# 1NC

### 1

Interpretation—“Armed forces” are military personnel—the aff is distinct

Lorber, JD University of Pennsylvania, January 2013

(Eric, “Executive Warmaking Authority and Offensive Cyber Operations: Can Existing Legislation Successfully Constrain Presidential Power?” 15 U. Pa. J. Const. L. 961, Lexis)

As discussed above, critical to the application of the War Powers Resolution - especially in the context of an offensive cyber operation - are the **definitions of key terms**, **particularly** **"armed forces,"** as the relevant provisions of the Act are only triggered if the President "introduces armed forces] into hostilities or into situations [of] imminent ... hostilities," n172 or if such forces are introduced "into the territory, airspace, or waters of a foreign nation, while equipped for combat, except for deployments which relate solely to supply, replacement, repair, or training of such forces." n173 The requirements may also be triggered if the United States deploys armed forces "in numbers which substantially enlarge United States Armed Forces equipped for combat already located in a foreign nation." n174 As is evident, the definition of "armed forces" is crucial to deciphering whether the WPR applies in a particular circumstance to provide congressional leverage over executive actions. The definition of "hostilities," which has garnered the majority of scholarly and political attention, n175 particularly in the recent Libyan conflict, n176 will be dealt with secondarily here because it only becomes important if "armed forces" exist in the situation. As is evident from a textual analysis, n177 an examination of the legislative history, n178 and the broad policy purposes behind the creation of the Act, n179 [\*990] **"armed forces" refers to U.S. soldiers and members of the armed forces**, **not weapon systems or capabilities** such as offensive cyber weapons. Section 1547 does not specifically define "armed forces," but it states that "the term "introduction of United States Armed Forces' includes the assignment of members of such armed forces to command, coordinate, participate in the movement of, or accompany the regular or irregular military forces of any foreign country or government." n180 While this definition pertains to the broader phrase "introduction of armed forces," **the clear implication is that only members of the armed forces count for** the purposes of **the definition** under the WPR. Though not dispositive, the term "member" connotes a human individual who is part of an organization. n181 Thus, it appears that the term "armed forces" means **human members of the** United States **armed forces**. However, there exist two potential complications with this reading. First, the language of the statute states that "the term "introduction of United States Armed Forces' includes the assignment of members of such armed forces." n182 By using inclusionary - as opposed to exclusionary - language, one might argue that the term "armed forces" could include more than members. This argument is unconvincing however, given that a core principle of statutory interpretation, expressio unius, suggests that expression of one thing (i.e., members) implies the exclusion of others (such as non-members constituting armed forces). n183 Second, the term "member" does not explicitly reference "humans," and so could arguably refer to individual units and beings that are part of a larger whole (e.g., wolves can be members of a pack). As a result, though a textual analysis suggests that "armed forces" refers to human members of the armed forces, such a conclusion is not determinative. An examination of the legislative history also suggests that Congress clearly conceptualized "armed forces" as human members of the armed forces. For example, disputes over the term "armed forces" revolved around who could be considered members of the armed forces, not what constituted a member. Senator Thomas Eagleton, one of the Resolution's architects, proposed an amendment during the process providing that the Resolution cover military officers on loan to a civilian agency (such as the Central [\*991] Intelligence Agency). n184 This amendment was dropped after encountering pushback, n185 but the debate revolved around whether those military individuals on loan to the civilian agency were still members of the armed forces for the purposes of the WPR, **suggesting that Congress considered the term to apply only to soldiers in the armed forces**. Further, during the congressional hearings, the question of deployment of "armed forces" centered primarily on past U.S. deployment of troops to combat zones, n186 suggesting that Congress conceptualized "armed forces" to mean U.S. combat troops.

The plan limits weapons systems.

They also put DRONES under the WPR, not TARGETED KILLING, which independently explodes the topic. They allow hundreds of weapon systems like nukes or bioweapons.

Ground – troops are the true controversy:

Lorber, JD University of Pennsylvania, January 2013

(Eric, “Executive Warmaking Authority and Offensive Cyber Operations: Can Existing Legislation Successfully Constrain Presidential Power?” 15 U. Pa. J. Const. L. 961, Lexis)

The broad purpose of the Resolution aimed to prevent the large-scale but unauthorized deployments of U.S. troops into hostilities. n187 While examining the broad purpose of a legislative act is increasingly relied upon only after examining the text and legislative history, here it provides further support for those two alternate interpretive sources. n188 As one scholar has noted, "the War Powers Resolution, for example, is concerned with **sending U.S.** troops **into harm's way**." n189 The historical context of the War Powers Resolution is also important in determining its broad purpose; as the resolutions submitted during the Vietnam War and in the lead-up to the passage of the WPR suggest, **Congress was concerned about its ability to effectively regulate the President's deployments of large numbers of U.S. troops** to Southeast Asia, n190 as well as prevent the President from authorizing troop incursions into countries in that region. n191 The WPR was a reaction to the President's continued deployments of these troops into combat zones, and as such suggests that Congress's broad purpose was to prevent the unconstrained **deployment of U.S. personnel**, not weapons, **into hostilities**.

### 2

Obama’s political capital is sufficient to get a resolution to the fiscal crisis but it’s close.

Jonathan Allen, Politico, 9/19/13, GOP battles boost President Obama, dyn.politico.com/printstory.cfm?uuid=17961849-5BE5-43CA-B1BC-ED8A12A534EB

