# ASU CR Cards Round 8 Districts

## 1NC

### 1

#### A. Interpretation

#### Restrictions are prohibitions --- topical affs must change what actions are allowed. Enforcing status quo authority is not enough.

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

3. The ordinary definition of the term "restrictions" also does not include the reporting and monitoring or supervising terms and conditions that are included in the 2001 Stipulation. Black's Law Dictionary, 'fifth edition,(1979) defines "restriction" as; A limitation often imposed in a deed or lease respecting the use to which the property may be put. The term "restrict' is also cross referenced with the term "restrain." Restrain is defined as; To limit, confine, abridge, narrow down, restrict, obstruct, impede, hinder, stay, destroy. To prohibit from action; to put compulsion on; to restrict; to hold or press back. To keep in check; to hold back from acting, proceeding, or advancing, either by physical or moral force, or by interposing obstacle, to repress or suppress, to curb. In contrast, the terms "supervise" and "supervisor" are defined as; To have general oversight over, to superintend or to inspect. See Supervisor. A surveyor or overseer. . . In a broad sense, one having authority over others, to superintend and direct. The term "supervisor" means an individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but required the use of independent judgment. Comparing the above definitions, it is clear that the definition of "restriction" is very different from the definition of "supervision"-very few of the same words are used to explain or define the different terms. In his 2001 stipulation, Mr. Kincheloe essentially agreed to some supervision conditions, but he did not agree to restrict his license.

#### Authority is granted permission

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

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

#### B. Violation – the aff doesn’t restrict president’s legal authority for targeted killing.

#### C. Reason to prefer

#### 1. Neg ground---only prohibitions on particular authorities guarantee links to every core argument like flexibility and deference. Judicial review is a mechanism of enforcement, not restriction.

#### 2. Limits---there are an infinite number of small hoops they could require the president to jump through---overstretches our research burden

#### 3. The aff makes the topic bidirectional – empirically supervision requirements expands the president’s war powers authority.

Woods 06 Senior fellow in American history at the Ludwig von Mises Institute (Thomas E., Jr., "The War Powers Resolution Fraud." February 4, http://www.lewrockwell.com/2006/02/ thomas-woods/the-war-powers-resolution-fraud/

Congress did pass **the War Powers Resolution**, to be sure. But if anything, the Resolution — sympathetic mythology to the contrary notwithstanding — **actually emboldened the president and** codified executive warmaking powers **that would have astonished the framers of the Constitution.** I have explained the intentions of the framers with regard to war powers here. Suffice it to say that **the framers resolutely opposed placing offensive war powers in the hands of the president, and deliberately assigned such authority to the legislative branch.** **The War Powers Resolution does not restore the proper constitutional balance between president and Congress in matters of war**. **Consider first the resolution’s provision that the president may commit troops to offensive operations anywhere in the world he chooses and for any reason without the consent of Congress, for a period of 60 days** (though he must at least inform them of his action within 48 hours). After the initial 60 days he must secure congressional authorization for the action to continue. He then has another 30 days to withdraw the troops if such authorization is not forthcoming. Until the War Powers Resolution, no constitutional or statutory authority could be cited on behalf of such behavior on the part of the president. Now it became fixed law, despite violating the letter and the spirit of the Constitution.

#### D. Voter for fairness and education.

### 2

#### The United States Congress should create a statutory cause of action for damages for those unlawfully injured by targeted killing operations or their heirs that waives the United States’ sovereign immunity and state secrets privileges and confers exclusive jurisdiction over such suits upon the U.S. District Court for the District of Columbia.

#### The CP solves the aff, preserves executive flexibility and overcomes the government’s ability to assert state secret privileges.

Vladeck 14 Stephen Professor of Law and Associate Dean for Scholarship, American University Washington College of Law. “Targeted Killing and Judicial Review” http://www.lawfareblog.com/wp-content/uploads/2014/02/Vladeck-Response-Piece.pdf

As noted above,70 such review is best provided after the fact, rather than ex ante, in a similar manner as the wrongful death actions recognized by virtually every jurisdiction.71 After-the-fact review avoids the serious logistical, prudential, and potentially constitutional concerns that ex ante review would raise because it does not stop the government from acting at its own discretion, and it allows for more comprehensive consideration of the issues “removed from the pressures of the moment and with the benefit of the dispassionate distance on which judicial review must rely.”72 Such review should be predicated on an express cause of action created by Congress. In designing such a remedy, Congress can borrow from the model created by FISA, which has provided since its inception that “[a]n aggrieved person, other than [one who is properly subject to surveillance under FISA], who has been subjected to an electronic surveillance . . . shall have a cause of action against any person who committed such violation.”73 An express cause of action would clarify Congress’s intent that such suits should be allowed to go forward, and it would also support arguments against otherwise available common law privileges and immunities. Further to that end, because review would be after the fact, such an action should be for damages, and, unlike FISA, should therefore contain an express waiver of the United States’ sovereign immunity to ensure that money damages will actually be available in such cases74—not so much to make the victim’s heirs whole, but to provide a meaningful deterrent for future government officers. Thus, although many will disagree with this particular aspect of my proposal, I suspect that such a cause of action could serve its purpose even if it only provided for nominal damages, insofar as such nominal damages still establish forward-looking principles of liability.75 Although no special jurisdictional provisions should be necessary (e.g., FISA does not require civil suits under FISA to be brought before the FISC),76 Congress could confer exclusive jurisdiction over such suits upon the U.S. District Court for the District of Columbia.77 This jurisdictional exclusivity would ensure that such cases were brought before federal judges with substantial and sustained experience handling high-profile (and often highly sensitive) national security cases. Borrowing from the model of the Federal Tort Claims Act (“FTCA”),78 as amended by the Federal Employees Liability Reform and Tort Compensation Act of 1988 (“Westfall Act”), 79 Congress can immunize potential officer-defendants by substituting the United States as the defendant on any claims arising under this cause of action in which the officer-defendant was acting within the scope of his employment.80 As is the case under the Westfall Act, such a move would also necessarily moot application of official immunity doctrines because it would confer absolute immunity upon the officer-defendants,81 and the United States may not invoke official immunity as a party. As under the Westfall Act, substitution would reinforce the idea that the goal is not to punish individual officers, but to establish the liability of the federal government writ large. As under the FTCA, Congress could bar jury trials in such cases, requiring instead that all factual and legal determinations be made by the presiding judge.82 Again, such a move would help to ensure that these suits could be heard expeditiously and with due regard for the government’s secrecy concerns. On that note, with regard to secrecy, Congress could look to both FISA83 and the provisions of the 1996 immigration laws establishing the Alien Terrorist Removal Court (“ATRC”)84 as models for how to allow for judicial proceedings that are both adversarial and largely secret. In this respect, both FISA and the ATRC contemplate litigation between the government and security-cleared counsel without regard to the state secrets privilege, which Congress could otherwise abrogate.85

#### The plan forces the court to issue death warrants— destroys their legitimacy, the CP is in keeping with existing precedent which preserves it

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First, Johnson notes, as others have, that judges would be loath to issue the equivalent of death warrants, first of all on purely moral grounds, but also on more political grounds. Courts enjoy the highest approval ratings of the three branches of government, yet accepting the responsibility to determine which individuals may live or die, without that individual having an opportunity to appear before the court would simply shift some of the public opprobrium from the Executive to the Judiciary. However, if the court exercised ex post review, it instead would be in its ordinary position of approving or disapproving the Executive’s decisions, not making its decisions for it. Another concern raised by Johnson is that the judges would be highly uncomfortable making such decisions because they would be necessarily involve a secret, purely ex parte process. While courts do this on a daily basis, as when they issue search or arrest warrants, the targeted killing context stands apart in that the judge’s decision would be effectively irreversible. Here again, the use of ex post process would free the courts from this problem, and place it in the executive (which includes the military, incidentally, an organization which deals with this issue as a matter of course).

#### Weakening the court prevents sustainable development

Stein 5—Former Judge of the New South Wales Court of Appeal and the New South Wales Land and Environment Court [Justice Paul Stein (International Union for Conservation of Nature (IUCN) Specialist Group on the Judiciary), “Why judges are essential to the rule of law and environmental protection,” Judges and the Rule of Law: Creating the Links: Environment, Human Rights and Poverty, IUCN Environmental Policy and Law Paper No. 60, Edited by Thomas Greiber, 2006]

The Johannesburg Principles state: “We emphasize that the fragile state of the global environment requires the judiciary, as the guardian of the Rule of Law, to boldly and fearlessly implement and enforce applicable international and national laws, which in the field of environment and sustainable development will assist in alleviating poverty and sustaining an enduring civilization, and ensuring that the present generation will enjoy and improve the quality of life of all peoples, while also ensuring that the inherent rights and interests of succeeding generations are not compromised.” There can be no argument that environmental law, and sustainable development law in particular, are vibrant and dynamic areas, both internationally and domestically. Judge Weeramantry (of the ICJ) has reminded us that we judges, as custodians of the law, have a major obligation to contribute to its development. Much of sustainable development law is presently making the journey from soft law into hard law. This is happening internationally but also it is occurring in many national legislatures and courts. Fundamental environmental laws relating to water, air, our soils and energy are critical to narrowing the widening gap between the rich and poor of the world. Development may be seen as the bridge to narrow that gap but it is one that is riddled with dangers and contradictions. We cannot bridge the gap with materials stolen from future generations. Truly sustainable development can only take place in harmony with the environment. Importantly we must not allow sustainable development to be duchessed and bastardized. A role for judges? It is in striking the balance between development and the environment that the courts have a role. Of course, this role imposes on judges a significant trust. The balancing of the rights and needs of citizens, present and future, with development, is a delicate one. It is a balance often between powerful interests (private and public) and the voiceless poor. In a way judges are the meat in the sandwich but, difficult as it is, we must not shirk our duty. Pg. 53-54

#### Extinction of all complex life

Barry 13—Political ecologist with expert proficiencies in old forest protection, climate change, and environmental sustainability policy [Dr. Glen Barry (Ph.D. in "Land Resources" and Masters of Science in "Conservation Biology and Sustainable Development” from the University of Wisconsin-Madison), “ECOLOGY SCIENCE: Terrestrial Ecosystem Loss and Biosphere Collapse,” Forests.org, February 4, 2013, pg. http://forests.org/blog/2013/02/ecology-science-terrestrial-ec.asp

