing to send enough troops to pacify the country, and generally attacked him for ignoring their advice and counsel. In an April 2006 act known in the military as the "revolt of the generals," dozens of senior retired military officers called for Rumsfeld's resignation for allegedly mismanaging the war. n73 In 2006, retired general Gregory Newbold, former director of operations of the Joint Chiefs, wrote an essay in Time declaring that it was his "sincere view ... that the commitment of forces to this fight was done with a casualness and swagger that are the special province of those who have never had to execute these missions - or bury the results." n74 Part of the impetus for the revolt was the deeper lesson, taken by the officer corps from Vietnam, that the military had been too subservient to civilian leaders and that they should talk straight to the political leadership about their views. Ironically, the 2007-08 surge in forces in Iraq and the improvement in the country's rebuilding came against the advice of the senior military leadership, which had decided that the size of the American footprint in Iraq was part of the problem. n75 Dissension over Iraq was matched by contention over the continuing war on terrorism. Perhaps the most public ex-ample was Congress's consideration of the Military Commissions Act of 2006 [\*2290] (MCA), n76 which established rules for the detention and military trials of terrorists. In November 2001, President Bush issued an executive order es-tablishing military commissions, in the form of a military tribunal, to try al Qaeda members and their allies for war crimes. n77 Some members of the military's Judge Advocate Generals (JAG) corps wanted to use courts-martial instead, but civilian leaders in the Pentagon favored commissions, which promised a flexible balance between the need for an open, fair proceeding and the need to keep national security secrets. In Hamdan v. Rumsfeld, n78 the Supreme Court held that the tribunals had to operate according to the lines set out in Common Article 3 of the Geneva Conventions, n79 set-ting off Congress's consideration of the 2006 Act. During congressional hearings, JAGs for the Marines and the Army testified that commission rules withholding classified evidence from the defendant, but not his lawyer, would still vio-late the Geneva Conventions, whereas the civilian representative of the Department of Justice testified to the opposite effect. n80 Military disagreement over civilian policy in the war on terrorism extended back to the beginning of the conflict. JAGs challenged President Bush's decision in February 2002, after extensive debate within the executive branch, that members of al Qaeda and the Taliban were not to receive the status of prisoners of war under the Geneva Conventions. n81 After that decision, JAGs reportedly cooperated with private human rights groups to challenge the decision in federal court. Once uniformed lawyers were appointed to represent detainees in the military commission process, they [\*2291] dispensed with the secrecy and filed suit against the Bush administration directly. n82 Members of the uniformed military also challenged the legality of holding suspected al Qaeda at the U.S. Navy Station at Guantanamo Bay, Cuba. n83 Ac-cording to media reports, JAGs representing detainees in the military commission process met with members of Con-gress to seek their assistance in reversing Bush administration policies on detainees. n84 Congress's enactment of the MCA hewed closely to civilian preferences on the commissions and the designation of al Qaeda as illegal combatants. Although the Supreme Court, in Boumediene v. Bush, n85 reversed the MCA's effort to prohibit federal habeas corpus review over the detainees at Guantanamo Bay, n86 it has not yet addressed the substance of the MCA. All of this has led historians and political scientists to warn of a crisis in civil-military relations. Russell Weigley, a prominent military historian, compared General Powell's resistance to intervention in Bosnia to General McClellan's reluctance to engage General Lee during the Civil War. n87 By 2002, Richard Kohn, a distinguished military historian, had already concluded that "civilian control of the military has weakened in the United States and is threatened today." n88 According to Kohn, "the American military has grown in influence to the point of being able to impose its own per-spective on many policies and decisions." n89 He detects "no conspiracy but repeated efforts on the part of the armed forces to frustrate or evade civilian authority when that opposition seems likely to preclude outcomes the military dis-likes." n90 He believes that civilian-military relations in that period are as poor as in any other period in American histo-ry. n91 Michael Desch argues that the high tensions in civil-military relations are due [\*2292] not to the military but to the civilians, which have violated Huntington's advice in favor of "objective control" by giving the military broad dis-cretion over tactics and operations while keeping final say over politics and grand strategy. n92 In a 1999 study, Desch found that civilians prevailed in almost all of the seventy-five civil-military disputes from 1938 to 1997, but that the military has won in seven or eight of the twelve post-Cold War conflicts. n93 Some attribute this discord to the regular give-and-take inherent in the civil-military relationship, whereas others believe that the military has grown bold in ques-tioning the foreign policy decisions of the civilian leadership. n94

## Pakistan

### 1NC

#### LET is not a threat- its media exaggeration to get US to act

M Khan Chishti , 7/21/13

“Western bruiting in Pakistan-LeT links” <http://www.thefrontierpost.com/article/28285/>

Major chunks of coalition forces are packing for home as Al-Qaeda is now practically a dysfunctional organization especially in Af-Pak region. A huge credit of this success against Al-Qaeda lies with Pakistani LEAs which arrested and killed hundreds of its operatives over a decade in War on Terror. Initially, immense criticism was made against Pakistan for harbouring Al-Qaeda leadership in its tribal areas however massive crackdown against the militant organization made all criticism null and void. Marginalization of Al-Qaeda and gradual movement of its remnants towards Middle Eastern and African countries has now compelled international media to focus Al-Qaeda’s activities in those regions, yet some hostile elements are still trying to entangle Pakistan with the global terrorist threat by floating exaggerated stories on media regarding Lashkar-e-Taiba (LeT). India-based media houses and its sponsored western think tanks are particularly projecting this organization as a regional militant group, having a global agenda and alleged links with Pakistan’s ISI, which can disturb regional and international stability. However, terming LeT as a terrorist organization with global aspiration like Al-Qaeda is a far-fetched reality. The narrative of LeT’s global reach is based on its alleged involvement in Mumbai attacks of 26/11. The forced confessions of Ajmal Qasab under the torture of RAW also facilitated India to label ISI responsible for these attacks. Nevertheless, after Mumbai attacks, Pakistan fully cooperated with India on the issue and arrested all the individuals, who were pointed out by the Indian government, yet India failed to provide enough evidence to convict the accused persons. Head of Jamaat-ud-Dawa, Hafiz Saeed was also released due to lack of evidence as India once again did not produce any data to support the accusation and could not materialize links between JuD and LeT. Devoid of any concrete proof, India continues to spread concocted stories of links between banned LeT and ISI in one way or the other. Indian intelligence apparatus RAW is feeding information through own media and foreign policy builders to project LeT posing potential threat to the West. In this malicious game, American-Israeli lobbies are also helping India’s propaganda against ISI. The aim of these false propagations is to malign Pakistan security agencies for harbouring terrorism and provoke rage of Western countries against Pakistan. Their purpose is to convince Washington to continue its “do more” demand from Pakistan and keep the country under the clutches of sporadic attacks of US drones. In addition, these countries also want to divert the attention of their masses from their frustrated misadventure in Afghanistan and Kashmir. In fact, US and India have badly failed in crushing the stiff resistance of Afghan Taliban and Kashmiris who have been fighting agai

#### Signature strikes are good and don’t risk civilian casualties – key to pace of attack that prevents organization of operations and more likely to kill high value targets

Greg Miller, Washington Post, “CIA seeks new authority to expand Yemen drone campaign,” April 18, 2012.

Proponents of the plan said improvements in U.S. intelligence collection in Yemen have made it possible to expand the drone campaign — and use signature strikes — while minimizing the risk of civilian casualties. They also pointed to the CIA’s experience in Pakistan. U.S. officials said the agency killed more senior al-Qaeda operatives there with signature strikes than with those in which it had identified and located someone on its kill list. In Pakistan, the CIA “killed most of their ‘list people’ when they didn’t know they were there,” said a former senior U.S. military official familiar with drone operations. The agency has cited the Pakistan experience to administration officials in arguing, perhaps counterintuitively, that it can be more effective against al-Qaeda’s Yemen affiliate if it doesn’t have to identify its targets before an attack. Obama, however, ruled out a similar push for such authority more than a year ago. Increasing focus on Yemen The CIA, the National Security Agency and other spy services have deployed more officers and resources to Yemen over the past several years to augment counterterrorism operations that were previously handled almost exclusively by the U.S. Joint Special Operations Command. The CIA began flying armed drones over Yemen last year after opening a secret base on the Arabian Peninsula. The agency also has worked with the Saudi and Yemeni intelligence services to build networks of informants — much the way it did in Pakistan before ramping up drone strikes there. The agency’s strategy in Pakistan was centered on mounting a drone campaign so relentless that it allowed no time between attacks for al-Qaeda operatives to regroup. The use of signature strikes came to be seen as critical to achieving that pace. The approach involved assembling threads of intelligence from multiple sources to develop telltale “signatures” of al-Qaeda activity based on operatives’ vehicles, facilities, communications equipment and patterns of behavior. A former senior U.S. intelligence official said the CIA became so adept at this that it could tell what was happening inside an al-Qaeda compound — whether a leader was visiting or explosives were being assembled, for example — based on the location and number of security operatives surrounding the site.

#### No risk of nuclear terror- cannot build and detonate

Mueller and Stewart 2012(John, Senior Research Scientist at the Mershon Center for International Security Studies and Adjunct Professor in the Department of Political Science at Ohio State University, Senior Fellow at the CATO institute, and Mark, Australian Research Council Professorial Fellow and Professor and Director at the Centre for Infrastructure Performance and Reliability at the University of Newcastle, Summer, "The Terrorism Delusion", International Security, Volume 37, Number 1, MUSE)

Over the course of time, such essentially delusionary thinking has been internalized and institutionalized in a great many ways. For example, an extrapolation of delusionary proportions is evident in the common observation that, because terrorists were able, mostly by thuggish means, to crash airplanes into buildings, they might therefore be able to construct a nuclear bomb. Brian Jenkins has run an internet search to discover how often variants of the term “al-Qaida” appeared within ten words of “nuclear.” There were only seven hits in 1999 and eleven in 2000, but the number soared to 1,742 in 2001 and to 2,931 in 2002.[47](http://muse.jhu.edu/journals/international_security/v037/37.1.mueller.html" \l "f47) By 2008, Defense Secretary Robert Gates was assuring a congressional committee that what keeps every senior government leader awake at night is “the thought of a terrorist ending up with a weapon of mass destruction, especially nuclear.”[48](http://muse.jhu.edu/journals/international_security/v037/37.1.mueller.html" \l "f48)¶ Few of the sleepless, it seems, found much solace in the fact that an al-Qaida computer seized in Afghanistan in 2001 indicated that the group’s budget for research on weapons of mass destruction (almost all of it focused on primitive chemical weapons work) was $2,000 to $4,000.[49](http://muse.jhu.edu/journals/international_security/v037/37.1.mueller.html" \l "f49) In the wake of the killing of Osama bin Laden, officials now have many more al-Qaida computers, and nothing in their content appears to suggest that the group had the time or inclination, let alone the money, to set up and staff a uranium-seizing operation, as well as a fancy, super-high-technology facility to fabricate a bomb. This is a process that requires trusting corrupted foreign collaborators and other criminals, obtaining and transporting highly guarded material, setting up a machine shop staffed with top scientists and technicians, and rolling the heavy, cumbersome, and untested finished product into position to be detonated by a skilled crew—all while attracting no attention from outsiders.[50](http://muse.jhu.edu/journals/international_security/v037/37.1.mueller.html" \l "f50)¶ If the miscreants in the American cases have been unable to create and set off even the simplest conventional bombs, it stands to reason that none of them were very close to creating, or having anything to do with, nuclear weapons—or for that matter biological, radiological, or chemical ones. In fact, with perhaps one exception, none seems to have even dreamed of the prospect; and the exception is José Padilla (case 2), who apparently mused at one point about creating a dirty bomb—a device that would disperse radiation—or even possibly an atomic one. His idea about isotope separation was to put uranium into a pail and then to make himself into a human centrifuge by swinging the pail around in great arcs.[51](http://muse.jhu.edu/journals/international_security/v037/37.1.mueller.html" \l "f51) ¶ Even if a weapon were made abroad and then brought into the United States, its detonation would require individuals in-country with the capacity to receive and handle the complicated weapons and then to set them off. Thus far, the talent pool appears, to put mildly, very thin. ¶ There is delusion, as well, in the legal expansion of the concept of “weapons of mass destruction.” The concept had once been taken as a synonym for nuclear weapons or was meant to include nuclear weapons as well as weapons yet to be developed that might have similar destructive capacity. After the Cold War, it was expanded to embrace chemical, biological, and radiological weapons even though those weapons for the most part are incapable of committing destruction that could reasonably be considered “massive,” particularly in comparison with nuclear ones.[52](http://muse.jhu.edu/journals/international_security/v037/37.1.mueller.html" \l "f52) And as explicitly rendered into U.S. law, the term was extended even further to include bombs of any kind, grenades, and mines; rockets having a propellant charge of more than four ounces; missiles having an explosive or incendiary charge of more than one-quarter ounce; and projectile-spewing weapons that have a barrel with a bore more than a half inch in diameter.[53](http://muse.jhu.edu/journals/international_security/v037/37.1.mueller.html" \l "f53) It turns out then that the “shot heard round the world” by revolutionary war muskets was the firing of a WMD, that Francis Scott Key was exultantly, if innocently, witnessing a WMD attack in 1814; and that Iraq was full of WMD when the United States invaded in 2003—and still is, just like virtually every other country in the world.