There’s a simple reason President Barack Obama is using his bully pulpit to focus the nation’s attention on the battle over the budget: In this fight, he’s watching Republicans take swings at each other. And that GOP fight is a **lifeline** for an administration that had been scrambling to gain control its message after battling congressional Democrats on the potential use of military force in Syria and the possible nomination of Larry Summers to run the Federal Reserve. If House Republicans and Obama can’t cut even a short-term deal for a continuing resolution, the government’s authority to spend money will run out on Oct. 1. Within weeks, the nation will default on its debt if an agreement isn’t reached to raise the federal debt limit. For some Republicans, those deadlines represent a leverage point that can be used to force Obama to slash his health care law. For others, they’re a zero hour at which the party will implode if it doesn’t cut a deal. **Meanwhile, “on the looming fiscal issues, Democrats** — both **liberal** and **conservative**, executive and congressional — **are virtually 100 percent united**,” said Sen. Charles Schumer (D-N.Y.). Just a few days ago, all that Obama and his aides could talk about were Syria and Summers. Now, they’re bringing their party together and shining a white hot light on Republican disunity over whether to shut down the government and plunge the nation into default in a vain effort to stop Obamacare from going into effect. The squabbling among Republicans has gotten so vicious that a Twitter hashtag — #GOPvsGOPugliness — has become a thick virtual data file for tracking the intraparty insults. Moderates, and even some conservatives, are slamming Texas Sen. Ted Cruz, a tea party favorite, for ramping up grassroots expectations that the GOP will shut down the government if it can’t win concessions from the president to “defund” his signature health care law. “I didn’t go to Harvard or Princeton, but I can count,” Sen. Bob Corker (R-Tenn.) tweeted, subtly mocking Cruz’s Ivy League education. “The defunding box canyon is a tactic that will fail and weaken our position.” While it is well-timed for the White House to interrupt a bad slide, Obama’s singular focus on the budget battle is hardly a last-minute shift. Instead, it is a return to the narrative arc that the White House was working to build before the Syria crisis intervened. And it’s so important to the president’s strategy that White House officials didn’t consider postponing Monday’s rollout of the most partisan and high-stakes phase even when a shooter murdered a dozen people at Washington’s Navy Yard that morning. The basic storyline, well under way over the summer, was to have the president point to parts of his agenda, including reducing the costs of college and housing, designed to strengthen the middle class; use them to make the case that he not only saved the country from economic disaster but is fighting to bolster the nation’s finances on both the macro and household level; and then argue that Republicans’ desire to lock in the sequester and leverage a debt-ceiling increase for Obamacare cuts would reverse progress made. The president is on firm ground, White House officials say, because he stands with the public in believing that the government shouldn’t shut down and that the country should pay its bills.

The plan causes an inter-branch fight that derails Obama’s agenda

Douglas Kriner, Assistant Profess of Political Science at Boston University, 2010, After the Rubicon: Congress, Presidents, and the Politics of Waging War, p. 67-69

Raising or Lowering Political Costs by Affecting Presidential Political Capital Shaping both real and anticipated public opinion are two important ways in which Congress can raise or lower the political costs of a military action for the president. However, focusing exclusively on opinion dynamics threatens to obscure the much broader political consequences of domestic reaction—particularly congressional opposition—to presidential foreign policies. At least since Richard Neustadt's seminal work Presidential Power, presidency scholars have warned that **costly political battles in one policy arena frequently have significant ramifications for presidential power in other realms**. Indeed, two of Neustadt's three "cases of command"—Truman's seizure of the steel mills and firing of General Douglas MacArthur—explicitly discussed the broader political consequences of stiff domestic resistance to presidential assertions of commander-in-chief powers. In both cases, Truman emerged victorious in the case at hand—yet, Neustadt argues, each victory cost Truman dearly in terms of his future power prospects and leeway in other policy areas, many of which were more important to the president than achieving unconditional victory over North Korea." While congressional support leaves the president's reserve of political capital intact, congressional criticism saps energy from other initiatives on the home front by forcing the president to expend energy and effort defending his international agenda. **Political capital spent shoring up support for a president's foreign policies is capital that is unavailable for his future policy initiatives**. Moreover, any weakening in the president's political clout may have immediate ramifications for his reelection prospects, as well as indirect consequences for congressional races." Indeed, Democratic efforts to tie congressional Republican incumbents to President George W. Bush and his war policies paid immediate political dividends in the 2006 midterms, particularly in states, districts, and counties that had suffered the highest casualty rates in the Iraq War.6° In addition to boding ill for the president's perceived political capital and reputation, such partisan losses in Congress only further imperil his programmatic agenda, both international and domestic. Scholars have long noted that President Lyndon Johnson's dream of a Great Society also perished in the rice paddies of Vietnam. Lacking both the requisite funds in a war-depleted treasury and the political capital needed to sustain his legislative vision, Johnson gradually let his domestic goals slip away as he hunkered down in an effort first to win and then to end the Vietnam War. In the same way, many of President Bush's **highest second-term domestic priorities**, such as Social Security and immigration reform, **failed** perhaps in large part **because the administration had to expend so much energy** and effort **waging a rear-guard action against congressional critics** of the war in Iraq. When making their cost-benefit calculations, presidents surely consider these wider political costs of congressional opposition to their military policies. If **congressional opposition in the military arena stands to** derail other elements of his agenda, all else being equal, the president will be more likely to judge the benefits of military action insufficient to its costs than if Congress stood behind him in the international arena

That spills-over to government shutdown and US default—that kills the economy and US credibility

Norm Ornstein, resident scholar at the American Enterprise Institute, 9/1/13, Showdowns and Shutdowns, www.foreignpolicy.com/articles/2013/09/01/showdowns\_and\_shutdowns\_syria\_congress\_obama

Then there is the overload of business on the congressional agenda when the two houses return on Sept. 9 -with only nine legislative days scheduled for action in the month. We have serious confrontations ahead on spending bills and the debt limit, as the new fiscal year begins on Oct. 1 and the debt ceiling approaches just a week or two thereafter. Before the news that we would drop everything for an intense debate on whether to strike militarily in Syria, Congress-watchers were wondering how we could possibly deal with the intense bargaining required to avoid one or more government shutdowns and/or a real breach of the debt ceiling, **with** devastating consequences for American credibility **and the** international economy. Beyond the deep policy and political divisions, Republican congressional leaders will likely use both a shutdown and the debt ceiling as hostages to force the president to cave on their demands for deeper spending cuts. **Avoiding this end-game bargaining will require** the unwavering attention of the same top leaders in the executive and legislative branches who will be deeply enmeshed in the Syria debate. The possibility -even probability -of disruptions caused by partial shutdowns could complicate any military actions. The possibility is also great that the rancor that will accompany the showdowns over fiscal policy will bleed over into the debate about America and Syria.