Blunt, Biocentric Discussion on Avoiding Global Ecosystem Collapse and Achieving Global Ecological Sustainability Science needs to do a better job of considering worst-case scenarios regarding continental- and global-scale ecological collapse. The loss of biodiversity, ecosystems, and landscape connectivity reviewed here shows clearly that ecological collapse is occurring at spatially extensive scales. The collapse of the biosphere and complex life, or eventually even all life, is a possibility that needs to be better understood and mitigated against. A tentative case has been presented here that terrestrial ecosystem loss is at or near a planetary boundary. It is suggested that a 66% of Earth's land mass must be maintained in terrestrial ecosystems, to maintain critical connectivity necessary for ecosystem services across scales to continue, including the biosphere. Yet various indicators show that around 50% of Earth's terrestrial ecosystems have been lost and their services usurped by humans. Humanity may have already destroyed more terrestrial ecosystems than the biosphere can bear. There exists a major need for further research into how much land must be maintained in a natural and agroecological state to meet landscape and bioregional sustainable development goals while maintaining an operable biosphere. It is proposed that a critical element in determining the threshold where terrestrial ecosystem loss becomes problematic is where landscape connectivity of intact terrestrial ecosystems erodes to the point where habitat patches exist only in a human context. Based upon an understanding of how landscapes percolate across scale, it is recommended that 66% of Earth's surface be maintained as ecosystems; 44% as natural intact ecosystems (2/3 of 2/3) and 22% as agroecological buffer zones. Thus nearly half of Earth must remain as large, connected, intact, and naturally evolving ecosystems, including old-growth forests, to provide the context and top-down ecological regulation of both human agroecological, and reduced impact and appropriately scaled industrial activities. Given the stakes, it is proper for political ecologists and other Earth scientists to willingly speak bluntly if we are to have any chance of averting global ecosystem collapse. A case has been presented that Earth is already well beyond carrying capacity in terms of amount of natural ecosystem habitat that can be lost before the continued existence of healthy regional ecosystems and the global biosphere itself may not be possible. Cautious and justifiably conservative science must still be able to rise to the occasion of global ecological emergencies that may threaten our very survival as a species and planet. Those knowledgeable about planetary boundaries—and abrupt climate change and terrestrial ecosystem loss in particular—must be more bold and insistent in conveying the range and possible severity of threats of global ecosystem collapse, while proposing sufficient solutions. It is not possible to do controlled experiments on the Earth system; all we have is observation based upon science and trained intuition to diagnose the state of Earth's biosphere and suggest sufficient ecological science–based remedies. If Gaia is alive, she can die. Given the strength of life-reducing trends across biological systems and scales, there is a need for a rigorous research agenda to understand at what point the biosphere may perish and Earth die, and to learn what configuration of ecosystems and other boundary conditions may prevent her from doing so. We see death of cells, organisms, plant communities, wildlife populations, and whole ecosystems all the time in nature—extreme cases being desertification and ocean dead zones. There is no reason to dismiss out of hand that the Earth System could die if critical thresholds are crossed. We need as Earth scientists to better understand how this may occur and bring knowledge to bear to avoid global ecosystem and biosphere collapse or more extreme outcomes such as biological homogenization and the loss of most or even all life. To what extent can a homogenized Earth of dandelions, rats, and extremophiles be said to be alive, can it ever recover, and how long can it last? The risks of global ecosystem collapse and the need for strong response to achieve global ecological sustainability have been understated for decades. If indeed there is some possibility that our shared biosphere could be collapsing, there needs to be further investigation of what sorts of sociopolitical responses are valid in such a situation. Dry, unemotional scientific inquiry into such matters is necessary—yet more proactive and evocative political ecological language may be justified as well. We must remember we are speaking of the potential for a period of great dying in species, ecosystems, humans, and perhaps all being. It is not clear whether this global ecological emergency is avoidable or recoverable. It may not be. But we must follow and seek truth wherever it leads us. Planetary boundaries have been quite anthropocentric, focusing upon human safety and giving relatively little attention to other species and the biosphere's needs other than serving humans. Planetary boundaries need to be set that, while including human needs, go beyond them to meet the needs of ecosystems and all their constituent species and their aggregation into a living biosphere. Planetary boundary thinking needs to be more biocentric. I concur with Williams (2000) that what is needed is an Earth System–based conservation ethic—based upon an "Earth narrative" of natural and human history—which seeks as its objective the "complete preservation of the Earth's biotic inheritance." Humans are in no position to be indicating which species and ecosystems can be lost without harm to their own intrinsic right to exist, as well as the needs of the biosphere. For us to survive as a species, logic and reason must prevail (Williams 2000). Those who deny limits to growth are unaware of biological realities (Vitousek 1986). There are strong indications humanity may undergo societal collapse and pull down the biosphere with it. The longer dramatic reductions in fossil fuel emissions and a halt to old-growth logging are put off, the worse the risk of abrupt and irreversible climate change becomes, and the less likely we are to survive and thrive as a species. Human survival—entirely dependent upon the natural world—depends critically upon both keeping carbon emissions below 350 ppm and maintaining at least 66% of the landscape as natural ecological core areas and agroecological transitions and buffers. Much of the world has already fallen below this proportion, and in sum the biosphere's terrestrial ecosystem loss almost certainly has been surpassed, yet it must be the goal for habitat transition in remaining relatively wild lands undergoing development such as the Amazon, and for habitat restoration and protection in severely fragmented natural habitat areas such as the Western Ghats. The human family faces an unprecedented global ecological emergency as reckless growth destroys the ecosystems and the biosphere on which all life depends. Where is the sense of urgency, and what are proper scientific responses if in fact Earth is dying? Not speaking of worst-case scenarios—the collapse of the biosphere and loss of a living Earth, and mass ecosystem collapse and death in places like Kerala—is intellectually dishonest. We must consider the real possibility that we are pulling the biosphere down with us, setting back or eliminating complex life. The 66% / 44% / 22% threshold of terrestrial ecosystems in total, natural core areas, and agroecological buffers gets at the critical need to maintain large and expansive ecosystems across at least 50% of the land so as to keep nature connected and fully functional. We need an approach to planetary boundaries that is more sensitive to deep ecology to ensure that habitable conditions for all life and natural evolutionary change continue. A terrestrial ecosystem boundary which protects primary forests and seeks to recover old-growth forests elsewhere is critical in this regard. In old forests and all their life lie both the history of Earth's life, and the hope for its future. The end of their industrial destruction is a global ecological imperative. Much-needed dialogue is beginning to focus on how humanity may face systematic social and ecological collapse and what sort of community resilience is possible. There have been ecologically mediated periods of societal collapse from human damage to ecosystems in the past (Kuecker and Hall 2011). What makes it different this time is that the human species may have the scale and prowess to pull down the biosphere with them. It is fitting at this juncture for political ecologists to concern themselves with both legal regulatory measures, as well as revolutionary processes of social change, which may bring about the social norms necessary to maintain the biosphere. Rockström and colleagues (2009b) refer to the need for "novel and adaptive governance" without using the word revolution. Scientists need to take greater latitude in proposing solutions that lie outside the current political paradigms and sovereign powers. Even the Blue Planet Laureates' remarkable analysis (Brundtland et al. 2012), which notes the potential for climate change, ecosystem loss, and inequitable development patterns neither directly states nor investigates in depth the potential for global ecosystem collapse, or discusses revolutionary responses. UNEP (2012) notes abrupt and irreversible ecological change, which they say may impact life-support systems, but are not more explicit regarding the profound human and ecological implications of biosphere collapse, or the full range of sociopolitical responses to such predictions. More scientific investigations are needed regarding alternative governing structures optimal for pursuit and achievement of bioregional, continental, and global sustainability if we are maintain a fully operable biosphere forever. An economic system based upon endless growth that views ecosystems necessary for planetary habitability primarily as resources to be consumed cannot exist for long. Planetary boundaries offer a profoundly difficult challenge for global governance, particularly as increased scientific salience does not appear to be sufficient to trigger international action to sustain ecosystems (Galaz et al. 2012). If indeed the safe operating space for humanity is closing, or the biosphere even collapsing and dying, might not discussion of revolutionary social change be acceptable? Particularly, if there is a lack of consensus by atomized actors, who are unable to legislate the required social change within the current socioeconomic system. By not even speaking of revolutionary action, we dismiss any means outside the dominant growth-based oligarchies. In the author's opinion, it is shockingly irresponsible for Earth System scientists to speak of geoengineering a climate without being willing to academically investigate revolutionary social and economic change as well. It is desirable that the current political and economic systems should reform themselves to be ecologically sustainable, establishing laws and institutions for doing so. Yet there is nothing sacrosanct about current political economy arrangements, particularly if they are collapsing the biosphere. Earth requires all enlightened and knowledgeable voices to consider the full range of possible responses now more than ever. One possible solution to the critical issues of terrestrial ecosystem loss and abrupt climate change is a massive and global, natural ecosystem protection and restoration program—funded by a carbon tax—to further establish protected large and connected core ecological sustainability areas, buffers, and agro-ecological transition zones throughout all of Earth's bioregions. Fossil fuel emission reductions must also be a priority. It is critical that humanity both stop burning fossil fuels and destroying natural ecosystems, as fast as possible, to avoid surpassing nearly all the planetary boundaries. In summation, we are witnessing the collective dismantling of the biosphere and its constituent ecosystems which can be described as ecocidal. The loss of a species is tragic, of an ecosystem widely impactful, yet with the loss of the biosphere all life may be gone. Global ecosystems when connected for life's material flows provide the all-encompassing context within which life is possible. The miracle of life is that life begets life, and the tragedy is that across scales when enough life is lost beyond thresholds, living systems die.