#### Blowback arguments are wrong and outweighed by conducting the war against terror

Kenneth Anderson, professor of international law at American University and a member of the Task Force on National Security and Law at the Hoover Institution, “The Case for Drones,” Commentary, June 2013.

4. Blowback ¶ The most prominent critique today, however, is that drone warfare is counterproductive because it produces “blowback.” What is blowback?¶ Blowback comprises the supposed bad consequences of drones that swamp the benefits, if any, of drone warfare itself—the anger of villagers whose civilian relatives have been killed, for instance, or the resentment among larger populations in Pakistan or Yemen over drone strikes. The anger, we are told, is fanned by Islamist preachers, local media, and global Web communities, and then goes global in the ummah about the perceived targeting of Muslims and Islam. This leads to radicalization and membership recruitment where the strikes take place. Or maybe it leads to independently organized violence—perhaps the case of the Boston bombers, though it is too early to say. All this bad public perception outweighs whatever tactical value, if any, drone strikes might have.¶ Blowback can never be dismissed, because it might be true in some cases. But even when true, it would exist as a matter of degree, to be set against the benefits of the drone strikes themselves. By definition, blowback is a second-order effect, and its diffuse nature makes its existence more a matter of subjective judgment than any other evaluation of drone warfare. As a hypothesis, the possibility of blowback arises in two distinct settings: “narrow” counterinsurgency and “broad” global counterterrorism.¶ The narrow blowback hypothesis concerns those in communities directly affected by global counterterrorism drone strikes while the United States is trying to carry out a ground-level counterinsurgency campaign. The question is whether civilians, women and children especially, are being killed by drones in such numbers—because collateral damage is a fact, including from drone strikes—that they make these local communities even more fertile ground for anti-American operations. Do the drone strikes make things unacceptably more difficult for ground forces attempting to carry out a hearts-and-minds campaign to win over the local population?¶ Direct and immediate concerns about villagers’ perceptions during the counterinsurgencies in Iraq and Afghanistan led, at some points, to extraordinary (from the standpoint of lawful targeting and acceptable collateral damage) measures against using air power and even infantry to fire back at insurgents. But local counterinsurgency is not the long-term concern today; global counterterrorism is. Village-level resentments fueling recruitment might be a concern, but this type of blowback matters far less in terms of war fighting when the United States no longer has infantry in those places (and is no longer making its counterterrorism policy rest upon the chimera of a stable, democratic Afghanistan).¶ It is sharply contested, to say the least, whether and to what extent drone strikes are creating blowback among villagers, or whether and to what extent, as a former British soldier recently returned from Afghanistan remarked to me, villagers are sad to see the Taliban commander who just insisted on marrying someone’s young daughter blown up in an airstrike. There is also debate about the degree to which villagers are aware that the American drones are undertaking strikes that the Pakistani government might otherwise undertake. Critics often neglect to focus on the Pakistani government’s regular and brutal assaults in the tribal zones. Despite a general perception that all of Pakistan is united against drone strikes, voices in the Pakistani newspapers have often made note that the tribal areas fear the Pakistani army far more than they fear U.S. drones, because, despite mistakes and inevitable civilian casualties, they see them as smaller and more precise. But the blunt reality is that as the counterinsurgency era ends for U.S. forces, narrow blowback concerns about whether villages might be sufficiently provoked against American infantry are subsiding.¶ That leaves the broader claim of global blowback—the idea that drone campaigns are effectively creating transnational terrorists as well as sympathy for their actions. That could always be true and could conceivably outweigh all other concerns. But the evidence is so diffuse as to be pointless. Do Gallup polls of the general Pakistani population indicate overwhelming resentment about drone strikes—or do they really suggest that more than half the country is unaware of a drone campaign at all? Recent polls found the latter to be the case. Any causal connections that lead from supposed resentments to actual terrorist recruitment are contingent and uncertain. Discussing global blowback is also an easy stance for journalists writing about U.S. counterterrorism—Mark Mazzetti’s new book, The Way of the Knife, is a good example—because it automatically frames an oppositional narrative, one with dark undertones and intimations of unattractive, unintended consequence. The blowback argument is also peculiarly susceptible to raising the behavioral bar the United States must meet in order to keep the local population happy enough not to embrace suicide bombing and terrorism. It defines terrorist deviancy down, while U.S. and Western security behaviors are always defined up.¶ From a strategic standpoint, however, the trouble with the blowback theory is simple: It will always counsel doing nothing rather than doing something. It’s the kibitzer’s lazy objection. Whether one knows a lot or a little about the action and its possible blowback consequences, whether one has an axe to grind or is reasonably objective, one can always offer the blowback scenario.¶ There might be situations in which to give it priority; Gregory Johnsen, a Yemen expert, for example, says that a particular form of strike in Yemen causes blowback because it hits low-level fighters whose families cannot understand the American justification. (The response is, usually, that we are effectively fighting as the air arm of the Yemen government against its insurgents, including its low-level fighters.) That bears attention; whether it outweighs the strategic concern of supporting the Yemeni government, which does have to fight even low-level insurgents who in effect offer protection to the transnational terrorist wing, is another question. But we should consider it carefully.¶ Blowback is a form of the precautionary principle. But it’s awfully difficult to conduct war, after all, on the basis of “first do no harm.” As it happens, the United States once had a commander driven largely by considerations of blowback from a restive local population. His name was George McClellan. If he had not been replaced by Abraham Lincoln, the Union would have lost the Civil War.

#### Drones aren’t bad in terms of civilian casualties

Rosa Brooks, Prof of Law @ Georgetown University Law Center and Bernard Schwartz Senior Fellow at the New America Foundation, The Constitutional and Counterterrorism Implications of Targeted Killing: Testimony Before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights, April 23, 2013.

1. What’s not wrong with drones¶ Many of the most frequently heard criticisms of drones and drone warfare do not hold up ¶ well under serious scrutiny – or, at any rate, there’s nothing uniquely different or worse about ¶ drones, compared to other military technologies. Consider the most common anti-drone ¶ arguments.¶ First, critics often assert that U.S. drone strikes are morally wrong because the kill ¶ innocent civilians. This is undoubtedly both true and tragic -- but it is not really an argument ¶ against drone strikes as such. War kills innocent civilians, period. But the best available evidence ¶ suggests that U.S. drone strikes kill civilians at no higher a rate, and almost certainly at a lower ¶ rate, than most other common means of warfare. ¶ Much of the time, the use of drones actually permits far greater precision in targeting than ¶ most traditional manned aircraft. Today's unmanned aerial vehicles (UAVs) can carry very small ¶ bombs that do less widespread damage, and UAVs have no human pilot whose fatigue might ¶ limit flight time. Their low profile and relative fuel efficiency combines with this to permit them ¶ to spend more time on target than any manned aircraft. Equipped with imaging technologies that ¶ enable operators even thousands of miles away to see details as fine as individual faces, modern ¶ drone technologies allow their operators to distinguish between civilians and combatants far ¶ more effectively than most other weapons systems.¶ That does not mean civilians never get killed in drone strikes. Inevitably, they do, ¶ although the covert nature of most U.S.strikes and the contested environment in which they ¶ occur makes it impossible to get precise data on civilian deaths. This lack of transparency ¶ inevitably fuels rumors and misinformation. However, several credible organizations have ¶ sought to track and analyze deaths due to U.S. drone strikes. The British Bureau of Investigative ¶ Journalism analyzed examined reports by "government, military and intelligence officials, and ¶ by credible media, academic and other sources," for instance, and came up with a range,¶ suggesting that the 344 known drone strikes in Pakistan between 2004 and 2012 killed between ¶ 2,562 and 3,325 people, of whom between 474 and 881 were likely civilians.38 (The numbers for ¶ Yemen and Somalia are more difficult to obtain.) The New America Foundation, with which I ¶ am affiliated, came up with slightly lower numbers, estimating that U.S. drone strikes killed ¶ somewhere between 1,873 and 3,171 people overall in Pakistan, of whom between 282 and 459 ¶ were civilians. 39¶ Whether drones strikes cause "a lot" or "relatively few" civilian casualties depends what ¶ we regard as the right point of comparison. Should we compare the civilian deaths caused by ¶ drone strikes to the civilian deaths caused by large-scale armed conflicts? One study by the ¶ International Committee for the Red Cross found that on average, 10 civilians died for every ¶ combatant killed during the armed conflicts of the 20th century.40 For the Iraq War, estimates ¶ vary widely; different studies place the ratio of civilian deaths to combatant deaths anywhere ¶ between 10 to 1 and 2 to 1.41¶ The most meaningful point of comparison for drones is probably manned aircraft. It's ¶ extraordinarily difficult to get solid numbers here, but one analysis published in the Small Wars ¶ Journal suggested that in 2007 the ratio of civilian to combatant deaths due to coalition air ¶ attacks in Afghanistan may have been as high as 15 to 1.42 More recent UN figuressuggest a far ¶ lower rate, with as few as one civilian killed for every ten airstrikes in Afghanistan.43 But drone ¶ strikes have also gotten far less lethal for civilians in the last few years: the New America ¶ Foundation concludes that only three to nine civilians were killed during 72 U.S. drone strikes in ¶ Pakistan in 2011, and the 2012 numbers were also low.44 In part, this is due to technological ¶ advances over the last decade, but it's also due to far more stringent rules for when drones can ¶ release weapons. ¶ Few details are known about the precise targeting procedures followed by either U.S.¶ armed forces or the Central Intelligence Agency with regard to drone strikes. The Obama ¶ Administration is reportedly finalizing a targeted killing “playbook,”45 outlining in great detail ¶ the procedures and substantive criteria to be applied. I believe an unclassified version of this ¶ should be should be made public, as it may help to diminish concerns reckless or negligent ¶ targeting decisions. Even in the absence of specific details, however, I believe we can have ¶ confidence in the commitment of both military and intelligence personnel to avoiding civilian ¶ casualties to the greatest extent possible. The Obama Administration has stated that it regards ¶ both the military and the CIA as bound by the law of war when force is used for the purpose of¶ targeted killing.46 (I will discuss the applicable law of war principles in section IV of this ¶ statement). What is more, the military is bound by the Uniform Code of Military Justice. ¶ Concern about civilian casualties is appropriate, and our targeting decisions, however ¶ thoughtfully made, are only as good as our intelligence—and only as wise as our overall ¶ strategy. Nevertheless, there is no evidence supporting the view that drone strikes cause ¶ disproportionate civilian casualties relative to other commonly used means or methods of ¶ warfare. On the contrary, the evidence suggests that if the number of civilian casualties is our ¶ metric, drone strikes do a better job of discriminating between civilians and combatants than ¶ close air support or other tactics that receive less attention.