Extinction

Kemp 10

Geoffrey Kemp, Director of Regional Strategic Programs at The Nixon Center, served in the White House under Ronald Reagan, special assistant to the president for national security affairs and senior director for Near East and South Asian affairs on the National Security Council Staff, Former Director, Middle East Arms Control Project at the Carnegie Endowment for International Peace, 2010, The East Moves West: India, China, and Asia’s Growing Presence in the Middle East, p. 233-4

The second scenario, called Mayhem and Chaos, is the opposite of the first scenario; everything that can go wrong does go wrong. The world economic situation weakens rather than strengthens, and India, China, and Japan suffer a major reduction in their growth rates, further weakening the global economy. As a result, energy demand falls and the price of fossil fuels plummets, leading to a financial crisis for the energy-producing states, which are forced to cut back dramatically on expansion programs and social welfare. That in turn leads to political unrest: and nurtures different radical groups, including, but not limited to, Islamic extremists. The internal stability of some countries is challenged, and there are more “failed states.” Most serious is the collapse of the democratic government in Pakistan and its takeover by Muslim extremists, who then take possession of a large number of nuclear weapons. The danger of war between India and Pakistan increases significantly. Iran, always worried about an extremist Pakistan, expands and weaponizes its nuclear program. That further enhances nuclear proliferation in the Middle East, with Saudi Arabia, Turkey, and Egypt joining Israel and Iran as nuclear states. Under these circumstances, the potential for nuclear terrorism increases, and the possibility of a nuclear terrorist attack in either the Western world or in the oil-producing states may lead to a further devastating collapse of the world economic market, with a tsunami-like impact on stability. In this scenario, major disruptions can be expected, with dire consequences for two-thirds of the planet’s population.

### 3

Executive war power primacy now—the plan flips that

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

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

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

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

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

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

Congressional control of targeted killing destroys war fighting and turns the case.

Issacharoff ‘13

Samuel Issacharoff, Reiss Professor of Constitutional Law, New York University School of Law. and Richard H. Pildes, Sudler Family Professor of Constitutional Law, New York University School of Law; CoDirector, NYU Program on Law and Security, “Drones and the Dilemma of Modern Warfare,” PUBLIC LAW & LEGAL THEORY RESEARCH PAPER SERIES WORKING PAPER NO. 13-34 Star Chamber=politicized secret court from 15th century England, symbol of abuse

Procedural Safeguards

As with all use of lethal force, there must be procedures in place to maximize the likelihood of correct identification and minimize risk to innocents. In the absence of formal legal processes, sophisticated institutional entities engaged in repeated, sensitive actions – including the military – will gravitate toward their own **internal analogues** to legal process, even without the compulsion or shadow of formal judicial review. This is the role of bureaucratic legalism63 in developing sustained institutional practices, even with the dim shadow of unclear legal commands. These forms of self-regulation are generated by programmatic needs to enable the entity’s own aims to be accomplished effectively; at times, that necessity will share an overlapping converge with humanitarian concerns to generate internal protocols or process-like protections that minimize the use of force and its collateral consequences, in contexts in which the use of force itself is otherwise justified. But because these process-oriented protections are not codified in statute or reflected in judicial decisions, they typically are too invisible **to draw the eye of constitutional law scholars** who survey these issues from much higher levels of generality. In theory, such review procedures could be fashioned alternatively as a matter of **judicial review** (perhaps following warrant requirements or the security sensitivities of the FISA court), or accountability **to legislative oversight** (using the processes of select committee reporting), or the institutionalization of friction points within the executive branch (as with review by multiple agencies). Each could serve as a check on the development of unilateral excesses by the executive. And, presumably, each could guarantee that internal processes were adhered to and that there be accountability for wanton error. The centrality of dynamic targeting in the active theaters such as the border areas between Afghanistan and Pakistan **make it difficult to integrate legislative or judicial review mechanisms**. Conceivably, the decision to place an individual on a list for targeting could be a moment for review outside the boundaries of the executive branch, but even this has its drawback. Any court engaged in the ex parte review of the decision to execute someone outside the formal mechanisms of crime and punishment risks appearing as a modern variant of the Star Chamber.64 Similarly, there are difficulties in forcing a polarized Congress as a whole to assume collective responsibility for decisions of life and death and the incentives have turned out to not to be well aligned to get a subset of Congress, such as the intelligence committees, to play this role effectively.65

Congressional restraints spill over to destabilize all presidential war powers.

Heder ’10

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

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

That goes nuclear

Li ‘9

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

A. The Emergence of Non-State Actors

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

### 4

The affirmative re-inscribes the primacy of liberal legalism as a method of restraint—that paradoxically collapses resistance to Executive excesses.