### 3

#### Ex ante judicial review makes effective drone ops impossible---even limiting the court to vetting names in advance compromises the timelines of operations

James Oliphant 13, Deputy Editor, the National Journal, J.D. from the Ohio State University Morrill College of Law, 5/30/13, “Vetting the Kill List,” National Journal, http://www.nationaljournal.com/magazine/vetting-the-kill-list-20130404

Civil libertarians and even hawks such as former Rep. Jane Harman of California, who served on the House Intelligence Committee, have suggested creating a court modeled on the one that signs off on federal wiretaps of suspected foreign agents. The Foreign Intelligence Surveillance Court in Washington operates in secret and requires the government to make a case before approving a tap. Harman and other proponents say such a body could review names on the “kill list” and weigh in on whether they merit inclusion based on the White House’s criteria for targeting potential threats. Robert Gates, the former Defense secretary, also favors such an approach.¶ But even among supporters, no consensus exists on what questions a drone court would actually review or even whether its scrutiny would come before or after a strike. The most problematic scenario involves any sort of preoperational clearance. Possible windows for action open and shut in a matter of hours. The kill lists are constantly being revised and updated. Even many of those who argue for some sort of oversight mechanism, such as University of Texas law professor Robert Chesney, don’t believe a judge should be involved when it comes to “pulling the trigger.”¶ Still, Chesney says such a court could still vet the names on the list in advance to ensure the administration is following its own guidelines for a strike: the target is connected to al-Qaida; he poses some threat of “imminent” harm; and the government is operating within its legal authority. “Whether and when to fire is a totally separate question,” Chesney says. (He notes that there’s a range of disagreement over how the administration classifies an “imminent” threat and whether a judge would be qualified to make that determination.)¶ But even that small degree of oversight, warns Gregory McNeal, a counterterrorism expert at Pepperdine University, risks throwing sand in the gears by extending the timeline of an op. And to McNeal, this point leads directly to the larger issue of accountability—or, to use the Washington synonym, blame. Judges, he says, simply aren’t ever going to be equipped to identify and navigate the variables involved in a drone strike.¶ Jeh Johnson, formerly the Obama administration’s top lawyer at the Pentagon, expressed his discomfort with court-based oversight in a speech last month at Fordham University. Questions of feasibility and imminence, he said, “are up-to-the-minute, real-time assessments.” More important, Johnson emphasized, “we want military and national security officials to continually assess and reassess these two questions up until the last minute of the operation.”¶ Given that reality, shifting the responsibility of a sign-off to a set of federal judges, who are unelected and serve for life, would allow the White House to escape the consequences of its actions, or more crucially, perhaps its failure to act if a target slips out of harm’s way and then masterminds an attack. Military decisions are, at heart, political ones, McNeal says, and they are rightly made by the branch of government whose top official, the president, faces voters. (A case in point: Republicans suffered at the ballot box in 2006 and 2008 as a result of the public’s displeasure with the Iraq war.) “If you’re a politician,” McNeal says of a drone court, “this is great. Because you aren’t on the hook for anything.”¶ By and large, federal judges don’t want to be in this position. They worry about damaging the integrity of the bench. Retired Judge James Robertson, who served on the U.S. Appeals Court in Washington, argued in The Washington Post that the Constitution forbids the judiciary from issuing advisory opinions. “Federal courts rule on specific disputes between adversary parties,” he wrote. “They do not make or approve policy; that job is reserved to Congress and the executive.” The FISA court is a different animal, because approving surveillance is related to Fourth Amendment protections on search warrants.

#### Targeted killing’s vital to CT – prevents complex WMD plots.

Kenneth Anderson 13, Professor of International Law at American University, June 2013, “The Case for Drones,” Commentary, Vol. 135, No. 6

Targeted killing of high-value terrorist targets, by contrast, is the end result of a long, independent intelligence process. What the drone adds to that intelligence might be considerable, through its surveillance capabilities -- but much of the drone's contribution will be tactical, providing intelligence that assists in the planning and execution of the strike itself, in order to pick the moment when there might be the fewest civilian casualties. Nonetheless, in conjunction with high-quality intelligence, drone warfare offers an unparalleled means to strike directly at terrorist organizations without needing a conventional or counterinsurgency approach to reach terrorist groups in their safe havens. It offers an offensive capability, rather than simply defensive measures, such as homeland security alone. Drone warfare offers a raiding strategy directly against the terrorists and their leadership. If one believes, as many of the critics of drone warfare do, that the proper strategies of counterterrorism are essentially defensive -- including those that eschew the paradigm of armed conflict in favor of law enforcement and criminal law -- then the strategic virtue of an offensive capability against the terrorists themselves will seem small. But that has not been American policy since 9/11, not under the Bush administration, not under the Obama administration -- and not by the Congress of the United States, which has authorized hundreds of billions of dollars to fight the war on terror aggressively. The United States has used many offensive methods in the past dozen years: Regime change of states offering safe havens, counter-insurgency war, special operations, military and intelligence assistance to regimes battling our common enemies are examples of the methods that are just of military nature. Drone warfare today is integrated with a much larger strategic counterterrorism target -- one in which, as in Afghanistan in the late 1990s, radical Islamist groups seize governance of whole populations and territories and provide not only safe haven, but also an honored central role to transnational terrorist groups. This is what current conflicts in Yemen and Mali threaten, in counterterrorism terms, and why the United States, along with France and even the UN, has moved to intervene militarily. Drone warfare is just one element of overall strategy, but it has a clear utility in disrupting terrorist leadership. It makes the planning and execution of complex plots difficult if only because it is hard to plan for years down the road if you have some reason to think you will be struck down by a drone but have no idea when. The unpredictability and terrifying anticipation of sudden attack, which terrorists have acknowledged in communications, have a significant impact on planning and organizational effectiveness.

#### Nuclear terrorist attack results in extinction.

Owen B. Toon 7, chair of the Department of Atmospheric and Oceanic Sciences at CU-Boulder, et al., April 19, 2007, “Atmospheric effects and societal consequences of regional scale nuclear conflicts and acts of individual nuclear terrorism,” online: http://climate.envsci.rutgers.edu/pdf/acp-7-1973-2007.pdf

To an increasing extent, people are congregating in the world’s great urban centers, creating megacities with populations exceeding 10 million individuals. At the same time, advanced technology has designed nuclear explosives of such small size they can be easily transported in a car, small plane or boat to the heart of a city. We demonstrate here that a single detonation in the 15 kiloton range can produce urban fatalities approaching one million in some cases, and casualties exceeding one million. Thousands of small weapons still exist in the arsenals of the U.S. and Russia, and there are at least six other countries with substantial nuclear weapons inventories. In all, thirty-three countries control sufficient amounts of highly enriched uranium or plutonium to assemble nuclear explosives. A conflict between any of these countries involving 50-100 weapons with yields of 15 kt has the potential to create fatalities rivaling those of the Second World War. Moreover, even a single surface nuclear explosion, or an air burst in rainy conditions, in a city center is likely to cause the entire metropolitan area to be abandoned at least for decades owing to infrastructure damage and radioactive contamination. As the aftermath of hurricane Katrina in Louisiana suggests, the economic consequences of even a localized nuclear catastrophe would most likely have severe national and international economic consequences. Striking effects result even from relatively small nuclear attacks because low yield detonations are most effective against city centers where business and social activity as well as population are concentrated. Rogue nations and terrorists would be most likely to strike there. Accordingly, an organized attack on the U.S. by a small nuclear state, or terrorists supported by such a state, could generate casualties comparable to those once predicted for a full-scale nuclear “counterforce” exchange in a superpower conflict. Remarkably, the estimated quantities of smoke generated by attacks totaling about one megaton of nuclear explosives could lead to significant global climate perturbations (Robock et al., 2007). While we did not extend our casualty and damage predictions to include potential medical, social or economic impacts following the initial explosions, such analyses have been performed in the past for large-scale nuclear war scenarios (Harwell and Hutchinson, 1985). Such a study should be carried out as well for the present scenarios and physical outcomes.

### 4

#### Presidential war powers authority captures the legal system—statutory and judicial restrictions on the president only serve to legitimate state monopolies on violence which make the worst atrocities possible.

Morrissey 2011 [John, Department of Geography at the National University of Ireland, “Liberal Lawfare and Biopolitics: US Juridical Warfare in the War on Terror,” *Geopolitics* 16:280-305]

Nearly two centuries ago, Prussian military strategist, Carl von Clausewitz, observed how war is merely a “continuation of political commerce” by “other means”.70 Today, the lawfare of the US military is a continuation of war by legal means. Indeed, for US Deputy Judge Advocate General, Major General Charles Dunlap, it “has become a key aspect of modern war”.71 For Dunlap and his colleagues in the JAG corps, the law is a “force multiplier”, as Harvard legal scholar, David Kennedy, explains: it “structures logistics, command, and control”; it “legitimates, and facilitates” violence; it “privileges killing”; it identifies legal “openings that can be made to seem persuasive”, promissory, necessary and indeed therapeutic; and, of course, it is “a communication tool” too because defining the battlefield is not only a matter of “privileging killing”, it is also a “rhetorical claim”.72 Viewed in this way, the law can be seen to in fact “contribute to the proliferation of violence rather than to its containment”, as Eyal Weizman has instructively shown in the case of recent Israeli lawfare in Gaza.73 In the US wars in Iraq, Afghanistan and broader war on terror, the Department of Defense has actively sought to legalise its use of biopolitical violence against all those deemed a threat. Harvey Rishikof, the former Chair of the Department of National Security Strategy at the National War College in Washington, recently underlined ‘juridical warfare’ (his preferred designation over ‘lawfare’) as a pivotal “legal instrument” for insurgents in the asymmetric war on terror.74 For Rishikof and his contemporaries, juridical warfare is always understood to mean the legal strategies of the weak ‘against’ the United States; it is never acknowledged as a legal strategy ‘of’ the United States. However, juridical warfare has been a proactive component of US military strategy overseas for some time, and since the September 11 attacks in New York and Washington in 2001, a renewed focus on juridical warfare has occurred, with the JAG Corps playing a central role in reforming, prioritising and mobilising the law as an active player in the war on terror.75 Deputy Judge Advocate General, Major General Charles Dunlap, recently outlined some of the key concerns facing his corps and the broader US military; foremost of which is the imposing of unnecessary legal restraints on forward-deployed military personnel.76 For Dunlap, imposing legal restraints on the battlefield as a “matter of policy” merely “play[s] into the hands of those who would use [international law] to wage lawfare against us”.77 Dunlap’s counter-strategy is simply “adhering to the rule of law”, which “understands that sometimes the legitimate pursuit of military objectives will foreseeably – and inevitably – cause the death of noncombatants”; indeed, he implores that “this tenet of international law be thoroughly understood”.78 But ‘the’ rule of international law that Dunlap has in mind is merely a selective and suitably enabling set of malleable legal conventions that legitimate the unleashing of military violence.79 As David Kennedy illuminates so brilliantly in Of War and Law: We need to remember what it means to say that compliance with international law “legitimates.” It means, of course, that killing, maiming, humiliating, wounding people is legally privileged, authorized, permitted, and justified.80 The recent ‘special issue on juridical warfare’ in the US military’s flagship journal, Joint Force Quarterly, brought together a range of leading judge advocates, specialists in military law, and former legal counsels to the Chairman of the Joint Chiefs of Staff. All contributions addressed the question of “which international conventions govern the confinement and interrogation of terrorists and how”.81 The use of the term ‘terrorists’ instead of suspects sets the tone for the ensuing debate: in an impatient defence of ‘detention’, Colonel James Terry bemoans the “limitations inherent in the Detainee Treatment Act of 2005 and the Military Commissions Act of 2006” (which he underlines only address detainees at the US Naval Base at Guantanamo) and asserts that “requirements inherent in the war on terror will likely warrant expansion of habeas corpus limitations”;82 considering ‘rendition’, Colonel Kevin Cieply asks the shocking question “is rendition simply recourse to the beast at a necessary time”;83 Colonel Peter Cullen argues for the necessity of the “role of targeted killing in the campaign against terror”;84 Commander Brian Hoyt contends that it is “time to reexamine U.S. policy on the [international criminal] court, and it should be done through a strategic lens”;85 while Colonel James Terry furnishes an additional concluding essay with the stunningly instructive title ‘The International Criminal Court: A Concept Whose Time Has Not Come’.86 These rather chilling commentaries attest to one central concern of the JAG Corps and the broader military-political executive at the Pentagon: that enemies must not be allowed to exploit “real, perceived, or even orchestrated incidents of law-of-war violations being employed as an unconventional means of confronting American military power”.87 And such thinking is entirely consistent with the defining National Defense Strategy of the Bush administration, which signalled the means to win the war on terror as follows: “We will defeat adversaries at the time, place, and in the manner of our choosing”.88 If US warfare in the war on terror is evidently underscored by a ‘manner of our choosing’ preference – both at the Pentagon and in the battlefield – this in turn prompts an especially proactive ‘juridical warfare’ that must be simultaneously pursued to legally capacitate, regulate and maximise any, and all, military operations. The 2005 National Defense Strategy underlined the challenge thus: Many of the current legal arrangements that govern overseas posture date from an earlier era. Today, challenges are more diverse and complex, our prospective contingencies are more widely dispersed, and our international partners are more numerous. International agreements relevant to our posture must reflect these circumstances and support greater operational flexibility.89 It went on to underline its consequent key juridical tactic and what I argue is a critical weapon in the US military-legal arsenal in the war on terror: the securing of ‘Status of Forces Agreements’ – to “provide legal protections” against “transfers of U.S. personnel to the International Criminal Court”.90