#### Drone strikes decrease militant violence – all measures show

Johnson and Sarbahi ‘13

[Patrick Johnson Former Fellow Harvard’s Kennedy School; Anoop K. Sarbahi Postdoctoral Scholar Stanford, “The Impact of U.S. Drone Strikes on Terrorism in Pakistan and Afghanistan”, 7/1/13, <http://patrickjohnston.info/materials/drones.pdf,//wyo> TL]

To test Hypotheses 1 and 2, we examine five different measures of militant violence: ¶ the frequency of attacks, the lethality of attacks, the number of IED attacks, the¶ number of suicide attacks, and the number of attacks on tribal elders. The results do not¶ support Hypothesis 1—that drone strikes are associated with increased terrorism. On the¶ contrary, they support our hypothesis, (Hypothesis 2), that that drone strikes are¶ associated with decreases in militant violence. We find no evidence in support of the¶ competing hypothesis (Hypothesis 1)—that drone strikes increase violence. We discuss these results in more detail below. The 2FESL estimates in column 2 of table 2 show that drone strikes are associated¶ with a decrease in militant attacks of approximately 24 percentage points—a result that¶ is statistically significant at the one percent level. From 2007 through 2011, the average¶ agency suffered roughly 0.88 militant attacks per week. During weeks in which a drone¶ strike occurred, agencies suffered an average of about 0.68 attacks Given that drone strikes are associated with reductions in insurgent attacks in the¶ areas where they occur, it makes sense that drone strikes might also be negatively¶ associated with the lethality, or “quality,” of attacks in those same areas. Consistent with¶ Hypothesis 2, the estimates presented in column 2 of table 2 suggest that the lethality of¶ militant attacks declines by more than 36.5 percent as a result of a drone strike in a given¶ week. On average, 2.77 people were killed or injured in militant attacks in FATA between¶ 2007 and the end of the third quarter of 2011. This figure would decline substantially to¶ 1.76 per week as a result of a single drone strike if the number of drone strikes would¶ increase by one per agency-week.4Regarding suicide attacks, the coefficient in column 4 of table 2 suggests that drone¶ strikes are also associated with reductions in these tactics. This result is significant at the¶ one percent level. Suicide attacks are relatively rare but extremely high-profile events:¶ the mean number of suicide attacks per agency per week is 0.02, or about one per¶ agency every year. The point estimate appears small, but the marginal effect translates into an almost 67 percent decline in the number of suicide attacks in a week with one drone¶ strike. Thus, the average number of weekly suicide attacks in FATA, which is 0.14 per¶ week during the period under consideration, would decline to 0.05 per week as a result of¶ one drone strike per agency-week. On balance, the evidence is clearly consistent with¶ Hypothesis 2—the “disruption” hypothesis—and not with the argument that drone strikes¶ trigger increased violence (Hypothesis 1)

#### Low risk of terrorist attack against the U.S.

Shinkman ‘12

[Paul D., Washington newsman, naturalized Capitol Hill citizen, now national security reporter at US News & World Report. Formerly with WTOP News, “Study: U.S. at 'Low' Risk of Terror Attack,” U.S.News & World Report LP, 12.05.2012. <<http://www.usnews.com/news/articles/2012/12/05/study-america-has-relatively-low-chance-of-terrorist-attack->>//wyo-hdm]

In an era of terrorist plots and WMD proliferation, this news may come as a slight relief: Among countries with the highest risk of terrorist attacks, the United States ranks "relatively low," according to a new study. The University of Maryland collected data on 104,000 instances of terrorism in 158 nations, and ranked the likelihood of each country witnessing a terrorist attack within its borders. Iraq, Pakistan and Afghanistan earn the top positions. The U.S. slides in at No. 41. "In global terms, this is a relatively low level of activity," according to the study, first reported by The Washington Times . "North America is the least-likely region to be involved in a terrorist attack, though this is not the general impression among many of its residents," says Steve Killelea with the Institute for Economics and Peace, which published the study using statistics and analysis from the University of Maryland's National Consortium for the Study of Terrorism and Responses to Terrorism . "The fatality rate in the U.S. is 19 times lower than Western Europe," he tells the Times. "Still, the level of terrorism elsewhere is too high. We're hoping the index can prompt a practical debate about the future of terrorism and some appropriate policy responses." Major U.S. allies land much higher on the list. Britain is ranked 28th, behind Turkey and Israel, which are 19th and 20th, respectively. The Philippines just squeaks into the top 10, right behind Russia at No. 9.

### 1NC Pakistan Stab

#### Casualties are way down and drones are far more precise than alternatives---our ev uses the best data

Michael Cohen 13, Fellow at the Century Foundation, 5/23/13, “Give President Obama a chance: there is a role for drones,” The Guardian, http://www.theguardian.com/commentisfree/2013/may/23/obama-drone-speech-use-justified

Drone critics have a much different take. They are passionate in their conviction that US drones are indiscriminately killing and terrorizing civilians. The Guardian's own Glenn Greenwald argued recently that no "minimally rational person" can defend "Obama's drone kills on the ground that they are killing The Terrorists or that civilian deaths are rare". Conor Friedersdorf, an editor at the Atlantic and a vocal drone critic, wrote last year that liberals should not vote for President Obama's re-election because of the drone campaign, which he claimed "kills hundreds of innocents, including children," "terrorizes innocent Pakistanis on an almost daily basis" and "makes their lives into a nightmare worthy of dystopian novels". ¶ I disagree. Increasingly it appears that arguments like Friedersdorf makes are no longer sustainable (and there's real question if they ever were). Not only have drone strikes decreased, but so too have the number of civilians killed – and dramatically so. ¶ This conclusion comes not from Obama administration apologists but rather, Chris Woods, whose research has served as the empirical basis for the harshest attacks on the Obama Administration's drone policy. ¶ Woods heads the covert war program for the Bureau of Investigative Journalism (TBIJ), which maintains one of three major databases tabulating civilian casualties from US drone strikes. The others are the Long War Journal and the New America Foundation (full disclosure: I used to be a fellow there). While LWJ and NAJ estimate that drone strikes in Pakistan have killed somewhere between 140 and 300 civilians, TBIJ utilizes a far broader classification for civilians killed, resulting in estimates of somewhere between 411-884 civilians killed by drones in Pakistan. The wide range of numbers here speaks to the extraordinary challenge in tabulating civilian death rates. ¶ There is little local reporting done on the ground in northwest Pakistan, which is the epicenter of the US drone program. As a result data collection is reliant on Pakistani news reporting, which is also dependent on Pakistani intelligence, which has a vested interest in playing up the negative consequences of US drones. ¶ When I spoke with Woods last month, he said that a fairly clear pattern has emerged over the past year – far fewer civilians are dying from drones. "For those who are opposed to drone strikes," says Woods there is historical merit to the charge of significant civilian deaths, "but from a contemporary standpoint the numbers just aren't there." ¶ While Woods makes clear that one has to be "cautious" on any estimates of casualties, it's not just a numeric decline that is being seen, but rather it's a "proportionate decline". In other words, the percentage of civilians dying in drone strikes is also falling, which suggests to Woods that US drone operators are showing far greater care in trying to limit collateral damage. ¶ Woods estimates are supported by the aforementioned databases. In Pakistan, New America Foundation claims there have been no civilian deaths this year and only five last year; Long War Journal reported four deaths in 2012 and 11 so far in 2013; and TBIJ reports a range of 7-42 in 2012 and 0-4 in 2013. In addition, the drop in casualty figures is occurring not just in Pakistan but also in Yemen. ¶ These numbers are broadly consistent with what has been an under-reported decline in drone use overall. According to TBIJ, the number of drone strikes went from 128 in 2010 to 48 in 2012 and only 12 have occurred this year. These statistics are broadly consistent with LWJ and NAF's reporting. In Yemen, while drone attacks picked up in 2012, they have slowed dramatically this year. And in Somalia there has been no strike reported for more than a year. ¶ Ironically, these numbers are in line with the public statements of CIA director Brennan, and even more so with Senator Dianne Feinstein of California, chairman of the Select Intelligence Committee, who claimed in February that the numbers she has received from the Obama administration suggest that the typical number of victims per year from drone attacks is in "the single digits".¶ Part of the reason for these low counts is that the Obama administration has sought to minimize the number of civilian casualties through what can best be described as "creative bookkeeping". The administration counts all military-age males as possible combatants unless they have information (posthumously provided) that proves them innocent. Few have taken the White House's side on this issue (and for good reason) though some outside researchers concur with the administration's estimates.¶ Christine Fair, a professor at Georgetown University has long maintained that civilian deaths from drones in Pakistan are dramatically overstated. She argues that considering the alternatives of sending in the Pakistani military or using manned aircraft to flush out jihadists, drone strikes are a far more humane method of war-fighting.

#### Drones key to Pakistan stability **Nadim 2012** [Hussain, visiting scholar at the Woodrow Wilson Center, “How Drones Changed the Game in Pakistan,” August 8, 2012, nationalinterest.org/how-drones-changed-the-game-pakistan-7290, wyo-sc]

Regardless of what the news agencies in Pakistan claim about the negative effects of drone strikes, the weapon is proving to be a game changer for the U.S. war on terrorism. And surprisingly, the Pakistani Army quietly admits to this fact. Just the way Stinger missiles shifted the balance of power in favor of the United States in the 1980s, drones are producing the same results.¶ The critics of unmanned strikes, who claim that drones are contributing to growing radicalization in Pakistan, haven’t looked around enough—or they would realize that much of the radicalization already was established by the Taliban in the 1990s. The real tragedy is that it is acceptable for the Taliban to radicalize and kill, but it is considered a breach of sovereignty for the United States, in pursuit of those radicalizing Pakistan’s people, to do the same.¶ There is so much protest over the drones because the media reports about them are biased. Although people on ground in war zones contend that the drone strikes have very few civilian casualties and, with time, have become extremely precise, the media presents quite a different story to boost its ratings.¶ Many in Pakistan, especially in the army, understand the positive impact of this weapon. Drones are coming in handy for two reasons: their precision and psychological effect. Many analysts of this subject have been concerned only with the military aspect, such as whether or not drones are precise enough and the casualties they incur. But part of what works in favor of the United States is the psychological impact—the fear that drones have instilled in the militants. The fact that the United States might strike day or night, inside the militant compound or outside while traveling in the convoys, works to deter militants and restrict their operations. This tilts the balance of power in favor of the United States.¶ Most of the people in the Pakistani Army whom I interviewed on the subject were positive about the drone strikes and their direct correlation with a decrease in terrorist attacks in Pakistan. The majority focused on the psychological impact of the drones and how they have put militants on the run, forcing them to sleep under trees at night, though it must be said that army officials showed some concern about cases in which the same psychological impact is experienced by civilians.¶ Locals I talked to are frustrated over the fear that they might get hit by a drone if the militants are hiding in their neighborhood. But this frustration may have a positive impact as it motivates civilians to flush out and close doors to militants who seek refuge in their areas.¶ Surprisingly, there isn’t as much anti-Americanism as one would suspect in areas where the United States is conducting drone strikes, largely because the locals are fed up with the influx of militants in their areas and have suffered because of terrorism. However, urban centers, which have suffered the least from terrorism, are far more radicalized and anti-American. Hence, we see large anti-drone rallies in the cities of Punjab, where people have little first-hand experience with drones. The anti-American lot in these places will start a rally for any reason at all as long as they get to burn a few American flags.

#### No signature strikes causes raiding—causes excessive killing and spurs extortive governments

Dan Trombly 13, National Security/International Affairs Analyst, Caerus Analytics, LLC, 5/29/13, “I Might Need You To Kill: Signatures, Patterns, and Alternatives,” http://www.cnas.org/blogs/abumuqawama/2013/05/i-might-need-you-kill-signatures-patterns-and-alternatives.html

Of course, it is important to note these violent dynamics are hardly unique to signature strikes or aerial assassinations. Though improper targeting and munitions selection can rapidly magnify the danger of collateral damage in those operations, it is important to remember the enormous potential costs of seeking to kill or capture militants with any instruments that are unable to ensure security for civilians. ¶ Night raids, such as the infamous botched Gardez raid, can easily falter on poor intelligence and the mistaken use of force against civilians. While the U.S. has learned much since Black Hawk Down, compare the amount of force the U.S. has had to bring down to ensure adequate force protection in operations on or across the border with Pakistan. In 2008, the Angor Ada raid, involving dozens of US ground troops and multiple aircraft, killed at least several civilians, and meant that the next raid provoked a major standoff that threatened to cause large-scale firefights and civilian displacement. Or take the example of 2011, NATO and Afghan forces reported fire from Pakistani positions. The result was that NATO unleashed more airpower to protect its troops in contact than MQ-1s or MQ-9s ever could. Two Apache attack helicopters, two F-15Es, and an AC-130 gunship pummeled targets on the Pakistani border, killing as many as two dozen Pakistani soldiers. ¶ Even then, a regime of raiding into territories where we are not willing to actually create a sustained military presence does nothing to mitigate the dangerous dynamics for civilian cooperation and intelligence collection. Raids that leave territorial control an open question for host governments and militants do not give civilians much incentive to provide the intelligence necessary for more precise targeting, leaving them to try their luck at the dangerous game of avoiding militant counterintelligence efforts. The solution to such a quandary, especially when providing security to positively incentivize informers, is to remove potential informers from enemy retaliation through detention or concentration, and the use of high-tempo raiding operations to generate as much actionable intelligence as possible through the raiding process itself. ¶ The face of a robust capture program is not the FBI effort which retrieved the 1993 CIA shooter, which in the relatively sanguine climate of 1997, the Pakistani government was unwilling to publicly admit its role in handing over a citizen to the US. American law enforcement wisely worked with the ISI to lure the suspect into Punjab. In today’s climate, against targets part of active militant networks, an operation that relies on relatively unsavvy suspects and highly compliant host government security and intelligence seems less than forthcoming. ¶ The face of a capture program in Pakistan’s border regions with Afghanistan, Yemen, Somalia, and similar environments, is not going to be law enforcements, but the types of programs that, past and present, we praise with intimidation or decry with disgust as “industrial-scale killing machines” or “executive assassination rings.” Wartime friction ensures that any well-intentioned capture program in denied or contested areas will live on as an assassination program. Just ask those involved in the Phoenix Program, who had even their own President thinking they were running a massive assassination machine.¶ Of course, programs like the CIA-Vietnamese Provincial Reconnaissance Units, for all the reputation they gained as an unstoppable assassination machine, pale in comparison to the sanguinary behavior of other paramilitary efforts to dismantle insurgent infrastructure and disrupt irregular opponents. While the Anbar Awakening receives massive praise, enlisting irregular forces with relatively little opportunity to control their behavior,¶ and far less “skin in the game” with regard to the political situation on the ground, frequently results in incredibly excessive killing and the incorporation of civilian populations into horrific, racket-like forms of extortive governance. Even relatively antiseptic terms such as extending the reach of governance and strengthening the state, in the context of civil wars or internal conflict against irregular opponents, frequently involves the tacit or explicit cooperation between host government and paramilitary forces to purge not just insurgent infrastructure, but political sympathizers and threats to elite interests. Extending the reach of the state under such conditions is frequently a nasty thing, and while it is in vogue to speak of the death or decline of counterinsurgency, the clean language of empowering local partners and expanding state capacity is still counterinsurgency, just of a much different sort than the kind wealthy liberal 3rd-party interventions might try to steer their clients towards.