**Margulies ‘11**

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In an observation more often repeated than defended, we are told that the attacks of September 11 “changed everything.” Whatever merit there is in this notion, it is certainly true that 9/11—and in particular the legal response set in motion by the administration of President George W. Bush—left its mark on the academy. Nine years after 9/11, it is time to step back and assess these developments and to offer thoughts on their meaning. In Part II of this essay, we analyze the post-9/11 scholarship produced by this “emergency” framing. We argue that legal scholars writing in the aftermath of 9/11 generally fell into one of three groups: unilateralists, interventionists, and proceduralists. Unilateralists argued in favor of tilting the allocation of government power toward the executive because the state’s interest in survival is superior to any individual liberty interest, and because the executive is best able to understand and address threats to the state. Interventionists, by contrast, argued in favor of restraining the executive (principally through the judiciary) precisely to prevent the erosion of civil liberties. Proceduralists took a middle road, informed by what they perceived as a central lesson of American history.1 Because at least some overreaction by the state is an inevitable feature of a national crisis, the most one can reasonably hope for is to build in structural and procedural protections to preserve the essential U.S. constitutional framework, and, perhaps, to minimize the damage done to American legal and moral traditions. Despite profound differences between and within these groups, legal scholars in all three camps (as well as litigants and clinicians, including the authors) shared a common perspective—viz., that repressive legal policies adopted by wartime governments are temporary departures from hypothesized peacetime norms. In this narrative, metaphors of bewilderment, wandering, and confusion predominate. The country “loses its bearings” and “goes astray.” Bad things happen until at last the nation “finds itself” or “comes to its senses,” recovers its “values,” and fixes the problem. Internment ends, habeas is restored, prisoners are pardoned, repression passes. In a show of regret, we change direction, “get back on course,” and vow it will never happen again. Until the next time, when it does. This view, popularized in treatments like All the Laws but One, by the late Chief Justice Rehnquist,2 or the more thoughtful and thorough discussion in Perilous Times by Chicago’s Geoffrey Stone,3 quickly became the dominant narrative in American society and the legal academy. **This narrative also figured heavily in the many challenges to Bush-era policies,** including by the authors. The narrative permitted litigators and legal scholars to draw upon what elsewhere has been referred to as America’s “civic religion”4 and to cast the courts in the role of hero-judges5 **whom we hoped would restore legal order.**6 But by framing the Bush Administration’s response as the latest in a series of regrettable but temporary deviations from a hypothesized liberal norm, the legal academy ignored the more persistent, and decidedly illiberal, authoritarian tendency in American thought to demonize communal “others” during moments of perceived threat. Viewed in this light, what the dominant narrative identified as a brief departure caused by a military crisis is more accurately seen as part of a recurring process of intense stigmatization tied to periods of social upheaval, of which war and its accompanying repressions are simply representative (and particularly acute) illustrations. It is worth recalling, for instance, that the heyday of the Ku Klux Klan in this country, when the organization could claim upwards of 3 million members, was the early-1920s, and that the period of greatest Klan expansion began in the summer of 1920, almost immediately after the nation had “recovered” from the Red Scare of 1919–20.7 Klan activity during this period, unlike its earlier and later iterations, focused mainly on the scourge of the immigrant Jew and Catholic, and flowed effortlessly from the anti-alien, anti-radical hysteria of the Red Scare. Yet this period is almost entirely unaccounted for in the dominant post-9/11 narrative of deviation and redemption, which in most versions glides seamlessly from the madness of the Red Scare to the internment of the Japanese during World War II.8 And because we were studying the elephant with the wrong end of the telescope, we came to a flawed understanding of the beast. In Part IV, we argue that the interventionists and unilateralists came to an incomplete understanding by focusing almost exclusively on what Stuart Scheingold called “the myth of rights”—the belief that if we can identify, elaborate, and secure judicial recognition of the legal “right,” **political structures and policies will adapt their behavior to the requirements of the law** and change will follow more or less automatically.9 Scholars struggled to define the relationship between law and security primarily through exploration of structural10 and procedural questions, and, to a lesser extent, to substantive rights. And they examined the almost limitless number of subsidiary questions clustered within these issues. Questions about the right to habeas review, for instance, generated a great deal of scholarship about the handful of World War II-era cases that the Bush Administration relied upon, including most prominently Johnson v. Eisentrager and Ex Parte Quirin. 11 Regardless of political viewpoint, a common notion among most unilateralist and interventionist scholars was that when law legitimized or delegitimized a particular policy, **this would have a direct and observable effect on actual behavior**. The premise of this scholarship, in other words, was that policies “struck down” by the courts, or credibly condemned as lawless by the academy, would inevitably be changed—and that this should be the focus of reform efforts. Even when disagreement existed about the substance of rights or even which branch should decide their parameters, it reflected shared acceptance of the primacy of law, often to the exclusion of underlying social or political dynamics. Eric Posner and Adrian Vermeule, for instance, may have thought, unlike the great majority of their colleagues, that the torture memo was “standard fare.”12 But their position nonetheless accepted the notion that if the prisoners had a legal right to be treated otherwise, then the torture memo authorized illegal behavior and must be given no effect.13 Recent developments, however, cast doubt on two grounding ideas of interventionist and unilateralist scholarship—viz., that post-9/11 policies were best explained as responses to a national crisis (and therefore limited in time and scope), and that the problem was essentially legal (and therefore responsive to condemnation by the judiciary and legal academy). One might have reasonably predicted that in the wake of a string of Supreme Court decisions limiting executive power, apparently widespread and bipartisan support for the closure of Guantánamo during the 2008 presidential campaign, and the election of President Barack Obama, which itself heralded a series of executive orders that attempted to dismantle many Bush-era policies, the nation would be “returning” to a period of respect for individual rights and the rule of law. Yet the period following Obama’s election has been marked by an increasingly retributive and venomous narrative surrounding Islam and national security. **Precisely when the dominant narrative would have predicted change** and redemption, we have seen retreat and retrenchment. This conundrum is not adequately addressed by dominant strands of post-9/11 legal scholarship. In retrospect, it is surprising that much post-9/11 scholarship appears to have set aside critical lessons from previous decades as to the relationship among law, society and politics.14 Many scholars have long argued in other contexts that rights—or at least the experience of rights—are subject to political and social constraints, particularly for groups subject to historic marginalization. Rather than self-executing, rights are better viewed as contingent political resources, capable of mobilizing public sentiment and generating social expectations.15 From that view, a victory in Rasul or Boumediene no more guaranteed that prisoners at Guantánamo would enjoy the right to habeas corpus than a victory in Brown v. Board16 guaranteed that schools in the South would be desegregated.17 Rasul and Boumediene, therefore, should be seen as part (and probably only a small part) of a varied and complex collection of events, including the fiasco in Iraq, the scandal at the Abu Ghraib prison, and the use of warrantless wiretaps, as well as seemingly unrelated episodes like the official response to Hurricane Katrina. These and other events during the Bush years merged to give rise to a powerful social narrative critiquing an administration committed to lawlessness, content with incompetence, and engaged in behavior that was contrary to perceived “American values.”18 Yet the very success of this narrative, culminating in the election of Barack Obama in 2008, produced quiescence on the Left, even as it stimulated massive opposition on the Right. The result has been the emergence of a counter-narrative about national security that has produced a vigorous social backlash such that most of the Bush-era policies will continue largely unchanged, at least for the foreseeable future.19 Just as we see a widening gap between judicial recognition of rights in the abstract and the observation of those rights as a matter of fact, there appears to be an emerging dominance of proceduralist approaches, which take as a given that rights dissolve under political pressure, and, thus, are best protected by basic procedural measures. But that stance falls short in its seeming readiness to trade away rights in the face of political tension. First, it accepts the tropes du jour surrounding radical Islam—namely, that it is a unique, and uniquely apocalyptic, threat to U.S. security. In this, proceduralists do not pay adequate heed to the lessons of American history and sociology. And second, it endorses too easily the idea that procedural and structural protections will protect against substantive injustice in the face of popular and/or political demands for an outcome-determinative system that cannot tolerate acquittals. Procedures only provide protection, however, if there is sufficient political support for the underlying right. Since the premise of the proceduralist scholarship is that such support does not exist, it is folly to expect the political branches to create meaningful and robust protections. In short, a witch hunt does not become less a mockery of justice when the accused is given the right to confront witnesses. And a separate system (especially when designed for demonized “others,” such as Muslims) cannot, by definition, be equal. In the end, we urge a fuller embrace of what Scheingold called “the politics of rights,” which recognizes the contingent character of rights in American society. We agree with Mari Matsuda, who observed more than two decades ago that rights are a necessary but not sufficient resource for marginalized people with little political capital.20 To be effective, therefore, we must look beyond the courts and grapple with the hard work of long-term change with, through and, perhaps, in spite of law. These are by no means new dilemmas, but the post-9/11 context raises difficult and perplexing questions that deserve study and careful thought as our nation settles into what appears to be a permanent emergency.