#### The alternative is to reject their understanding of the law as an independent neutral entity with the power to restrict practices apart from practices. Instead, we should conceive of the law and practice as co-constitutive—this opens up the space to change the relationship between lived decisionmaking and the autocracy of bureaucratic legal determinations.

Krassman 2012 [Susan, Professor at the Institute for Criminological Research at the University of Hamburg. “Targeted Killing and Its Law: On a Mutually Constitutive Relationship,” *Leiden Journal of International Law* 25.03]

Foucault did not elaborate on a comprehensive theory of law – a fact that critics have attributed to his allegedly underestimating law's political and social relevance. Some statements by Foucault may have provoked this interpretation, among them his assertion that law historically ‘recedes’ with,46 or is being ‘colonized’ by,47 forms of knowledge that are addressed at governing people and populations. It is, though, precisely this analytical perspective that allows us to capture the mutually productive relationship between targeted killing and the law. In contrast to a widely shared critique, then, Foucault did not read law merely as a negative instrument of constraint. He referred, instead, to a particular mode of juridical power that operates in terms of repressive effects.48 Moreover, rather than losing significance coextensively with the ancient sovereign power, law enters new alliances, particularly with certain knowledge practices and attendant expertise.49 This linkage proves to be relevant in the present context, considering not only the interchange between the legal and political discourse on targeted killing, but notably the relationship between law and security. According to Foucault, social phenomena cannot be isolated from and are only decipherable within the practices, procedures, and forms of knowledge that allow them to surface as such.50 In this sense, ‘all phenomena are singular, every historical or social fact is a singularity’.51 Hence, they need to be studied within their historically and locally specific contexts, so as to account for both the subject's singularity and the conditions of its emergence. It is against this background that a crucial question to be posed is how targeted killing could emerge on the political stage as a subject of legal debate. Furthermore, this analytical perspective on power and knowledge intrinsically being interlinked highlights that our access to reality always entails a productive moment. Modes of thinking, or what Foucault calls rationalities, render reality conceivable and thus manageable.52 They implicate certain ways of seeing things, and they induce truth effects whilst translating into practices and technologies of government. These do not merely address and describe their subject; they constitute or produce it.53 Law is to be approached accordingly.54 It cannot be extracted from the forms of knowledge that enact it, and it is in this sense that law is only conceivable as practice. Even if we only think of the law in ideal terms, as being designated to contain governmental interference, for example, or to provide citizens’ rights, it is already a practice and a form of enacting the law. To enforce the law is always a form of enactment, since it involves a productive moment of bringing certain forms of knowledge into play and of rendering legal norms meaningful in the first place. Law is susceptible to certain forms of knowledge and rationalities in a way that these constitute it and shape legal claims. Rather than on the application of norms, legal reasoning is on the production of norms. Legality, within this account of law, then, is not only due to a normative authority that, based in our political culture, is external to law, nor is it something that is just inherent in law, epitomized by the principles that constitute law's ‘inner morality’.55 Rather, the enforcement of law and its attendant reasoning produce their own – legal – truth effects. Independently of the purported intentions of the interlocutors, the juridical discourse on targeted killing leads to, in the first instance, conceiving of and receiving the subject in legal terms. When targeted killing surfaced on the political stage, appropriate laws appeared to be already at hand. ‘There are more than enough rules for governing drone warfare’, reads the conclusion of a legal reasoning on targeted killing.56 Yet, accommodating the practice in legal terms means that international law itself is undergoing a transformation. The notion of dispositifs is useful in analysing such processes of transformation. It enables us to grasp the minute displacements of established legal concepts that,57 while undergoing a transformation, at the same time prove to be faithful to their previous readings. The displacement of some core features of the traditional conception of the modern state reframes the reading of existing law. Hence, to give just one example for such a rereading of international law: legal scholars raised the argument that neither the characterization of an international armed conflict holds – ‘since al Qaeda is not a state and has no government and is therefore incapable of fighting as a party to an inter-state conflict’58 – nor that of an internal conflict. Instead, the notion of dealing with a non-international conflict,59 which, in view of its global nature, purportedly ‘closely resembles’ an international armed conflict, serves to provide ‘a fuller and more comprehensive set of rules’.60 Established norms and rules of international law are preserved formally, but filled with a radically different meaning so as to eventually integrate the figure of a terrorist network into its conventional understanding. Legal requirements are thus meant to hold for a drone programme that is accomplished both by military agencies in war zones and by military and intelligence agencies targeting terror suspects beyond these zones,61 since the addressed is no longer a state, but a terrorist network. However, to conceive of law as a practice does not imply that law would be susceptible to any form of knowledge. Not only is its reading itself based on a genealogy of practices established over a longer period.62 Most notably, the respective forms of knowledge are also embedded in varying procedures and strategic configurations. If law is subject to an endless deference of meaning,63 this is not the case in the sense of arbitrary but historically contingent practices, but in the sense of historically contingent practices. Knowledge, then, is not merely an interpretive scheme of law. Rather than merely on meaning, focus is on practices that, while materializing and producing attendant truth effects, shape the distinctions we make between legal and illegal measures. What is more, as regards anticipatory techniques to prevent future harm, this perspective allows for our scrutinizing the division made between what is presumably known and what is yet to be known, and between what is presumably unknown and has yet to be rendered intelligible. This prospect, as will be seen in the following, is crucial for a rereading of existing law. It was the identification of a new order of threat since the terror attacks of 9/11 that brought about a turning point in the reading of international law. The identification of threats in general provides a space for transforming the unknowable into new forms of knowledge. The indeterminateness itself of legal norms proves to be a tool for introducing a new reading of law.

### Solvency

#### Executive will circumvent the plan.

Barron & Lederman, 8 --- \*Professor of Law at Harvard, AND \*\* Visiting Professor of Law at Georgetown

(February 2008, David J. Barron and Martin S. Lederman, Harvard Law Review, “THE COMMANDER IN CHIEF AT THE LOWEST EBB -- A CONSTITUTIONAL HISTORY,” 121 Harv. L. Rev. 941)

VII. Conclusion

Powers once claimed by the Executive are not easily relinquished. One sees from our narrative how, in a very real sense, the constitutional law of presidential power is often made through accretion. A current administration eagerly seizes upon the loose claims of its predecessors, and applies them in ways perhaps never intended or at least not foreseen or contemplated at the time they were first uttered. The unreflective notion that the "conduct of campaigns" is for the President alone to determine has slowly insinuated itself into the consciousness of the political departments (and, at times, into public debate), and has gradually been invoked in order to question all manner [\*1112] of regulations, from requirements to purchase airplanes, to limitations on deployments in advance of the outbreak of hostilities, to criminal prohibitions against the use of torture and cruel treatment. In this regard, the claims of the current Administration represent as clear an example of living constitutionalism in practice as one is likely to encounter. There is a radical disjuncture between the approach to constitutional war powers the current President has asserted and the one that prevailed at the moment of ratification and for much of our history that followed. But that dramatic deviation did not come from nowhere. Rarely does our constitutional framework admit of such sudden creations. Instead, the new claims have drawn upon those elements in prior presidential practice most favorable to them. That does not mean our constitutional tradition is foreordained to develop so as to embrace unchecked executive authority over the conduct of military campaigns. At the same time, it would be wrong to assume, as some have suggested, that the emergence of such claims will be necessarily self-defeating, inevitably inspiring a popular and legislative reaction that will leave the presidency especially weakened. In light of the unique public fears that terrorism engenders, the more substantial concern is an opposite one. It is entirely possible that the emergence of these claims of preclusive power will subtly but increasingly influence future Executives to eschew the harder work of accepting legislative constraints as legitimate and actively working to make them tolerable by building public support for modifications. The temptation to argue that the President has an obligation to protect the prerogatives of the office asserted by his or her predecessors will be great. Congress's capacity to effectively check such defiance will be comparatively weak. After all, the President can veto any effort to legislatively respond to defiant actions, and impeachment is neither an easy nor an attractive remedy.