#### 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 no-first-strike policy," 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."

## Prolif

### 1NC

#### No reverse casual modeling internal link --- we can’t reverse the precedent that has already been set

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/)

The New York Times engages in some scare-mongering today about a drone arms 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.

#### No impact --- drones are ineffective and there’s no incentive for them be used on a wide-scale --- they’ll be easily countered even if they are with limited escalation

Lewis 11

(Michael W. Lewis, professor of international law and the law of war at Ohio Northern University School of Law, former Navy fighter pilot, and coauthor of ‘The War on Terror and the Laws of War: A Military Perspective,’ “Unfounded Drone Fears,” Los Angeles Times, October 17, 2011, http://articles.latimes.com/2011/oct/17/opinion/la-oe--lewis-drones-20111017)

Almost since the United States began using the unmanned aerial vehicles known as drones, their use has drawn criticism. The latest criticism, which has received considerable attention in the wake of the drone strike on Anwar Awlaki, is that America's use of drones has sparked a new international arms race.¶ While it is true that some other nations have begun developing their own unmanned aerial vehicles, the extent of the alarm is unjustified. Much of it rests on myths that are easily dispelled.¶ Myth 1: Drones will be a threat to the United States in the hands of other nations. Drones are surveillance and counter-terrorism tools; they are **not effective weapons** of conventional warfare. The unmanned aerial vehicles are slow and **extremely vulnerable** to even basic air defense systems, illustrated by the fact that a U.S. surveillance drone was shot down by a 1970s-era MIG-25 Soviet fighter over Iraq in 2002. Moreover, drones are dependent on constant telemetry signals from their ground controllers to remain in flight. Such signals can be easily jammed or disrupted, causing the drone to fall from the sky. It's even possible that a party sending stronger signals could take control of the drone. The drones, therefore, have limited usefulness. And certainly any drone flying over the U.S. while being controlled by a foreign nation could be easily detected and either destroyed or captured.¶ Myth 2: Terrorists could effectively use drones to strike targets that are otherwise safe. Though it would be preferable if terrorist groups did not acquire drones, the technology required to support them is not particularly advanced. If organizations such as Al Qaeda were intent on acquiring the technology, they probably could. One of the reasons Al Qaeda may not have spent the time and resources necessary to do so is that drones would be of limited value. In addition to being very vulnerable to even basic air defense systems, drones require a great deal of logistical support. They have to be launched, recovered and controlled from a reasonably large and secure permanent facility. Wherever Al Qaeda's drones landed would immediately become a target.¶ It is true that a small, hand-launched drone capable of delivering a small warhead over a reasonably short distance could be, like radio-controlled model airplanes, launched in a public park or other open area and flown to a target several miles away. However, the amount of explosives that such a drone can carry is very limited (at most a few pounds) and pales in comparison to the amount of explosives that can be delivered by a vehicle or even a suicide bomber. It seems likely that terrorist groups will continue to deliver their explosives by vehicle or suicide bomber.¶ Myth 3: The U.S. use of drones in cases such as the Awlaki killing in Yemen serves to legitimize their use by China or Russia. International law places the same restrictions on the use of drones that it places on any other use of military force. The U.S. used a drone on Yemeni territory to kill Awlaki because it was given permission to do so by the Yemeni government, and because Awlaki was an active member of an Al Qaeda affiliate who had repeatedly been involved in operations designed to kill Americans at home and abroad. With such permission, the U.S. could instead have employed special forces or a conventional airstrike.¶ Numerous commentators have suggested that U.S. drone use legitimizes Russian drone use in Chechnya or Chinese drone use against the Uighurs. If China or Russia were facing genuine threats from Chechen or Uighur separatists, they might be allowed under international law to use drones in neighboring states if those states gave them permission to do so. However, given the fact that Chechen separatists declared an end to armed resistance in 2009, and that the greatest concern Russians currently have with Chechnya is with the lavish subsidies that Russia is currently providing it, the likelihood of armed Russian drones over Chechnya seems **remote at best.**¶ Likewise, there is no Uighur separatist organization that even remotely resembles Al Qaeda. Uighur unrest has taken the form of uprisings in Urumqi and other areas, similar to the Tibetan unrest of a few years ago. The Chinese eliminated such unrest with widespread arrests and disappearances, which raised serious human rights concerns. But there has been no time in which Uighur opposition has met the threshold established by international law that would allow for the use of armed drones in response to Uighur actions.¶ It is important to recognize drones for what they are: slow, relatively low-tech anti-terrorism tools that would be of limited use on most modern battlefields and are particularly unsuited to use by terrorist organizations.

#### 1. 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.

### Impact

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

Carlson ’13(Allen Carlson is an Associate Professor in Cornell University’s Government Department. He was granted his PhD from Yale University’s Political Science Department. His undergraduate degree is from Colby College. In 2005 his Unifying China, Integrating with the World: Securing Chinese Sovereignty in the Reform Era was published by Stanford University Press. He has also written articles that appeared in the Journal of Contemporary China, Pacific Affairs, Asia Policy, and Nations and Nationalism. In addition, he has published monographs for the National Committee on U.S.-China Relations and the East-West Center Washington. Carlson was a Fulbright-Hays scholar at Peking University during the 2004-2005 academic year. In 2005 he was chosen to participate in the National Committee’s Public Intellectuals Program, and he currently serves as an adviser to Cornell’s China Asia Pacific Studies program and its East Asia Program. Carlson is currently working on a project exploring the issue of nontraditional security in China’s emerging relationship with the rest of the international system. His most recent publications are the co-edited Contemporary Chinese Politics: New Sources, Methods and Field Strategies (Cambridge University Press, 2010) and New Frontiers in China’s Foreign Relations (Lexington, 2011). China Keeps the Peace at Sea China Keeps the Peace at Sea Why the Dragon Doesn't Want War Allen Carlson February 21, 2013

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 the disputed 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** thateven the most pronounced victory would be outweighed by the collateral damagethat 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 of deadly **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 § Marked 12:52 § 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.

# 2NC

Terror

**Constrained executive makes it impossible to respond to the rapid and existential nature of the threat posed by terrorism-strong, flexible executive key to check nuclear, chemical, and biological attacks**

**Royal 2011**

[John Paul, Fellow of the Institute for World Politics, 2011, War Powers and the Age of Terrorism, <http://www.thepresidency.org/storage/Fellows2011/Royal-_Final_Paper.pdf>, uwyo//amp]

The international system itself and national security challenges to the United States in particular, underwent rapid and significant change in the first decade of the twenty-first century. War can no longer be thought about strictly in the terms of the system and tradition created by the Treaty of Westphalia over three and a half centuries ago**. Non-state actors now possess a level of destructiveness formerly enjoyed only by nation states. Global terrorism, coupled with the threat of weapons of mass destruction** developed organically or obtained from rogue regimes, **presents new challenges to U.S. national security and place innovative demands on the Constitution’s system of making war. I**n the past, as summarized in the 9/11 Commission Report, threats emerged due to hostile actions taken by enemy states and their ability to muster large enough forces to wage war: “Threats emerged slowly, often visibly, as weapons were forged, armies conscripted, and units trained and moved into place. **Because large states were more powerful, they also had more to lose. They could be deterred"** (National Commission 2004, 362). This mindset assumed that peace was the default state for American national security. Today however, **we know that threats can emerge quickly. Terrorist organizations** half-way around the world **are able to wield weapons of unparalleled destructive power. These attacks are more difficult to detect and deter due to their unconventional and asymmetrical nature. In light of these new asymmetric threats** and the resultant changes to the international system, **peace can no longer be considered the default state of American national security. Many have argued that the Constitution permits the president to use unilateral action only in response to an imminent direct attac**k on the United States. In the emerging security environment described above, **pre-emptive action taken by the executive branch may be needed more often than when nation-states were the principal threat** to American national interests. Here again, the 9/11 Commission Report is instructive as it considers the possibility of pre-emptive force utilized over large geographic areas due to the diffuse nature of terrorist networks: In this sense, 9/11 has taught us that terrorism against American interests “over there” should be regarded just as we regard terrorism against America “over here.” In this sense, the American homeland is the planet (National Commission 2004, 362). Furthermore, the report explicitly describes the global nature of the threat and the global mission that must take place to address it. Its first strategic policy recommendation against terrorism states that **the: U.S. government must identify and prioritize actual or potential terrorist sanctuaries.** For each, it should have a realistic strategy to keep possible terrorists insecure and on the run, using all elements of national power (National Commission 2004, 367). Thus, **fighting continues against terrorists in Afghanistan, Yemen, Iraq, Pakistan, the Philippines, and beyond,** as we approach the tenth anniversary of the September 11, 2001 attacks. **Proliferation of weapons of mass destruction (WMD), especially nuclear weapons, into the hands of these terrorists is the most dangerous threat to the United States**. We know from the 9/11 Commission Report that A**l Qaeda has attempted to make and obtain nuclear weapons for at least the past fifteen years. Al Qaeda considers the acquisition of weapons of mass destruction to be a religious obligation** **while “more than two dozen other terrorist groups are pursing CBRN [chemical, biological, radiological, and nuclear] materials**” (National Commission 2004, 397). Considering these statements**, rogue regimes** that are openly hostile to the United States and have or seek to develop nuclear weapons capability such as North Korea and Iran, **or extremely unstable nuclear countries such as Pakistan, pose a special threat to American national security interests**. These nations were not necessarily a direct threat to the United States in the past. Now, however, **due to proliferation of nuclear weapons and missile technology, they can inflict damage at considerably higher levels** and magnitudes than in the past. In addition, **these regimes may pursue proliferation of nuclear weapons and missile technology to other nations and to allied terrorist organizations. The United States must pursue condign punishment and appropriate, rapid action against hostile terrorist organizations, rogue nation states, and nuclear weapons proliferation threats in order to protect American interest**s both at home and abroad. Combating these threats are the “top national security priority for the United States…with the full support of Congress, both major political parties, the media, and the American people” (National Commission 2004, 361). **Operations may take the form of pre-emptive and sustained action against those who have expressed hostility or declared war on the United States. Only the executive branch can effectively execute this mission,** authorized by the 2001 AUMF. If the national consensus or the nature of the threat changes, Congress possesses the intrinsic power to rescind and limit these powers.

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**Weak Obama causes multiple scenarios for nuclear war hotspots- turns Pakistan**

**COES 2011** (Ben, former speechwriter for George H.W. Bush, September 30, “The Disease of a Weak President,” <http://dailycaller.com/2011/09/30/the-disease-of-a-weak-president/>

The disease of a weak president usually begins with the Achilles’ heel all politicians are born with — the desire to be popular. It leads to pandering to different audiences, people and countries and creates a sloppy, incoherent set of policies. Ironically, it ultimately results in that very politician **losing the trust and respect of friends and foes alike.**

In the case of Israel, those of us who are strong supporters can at least take comfort in the knowledge that Tel Aviv will do whatever is necessary to protect itself from potential threats from its unfriendly neighbors. While it would be preferable for the Israelis to be able to count on the United States, in both word and deed, the fact is right now they stand alone. Obama and his foreign policy team have undercut the Israelis in a multitude of ways. Despite this, I wouldn’t bet against the soldiers of Shin Bet, Shayetet 13 and the Israeli Defense Forces.