Legalism underpins the violence of empire and creates the conditions of possibility for liberal violence.

Dossa ‘99

Shiraz, Department of Political Science, St. Francis Xavier University, Antigonish, Nova Scotia, “Liberal Legalism: Law, Culture and Identity,” The European Legacy, Vol. 4, No. 3, pp. 73-87,1

No discipline in the rationalized arsenal of modernity is as rational, impartial, objective as the province of law and jurisprudence, in the eyes of its liberal enthusiasts. Law is the exemplary countenance of the conscious and calculated rationality of modern life, **it is the** emblematic face of liberal civilization. Law and legal rules symbolize the spirit of science, the march of human progress. As Max Weber, the reluctant liberal theorist of the ethic of rationalization, asserted: judicial formalism enables the legal system to operate like a technically **rational machine**. Thus it guarantees to individuals and groups within the system a relative of maximum of freedom, and greatly increases for them the possibility of predicting the legal consequences of their action. In this reading, law encapsulates the western capacity to bring order to nature and human beings, to turn the ebb and flow of life into a "rational machine" under the tutelage of "judicial formalism".19 Subjugation of the Other races in the colonial empires was motivated by power and rapacity, but it was justified and indeed rationalized, by an appeal to the civilizing influence of religion and law: western Christianity and liberal law. To the imperialist mind, "the civilizing mission of law" was fundamental, though Christianity had a part to play in this program.20 Liberal colonialists visualized law, civilization and progress as deeply connected and basic, they saw western law as neutral, universally relevant and desirable. The first claim was right in the liberal context, the second thoroughly false. In the liberal version, the mythic and irrational, emblems of thoughtlessness and fear, had ruled all life-forms in the past and still ruled the lives of the vast majority of humanity in the third world; in thrall to the majesty of the natural and the transcendent, primitive life flourished in the environment of traditionalism and lawlessness, hallmarks of the epoch of ignorance. By contrast, liberal ideology and modernity were abrasively unmythic, rational and controlled. Liberal order was informed by knowledge, science, a sense of historical progress, a continuously improving future. But this canonical, secular, bracing self-image, is tendentious and substantively illusory: it blithely scants the bloody genealogy and the extant historical record of liberal modernity, liberal politics, and particularly liberal law and its impact on the "lower races" (Hobson). In his Mythology of Modern Law, Fitzpatrick has shown that the enabling claims of liberalism, specifically of liberal law, are not only untenable but implicated in canvassing a racist justification of its colonial past and in eliding the racist basis of the structure of liberal jurisprudence.21 Liberal law is mythic in its presumption of its neutral, objective status. Specifically, the liberal legal story of its immaculate, analytically pure origin obscures and veils not just law's own ruthless, violent, even savage and disorderly trajectory, but also its constitutive association with imperialism and racism.22 In lieu of the transcendent, divine God of the "lower races", modern secular law postulated the gods of History, Science, Freedom. Liberal law was to be the instrument for realizing the promise of progress that the profane gods had decreed. Fitzpatrick's invasive surgical analysis lays bare the underlying logic of law's self-articulation in opposition to the values of cultural-racial Others, and its strategic, continuous reassertion of liberalism's superiority and the civilizational indispensability of liberal legalism. Liberal law's self-presentation presupposes a corrosive, debilitating, anarchic state of nature inhabited by the racial Others and lying in wait at the borders of the enlightened modern West. This mythological, savage Other, creature of raw, natural, unregulated fecundity and sexuality, justified the liberal conquest and control of the racially Other regions.23 Law's violence and resonant savagery on behalf of the West in its imperial razing of cultures and lands of the others, has been and still is, justified in terms of the necessary, beneficial spread of liberal civilization. Fitzpatrick's analysis parallels the impassioned deconstruction of this discourse of domination initiated by Edward Said's Orientalism, itself made possible by the pioneering analyses of writers like Aime Cesaire and Frantz Fanon. Fitzpatrick's argument is nevertheless instructive: his focus on law and its machinations unravels the one concrete province of imperial ideology that is centrally modern and critical in literally transforming and refashioning the human nature of racial Others. For liberal law carries on its back the payload of "progressive", pragmatic, **instrumental modernity**, its ideals of order and rule of law, its articulation of human rights and freedom, its ethic of procedural justice, its hostility to the sacred, to transcendence or spiritual complexity, its recasting of politics as the handmaiden of the nomos, its valorization of scientism and rationalization in all spheres of modern life. Liberal law is not synonymous with modernity tout court, but it is the exemplary voice of its rational spirit, **the custodian of its civilizational ambitions.** For the colonized Others, no non-liberal alternative is available: a non-western route to economic progress is inconceivable in liberal-legal discourse. For even the truly tenacious in the third world will never cease to be, in one sense or another, the outriders of modernity: their human condition condemns them to **playing perpetual catch-up**, eternally subservient to Western economic and technological superiority in a epoch of self-surpassing modernity.24 If the racially Other nations suffer exclusion globally, the racially other minorities inside the liberal loop enjoy the ambiguous benefits of inclusion. As legal immigrants or refugees, they are entitled to the full array of rights and privileges, as citizens (in Canada, France, U.K., U.S—Germany is the exception) they acquire civic and political rights as a matter of law. Formally, they are equal and equally deserving. In theory liberal law is inclusive, but concretely it is routinely **partial and invidious**. Inclusion is conditional: it depends on how robustly the new citizens wear and deploy their cultural difference. Two historical facts account for this phenomenon: liberal law's role in western imperialism and the Western claim of civilizational superiority that pervades the culture that sustains liberal legalism. Liberal law, as the other of the racially Other within its legal jurisdiction, differentiates and locates this other in the enemy camp of the culturally raw, irreducibly foreign, making him an unreliable ally or citizen. Law's suspicion of the others socialized in "lawless" cultures is instinctive and undeniable. Liberal law's constitutive bias is in a sense incidental: the real problem is racism or the racist basis of liberal ideology and culture.25 The internal racial other is not the juridical equal in the mind of liberal law but the juridically and humanly inferior Other, the perpetual foreigner.

The alternative is to vote negative to endorse political, rather than legal restrictions on Presidential war powers authority.