#### Ex ante review is worse than the suqo

#### a. Authority – prior review legitimizes targeted killing for non-immanent threats – locks in the status quo program

Jaffer, Director-ACLU Center for Democracy, 13 (Jameel Jaffer, Director of the ACLU's Center for Democracy, “Judicial Review of Targeted Killings,” 126 Harv. L. Rev. F. 185 (2013), http://www.harvardlawreview.org/issues/126/april13/forum\_1002.php)

But to recognize that judicial review is indispensible in this context is not to say that Congress should establish a specialized court, still less that it should establish such a court to review contemplated killings before they are carried out. First, the establishment of such a court would almost certainly entrench the notion that the government has authority, even far away from conflict zones, to use lethal force against individuals who do not present imminent threats. When a threat is truly imminent, after all, the government will not have time to apply to a court for permission to carry out a strike. Exigency will make prior judicial review infeasible. To propose that a court should review contemplated strikes before they are carried out is to accept that the government should be contemplating strikes against people who do not present imminent threats. This is why the establishment of a specialized court would more likely institutionalize the existing program, with its elision of the imminence requirement, than narrow it.

#### b. Deference - Judges won’t want to wade into national security measures – they would defer to the executive if it is an issue of imminence

Vladeck, editor- Journal of National Security Law & Policy, 13 (Steve Vladeck, professor of law and the associate dean for scholarship at American University Washington College of Law, senior editor of the Journal of National Security Law & Policy, Why a “Drone Court” Won’t Work–But (Nominal) Damages Might…, Sunday, February 10, 2013, <http://www.lawfareblog.com/2013/02/why-a-drone-court-wont-work/>)

III. Drone Courts and the Legitimacy Problem That brings me to perhaps the biggest problem we should all have with a “drone court”–the extent to which, even if one could design a legally and practically workable regime in which such a tribunals could operate, its existence would put irresistible pressure on federal judges to sign off even on those cases in which they have doubts. As a purely practical matter, it would be next to impossible meaningfully to assess imminence, the existence of less lethal alternatives, or the true nature of a threat that an individual suspect poses ex ante. Indeed, it would be akin to asking law enforcement officers to obtain judicial review before they use lethal force in defense of themselves or third persons–when the entire legal question turns on what was actually true in the moment, as opposed to what might have been predicted to be true in advance. At its core, that’s why the analogy to search warrants utterly breaks down–and why it would hardly be surprising if judges in those circumstances approved a far greater percentage of applications than they might have on a complete after-the-fact record. Judges, after all, are humans. In the process, the result would be that such ex ante review would do little other than to add legitimacy to operations the legality of which might have otherwise been questioned ex post. Put another way, ex ante review in this context would most likely lead to a more expansive legal framework within which the targeted killing program could operate, one sanctioned by judges asked to decide these cases behind closed doors; without the benefit of adversary parties, briefing, or presentation of the facts; and with the very real possibility that the wrong decision could directly lead to the deaths of countless Americans. Thus, even if it were legally and practically possible, a drone court would be a very dangerous idea.

#### c. Intel gathering The plan gives a perverse incentive to not collect information---the CP corrects that

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

Lastly, there is the concern of creating perverse incentives: whether a person’s name or identity is known has never been a factor in determining the legality of targeting an otherwise-lawful military target. But by creating a separate legal regime for known targets, we could create a disincentive to collect information about a target. We do not want a military or intelligence agency that keeps itself intentionally uninformed. Nor do we want to halt a military operation in progress simply because one of the targets is recognized late. Conducting the review ex post would not eliminate these issues, but it would substantially mitigate them. The military (or CIA, if it keeps its program), would not fear an interruption of its operations, and could even have an incentive to collect more information in order to later please a court that has plenty of time to look back at the past operations and question whether an individual was in fact targeted.

### International Norms

**US action irrelevant to international norms on drones – other tech proves**

**Etzioni 13** – professor of IR @ George Washington (Amitai, “The Great Drone Debate”, March/April, <http://usacac.army.mil/CAC2/MilitaryReview/Archives/English/MilitaryReview_20130430_art004.pdf>)

Other **critics contend** that **by the U**nited **S**tates ¶ **using drones, it leads other countries into making and** ¶ **using them.** For example, Medea Benjamin, the cofounder of the anti-war activist group CODEPINK ¶ and author of a book about drones argues that, “The ¶ proliferation of drones should evoke reﬂection on the ¶ precedent that the United States is setting by killing ¶ anyone it wants, anywhere it wants, on the basis of ¶ secret information. Other nations and non-state entities are watching—and are bound to start acting in ¶ a similar fashion.”60 Indeed scores of countries are ¶ now manufacturing or purchasing drones. There can ¶ be little doubt that the fact that drones have served ¶ the United States well has helped to popularize them. ¶ However, **it does not follow that U**nited **S**tates ¶ **should not have employed drones in the hope that** ¶ **such a show of restraint would deter others**. First ¶ of all, this would have meant that either the United ¶ States would have had to allow terrorists in hardto-reach places, say North Waziristan, to either ¶ roam and rest freely—or it would have had to use ¶ bombs that would have caused much greater collateral damage. ¶ Further, **the record shows** that **even when the** ¶ **U**nited **S**tates **did not develop a particular weapon,** ¶ **others did.** Thus, **China has taken the lead in** the ¶ development of **anti-ship missiles and** seemingly ¶ **cyber weapons** as well. One must keep in mind ¶ that **the international environment is** a **hostile** ¶ one. **Countries**—and especially non-state actors—¶ most of the time **do not play by** some set of **selfconstraining rules**. Rather, **they** tend **to employ** ¶ **whatever weapons they can obtain that will further** ¶ **their interests.** The United States correctly does ¶ not assume that it can rely on some non-existent ¶ implicit gentleman’s agreements that call for the ¶ avoidance of new military technology by nation X ¶ or terrorist group Y—if the United States refrains ¶ from employing that technology¶ I am not arguing that there are no natural norms ¶ that restrain behavior. There are certainly some ¶ that exist, particularly in situations where all parties beneﬁt from the norms (e.g., the granting of ¶ diplomatic immunity) or where particularly horrifying weapons are involved (e.g., weapons of ¶ mass destruction). However **drones are but one** ¶ **step**—following bombers and missiles—**in the** ¶ **development of distant battleﬁeld tech**nologies. ¶ (Robotic soldiers—or future ﬁghting machines—¶ are next in line). **In such circumstances, the role** ¶ **of norms is much more limited**.

#### No risk of drone wars

Joseph Singh 12, researcher at the Center for a New American Security, 8/13/12, “Betting Against a Drone Arms Race,” http://nation.time.com/2012/08/13/betting-against-a-drone-arms-race/#ixzz2eSvaZnfQ

In short, the doomsday drone scenario Ignatieff and Sharkey predict results from an excessive focus on rapidly-evolving military technology. ¶ Instead, we must return to what we know about state behavior in an anarchistic international order. Nations will confront the same principles of deterrence, for example, when deciding to launch a targeted killing operation regardless of whether they conduct it through a drone or a covert amphibious assault team. ¶ Drones may make waging war more domestically palatable, but they don’t change the very serious risks of retaliation for an attacking state. Any state otherwise deterred from using force abroad will not significantly increase its power projection on account of acquiring drones. ¶ What’s more, the very states whose use of drones could threaten U.S. security – countries like China – are not democratic, which means that the possible political ramifications of the low risk of casualties resulting from drone use are irrelevant. For all their military benefits, putting drones into play requires an ability to meet the political and security risks associated with their use. ¶ Despite these realities, there remain a host of defensible arguments one could employ to discredit the Obama drone strategy. The legal justification for targeted killings in areas not internationally recognized as war zones is uncertain at best. ¶ Further, the short-term gains yielded by targeted killing operations in Pakistan, Somalia and Yemen, while debilitating to Al Qaeda leadership in the short-term, may serve to destroy already tenacious bilateral relations in the region and radicalize local populations. ¶ Yet, the past decade’s experience with drones bears no evidence of impending instability in the global strategic landscape. Conflict may not be any less likely in the era of drones, but the nature of 21st Century warfare remains fundamentally unaltered despite their arrival in large numbers.

#### No SCS conflict – economics.

Creehan 12 – Senior Editor of the SAIS Review of International Affairs (Sean, “Assessing the Risks of Conflict in the South China Sea,” Winter/Spring, SAIS Review, Vol. 32, No. 1)

Regarding Secretary Clinton’s first requirement, the risk of actual closure of the South China Sea remains remote, as instability in the region would affect the entire global economy, raising the price of various goods and commodities. According to some estimates, for example, as much as 50 percent of global oil tanker shipments pass through the South China Sea— that represents more than three times the tanker traffic through the Suez Canal and over five times the tanker traffic through the Panama Canal.4 It is in no country’s interest to see instability there, least of all China’s, given the central economic importance of Chinese exports originating from the country’s major southern ports and energy imports coming through the South China Sea (annual U.S. trade passing through the Sea amounts to $1.2 trillion).5 Invoking the language of nuclear deterrence theory, disruption in these sea lanes implies mutually assured economic destruction, and that possibility should moderate the behavior of all participants. Furthermore, with the United States continuing to operate from a position of naval strength (or at least managing a broader alliance that collectively balances China’s naval presence in the future), the sea lanes will remain open. While small military disputes within such a balance of power are, of course, possible, the economic risks of extended conflict are so great that significant changes to the status quo are unlikely.