But Obama’s weakness could — in other places — have implications far, far worse than anything that might ultimately occur in Israel. The triangular plot of land that connects Pakistan, India and China is held together with much more fragility and is built upon a truly foreboding foundation of religious hatreds, radicalism, resource envy and nuclear weapons. If you can only worry about preventing one foreign policy disaster, worry about this one.

Here are a few unsettling facts to think about: First, Pakistan and India have fought three wars since the British de-colonized and left the region in 1947. All three wars occurred before the two countries had nuclear weapons. Both countries now possess hundreds of nuclear weapons, enough to wipe each other off the map many times over.

Second, Pakistan is 97% Muslim. It is a question of when — not if — Pakistan elects a radical Islamist in the mold of Ayatollah Khomeini as its president. Make no mistake, it will happen, and when it does the world will have a far greater concern than Ali Khamenei or Mahmoud Ahmadinejad and a single nuclear device.

Third, China sits at the northern border of both India and Pakistan. China is strategically aligned with Pakistan. Most concerning, China covets India’s natural resources. Over the years, it has slowly inched its way into the northern tier of India-controlled Kashmir Territory, appropriating land and resources and drawing little notice from the outside world.

In my book, Coup D’Etat, I consider this tinderbox of colliding forces in Pakistan, India and China as a thriller writer. But thriller writers have the luxury of solving problems by imagining solutions on the page. In my book, when Pakistan elects a radical Islamist who then starts a war with India and introduces nuclear weapons to the theater, America steps in and removes the Pakistani leader through a coup d’état. I wish it was that simple.

The more complicated and difficult truth is that we, as Americans, must take sides. We must be willing to be unpopular in certain places. Most important, **we must be ready and willing to threaten our military might on behalf of our allies**. And our allies are Israel and India.

There are many threats out there — Islamic radicalism, Chinese technology espionage, global debt and half a dozen other things that smarter people than me are no doubt worrying about. But the single greatest threat to America is none of these. **The single greatest threat** facing America and our allies **is a weak U.S. president.** It doesn’t have to be this way. President Obama could — if he chose — develop a backbone and lead. Alternatively, America could elect a new president. It has to be one or the other. The status quo is simply not an option.

Drone prolif

# CP

### Solves: Drone Prolif

#### Allies only perceive Obama’s actions on drones-want to preserve broad executive power while setting international drone standards

The Economist 2013

[The Economist, June 21st, 2013, Out of the shadows, http://www.economist.com/news/united-states/21578689-barack-obamas-rules-drones-could-shape-new-global-laws-war-out-shadows, uwyo//amp]

WHEN it comes to lethal drone strikes against foreign targets, America’s government and Congress should be aware that “what is sauce for the goose is sauce for the gander”, says John Bellinger, for eight years a government lawyer charged with explaining George W. Bush’s global war on terror to allies. China and Russia are just two of the powers that may soon launch their own fleets of unmanned aircraft against suspected foes. It is not too far-fetched to imagine a near future in which a Russian drone targets a Chechen radical based in neighbouring Georgia, say, who appears immune from capture while apparently plotting an imminent strike on Russian targets. Experts such as Mr Bellinger have warned Congress in public hearings that unless America sets clear, internationally accepted rules for its own drone strikes, it can hardly condemn Russian or Chinese aerial killings with any credibility. Such advice has been echoed, privately, by diplomats from some of America’s closest partners, who fret about the legal underpinnings of Barack Obama’s war on terror. A few phrases passed by Congress days after the September 11th 2001 attacks give the president broad war-making powers in the name of self-defence. But such allies are worried not just about Mr Obama’s ability to stare down alarming, fast-rising powers such as China. The other reason why they want him to lead America back onto higher moral ground is that they fear for their own reputations, if they lend help to drone attacks. Even supportive governments face some hard choices about passing intelligence to America, when the ensuing drone strikes may leave spooks and spymasters facing public anger and even lawsuits.

### Solves: Modeling

#### Solves drone modeling

Twomey 2013

[Twomey, JD candidate – Trinity College Dublin, 3/14/’13

(Laura, “Setting a Global Precedent: President Obama's Codification of Drone Warfare,” Cambridge Journal of International and Comparative Law Blog)]

It is clear that, as the first State to deploy remote targeting technology in a non international armed conflict, the legal framework forged by the US during President Obama's second term will set significant precedent for the future practice of the estimated 40 States developing their own drone technology.

On 7 March 2013, members of the European Parliament expressed deep concern about the “unwelcome precedent” the programme sets, citing its “destabilising effect on the international legal framework” that “destroys ... our common legal heritage.” This 'destabilising effect' arises from the classified and seemingly amorphous substantive legal basis for the programme and the apparent lack of procedural standards in place. It remains to be seen if the classified 'rulebook' will be released for public scrutiny, and allay these concerns.

Reliance on international law in world order is based on consent, consensus, good faith and, crucially in this instance, reciprocity. The US programme may harbour short term gains in the pursuit of al-Qaeda operatives, however, if the aforementioned substantive legal justifications continue to be invoked, it risks engendering long term disadvantages. Pursuing this policy encourages other States to adopt similar policies. Administration officials have cited particular concern about setting precedent for Russia, Iran and China, all of which are developing their own remote targeting technology.

It is therefore suggested that the Administration should take this opportunity to codify the rules, clarify terms where ambiguity may currently allow for broader interpretations, and to bring its regulations in line with the existing framework of **i**nternational law. This legal framework should then be made available to the public, with covert operational necessities redacted. This could **set a valuable** legal **precedent**, of particular importance at this turning point wherein international law must adapt to the 21st century model of warfare, a model which lacks a clear enemy and a demarcated battlefield.

### AT: Perm F/L

#### First, -Doesn’t solve prez powers - congressional silence is key

Bellia 2

[Patricia, Professor of Law @ Notre Dame, “Executive Power in Youngstown’s Shadows” Constitutional Commentary, , 19 Const. Commentary 87, Spring, Lexis]

To see the problems in giving dispositive weight to inferences from congressional action (or inaction), we need only examine the similarities between courts' approach to executive power questions and courts' approach to federal-state preemption questions. If a state law conflicts with a specific federal enactment, n287 or if Congress displaces the state law by occupying the field, n288 a court cannot give the state law effect. Similarly, if executive action conflicts with a specific congressional policy (reflected in a statute or, as Youngstown suggests, legislative history), or if Congress passes related measures not authorizing the presidential conduct, courts cannot give the executive action effect. n289 When Congress is silent, however, the state law will stand; when Congress is silent, the executive action will stand. This analysis makes much sense with respect to state governments with reserved powers, but it makes little sense with respect to an Executive Branch lacking such powers. **The combination of** congressional silence **and judicial inaction** has the **practical** effect of creating power. Courts' reluctance to face questions about the scope of the President's constitutional powers - express and implied - creates three other problems. First, **the implied** presidential power given **effect** by virtue ofcongressional silence **and judicial inaction** can solidify into a broader claim**. When the Executive exercises an "initiating"** or "concurrent" **power, it will tie that power to a textual provision or to a claim about the structure of the Constitution.** Congress's silence **as a practical matter** tends to validate theexecutive rationale, and the Executive **Branch** maythen claim a power not only to exercise the **disputed** authority in the face of congressional silence, but also **to exercise the disputed authority** inthe face of congressional opposition. In other words, a power that the Executive Branch claims is "implied" in the Constitution may soon become an "implied" and "plenary" one. Questions about presidential power to terminate treaties provide a  [\*151]  ready example. The Executive's claim that the President has the power to terminate a treaty - the power in controversy in Goldwater v. Carter, where Congress was silent - now takes a stronger form: that congressional efforts to curb the power are themselves unconstitutional. n290

### AT: Object Fiat Theory

#### No link: 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.

### AT: Rollback F/L

#### President can show credibility by self-binding, and it puts heavy costs on future presidents for not representing public interests

Posner and Vermeule 2010 [Eric A. , Professor of Law at the University of Chicago Law School and Editor of The Journal of Legal Studies; Adrian , Harvard Law Professor, The Executive Unbound: After the Madisonian Republic, Oxford Press, p. 101-103//wyo-sc]

Where the executive is indeed ill-motivated in any of these ways, constraining his discretion (more than the voters would otherwise choose) may be sensible. But the executive may not be ill-motivated at all. Where the executive would in fact be a faithful agent, using his increased discretion to promote the public good according to whatever conception of the public good voters hold, then constraints on executive discretion are all cost and no benefit. Voters, legislators, and judges know that different executive officials have different motivations. Not all presidents are power maximizers or empire-builders.20 Of course, the executive need not be pure of heart; his devotion to the public interest may in turn be based on concern for the judgment of history. But so long as that motivation makes him a faithful agent of the principal(s), he counts as well-motivated. The problem, however, is that the public has no simple way to know which type of executive it is dealing with. An ill-motivated executive will just mimic the statements of a well-motivated one, saying the right things and offering plausible rationales for policies that outsiders, lacking crucial information, find difficult to evaluate—policies that turn out not to be in the public interest. The ability of the ill-motivated executive to mimic the public-spirited executive's statements gives rise to the executive's dilemma of credibility: the well-motivated executive has no simple way to identify himself as such. Distrust causes voters (and the legislators they elect) to withhold discretion that they would like to grant and that the well-motivated executive would like to receive. Of course the ill-motivated executive might also want discretion; the problem is that voters who would want to give discretion (only) to the well-motivated executive may choose not to do so, because they are not sure what type he actually is. The risk that the public and legislators will fail to trust a well-motivated president is just as serious as the risk that they will trust an ill-motivated president, yet legal scholars have felled forests on the second topic while largely neglecting the first.21 Indeed, legal scholars assume (without evidence) that the executive's interests lead it to keep too many secrets, and thus endlessly debate how it should be compelled to disclose information that should be made public. It has not occurred to them that their premise might be wrong22—that excessive secrecy undermines the executive by ruining its credibility and thus does not serve its interest. Scholars of presidentialism have addressed credibility problems in general and anecdotal terms,23 but without providing social-scientific microfoundations for their analysis. Our basic claim is that the credibility dilemma is best explored from the perspective of executive signaling*.* Without any new constitutional amendments, statutes, or legislative action, law and executive practice already contain resources to allow a well-motivated executive to send a credible signal of his motivations, committing to use increased discretion in public spirited ways. By tying policies to institutional mechanisms that impose heavier costs on ill-motivated actors than on well-motivated ones, the well-motivated executive can credibly signal his good intentions and thus persuade voters that his policies are those that voters would want if fully informed. We focus particularly on mechanisms of executive self-binding that send a signal of credibility by committing presidents to actions or policies that only a well-motivated president would adopt

**CP constrains future Presidents – it creates a legal framework**

**Brecher**, JD University of Michigan, December **2012**

(Aaron, Cyberattacks and the Covert Action Statute, 111 Mich. L. Rev. 423, Lexis)

The executive might also issue the proposed order, even though it would limit her freedom in some ways, because of the possible benefits of **constraining future administrations** or preempting legislative intervention. n149 For example, in this context, an administration may choose to follow the finding and reporting requirements in order to convince Congress that legislative intervention is unnecessary for proper oversight. This is acceptable if the covert action regime is in fact adequate on its own. Moreover, if greater statutory control over cyberattacks is needed, the information shared with Congress may give Congress the tools and knowledge of the issue necessary to craft related legislation. n150 Additionally, while executive orders are hardly binding, **the inertia following adoption of an order may help constrain future administrations**, which may be more or less trustworthy than the current one. **Creating a presumption through an executive order** also **establishes a stable legal framework** for cyberattacks that allows law to follow policy in this new field, and permits decisionmakers to learn more about the nature of cyberoperations before passing detailed statutes that may result in unintended consequences.

**Epirics prove**

**Jensen**, JD Drake University, Summer **2012**

(Jase, FIRST AMERICANS AND THE FEDERAL GOVERNMENT, 17 Drake J. Agric. L. 473, Lexis)

At the historic 1994 meeting with the tribes, President Clinton signed a Presidential memorandum which provided executive departments and agencies with principles to guide interaction with and policy concerning Indian tribes. n83 President Clinton sought to ensure that the government recognizes that it operates on a government-to-government relationship with the federally recognized tribes. n84 Agencies were to consult with tribes prior to taking action which would affect them, consider tribal impact regarding current programs and policies, and remove barriers to communication. n85

Toward the end of Clinton's second term he issued an executive order which provided the executive branch with more detailed directions on how to implement the broader policy of government-to-government tribal consultation set forth in the 1994 memorandum. n86 **The order had a stronger binding effect on future administrations**. President Clinton signed Executive Order 13175 on November 6, 2000, and the order went into effect on January 5, 2001. n87 The order was binding upon all executive departments and executive agencies and all independent agencies were encouraged to comply with the order on a voluntary basis. n88 Each agency was required to designate an official which is to head the crea [\*486] tion of a tribal consultation plan, prepare progress reports, and ensure compliance with Executive Order 13175. n89

**And executive orders have the force of law:**

**Oxford** Dictionary of English **2010**

(Oxford Reference, Georgetown Library)

executive order

▶ noun US (Law) a rule or order issued by the President to an executive branch of the government and having the **force of law**.