**Goldsmith ‘12**

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DAVID BRIN is a science-fiction writer who in 1998 turned his imagination to a nonfiction book about privacy called The Transparent Society. Brin argued that individual privacy was on a path to extinction because government surveillance tools—tinier and tinier cameras and recorders, more robust electronic snooping, and bigger and bigger databases—were growing irreversibly more powerful. His solution to this attack on personal space was not to erect privacy walls, which he thought were futile, but rather to induce responsible government action by turning the surveillance devices on the government itself. A government that citizens can watch, Brin argued, is one subject to criticism and reprisals for its errors and abuses, and one that is more careful and responsible in the first place for fear of this backlash. A transparent government, in short, is an accountable one. "If neo-western civilization has one great trick in its repertoire, a technique more responsible than any other for its success, that trick is accountability," Brin argues, "[e]specially the knack—which no other culture ever mastered—of making accountability apply to the mighty."' Brin's notion of reciprocal transparency is in some ways the inverse of the penological design known as a "panopticon," made famous by the eighteenth-century English utilitarian philosopher Jeremy Bentham. Bentham's brother Samuel had designed a prison in Paris that allowed an "inspector" to monitor all of the inmates from a central location without the prisoners knowing whether or when they were being watched (and thus when they might be sanctioned for bad behavior). Bentham described the panopticon prison as a "new mode of obtaining power of mind over mind" because it allowed a single guard to control many prisoners merely by conveying that he might be watching.' The idea that a "watcher" could gain enormous social control over the "watched" through constant surveillance backed with threats of punishment has proved influential. Michel Foucault invoked Bentham's panopticon as a model for how modern societies and governments watch people in order to control them.' George Orwell invoked a similar idea three decades earlier with the panoptical telescreen in his novel 1984. More recently, Yale Law School professor Jack Balkin used the panopticon as a metaphor for what he calls the "National Surveillance State," in which governments "use surveillance, data collection, and data mining technologies not only to keep Americans safe from terrorist attacks but also to prevent ordinary crime and deliver social services." **The direction of the panopticon can be reversed, however, creating a "synopticon" in which many can watch one, including the government**.' The television is a synopticon that enables millions to watch the same governmental speech or hearing, though it is not a terribly robust one because the government can control the broadcast. Digital technology and the Internet combine to make a more powerful synopticon that allows many individuals to record and watch an official event or document in sometimes surprising ways. Video recorders placed in police stations and police cars, cell-phone video cameras, and similar tools increase citizens' ability to watch and record government activity. This new media content can be broadcast on the Internet and through other channels to give citizens synoptical power over the government—a power that some describe as "sousveillance" (watching from below)! These and related forms of watching can have a disciplining effect on government akin to Brin's reciprocal transparency. The various forms of watching and checking the presidency described in this book constitute a vibrant presidential synopticon. Empowered by legal reform and technological change, the "many"—in the form of courts, members of Congress and their staff, human rights activists, journalists and their collaborators, and lawyers and watchdogs inside and outside the executive branch—constantly gaze on the "one," the presidency. Acting alone and in mutually reinforcing networks that crossed organizational boundaries, these institutions extracted and revealed information about the executive branch's conduct in war—sometimes to adversarial actors inside the government, and sometimes to the public. The revelations, in turn, forced the executive branch to account for its actions and enabled many institutions to influence its operations. **The presidential synopticon** also **promoted responsible executive action merely through its broadening gaze.** One consequence of a panopticon, in Foucault's words, is "to induce in the inmate a state of conscious and permanent visibility that assures the automatic functioning of power."' The same thing has happened in reverse but to similar effect within the executive branch, where officials are much more careful merely by virtue of being watched. The presidential synopticon is in some respects not new. Victor Davis Hanson has argued that "war amid audit, scrutiny, and self-critique" has been a defining feature of the Western tradition for 2,500 years.' From the founding of the nation, American war presidents have been subject to intense scrutiny and criticism in the unusually open society that has characterized the United States. And many of the accountability mechanisms described in this book have been growing since the 1970s in step with the modern presidency. What is new, however, is the scope and depth of these modern mechanisms, their intense legalization, and their robust operation during wartime. In previous major wars the President determined when, how, and where to surveil, target, detain, transfer, and interrogate enemy soldiers, often without public knowledge, and almost entirely without unwanted legal interference from within the executive branch itself or from the other branches of government.' Today these **decisions are known inside and outside the government to an unprecedented degree** and are heavily regulated by laws and judicial decisions that are enforced daily by lawyers and critics inside and outside the presidency. Never before have Congress, the courts, and lawyers had such a say in day-to-day military activities; never before has the Commander in Chief been so influenced, and constrained, by law. This regime has many historical antecedents, but it came together and hit the Commander in Chief hard for the first time in the last decade. It did so because of extensive concerns about excessive presidential power in an indefinite and unusually secretive war fought among civilians, not just abroad but at home as well. These concerns were exacerbated and given credibility by the rhetoric and reality of the Bush administration's executive unilateralism—a strategy that was designed to free it from the web of military and intelligence laws but that instead galvanized forces of reaction to presidential power and deepened the laws' impact. Added to this mix were enormous changes in communication and collaboration technologies that grew to maturity in the decade after 9/11. These changes helped render executive branch secrets harder to keep, and had a flattening effect on the executive branch just as it had on other hierarchical institutions, making connections between (and thus accountability to) actors inside and outside the presidency **much more extensive**.

### 5

The executive branch should establish ex ante transparency of targeted killing standards and procedures.

The executive branch should determine that the offensive use of combat drones constitutes an introduction of United States Armed Forces into hostilities.

Transparency of targeting decisions resolves drone legitimacy and resentment

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

4. Procedural Requirements

Currently, officials in the executive branch carry out all such ex ante review of out-of-battlefield targeting and detention decisions, reportedly with the involvement of the President, but without any binding and publicly articulated standards governing the exercise of these authorities. n163 All ex post review of targeting is also done internally within the executive branch. There is no public accounting, or even acknowledgment, of most strikes, their success and error rates, or the extent of any collateral damage. Whereas the Department of Defense provides solatia or condolence payments to Afghan civilians who are killed or injured as a result of military actions in Afghanistan (and formerly did so in Iraq), there is no equivalent effort in areas outside the active conflict zone. n164

Meanwhile, the degree of ex post review of detention decisions depends on the location of detention as opposed to the location of capture. Thus, [\*1219] Guantanamo detainees are entitled to habeas review, but detainees held in Afghanistan are not, even if they were captured far away and brought to Afghanistan to be detained. n165

Enhanced ex ante and ex post procedural protections for both detention and targeting, coupled with transparency as to the standards and processes employed, serve several important functions: they can minimize error and abuse by creating time for advance reflection, correct erroneous deprivations of liberty, create endogenous incentives to avoid mistake or abuse, and increase the legitimacy of state action.

a. Ex Ante Procedures

Three key considerations should guide the development of ex ante procedures. First, any procedural requirements must reasonably respond to the need for secrecy in certain operations. Secrecy concerns cannot, for example, justify the lack of transparency as to the substantive targeting standards being employed. There is, however, a legitimate need for the state to protect its sources and methods and to maintain an element of surprise in an attack or capture operation. Second, contrary to oft-repeated rhetoric about the ticking time bomb, few, if any, capture or kill operations outside a zone of active conflict occur in situations of true exigency. n166 Rather, there is often the time and need for advance planning. In fact, advance planning is often necessary to minimize damage to one's own troops and nearby civilians. n167 Third, the procedures and standards employed must be transparent and sufficiently credible to achieve the desired legitimacy gains.