#### No Indo-Pak conflict.

Dasgupta, Director of the University of Maryland Baltimore County Political Science Program at the Universities at Shady Grove, ‘13

[Sunil, non-resident Senior Fellow at the Brookings Institution, East Asia Forum, February 25, 2013, "How will India respond to civil war in Pakistan?", http://www.eastasiaforum.org/2013/02/25/how-will-india-respond-to-civil-war-in-pakistan/]

¶ As it is, **India and Pakistan have gone down to the nuclear edge four times** — in 1986, 1990, 1999 and 2001–02. In each case, India responded in a manner that did not escalate the conflict. **Any incursion into Pakistan was** extremely limited. An Indian intervention in a civil war in Pakistan would be subject to the same limitations — at least so long as the Pakistani army maintains its integrity.¶ **Given the new US–India ties, the** most important factor in determining the **possibility and nature of Indian intervention in a possible Pakistani civil war** is Washington. **If the** United States **is able to get Kabul and Islamabad to work together** against the Taliban, **as it is trying to do now, then India is likely to continue its current policy** or try to preserve some influence in Afghanistan, especially working with elements of the Northern Alliance.¶ India and Afghanistan already have a strategic partnership agreement in place that creates the framework for their bilateral relationship to grow, but the degree of actual cooperation will depend on how Pakistan and the Taliban react. If Indian interests in Afghanistan come under attack, New Delhi might have to pull back. The Indian government has been quite clear about not sending troops to Afghanistan.¶ If the United States shifts its policy to where it has to choose Kabul over Islamabad, in effect reviving the demand for an independent Pashtunistan, India is likely to be much more supportive of US and Afghan goals. The policy shift, however, carries the risk of a full-fledged proxy war with Pakistan in Afghanistan, but should not involve the prospect of a direct Indian intervention in Pakistan itself.¶ **India is not likely to initiate an intervention that causes the Pakistani state to fail**. Bill Keller of the New York Times has described Pakistani president Asif Ail Zardari as overseeing ‘a ruinous kleptocracy that is spiraling deeper into economic crisis’. But **in contrast to predictions of an unravelling nation**, British journalist-scholar Anatol Lieven argues that the Pakistani state is likely to continue muddling through its many problems, unable to resolve them but equally predisposed against civil war and consequent state collapse. Lieven finds that the strong bonds of family, clan, tribe and the nature of South Asian Islam prevent modernist movements — propounded by the government or by the radicals — from taking control of the entire country.¶ Lieven’s analysis is more persuasive than the widespread view that Pakistan is about to fail as a state. The formal institutions of the Pakistani state are surprisingly robust given the structural conditions in which they operate. Indian political leaders recognise Pakistan’s resilience. **Given the bad choices in Pakistan**, they would rather not have anything to do with it. **If there is going to be** a **civil war, why not wait for the two sides to exhaust themselves before thinking about intervening?** The 1971 war demonstrated India’s willingness to exploit conditions inside Pakistan, but **to break from tradition requires** strong, countervailing logic, and those elements do not yet exist. Given the current conditions and those in the foreseeable future, India is likely to sit out a Pakistani civil war while covertly coordinating policy with the United States.

### Hegemony

#### There’s no impact to anti-drones backlash.

Holmes, Walter E. Meyer Professor of Law, New York University School of Law, ‘13

[Stephen, July 2013, “What’s in it for Obama?,” The London Review of Books, <http://www.lrb.co.uk/v35/n14/stephen-holmes/whats-in-it-for-obama>]

This is the crux of the problem. We stand at the beginning of the Drone Age and the genie is not going to climb back into the bottle. The chances that this way of war will, over time, reduce the amount of random violence in the world are essentially nil. Obama’s drone policy has set an ominous precedent, and not only for future residents of the White House. It promises, over the long term, to engender more violence than it prevents because it excites no public backlash. That, for the permanent national security apparatus that has deftly moulded the worldview of a novice president, is its irresistible allure. It doesn’t provoke significant protest even on the part of people who condemn hit-jobs done with sticky bombs, radioactive isotopes or a bullet between the eyes – in the style of Mossad or Putin’s FSB. That America appears to be laidback about drones has made it possible for the CIA to resume the assassination programme it was compelled to shut down in the 1970s without, this time, awakening any politically significant outrage. It has also allowed the Pentagon to wage a war against which antiwar forces are apparently unable to rally even modest public support.

#### No impact to heg – best data goes neg.

Fettweis, Department of Political Science at Tulane University, ‘11

[Christopher, 9/26/11, Free Riding or Restraint? Examining European Grand Strategy, Comparative Strategy, 30:316–332, EBSCO]

It is perhaps worth noting that there is no evidence to support a direct relationship between the relative level of U.S. activism and international stability. In fact, the limited data we do have suggest the opposite may be true. During the 1990s, the United States cut back on its defense spending fairly substantially. By 1998, the United States was spending $100 billion less on defense in real terms than it had in 1990. 51 To internationalists, defense hawks and believers in hegemonic stability, this irresponsible “peace dividend” endangered both national and global security. “No serious analyst of American military capabilities,” argued Kristol and Kagan, “doubts that the defense budget has been cut much too far to meet America’s responsibilities to itself and to world peace.” 52 On the other hand, if the paciﬁc trends were not based upon U.S. hegemony but a strengthening norm against interstate war, one would not have expected an increase in global instability and violence. The verdict from the past two decades is fairly plain: The world grew more peaceful while the United States cut its forces. No state seemed to believe that its security was endangered by a less-capable United States military, or at least none took any action that would suggest such a belief. No militaries were enhanced to address power vacuums, no security dilemmas drove insecurity or arms races, and no regional balancing occurred once the stabilizing presence of the U.S. military was diminished. The rest of the world acted as if the threat of international war was not a pressing concern, despite the reduction in U.S. capabilities. Most of all, the United States and its allies were no less safe. The incidence and magnitude of global conﬂict declined while the United States cut its military spending under President Clinton, and kept declining as the Bush ramped the spending back up. No complex statistical analysis should be necessary to reach the conclusion that the two are unrelated. Military spending ﬁgures by themselves are insufﬁcient to disprove a connection between overall U.S. actions and international stability. Once again, one could presumably argue that spending is not the only or even the best indication of hegemony, and that it is instead U.S. foreign political and security commitments that maintain stability. Since neither was signiﬁcantly altered during this period, instability should not have been expected. Alternately, advocates of hegemonic stability could believe that relative rather than absolute spending is decisive in bringing peace. Although the United States cut back on its spending during the 1990s, its relative advantage never wavered. However, even if it is true that either U.S. commitments or relative spending account for global paciﬁc trends, then at the very least stability can evidently be maintained at drastically lower levels of both. In other words, even if one can be allowed to argue in the alternative for a moment and suppose that there is in fact a level of engagement below which the United States cannot drop without increasing international disorder, a rational grand strategist would still recommend cutting back on engagement and spending until that level is determined. Grand strategic decisions are never ﬁnal; continual adjustments can and must be made as time goes on. Basic logic suggests that the United States ought to spend the minimum amount of its blood and treasure while seeking the maximum return on its investment. And if the current era of stability is as stable as many believe it to be, no increase in conﬂict would ever occur irrespective of U.S. spending, which would save untold trillions for an increasingly debt-ridden nation. It is also perhaps worth noting that if opposite trends had unfolded, if other states had reacted to news of cuts in U.S. defense spending with more aggressive or insecure behavior, then internationalists would surely argue that their expectations had been fulﬁlled. If increases in conﬂict would have been interpreted as proof of the wisdom of internationalist strategies, then logical consistency demands that the lack thereof should at least pose a problem. As it stands, the only evidence we have regarding the likely systemic reaction to a more restrained United States suggests that the current peaceful trends are unrelated to U.S. military spending. Evidently the rest of the world can operate quite effectively without the presence of a global policeman. Those who think otherwise base their view on faith alone.

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#### More violation ev – drone courts supervise that which has been authorized

GARRETT EPPS FEB 16 2013, 9:54 AM ET. http://www.theatlantic.com/politics/archive/2013/02/why-a-secret-court-wont-solve-the-drone-strike-problem/273246/

The idea of a "drone court" would send federal courts into areas they have never gone before, and indeed from which, I think, the text of the Constitution bars them. It could also put the integrity of our court system at risk. Let's frame the issue properly. The present administration does not claim that the president has "inherent authority" to attack anyone anywhere. Instead, from the documents and speeches we've seen, the administration says it can order drone attacks only as provided by the Authorization for the Use of Military Force passed by Congress after the September 11 attacks--that is, against "those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons." Unlike the fictional President Bennett in Tom Clancy's Clear and Present Danger, then, President Obama can't suddenly send the drone fleet down to take out, say, Colombian drug lords or the Lord's Resistance Army in Uganda. That's a marked change from the overall position of the last administration, and it's an important limitation on the president's claimed authority. But because of that limitation, a court would be supervising the president's command decisions in a time of authorized military action--after, that is, the legal equivalent of a "declaration of war." As commander in chief, the president has been given a mission by Congress. By passing the AUMF, Congress has delegated to him its full war power to use in that mission. Nothing in the AUMF is directed to the courts; in fact, I have trouble finding authority for target selection anywhere in Article III. And whatever the technological changes, constitutionally I see no difference between targeting an enemy with a drone and doing the same thing with a Cruise missile or a SEAL Team. Courts simply aren't equipped to decide military tactics.

#### Their own solvency evidence concedes this – looking over eligibility requirements just means that the aff decides whether the executive complies with the SQUO.

THEIR EVIDENCE Weinberger 13 (Seth, University of Puget Sound political science professor, Global Security Studies Review, May 2013, Volume I, Issue 2, “Enemies Among Us: The Targeted Killing of American Members of al Qaeda and the Need for Congressional Leadership” https://www.academia.edu/4033328/Enemies\_Among\_Us\_The\_Targeted\_Killing\_of\_American\_Members\_of\_al\_Qaeda\_and\_the\_Need\_for\_Congressional\_Leadership, p.20)

The court would carry out a function quite similar to the FISA courts, judging whether the Executive Branch has sufficient evidence to support its claim that a citizen has become a senior operational member of a group covered under the AUMF and 2012 NDAA

#### Causes a limits slippery slope - strict scrutiny means nothing in this context – their evidence just says that the courts will hold evidence to a high standard to determine imminence – doesn’t fundamentally change legality of strikes. AUMF grants TK authority – means plan doesn’t alter permission.