**Executive orders are permanent**

**Duncan**, Associate Professor of Law at Florida A&M, Winter **2010**

(John C., “A Critical Consideration of Executive Orders,” 35 Vt. L. Rev. 333, Lexis)

The trajectory of the evolution of the executive power in the United States, as seen through the prism of the growing edifice of executive orders have become increasingly **formal and permanent**. The evolution of executive power in the United States has shifted executive orders from mere legislative interpretation to ancillary legislation. **Executive orders continue to influence subsequent presidents**. The elaboration of executive order promulgation, as an autopoietic process was necessary to the very existence of presidential power. That is, the mechanisms for formalizing executive orders have always existed in the executive power in a government whose legitimacy lives in written pronouncements treated as delicate, sacred, and worth protecting at all cost. **Part of this formalization is** a consequence of **the reverence for precedent**. Thus, **prior presidents influence future presidents**, less because future presidents wish to mimic their predecessors, but more **because future presidents act within an edifice their predecessors have already erected**. Thus, the growth and elaboration of an ever more robust structure of executive orders resembles an autopoietic process. n561

#### FIAT ISDURABLE

# Solvency

# Pakistan

#### 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.

### No terrorism – No tech

#### Terrorists aren’t pursuing nukes

**Wolfe 12 –** Alan Wolfe is Professor of Political Science at Boston College. He is also a Senior Fellow with the World Policy Institute at the New School University in New York. A contributing editor of The New Republic, The Wilson Quarterly, Commonwealth Magazine, and In Character, Professor Wolfe writes often for those publications as well as for Commonweal, The New York Times, Harper's, The Atlantic Monthly, The Washington Post, and other magazines and newspapers. March 27, 2012, "Fixated by “Nuclear Terror” or Just Paranoia?" [http://www.hlswatch.com/2012/03/27/fixated-by-“nuclear-terror”-or-just-paranoia-2/](http://www.hlswatch.com/2012/03/27/fixated-by-)

If one were to read the most recent unclassified report to Congress on the acquisition of technology relating to weapons of mass destruction and advanced conventional munitions, it does have a section on CBRN terrorism (note, not WMD terrorism). The intelligence community has a very toned down statement that says “several terrorist groups … probably remain interested in [CBRN] capabilities, but not necessarily in all four of those capabilities. … mostly focusing on low-level chemicals and toxins.” They’re talking about terrorists getting industrial chemicals and making ricin toxin, not nuclear weapons. And yes, Ms. Squassoni, it is primarily al Qaeda that the U.S. government worries about, no one else. The trend of worldwide terrorism continues to remain in the realm of conventional attacks. In 2010, there were more than 11,500 terrorist attacks, affecting about 50,000 victims including almost 13,200 deaths. None of them were caused by CBRN hazards. Of the 11,000 terrorist attacks in 2009, none were caused by CBRN hazards. Of the 11,800 terrorist attacks in 2008, none were caused by CBRN hazards.

# 1NR

**Russia not pursuing imperial expansion**

Celeste A. **Wallander 07** is a visiting associate professor in the School of Foreign Service at Georgetown University in Washington, D.C., and a member of the Editorial Board of The Washington Quarterly, Washington Quarterly, Spring 2007, http://www.twq.com/07spring/docs/07spring\_wallander.pdf

**Neoimperialism as an explanation for Russian foreign and security policy is flawed as well. If the Russian leadership is bent on reestablishing an informal Russian/Soviet empire, why does the Kremlin continue on the path of the malign neglect and failure to reform the Russian military? In contrast to the expectations of a neoimperial model, Russia has been very restrained in the use of force toward its post-Soviet neighbors. Russia played a constructive role in resolving the crisis over Ajaria in 2004 and has been withdrawing military forces from Georgia. Although Russia did en­dorse fraudulent elections in Ukraine, it also accepted the results of the Orange Revolution and the free and fair elections that ultimately made Viktor Yushchenko president. Russia is now poised to join the World Trade Organiza­tion (WTO) and its leadership remains active in pursuit of that goal, having compromised a great deal and made substantial progress in its negotiations with the United States. The disputes that delayed its WTO accession agreement were not those of an empire and are all too familiar in the normal trade realm of the international economic system. Perhaps the most important anomaly both for neoimperialism and postim­perialism as explanations for Russian foreign policy is the deep complicity of leaderships abroad in Russia’s new activism in international politics and eco­nomics. Russia’s favorable gas deal with Ukraine in January 2006, which keeps Ukraine largely vulnerable and dependent on Russian energy and goodwill, was not imposed on an unwilling Ukrainian leadership. The winning govern­ment of the Orange Revolution agreed to it, and the deal profits not only Gaz­prom but also the Ukrainian joint owners of RosUkrEnergo. Gazprom may be pressuring Belarusian president Aleksandr Lukashenka for partial ownership and thus control of gas pipelines, but without the bil­lions of dollars in implicit and explicit subsidies received over the past years, Lukashenka would face domestic discontent and potentially more effective opposition. Georgia is vulnerable to a Russian blockade precisely because so many illicit economic and commercial relations with Russia sustain the Geor­gian economy. Uzbek president Islam Karimov did not expel the U.S. military presence in 2005 because of Russian neoimperialist pressure. Rather, he saw a common interest in joining with Russia to resist the perceived threat of a Color Revolution that would shake his authoritarian rule. Both models ignore an essential dynamic of Russia’s foreign policy: how the Russian leadership pursues power and wealth. At the level of the international system, this means globalization. At the level of Russia’s emergent domestic political-economic system, the key factor is patrimonial authoritarianism.**

#### Russia has no military capacity for expansion

Ariel Cohen 07, Heritage, November 19, 2007, Domestic Factors Driving Russia’s Foreign Policy, <http://www.heritage.org/Research/RussiaandEurasia/bg2084.cfm>

These demographic shifts are already affecting Rus­sia's ability to project power. The Russian military is failing to meet its recruitment targets because of a declining pool of fit conscripts and their semi-legal efforts to avoid the draft Some demographers predict that in just nine years--by 2016--the pool of conscripts will be half Muslim. It is also not clear that a majority Muslim, non-ethnic Russian army will willingly take on missions to carry the Russian flag forward either in the "near abroad" (the 14 other former Soviet republics) or elsewhere. In addition, the workforce will further shrink in size and quality. The population is diseased, aging, and dying. In many countries, immigration has helped to mitigate the economic effects of population decline. In Russia, most immi­grants are from Central Asian former Soviet repub­lics and increasingly from China and Afghanistan. Yet, as growing xenophobia and racism in Russia suggest, ethnic Russians mostly disapprove of non-Slavic immigration.

#### [3] Europe checks.

Khanna 08 (Parag, senior research fellow in the American Strategy Program of the New America Foundation, “Waving Goodbye to Hegemony”, http://www.nytimes.com/2008/01/27/magazine/27world-t.html?pagewanted=3&\_r=3)

Russia lost its western satellites almost two decades ago, and Europe, while appearing to be bullied by Russia’s oil-dependent diplomacy, is staging a long-term buyout of Russia, whose economy remains roughly the size of France’s. The more Europe gets its gas from North Africa and oil from Azerbaijan, the less it will rely on Russia, all the while holding the lever of being by far Russia’s largest investor. The European Bank for Reconstruction and Development provides the kinds of loans that help build an alternative, less corrupt private sector from below, while London and Berlin welcome Russia’s billionaires, allowing the likes of Boris Berezovsky to openly campaign against Putin. The E.U. and U.S. also finance and train a pugnacious second-world block of Baltic and Balkan nations, whose activists agitate from Belarus to Uzbekistan. Privately, some E.U. officials say that annexing Russia is perfectly doable; it’s just a matter of time. In the coming decades, far from restoring its Soviet-era might, Russia will have to decide whether it wishes to exist peacefully as an asset to Europe or the alternative — becoming a petro-vassal of China.

#### 2. no restrictions now- Senate recently rejected effort to restrict presidential war powers

Caroll 13

[James, overs the Kentucky and Indiana delegations in Congress from our bureau in Washington, D.C., “Senate panel rejects Sen. Rand Paul’s amendment to limit president’s war powers,” 09.04.2013. <http://blogs.courier-journal.com/politics/2013/09/04/senate-panel-rejects-sen-rand-pauls-amendment-to-limit-presidents-war-powers/>//wyo-hdm]

The Senate Foreign relations Committee on Wednesday rejected an effort by Sen. Rand Paul, R-Ky., to restrict the presidential power to wage war.¶ Paul sought to amend a resolution authorizing military action against Syria by specifying that “the president does not have the power under the Constitution to unilaterally authorize a military attack in a situation that does not involve stopping an actual or imminent threat to the nation.”¶ The panel voted 14-5 to table Paul’s amendment. The committee later passed the resolution authorizing military attacks on Syria on a 10-7 vote, with Paul among those voting “no.”¶ “I commend the president for doing his constitutional duty and bringing before the Congress and asking for the authority to go to war,” Paul, a member of the committee, said in introducing his amendment.¶ “I think it should be made very explicit, though, that this is his constitutional duty and that we are bound by the Constitution, bound by the ideas of the founding fathers…that the executive branch is the branc h of government most prone to war and therefore the Constitution vested the power to go to war in Congress.”¶ Panel Chairman Robert Menendez, D-N.J., said Paul had raised a “weighty” issue, but this was not the time to engage in a lengthy debate on the subject.¶ But Sen. Tom Udall, D-N.M., supported what Paul was proposing.¶ “I hope we have entered a new era in which Congress will assert its power under the Constitution when we get into situations like this,” Udall said.¶ Paul told his colleagues “there never seems to be a good time to debate these (issues).”¶ “If Congress wants to stand up now and take back power that’s been gravitating the wong way, this is precisely the time to do it,” he said.

#### No future precedent set-differences in situations prevent binding

NYT, 13

(“In Syrian crisis, US President Barack Obama tests limits of power” [Charlie Savage, The New York Times](http://www.ndtv.com/topic/charlie-savage-the-new-york-times) | September 09, 2013 http://www.ndtv.com/article/world/in-syrian-crisis-us-president-barack-obama-tests-limits-of-power-416490) KH  
Steven G Bradbury, a head of the Office of Legal Counsel in the Bush administration, said it would be "politically difficult" to order strikes if Congress refused to approve them. But he predicted future presidents would not feel legally constrained to echo Obama's request. "Every overseas situation, every set of exigent circumstances, is a little different, so I don't really buy that it's going to tie future presidents' hands very much," he said.

#### No restrictions- Syria proves- this ev also comparatively better because it proves that there’s no precedent that Obama’s set for going to Congress-

Balkin 13

[Jack M., Knight Professor of Constitutional Law and the First Amendment at Yale Law School, and the founder and director of Yale's Information Society Project, an interdisciplinary center that studies law and new information technologies. “What Congressional Approval Won't Do: Trim Obama's Power or Make War Legal,” 09.03.2013. <http://www.theatlantic.com/politics/archive/2013/09/what-congressional-approval-wont-do-trim-obamas-power-or-make-war-legal/279298/>//wyo-hdm]

One of the most misleading metaphors in the discussion of President Obama’s Syria policy is that the president has “boxed himself in” or has “painted himself into a corner.” These metaphors treat a president’s available actions as if they were physical spaces and limits on action as if they were physical walls. Such metaphors would make sense only if we also stipulated that Obama has the power to snap his fingers and create a door or window wherever he likes. The Syria crisis has not created a new precedent for limiting presidential power. To the contrary, it has offered multiple opportunities for increasing it.¶ If Congress says no to Obama, it will not significantly restrain future presidents from using military force. At best, it will preserve current understandings about presidential power. If Congress says yes, it may bestow significant new powers on future presidents -- and it will also commit the United States to violating international law. For Obama plans to violate the United Nations Charter, and he wants Congress to give him its blessing.¶ People who believe Obama has painted himself into a corner or boxed himself in might not remember that the president always has the option to ask Congress to authorize any military action he proposes, thus sharing the responsibility for decision if the enterprise goes sour. If Congress refuses, Obama can easily back away from any threats he has made against Syria, pointing to the fact that Congress would not go along. There is no corner. There is no box.¶ It just won’t matter very much what Obama said about red lines in the past. World leaders say provocative things all the time and then ignore them. Their motto is: That was then, and this is now.¶ Wouldn’t congressional refusal make the United States look weak, as critics including Senator John McCain warn loudly? Hardly. The next dictator who acts rashly will face a different situation and a different calculus. The UN Security Council or NATO may feel differently about the need to act.