These considerations suggest the value of an independent, formalized, ex ante review system. Possible models include the Foreign Intelligence [\*1220] Surveillance Court (FISC), n168 or a FISC-like entity composed of military and intelligence officials and military lawyers, in the mode of an executive branch review board. n169

Created by the Foreign Intelligence Surveillance Act (FISA) in 1978, n170 the FISC grants ex parte orders for electronic surveillance and physical searches, among other actions, based on a finding that a "significant purpose" of the surveillance is to collect "foreign intelligence information." n171 The Attorney General can grant emergency authorizations without court approval, subject to a requirement that he notify the court of the emergency authorization and seek subsequent judicial authorization within seven days. n172 The FISC also approves procedures related to the use and dissemination of collected information. By statute, heightened restrictions apply to the use and dissemination of information concerning U.S. persons. n173 Notably, the process has been extraordinarily successful in protecting extremely sensitive sources and methods. To date, there has never been an unauthorized disclosure of an application to or order from the FISC court.

An ex parte review system for targeting and detention outside zones of active hostility could operate in a similar way. Judges or the review board would approve selected targets and general procedures and standards, while still giving operators wide rein to implement the orders according to the approved standards. Specifically, the court or review board would determine whether the targets meet the substantive requirements and would [\*1221] evaluate the overarching procedures for making least harmful means-determinations, but would leave target identification and time-sensitive decisionmaking to the operators. n174

Moreover, there should be a mechanism for emergency authorizations at the behest of the Secretary of Defense or the Director of National Intelligence. Such a mechanism already exists for electronic surveillance conducted pursuant to FISA. n175 These authorizations would respond to situations in which there is reason to believe that the targeted individual poses an imminent, specific threat, and in which there is insufficient time to seek and obtain approval by a court or review panel as will likely be the case in instances of true imminence justifying the targeting of persons who do not meet the standards applicable to operational leaders. As required under FISA, the reviewing court or executive branch review board should be notified that such an emergency authorization has been issued; it should be time-limited; and the operational decisionmakers should have to seek court or review board approval (or review, if the strike has already taken place) as soon as practicable but at most within seven days. n176

Finally, and critically, given the stakes in any application namely, the deprivation of life someone should be appointed to represent the potential target's interests and put together the most compelling case that the individual is not who he is assumed to be or does not meet the targeting criteria.

The objections to such a proposal are many. In the context of proposed courts to review the targeting of U.S. citizens, for example, some have argued that such review would serve merely to institutionalize, legitimize, and expand the use of targeted drone strikes. n177 But this ignores the reality of their continued use and expansion and imagines a world in which targeted [\*1222] killings of operational leaders of an enemy organization outside a zone of active conflict is categorically prohibited (an approach I reject n178). If states are going to use this extraordinary power (and they will), there ought to be a clear and transparent set of applicable standards and mechanisms in place to ensure thorough and careful review of targeted-killing decisions. The formalization of review procedures along with clear, binding standards will help to avoid ad hoc decisionmaking and will ensure consistency across administrations and time.

Some also condemn the ex parte nature of such reviews. n179 But again, this critique fails to consider the likely alternative: an equally secret process in which targeting decisions are made without any formalized or institutionalized review process and no clarity as to the standards being employed. Institutionalizing a court or review board will not solve the secrecy issue, but it will lead to enhanced scrutiny of decisionmaking, particularly if a quasi-adversarial model is adopted, in which an official is obligated to act as advocate for the potential target.

That said, there is a reasonable fear that any such court or review board will simply defer. In this vein, FISC's high approval rate is cited as evidence that reviewing courts or review boards will do little more than rubber-stamp the Executive's targeting decisions. n180 But the high approval rates only tell part of the story. In many cases, the mere requirement of justifying an application before a court or other independent review board can serve as an internal check, creating endogenous incentives to comply with the statutory requirements and limit the breadth of executive action. n181 Even if this system does little more than increase the attention paid to the stated requirements and expand the circle of persons reviewing the factual basis for the application, those features in and of themselves can lead to increased reflection and restraint.

Additional accountability mechanisms, such as civil or criminal sanctions in the event of material misrepresentations or omissions, the granting of far-reaching authority to the relevant Inspectors General, and meaningful ex post review by Article III courts, n182 are also needed to help further minimize abuse.

Conversely, some object to the use of courts or court-like review as stymying executive power in wartime, and interfering with the President's Article II powers. n183 According to this view, it is dangerous and potentially unconstitutional to require the President's wartime targeting decisions to be subject to additional reviews. These concerns, however, can be dealt with through emergency authorization mechanisms, the possibility of a presidential override, and design details that protect against ex ante review of operational decisionmaking. The adoption of an Article II review board, rather than an Article III-FISC model, further addresses some of the constitutional concerns.

Some also have warned that there may be no "case or controversy" for an Article III, FISC-like court to review, further suggesting a preference for an Article II review board. n184 That said, similar concerns have been raised with respect to FISA and rejected. n185 Drawing heavily on an analogy to courts' roles in issuing ordinary warrants, the Justice Department's Office of Legal Counsel concluded at the time of enactment that a case and controversy existed, even though the FISA applications are made ex parte. n186 [\*1224] Here, the judges would be issuing a warrant to kill rather than surveil. While this is significant, it should not fundamentally alter the legal analysis. n187 As the Supreme Court has ruled, killing is a type of seizure. n188 The judges would be issuing a warrant for the most extreme type of seizure. n189

It is also important to emphasize that a reviewing court or review board would not be "selecting" targets, but determining whether the targets chosen by executive branch officials met substantive requirements much as courts do all the time when applying the law to the facts. Press accounts indicate that the United States maintains lists of persons subject to capture or kill operations lists created in advance of specific targeting operations and reportedly subject to significant internal deliberation, including by the President himself. n190 A court or review board could be incorporated into the existing ex ante decisionmaking process in a manner that would avoid interference with the conduct of specific operations reviewing the target lists but leaving the operational details to the operators. As suggested above, emergency approval mechanisms could and should be available to deal with exceptional cases where ex ante approval is not possible.