Allyson L. Mitchell, School of Conflict Analysis and Resolution (S-CAR), George Mason University, “My Neighbor Is A Terrorist: Peacebuilding, Drones, and America's Presence in Yemen,” November 2012, http://www.beyondintractability.org/reflection/mitchell-neighbor

Once wary of the use of targeted killings, the United States became an advocate of targeted warfare after 9/11. According to a 2010 United Nations report, targeted killings are defined as, "the intentional, premeditated and deliberate use of lethal force, by States or their agents acting under colour of law, or by an organized armed group in armed conflict, against a specific individual who is not in the physical custody of the perpetrator."[16] Under the rules of International Humanitarian Law, targeted killing is only lawful when met by three requirements; (1) The target is directly participating in the hostilities, (2) The use of force is proportionate, and (3) Precautions were taken to minimize harm to civilians. Under the Law of Inter-State Force, a targeted killing directed by a State in a territory of another State does not violate the second State's sovereignty if (A) the second State gives consent, or (B) the first State is using force in an act of self-defense. This act of self-defense is warranted when "the second state is unwilling or unable to stop armed attacks against the first State launched from its territory".[17] In both these cases the United States has legal authority to use lethal force against AQAP in Yemen; President Saleh had given the U.S. government permission to attack AQAP members and the United States' claim of self-defense is justified due to the previous assaults coordinated by AQAP that Yemeni authorities were unable to prevent. Although the United States appears to have followed the correct guidance in accordance with international laws, U.S. Constitutional Law was called into question because of Mr. al-Awlaki's American citizenship. To validate its claim, the U.S. government rationalized that Mr. Awlaki presented an imminent threat to civilians, that he was working hand-in-hand with the enemy (Al Qaeda), and that there was no feasible way to arrest and extradite him to the U.S. for trial. The justification for the kill order came from a secret memorandum written by the Justice Department's Office of Legal Counsel which concluded "Mr. Awlaki was covered by the authorization to use military force AUMF against Al Qaeda that Congress enacted shortly after the terrorist attacks of Sept. 11, 2001".[18] The document also alluded to the fact that there was future risk of Mr. Awlaki attacking the United States at any given time and this risk posed a significant threat to Americans' safety.

### CP

#### Ex ante will overwhelm ex post review

Vladeck 13 (Stephen I. Vladeck Professor of Law and Associate Dean for Scholarship, American University Washington College of Law, “DRONES AND THE WAR ON TERROR: WHEN CAN THE U.S.TARGET ALLEGED AMERICAN TERRORISTS OVERSEAS?,” http://judiciary.house.gov/hearings/113th/02272013\_2/Vladeck%2002272013.pdf)

In the process, the result would be that such ex ante review would do little other than to add the vestiges of legitimacy to operations the legality of which might have otherwise been questioned ex post. Put another way, ex ante review in this context would most likely lead to a more expansive legal framework within which the targeted killing program could operate, one sanctioned by judges asked to decide these cases behind closed doors; without the benefit of adversary parties, briefing, or presentation of the facts; and with the very real possibility that the wrong decision could directly lead to the deaths of countless Americans. Thus, even if it were legally and practically possible, a drone court would be a very dangerous idea.

#### Ex post review solves – sets clear standards and reduces resentment

Daskal, Fellow and Adjunct Professor, Georgetown Center on National Security and the Law, Georgetown University Law Center, ‘13

[Jennifer, April 2013, ARTICLE: THE GEOGRAPHY OF THE BATTLEFIELD: A FRAMEWORK FOR DETENTION AND TARGETING OUTSIDE THE "HOT" CONFLICT ZONE, 161 U. Pa. L. Rev. 1165, RSR]

For targeted-killing operations, ex post reviews serve only limited purposes. They obviously cannot restore the target’s life. But retrospective review either by a FISC-like court or review board can serve to identify errors or overreaching and thereby help avoid future mistakes. This can, and ideally would, be supplemented by the adoption of an additional Article III damages mechanism.197 At a minimum, the relevant Inspectors General should engage in regular—and extensive—reviews of targeted-killing operations. Such post hoc analysis helps to set standards and controls that then get incorporated into ex ante decisionmaking. In fact, post hoc review can often serve as a more meaningful—and often more searching—inquiry into the legitimacy of targeting decisions. Even the mere knowledge that an ex post review will occur can help to protect against rash ex ante decision- making, thereby providing a self-correcting mechanism. Ex post review should also be accompanied by the establishment of a solatia and condolence payment system for activities that occur outside the active zone of hostilities. Extension of such a system beyond Afghanistan and Iraq would help mitigate resentment caused by civilian deaths or injuries and would promote better accounting of the civilian costs of targeting operations.198

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

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

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

#### Retrospective judicial review is the only way to accurately review targeted killings – it prevents judges from being pressured to side with the executive

Vladeck 13 (Stephen I., Professor of Law and Associate Dean for Scholarship, American University Washington College of Law, Drones and the War on Terror: When can the U.S. Target Alleged American Terrorists Overseas? Hearing Before the House Committee on the Judiciary, 27 February 2013, http://www.lawfareblog.com/wp-content/uploads/2013/02/Vladeck-02272013.pdf, da 8-28-13) PC

More to the point, it should also follow that courts would be far more able as ¶ a practical matter to review the relevant questions in these cases after the fact. ¶ Although the pure membership question can probably be decided in the abstract, it ¶ should stand to reason that the imminence and infeasibility-of-capture issues will¶ be much easier to assess in hindsight—removed from the pressures of the moment ¶ and with the benefit of the dispassionate distance that judicial review provides. To ¶ similar effect, whether the government used excessive force in relation to the object ¶ of the attack is also something that can only reasonably be assessed post hoc.

#### Retrospective review solves transparency, protects state secrets, and effectively restricts the President

Vladeck 13 (Steve, professor of law and the associate dean for scholarship at American University Washington College of Law, What’s Really Wrong With the Targeted Killing White Paper, Lawfare Blog, 5 February 2013, http://www.lawfareblog.com/2013/02/whats-really-wrong-with-the-targeted-killing-white-paper/, da 8-15-13) PC

This all leads me to what I’ve increasingly come to believe is the only real solution here: If folks are really concerned about this issue, especially on the Hill, then Congress should create a cause of action–with nominal damages–for individuals who have been the targets of such operations (or, more honestly, their heirs). The cause of action could be for $1 in damages; it could expressly abrogate the state secrets privilege and replace it with a procedure for the government to offer at least some of its evidence ex parte and in camera; and it could abrogate qualified immunity so that, in every case, the court makes law concerning how the government applies its criteria in a manner consistent with the Due Process Clause of the Fifth Amendment. This wouldn’t in any way resolve the legality of targeted killings, but it would clear the way for courts to do what courts do–ensure that, when the government really is depriving an individual of their liberty (if not their life), it does so in a manner that comports with the Constitution–as the courts, and not just the Executive Branch, interpret it. It’s not a perfect solution, to be sure, but if ever there was a field in which the perfect is the enemy of the good, this is it.

## 1NR

### Legitimacy NB

#### Nuclear war doesn’t cause extinction nor turn bioD loss.

Seitz 11, Harvard University Center for International Affairs visiting scholar, (Russell, “Nuclear winter was and is debatable,” Nature, 7-7-11, Vol 475, pg37)

Alan Robock'scontention that there has been no real scientific debate about the 'nuclear winter' concept is itself **debatable** (Nature 473, 275–276; 2011). **This potential climate disaster**, popularized in Science in 1983, **rested on** the output of **a one-dimensional model that was later shown to** overestimatethe smoke **a nuclear holocaust** might engender. More refined estimates, combined with advanced three-dimensional models (see http://go.nature.com.libproxy.utdallas.edu/kss8te), have dramatically reduced the extent and severity of the projected cooling. Despite this, Carl Sagan, who co-authored the 1983 Science paper, went so far as to posit “the extinction of Homo sapiens” (C. Sagan Foreign Affairs 63, 75–77; 1984). **Some regarded this apocalyptic prediction as** an exercise inmythology. George **Rathjens of** the **M**assachusetts **I**nstitute of **T**echnology **protested: “Nuclear winter is** the worstexample of themisrepresentation of science **to the public** in my memory,” (see http://go.nature.com.libproxy.utdallas.edu/yujz84) **and climatologist** Kerry **Emanuel** observed that **the subject had “become** notorious for its lack of scientific integrity**”** (Nature 319, 259; 1986). Robock's single-digit fall in temperature is at odds with the subzero (about −25 °C) continental cooling originally projected for a wide spectrum of nuclear wars. Whereas Sagan predicted darkness at noon from a US–Soviet nuclear conflict, Robock projects global sunlight that is several orders of magnitude brighter for a Pakistan–India conflict — literally the difference between night and day. Since 1983**, the projected worst-case cooling has fallen** from a Siberian deep freeze spanning 11,000 degree-days Celsius (a measure of the severity of winters) **to numbers so** unseasonably **small as to call** the very term **'nuclear winter' into question.**

#### Biodiversity is the biggest internal link to extinction – newest studies prove.

Science Daily, ‘11

["Biodiversity Critical for Maintaining Multiple 'Ecosystem Services'" Cites McGill University, August 19, [www.sciencedaily.com/releases/2011/08/110819155422.htm](http://www.sciencedaily.com/releases/2011/08/110819155422.htm)]

By combining data from 17 of the largest and longest-running biodiversity experiments, scientists from universities across North America and Europe have found that previous studies have underestimated the importance of biodiversity for maintaining multiple ecosystem services across many years and places. "Most previous studies considered only the number of species needed to provide one service under one set of environmental conditions," says Prof. Michel Loreau from McGill University's biology department who supervised the study. "These studies found that many species appeared redundant. That is, it appeared that the extinction of many species would not affect the functioning of the ecosystem because other species could compensate for their loss." Now, by looking at grassland plant species, investigators have found that most of the studied species were important at least once for the maintenance of ecosystem services, because different sets of species were important during different years, at different places, for different services, and under different global change (e.g., climate or land-use change) scenarios. Furthermore, the species needed to provide one service during multiple years were not the same as those needed to provide multiple services during one year. "This means that biodiversity is even more important for maintaining ecosystem services than was previously thought," says Dr. Forest Isbell, the lead author and investigator of this study. "Our results indicate that many species are needed to maintain ecosystem services at multiple times and places in a changing world, and that species are less redundant than was previously thought." The scientists involved in the study also offer recommendations for using these results to prioritize conservation efforts and predict consequences of species extinctions. "It is nice to know which groups of species promoted ecosystem functioning under hundreds of sets of environmental conditions," says Isbell, "because this will allow us to determine whether some species often provide ecosystem services under environmental conditions that are currently common, or under conditions that will become increasingly common in the future." But Michel Loreau, of McGill, adds au cautionary note: "We should be careful when making predictions. The uncertainty over future environmental changes means that conserving as much biodiversity as possible could be a good precautionary approach."