#### Obama has built a solid basis for expanded Executive authority by pushing statutory and judicial limitations – Syria continues the trend

Gordon **Silverstein**, Assistant Dean and Lecturer in Law at Yale Law School, and author of Law’s Allure: How Law Shapes, Constrains, Saves and Kills Politics, “Obama Just Increased Executive Power—Again,” New Republic, **9/4**/2013

Bush-Cheney Administration alumni have risen from the ashes to denounce President Obama’s decision to force Congress to play its constitutional role in a decision to use military force in Syria. It is, they insist, yet another surrender of power by a feckless President presiding over the degradation of the Executive Branch itself, the empowerment of which was one of their central goals.¶ This is wrong on two dimensions: First, despite their aggressive efforts, **the Bush-Cheney administration left the Presidency weaker, and not stronger. And** second, far from degrading the power of the Executive, the **Obama** administration **has steadily, and significantly built up and exploited presidential power.¶** While it is too early to know if **Obama’s Syrian plan will continue this** trend, there are powerful reasons to think it will.¶ **The Bush-Cheney administration** famously asserted that when it came to foreign policy and national security, the President possessed nearly unlimited, autonomous, and unreviewable power. They insisted that the President could seize and hold prisoners at Guantanamo Bay; that the President alone could decide what and how much due process they were entitled to seek and that together with Congress, they could deny the independent federal courts, the third branch of government, the right to review their decisions. And they declared that the administration had the authority to redefine the meaning of torture.¶ All these **claims** and more were built on novel and poorly supported constitutional theories. **When** they were **challenged in Court, far from** enshrining the administration’s and **permanently shifting formal power to the Executive branch, these theories and claims were rejected, and** what had once been ambiguous and contested questions about **the allocation of power was settled, not by assigning it to the Executive but**, in fact, **by ruling that it belonged exclusively to Congress.¶** Jack Goldsmith, the head of the Office of Legal Counsel in the Bush-Cheney Justice Department, would later write that the administration advanced broad and unsupportable claims and arguments because “the President and Vice President wanted to leave the presidency stronger than they found it.” But, he concludes, “the approach they took achieved exactly the opposite effect. The central irony is that **people whose explicit goal was to expand presidential power have diminished it.”¶** Consider: In 2004 the Supreme Court ruled that the Executive could not independently order the detention of prisoners at Guantanamo, but could do so in this case because Congress had implicitly delegated this power to the President through the very open-ended language of the 2001 Authorization for the Use of Military Force. This was, in short, a power that now explicitly was assigned to Congress.¶ 2004 also was the year in which Goldsmith had to repudiate and withdraw a series of legal opinions his office had released—many authored by John Yoo—including the infamous memos ostensibly offering a legal rationale for the use of torture in interrogations.¶ The Bush-Cheney legal dream team failed again in 2006 in Hamdan v. Rumsfeld when the Supreme Court rejected their assertion that those same detainees could be tried by military commissions established by Executive Order. Commissions were possible, the Court ruled, but only if they were the produce of explicit congressional authorization. Another win for Congress. Another loss for fans of Executive prerogative.¶ But this dance was far from over. In Boumediene v. Bush in 2008, Justice Anthony Kennedy delivered a stinging blow to the Bush-Cheney project, ruling that prisoners at Guantanamo Bay had the right to file petitions for habeas corpus; that Congress and Congress alone could suspend habeas, but had to do so explicitly and could not simply forbid the Courts from hearing these appeals. A question that had been left in some shroud of ambiguity since Lincoln suspended the Great Writ in the Civil War was now clear: The power belongs to Congress alone.¶ John Yoo, one of the Bush-Cheney administration’s leading lawyers, realized in 2006 that the **Supreme Court would** actually **be a major barrier on their path to the constitutional fortification of Executive power.¶** After the Court handed the administration a defeat in the military commissions decision in Hamdan v. Rumsfeld, Yoo told the New York Times that the Justices were “attempting to suppress creative thinking.” The 2006 Hamdan decision, Yoo said, could undercut the entire legal edifice that had been built by the Bush lawyers.¶ What Yoo failed to acknowledge then (and fails to acknowledge even now) is that it was the Bush-Cheney overreach, their “creativity,” that had pressed even a conservative and friendly Supreme Court to undercut the administration’s claims to power, leaving the Executive weaker than it had been when Bush and Cheney walked into the White House in January 2001.¶ And Obama? While the Bush claims actually eroded and undercut Executive power which had built up steadily since World War II, it was the administration of Barack **Obama** that actually, quietly, **efficiently and with unerring focus has expanded, embedded and solidified Executive power.** And it has done so not by making “creative” constitutional claims, but instead **by steadily (and aggressively) building and exercising Executive power**—but doing so **by pressing existing statutes and judicial rulings, rather than unsupportable constitutional theories.**¶ **Turning to Congress now for formal authorization** to use military force **in Syria could** well be another example of this effort—and it may yet **have the same effect.¶** As I wrote in 2009, less than six months into the new administration, **in areas ranging from** the assertion of **the State Secrets privilege** in efforts **to** shut down lawsuits over warrantless **wiretapping and** extraordinary **rendition to** those concerning lawsuits over **detention and treatment in Guantanamo, and** the reach of habeas corpus to **Bagram** Air Force Base in Afghanistan, **Obama’s legal team was building up a far more impressive, far stronger and far more difficult to reverse set of precedents—winning in court after court—a trend that has continued ever since, including memos defending the legality of drone strikes** targeting U.S. citizens, **and** the sweeping authority for the **electronic surveillance** among many others. **Even** in their defense of **the use of force for limited strikes in Libya**, the Obama administration seemed to state that Congress must have a role in major military actions.¶ **These are aggressive claims. They are significant. They are new assertions of power—but they rest** far more squarely **on statutes, statutory interpretation and interpretations of judicial rulings than** did the military rationale offered by **Bush and Cheney**.¶ So—we have two models. The Bush-Cheney model, full of sound and fury which ultimately left the Executive branch weaker and not stronger, and the Obama model, which builds its case for executive power on the back of statutory authorization and judicial rulings.¶ And so, what are we to make of Obama’s decision to force Congress to play a role in a decision to use military force in Syria? Are the Bush apologists right? Is this—though a very difficult needle to thread—of a piece with Obama’s successful efforts to build executive power on a vastly firmer foundation than the constitutional “creativity” of the Bush legal team?¶ It may be, and here’s why:¶ Presidents in the modern era have turned to Congress for a fig-leaf of authorization before—in the 1964 Tonkin Gulf Resolution, or the 2001 Authorization for the Use of Military Force. But these were passed in the shadow of what was perceived to be a genuine emergency. There was no time for deliberation, no time to inspect the evidence. A vote for these authorizations was one that was all too easy for a regretful Congress to abandon as the wars they had ostensibly authorized dragged on and on.¶ This time there is time. Despite withering criticism from the Bush-Cheney apologists, Obama refused to call Congress back for an emergency session. Rather than giving them just hours to support the Commander in Chief in time of crisis, he has assured the nation that the military is confident that a few weeks will make no difference in our ability to achieve our military objectives.¶ A yes vote under this scenario means Congress fully shares the ownership of this policy (and its results). It means that whatever horror comes next in the Middle East, America’s policy there will be just that—America’s policy: The product of Congress acting together with the President, under the traditional rules and process laid out by the U.S. Constitution.¶ And if Congress votes no? Then we have one of two scenarios: The blame for the next atrocity, or the next deployment of chemical weapons in the Middle East or elsewhere is as much their heavy burden as it is Obama’s or, to prevent that, Congress will be compelled to actually deal with a serious policy issue and not simply vote a few dozen more times to repeal Obamacare.¶ **Turning to Congress in this fashion is** very much **in Obama’s self-interest**. But is also **in the national interest, and** quite possibly in **the best interest of those concerned about** preserving and **enhancing Executive power. Future Presidents** who will no doubt face complicated and risky security challenges, **will require the full force of a nation united behind them and** may now be more willing to **follow the precedent Obama has set**.

#### [2.]Syria proves statute outweighs- Obama AUMF over Syria would set precedent for no president to have to statutorily consult congress- means he or she no longer has to navigate political legitimacy for interventions- can blame congress for expanded authority

Eppssep, 13

(“The Senate's Syria Resolution Has a Huge Secret Giveaway to the President”

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The "Whereas" language in the draft AUMF gives significant support to the position that the President has some (uncertain) independent constitutional authority to use force in Syria, regardless of what Congress authorizes, and (perhaps) beyond what Congress authorizes. Since I believe that a unilateral presidential use of force in Syria would [go beyond all past OLC precedents](http://www.lawfareblog.com/2013/08/how-administration-lawyers-are-probably-thinking-about-the-constitutionality-of-the-syria-intervention-and-a-note-on-the-domestic-political-dangers-of-intervention/), the "Whereas" clause as currently drafted is especially important to the President's novel constitutional position.

Note that this astonishing language did not appear in [the administration's own draft authorization](http://www.cnn.com/2013/08/31/us/obama-authorization-request-text/index.html?hpt=hp_t1). Having been asked for broad authority already, the warriors on the Senate Foreign Relations Committee, for all their minimizing language, have in practice widened the White House's mandate -- to the point that, if it is adopted by Congress, neither Barack Obama nor any future president will likely have to come back for additional authority to fight against Syria and its chemical weapons anywhere in the region. And it will have written into law an explicit statement that the president doesn't need authorization to use force anywhere, any time he or she determines that "national security" demands it.

#### [3.] Politics is a red herring-Syrian crisis proves it’s a disguise for expanding statutory capacity

NYT, 13

(“In Syrian crisis, US President Barack Obama tests limits of power” [Charlie Savage, The New York Times](http://www.ndtv.com/topic/charlie-savage-the-new-york-times) | September 09, 2013 http://www.ndtv.com/article/world/in-syrian-crisis-us-president-barack-obama-tests-limits-of-power-416490) KH

Washington: In asking Congress to authorize an attack on Syria over claims it used chemical weapons, President Barack Obama has chosen to involve lawmakers in deciding whether to undertake a military intervention that in some respects resembles the limited types that many presidents - Ronald Reagan in Grenada, Bill Clinton in Kosovo and even Obama in Libya - have launched on their own. But on another level, the proposed strike is unlike anything that has come before - an attack inside the territory of a sovereign country, without its consent, without a self-defense rationale and without the authorization of the UN Security Council or even the participation of a multilateral treaty alliance like NATO, and for the purpose of punishing an alleged war crime that is already over rather than preventing an imminent disaster. The contrasting moves, ceding more of a political role to Congress domestically while expanding national war powers on the international stage, underscore the complexity of Obama's approach to the Syrian crisis. His administration pressed its case Sunday, saying it had won Saudi backing for a strike, even as the Syrian president warned he would retaliate. Obama's strategy ensures that no matter what happens, the crisis is likely to create an important precedent in the often murky legal question of when presidents or nations may lawfully use military force. Kathryn Ruemmler, the White House counsel, said the president believed a strike would be lawful, both in international law and domestic law, even if neither the Security Council nor Congress approves it. But the novel circumstances, she said, led Obama to seek congressional concurrence to bolster its legitimacy.

#### Drones are Obama’s weapon of choice- constraining hinders his ability to stop wars quickly and effectievly

Kenneth Anderson, professor of international law at American University and a member of the Task Force on National Security and Law at the Hoover Institution, “The Case for Drones,” Commentary, June 2013.