#### Court legitimacy high, plan destroys it – controversial and violates Article III

Epps 13 (Garrett Epps, Professor of Law at the University of Baltimore, “Why a Secret Court Won’t Solve the Drone-Strike Problem,” The Atlantic, February 16, 2013, http://www.theatlantic.com/politics/archive/2013/02/why-a-secret-court-wont-solve-the-drone-strike-problem/273246/)

Washington's idea of the week is a secret court, based on the Foreign Intelligence Surveillance Court, which issues secret wiretap warrants in certain espionage cases. **Executive officials would go before the drone court and present** their **evidence that an individual** abroad, perhaps a U.S. citizen, **is** an Al Qaeda affiliate and an **imminent danger. Judges** on the panel **would issue, in effect, a** secret death warrant--a certification that lethal force can be used against the "enemy combatant."¶ Sen. Dianne Feinstein spoke favorably about the idea at confirmation hearings for C.I.A. Director-designate John Brennan. So did former Defense Secretary Robert Gates. Thursday, the New York Times joined in the chorus. ¶ **Americans love courts** and judges. **But they trust them because,** in our system, **they are** independent of elected officials--not part of the political machine. They are also what lawyers call "courts of limited jurisdiction." **In carefully chosen language, Article III of the Constitution extends** "the **judicial power"** of the United States **to a specific and limited set of "cases and controversies." Federal courts** decide cases; they do not fight wars, collect the garbage, or set health-care policy. And most particularly, they **may** not become an advisory agency **of the executive branch**.¶ The idea of a **"drone court" would send federal courts into areas** they have never gone before, and indeed **from which,** I think, the text of **the** Constitution bars them. **It could** also **put the** integrity of our court system at risk.¶ Let's frame the issue properly. **The present administration does not claim that the president has "inherent authority" to attack anyone anywhere. Instead,** from the documents and speeches we've seen, **the administration says it can order drone attacks only as provided by the** Authorization for the Use of Military Force **passed by Congress** after the September 11 attacks--that is, against "those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons." ¶ Unlike the fictional President Bennett in Tom Clancy's Clear and Present Danger, then, **President Obama can't suddenly send the drone fleet down** to take out, say, Colombian drug lords or the Lord's Resistance Army in Uganda. **That's** a marked change from the overall position of the last administration, and it's **an** important limitation **on the president's** claimed **authority.**¶ But **because of that limitation, a court would be supervising the president's command decisions in a time of** authorized military action--after, that is, the legal equivalent of a "declaration of war." As commander in chief, the president has been given a mission by Congress. By passing the AUMF, Congress has delegated to him its full war power to use in that mission. Nothing in the AUMF is directed to the courts; in fact, I have trouble finding authority for target selection anywhere in Article III. And whatever the technological changes, constitutionally I see no difference between targeting an enemy with a drone and doing the same thing with a Cruise missile or a SEAL Team. **Courts simply** aren't equipped **to** decide military tactics.¶ The FISA Court, on the other hand, doesn't really reach beyond Article III--judges since ancient times have issued warrants for searches and arrests, and the individuals being spied on are suspected of crimes against the United States. But I don't know of a deep-rooted tradition of common-law courts telling the shire reeve he can hunt someone down and kill him without trial.¶ **There's yet another problem: what criteria would a "drone court" apply?** In the "white paper" obtained by NBC News earlier this month, the Department of Justice says that a decision to order a strike involves three requirements: (1) the target represents "an imminent threat of violent attack"; (2) capturing the target would be "infeasible"; and (3) a lethal attack can be carried out "in a manner consistent with law of war principles." A court might be able to apply the first criterion, though just barely; but **there is** simply no precedent **for an Article III judge** balancing the prospective risks of a capture operation vs. that of a missile, **or assessing** the probability of **"collateral damage"** if the strike goes forward. **We have left "the judicial power" behind altogether, and created a** panel of poorly trained generals in sloppy black uniforms.¶Finally, **in time of war, there will be occasions when a target emerges and decisions must be made** too quickly **for even a secret court proceeding.** And thus the "drone court" would not be able to rule on some cases; an ambitious president could find many exceptions.¶ In addition, **an ambitious executive might** also **use the secret court as a means to** extend the drone-strike authority beyond actions in time of authorized military action. **With such a review mechanism in place,** the argument might go, **there's no danger in ceding the president's authority to use drones against enemies not so designated by Congress.**¶ What about after the fact, then? Could there be a secret court that would hear the administration's case for a drone strike and then decide whether that strike had been justified?¶ Not hardly, I think.¶ **A court that meets in secret, hears** only one side **of a dispute, and issues** a final **judgment without notifying** other **parties is** not any kind of Article III court I recognize. **It is not deciding cases; it is** granting absolution.

### Solvency

#### Obama’s done it before --- means there’s no aff

Pollack, 13 --- professor of history emeritus at Michigan State

(2/5/2013, Norman, “For the Glory of What? Drones, Israel, and the Eclipse of Democracy,” <http://www.counterpunch.org/2013/02/05/drones-israel-and-the-eclipse-of-democracy/>)

Bisharat first addresses the transmogrification of international law by Israel’s military lawyers. We might call this damage control, were it not more serious. When the Palestinians first sought to join the I.C.C., and then, to receive the UN’s conferral of nonmember status on them, Israel raised fierce opposition. Why? He writes: “Israel’s frantic opposition to the elevation of Palestine’s status at the United Nations was motivated precisely by the fear that it would soon lead to I.C.C. jurisdiction over Palestinian claims of war crimes. Israeli leaders are unnerved for good reason. The I.C.C. could prosecute major international crimes committed on Palestinian soil anytime after the court’s founding on July 1, 2002.” In response to the threat, we see the deliberate reshaping of the law: Since 2000, “the Israel Defense Forces, guided by its military lawyers, have attempted to remake the laws of war by consciously violating them and then creating new legal concepts to provide juridical cover for their misdeeds.” (Italics, mine) In other words, habituate the law to the existence of atrocities; in the US‘s case, targeted assassination, repeated often enough, seems permissible, indeed clever and wise, as pressure is steadily applied to the laws of war. Even then, “collateral damage” is seen as unintentional, regrettable, but hardly prosecutable, and in the current atmosphere of complicity and desensitization, never a war crime. (Obama is hardly a novice at this game of stretching the law to suit the convenience of, shall we say, the national interest? In order to ensure the distortion in counting civilian casualties, which would bring the number down, as Brennan with a straight face claimed, was “zero,” the Big Lie if ever there was one, placing him in distinguished European company, Obama redefined the meaning of “combatant” status to be any male of military age throughout the area (which we) declared a combat zone, which noticeably led to a higher incidence of sadism, because it allowed for “second strikes” on funerals—the assumption that anyone attending must be a terrorist—and first responders, those who went to the aid of the wounded and dying, themselves also certainly terrorists because of their rescue attempts.) These guys play hardball, perhaps no more than in using—by report—the proverbial baseball cards to designate who would be next on the kill list. But funerals and first responders—verified by accredited witnesses–seems overly much, and not a murmur from an adoring public.

#### The executive always has the upper hand – rally around the leader effect

Rojas, 12 --- Associate Professor of Sociology at Indiana University (4/16/2012, Fabio, “rachel maddow will not bring peace,” <http://orgtheory.wordpress.com/2012/04/16/rachel-maddow-will-not-bring-peace/>)

Andrew Sullivan’s blog excerpted a passage from Rachel Maddow’s recent book. Understandably, Maddow’s book urges Congress to take a stand against war: When we go to war, we should raise taxes to pay for it. We should get rid of the secret military. The reserves should go back to being reserves. We should cut way back on the contractors and let troops peel their own potatoes. And above all, Congress should start throwing its weight around again… I agree in principle, but disagree on practice. Rules and institutions that end war are ineffective for two reasons. First, if you really want war, you can always vote to have a new rule for war or to make an exception. Also, most rules have wiggle room in them, which makes it easy to wage war under other guises. Secondly, there’s a consistent “rally around the leader effect.” It is incredibly hard for anyone to oppose leaders during war time. Elected leaders are in a particularly weak position. Simply put, legislatures can’t be trusted to assert their restraining role in most cases.

#### Secrecy guarantees this rubberstamp.

Taylor 13 (Paul is a Senior Fellow at the Center for Policy & Research at Seton Hall University and an alumnus of Seton Hall Law School and the Whitehead School of Diplomacy and International Relations. Having obtained a joint-degree in law and international relations, he has studied international security, causes of war, national security law, and international law, March 23rd, http://transparentpolicy.org/2013/03/former-dod-lawyer-frowns-on-drone-court/)

Last week Jeh Johnson, the general council for the Department of Defense during President Obama’s first term, warned at a conference at Fordham Law School that the President’s targeted killing policies breeds mistrust among the public:¶ “The problem is that the American public is suspicious of executive power shrouded in secrecy. In the absence of an official picture of what our government is doing, and by what authority, many in the public fill the void by imagining the worst.”¶ However, he was skeptical about recent calls for a “drone court” to review and approve or deny targeted killing decisions:¶ “To be sure, a national security court composed of a bipartisan group of federal judges with life tenure, to approve targeted lethal force, would bring some added levels of credibility, independence and rigor to the process, and those are worthy goals.”¶ …¶ “But, we must be realistic about the degree of added credibility such a court can provide. Its proceedings would necessarily be ex parte and in secret, and, like a FISA court, I suspect almost all of the government”s applications would be granted, because, like a FISA application, the government would be sure to present a compelling case. … [While] the New York Times editorial page promotes a FISA-like court for targeted lethal force, it derides the FISA court as a ‘rubber stamp’ because it almost never rejects an application. How long before a ‘drone court’ operating in secret is criticized in the same way?”¶ Apparently not long, since I have already raised this criticism in a previous post. However, I coupled this criticism with a proposed solution: using ex post review, rather than ex ante. By removing from the judge’s consideration the concern for the pressing national security need involved in deciding whether a proposed target is an imminent threat, ex post review would allow the judge to be more critical of the Administration’s case, and make the court less likely to become another “rubber stamp.”

#### Only the CP solves this – rubberstamp turns the entirety of the aff.

Taylor 13 (Paul is a Senior Fellow at the Center for Policy & Research and an alumnus of Seton Hall Law School and the Whitehead School of Diplomacy and International Relations, Former DOD Lawyer Frowns on Drone Court, Transparent Policy Blog, 23 March 2013, http://transparentpolicy.org/2013/03/former-dod-lawyer-frowns-on-drone-court/, da 8-15-13) PC

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