1. When Obama Embraced Drone Warfare¶ How, exactly, did drone warfare and targeted killing become key elements in America’s counterterrorism strategy? And why should we care about them as essential national-security tools for the future?¶ Barack Obama campaigned for his first presidential term on the platform of ending America’s wars. Obama voters and much of the rest of the world figured this promise referred not only to the conventional conflicts in Iraq and Afghanistan, but also to what liberals considered the long and unnecessary national nightmare of the war on terror. It now seems clear he was misunderstood—though we don’t know yet whether the misunderstanding was by Obama’s design or due to changes that took place after he assumed office. Obama’s policy proved not to be “peace breaks out.” It was, rather, that America would wind down its two counterinsurgency, boots-on-the-ground wars and undertake a refocused effort against the terrorists who had set this all in motion. He framed it this way during the 2008 race. “If Pakistan cannot or will not take out al-Qaeda leadership when we have actionable intelligence about their whereabouts,” he said on the campaign trail, “we will act to protect the American people. There can be no safe haven for al-Qaeda terrorists.” No safe havens—that has been Barack Obama’s strategic lodestar in the war on terror.¶ It is this proposition, more than any other, that gets us to drone warfare.¶ Even as Obama publicly disdained the institutions and methodologies of Bush’s war on terror, he was issuing a new call to arms in that war. Taking the fight directly to the enemy required a means of combat other than counterinsurgency warfare on the ground, and the United States turned to a technology the Israelis had used effectively in their war against Palestinian terrorists: unmanned surveillance drones, now weaponized.¶ This tool had been used during the Bush administration, but sparingly-—largely due to geopolitical fears, but also because it was only by the second Bush term that the CIA had established ground-level human-intelligence networks in Afghanistan and Pakistan sufficient for making independent targeting decisions without having to rely on the questionable and self-interested information coming from Pakistan’s intelligence services.¶ The strategy has worked far better than anyone expected. It is effective, and has rightfully assumed an indispensable place on the list of strategic elements of U.S. counterterrorism-on-offense.¶ But it is not only a strategy of effectiveness, convenience, and necessity. Drone warfare offers ethical advantages as well, allowing for increased discrimination in time, manner, and targeting not available via any other comparable weapon platform. As such, it lends civilians in the path of hostilities vastly greater protection than does any other fighting tool. Drone warfare is an honorable attempt to seek out terrorists and insurgents who hide among civilians.¶ The expansion into automated and robotic military equipment owes much to the ethical impulse to create new technologies of discrimination when fighting enemies for whom unwitting civilian shields were their main materiel of war. Moreover, these are weapons that gain much of their discrimination in use from the fact that U.S. forces are not directly at personal risk and are thus able to take time to choose a moment to attack when civilians might be least at risk. Remoteness—the fact that the drone user is nowhere near the target, as the pilot is probably sitting in an air-conditioned room in Nevada—actually enables precision. Ethical and effective—and yet today drone warfare is coming under increasingly strong public attack as being neither. Opponents of drones are seeking to raise the political costs of drone warfare to the United States, portraying it as a symbol of an arrogant, reprobate superpower dating back to the days of the “ugly American.” Steve Coll, writing in the New Yorker, says drone use is “unnervingly reminiscent of Eisenhower’s enthusiasm for poisoning schemes and coup plots.” And though, in a recent Gallup poll, two-thirds of those surveyed said they supported drone strikes, there is no question that the political, legal, and moral legitimacy of drone warfare is increasingly at risk. The delegitimators are the international community, both its UN officials and NGO advocates; a sizable portion of academic international lawyers; much of the elite international media; and Obama’s American left.¶ These delegitimators also include a number of conservatives and Republicans, chief among them Kentucky Senator Rand Paul. They claim the core issue is constitutional—that drones violate due process. This argument focuses specifically on the case of a radical cleric and terrorist operative in Yemen, Anwar al-Awlaki, who inspired a terrorist assault at Fort Hood in 2009, designed an al-Qaeda effort to detonate a plane over Detroit on Christmas Day in the same year, and was deeply involved in a plot to load printer ink cartridges with explosives for detonation on a plane. Awlaki was killed in a targeted drone strike in Yemen in 2011—and he was an American citizen.¶ His citizenship, some argue (most vigorously on the libertarian right), should have prevented the Obama administration from performing the targeted killing. But as an enemy combatant in the war on terror authorized by Congress in 2001, Awlaki could not be granted some special get-out-of-a-drone-strike-free card. Given the inherently unsympathetic nature of the Awlaki example, the due-process arguments of those on the right who stand in opposition to drone strikes took a markedly populist and anti-government turn. When the Republican senator Rand Paul decided to stage a 13-hour filibuster on the question of the legality of drone strikes, he and others spent a great deal of time talking not about the violated rights of a terrorist in Yemen but about the theoretical use of drones on American soil against a suspected domestic terrorist “sitting in a café.”¶ Paul’s critique delighted many conservatives and libertarians. They loved seeing him and others engage the Obama administration in a direct and seemingly high-minded manner, denouncing the “imperial” presidency. But they confused and conflated the Obama administration’s arguably imperial domestic policies with policies on national security, war, and foreign affairs—spheres in which the president has many and capacious constitutional powers. Moreover, those who were thrilled did not give much thought to whether they might see a need for a president they liked better to have access to those same policies—and whether, in making common cause with those who have opposed the war on terror since it began, they are working to destroy one of its most effective tools not only for Obama, but for future residents of the White House.

**Presidential power is zero-sum- the branches compete**

**Barilleaux and Kelley 2010** [Ryan J. , Professor of Political Science at Miami, OH; and Christopher S. , Lecturer (Political Science) at Miami, OH, The Unitary Executive and the Modern Presidency, Texas A&M Press, p. P 196-197, 2010// wyo-sc]

In their book *The Broken Branch,* Mann and Ornstein paint a different view. They discuss a wider range of public policy areas than just uses of force. Their argument is that although party is important as a conditioning factor for times when Congress might try to restrain an aggressive or noncompliant executive, **there has** also **been a broad**er **degrading of institutional power that has allowed,** **in a zero-sum context**, **the president to expand executive power at the expense of** **Congress**. Mann and Ornstein thus posit that congressional willingness to subordinate its collective power to that of the president has occurred across domestic politics and foreign affairs. They argue that a variety of factors are at fault for this trend, including the loss of institutional identity, the willingness to abdicate responsibility to the president, the demise of "regular order," and most importantly that **Congress has lost its one key advantage as a legislative body—the decay of the deliberative process.** Thus, they do recognize that party politics has played an important role in the degrading of congressional power, but they see a larger dynamic at work, one that reaches beyond partisanship. While we agree with Howell and Pevehouse that Congress retains important mechanisms for constraining the president, we tend to agree with the Mann and Ornstein view that there has been a significant and sustained decline in Congress's willingness to use these mechanisms to challenge presidential power. This tendency has been more prevalent in foreign affairs but has occurred noticeably across the spectrum of public policy issues. Building from both of those perspectives, and others, we argue that it is helpful to understand the pattern of congressional complicity in the rise of presidential power by viewing Congress's aiding and abetting as the logical outcomes of a collective action problem.31 By constitutional design, **the legislative** branch **is in competition with the president for** institutional **power**, **yet Congress is less than** ideally **suited for** such **a political conflict**. **Congress's** comparative **disadvantage begins with its 535 "interests**" **that are** very **rarely aligned,** and if so, only momentarily. **Because** individual **reelection overshadows all** other **goals**, members of Congress naturally seek to take as much credit and avoid as much blame from their constituencies as possible.32 The dilemma this creates for members is how to use or delegate its collective powers in order to maximize credit and minimize blame in the making of public policy. Congress can choose to delegate power internally to committees and party leaders or externally to the executive branch. **One can conceptualize** the strategic situation of members of **Congress** **in** terms of **a prisoner's dilemma**.33 **If members cooperate** (that is, in Mann and Ornstein's parlance, if members identify with the institution), **they could** maintain and **advance Congress's** institutional **power**. **But they would have to bypass** some potential **individual payoffs** **that could come from defection**, **such as "running against Congress" as an electoral strategy**. **A stronger institution should make** all members of **Congress better off, but it** also **makes them responsible for policymaking**. **If members defect** from the institution, **they** thus seek to **maximize constituency interests** either by simply allowing power to fall by the wayside or by simply **delegating it to the president**. **As more** and more **members choose to defect** over time, **the "public good" of a strong Congress is not provided** for or maintained—and **Congress's** institutional **authority** **erodes and presidential power fills in the gap**. Why, in other words, is congressional activism so often "less than meets the eye," as Barbara Hinckley maintained in her book by that title? Or why has the ''culture of deference" that Stephen Weissman identified developed as it has?34 We argue that the collective action problem that exists in Congress leads to the development of these trends away from meaningful congressional stewardship of foreign policy andspending**.**

**EVEN IF WEAPONS INDUCE CAUTION BY THE ACQUIRING STATE, THEIR PRESENCE INFLAMES REGIONAL TENSIONS BECAUSE IT CHANGES PERCEPTIONS OF THAT STATE, RISKING ESCALATION**

**Knopf in ‘2**

[Jeffrey, Department of National Security Affairs at Naval Postgraduate School, Security Studies, “Recasting the Proliferation Optimism-Pessimism Debate”, Oct. 2002]

Two **other reasons why nuclear war is possible under standard rationality assumptions involve the intrinsic nature of nuclear weapons themselves**. Because nuclear weapons are so destructive, proliferation optimists expect states to behave extremely carefully**. Fear of nuclear devastation**, however, **can cut two ways. It can make national leaders shrink away from the brink**, as optimists expect. In addition, though, **the danger of nuclear attack can also be provocative, triggering action intended to forestall the danger. In short, both “flight” and “fight” responses are possible**. Their awesome destructive power means nuclear weapons are dualistic in their effects: **they are likely both to dampen and to inflame tensions in regions where they are introduced**. Nuclear weapons can exacerbate tensions in two ways: by creating an increased perception of threat and by prompting efforts to limit damage in the event of nuclear war. On the first point, **proliferation optimists write as if potential adversaries exist at a given, fixed level of hostility. This is unlikely to be the case. Rather, a state that acquires nuclear weapons is likely to be perceived as more threatening than it was before**. This will be partly because of the new, more destructive capabilities at its disposal. In some cases, however, **a state’s pursuit of nuclear weapons may also change how other states view its intentions. This is especially likely because new and aspiring nuclear states are not always circumspect in their pronouncements**. In March 1994, in the midst of a crisis over North Korea’s suspected nuclear weapons program, the North’s chief negotiator threatened his South Korean counterpart that a war could break out in which the South would be turned into “a sea of fire.”47 After the May 1998 nuclear tests in India, Prime Minister Vajpayee wrote President Clinton and explicitly cited a threat from China as a motivation for the tests. Statements by Defense Minister Fernandes shortly before and again shortly after the tests also described China as “potential threat number one” to India.48 Other Indian officials publicly warned Pakistan to end its support for separatist insurgents in Kashmir. Home Minister Advani called on Islamabad to “realize the change in the geostrategic situation” and said that in the new circumstances even the option of “hot pursuit” would not be ruled out.49 Such statements are bound to be provocative to the states against which they are directed. **States on the receiving end of new, public nuclear threats will likely feel a need to display their toughness as a way to show they will not be intimidated. While nuclear weapons do encourage caution, they can also create pressures to demonstrate resolve, and any such demonstration carries with it some risk of escalation**.

#### Strong executive key winning wars- World War I and II prove oversight stymies flexibility

Yoo ‘12

\*Modified for ableist language

[John C. Yoo is a professor of law at the University of California at Berkeley School of Law , February 2012, War powers belong to the president, ABA Journal. 98.2 (Feb. 2012): p34, Academic OneFile, uwyo//amp]

The framers realized the obvious. Foreign affairs are unpredictable and involve the highest of stakes, making them unsuitable to regulation by pre-existing legislation. Instead, they can demand swift, decisive action--sometimes under pressured or even emergency circumstances--that is best carried out by a branch of government that does not suffer from multiple vetoes or is delayed by disagreements. Congress is too large and unwieldy to take the swift and decisive action required in wartime. Our framers replaced the Articles of Confederation, which had failed in the management of foreign relations because they had no single executive, with the Constitution's single president for precisely this reason. Even when it has access to the same intelligence as the executive branch, Congress' loose, decentralized structure would ~~paralyze~~ [freeze] American policy while foreign threats grow. Congress has no political incentive to mount and see through its own wartime policy. Members of Congress, who are interested in keeping their seats at the next election, do not want to take stands on controversial issues where the future is uncertain. They will avoid like the plague any vote that will anger large segments of the electorate. They prefer that the president take the political risks and be held accountable for failure. Congress' track record when it has opposed presidential leadership has not been a happy one. Perhaps the most telling example was the Senate's rejection of the Treaty of Versailles at the end of World War I. Congress' isolationist urge kept the United States out of Europe at a time when democracies fell and fascism grew in their place. Even as Europe and Asia plunged into war, Congress passed the Neutrality Acts designed to keep the United States out of the conflict. President Franklin Roosevelt violated those laws to help the Allies and draw the nation into war against the Axis. While pro-Congress critics worry about a president's foreign adventurism, the real threat to our national security may come from inaction and isolationism. Many point to the Vietnam War as an example of the faults of the "imperial presidency." Vietnam, however, could not have continued without the consistent support of Congress in raising a large military and paying for hostilities. And Vietnam ushered in a period of congressional dominance that witnessed American setbacks in the Cold War and the passage of the ineffectual War Powers Resolution. Congress passed the resolution in 1973 over President Richard Nixon's veto, and no president, Republican or Democrat, George W. Bush or Obama, has ever accepted the constitutionality of its 60-day limit on the use of troops abroad. No federal court has ever upheld the resolution. Even Congress has never enforced it.