Additional details will need to be addressed, including the temporal limits of the court's or review board's authorizations. For some high-level operatives, inclusion on a target list would presumably be valid for some set period of [\*1225] time, subject to specific renewal requirements. Authorizations based on a specific, imminent threat, by comparison, would need to be strictly time-limited, and tailored to the specifics of the threat, consistent with what courts regularly do when they issue warrants.

In the absence of such a system, the President ought to, at a minimum, issue an executive order establishing a transparent set of standards and procedures for identifying targets of lethal killing and detention operations outside a zone of active hostilities. n192 To enhance legitimacy, the procedures should include target list reviews and disposition plans by the top official in each of the agencies with a stake in the outcome the Secretary of Defense, the Director of the CIA, the Secretary of State, the Director of Homeland Security, and the Director of National Intelligence, with either the Secretary of Defense, Director of National Intelligence, or President himself, responsible for final sign-off. n193 In all cases, decisions should be unanimous, or, in the absence of consensus, elevated to the President of the United States. n194 Additional details will need to be worked out, including critical questions about the standard of proof that applies. Given the stakes, a clear and convincing evidentiary standard is warranted. n195

While this proposal is obviously geared toward the United States, the same principles should apply for all states engaged in targeting operations. n196 States would ideally subject such determinations to independent review or, alternatively, clearly articulate the standards and procedures for their decisionmaking, thus enhancing accountability.

b. Ex Post Review

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. n197 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 decisionmaking, 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. n198

### Solvency

No incentive for Congress to act—their author

Druck, JD – Cornell Law, ‘12

(Judah, 98 Cornell L. Rev. 209)

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

Targeted killing regulation is impossible

Alston, professor – NYU Law, ‘11

(Philip, 2 Harv. Nat'l Sec. J. 283)

Despite the existence of a multiplicity of techniques by which the CIA might be held to account at the domestic level, the foregoing survey demonstrates that there is no evidence to conclude that any of them has functioned effective-ly in relation to the expanding practices involving targeted killings. The CIA Inspector General's Office has been unable to exact accountability and proposals to expand or strengthen his role run counter to almost all official actions taken in relation to his work. The President's Intelligence Oversight Board and the President's Foreign Intelligence Advisory Board are lauded by some for their potential, but there is no indication that they scrutinize activities such as targeted killings policy or practice, and many indications that they view their role as being to support rather than monitor the intelligence community. The Privacy and Civil Liberties Oversight Board remains dormant. Congressional oversight has been seriously deficient and far from manifesting an appetite to scrutinize the CIA's targeted killings policies, a range of senior members of congress are on record as favoring a hands-off policy. And a combination of the political question doctrine, the state secrets privilege, and a reluctance to prosecute, ensure that the courts have indeed allowed the CIA to fall into a convenient legal **grey hole**. Finally, civil society has been largely stymied by the executive and the courts in their efforts to make effective use of freedom of information laws. All that remains is the media, and most of what they obtain through leaks come from government sources that are deliberately "spinning" the story in their own favor. Simi-lar conclusions have been reached in closely related contexts. Thus, for example, Kitrosser's survey of official responses to the warrantless wiretapping initiated after 9/11 led her to conclude that it was a shell [\*406] game, involving "an indefinite bi-partisan, cross-administration, cross-institutional pattern of accountability-avoidance." n450 In brief, at least in relation to targeted killings, the CIA enjoys almost complete impunity and is not subject to any form of meaningful internal or external accountability. Whether from the perspective of democratic theory or of interna-tional accountability for violations of the right to life, this is deeply problematic. One solution to this that has been sug-gested by some commentators is to follow the precedent set by Israel in its efforts to ensure legal oversight of its target killings programs. We turn now to examine the feasibility and desirability of pursuing such an option.

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Military will backlash, prevents implementation

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

(John, 58 Duke L.J. 2277)

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

### Adventurism

No unrestrained adventurism

Eric Posner, Professor of Law, The University of Chicago Law School, and Adrian Vermeule, Professor of Law, Harvard Law School, March 2011, The Executive Unbound, p. 187

The second hypothesis is that **American tyrannophobia has been a** fundamentally irrational **phenomenon** that has interfered with needed institutional development. Caesar took control of a highly militarized and hierarchical society. The seventeenth-century England of Cromwell and the Stuarts was also profoundly different from that of the United States—agrarian, poorly educated, riven by violent religious conflicts, aristocratic, and centered around a hereditary monarchy. What relevance could these examples have for the United States—relatively educated, egalitarian, and religiously peaceful from the founding, and then industrialized, highly educated, and secular over time? **We might think of tyrannophobia as** similar to other prejudices **that** perhaps **had some social function under** radically different circumstances in the distant past**, but that have** no place in modern times**, and only retard institutional change that is needed to address modern challenges**.47 Indeed, if the aim is to minimize the risk of dictatorship, or just to take optimal precautions against it, tyrannophobia might be counterproductive, for reasons we will discuss.

The public will always support drones

LaFranchi 6/3/13

Howard LaFranchi, Staff writer, CSMonitor, June 3, 2013, "American public has few qualms with drone strikes, poll finds", http://www.csmonitor.com/USA/Military/2013/0603/American-public-has-few-qualms-with-drone-strikes-poll-finds

When a US drone strike last week killed a top Taliban leader in Pakistan, critics of the strikes that have become a staple of President Obama’s counterterrorism policy were quick to condemn it. The killing of Waliur Rehman in the North Waziristan region on May 29 would only make reconciliation talks between the Taliban and the Afghan government – a US priority – more difficult to convene, some critics said. Others said such strikes infuriate local populations and are a recruiting tool for Al Qaeda and other Islamist extremists. But the American public appears to be unmoved by such arguments. A new Monitor/TIPP poll finds that a firm majority of Americans – 57 percent – support the current level of drone strikes targeting “Al Qaeda targets and other terrorists in foreign countries.” Another 23 percent said the use of drones for such purposes should increase. Only 11 percent said the use of drones should decrease. The poll, conducted from May 28-31, followed a major speech in which Mr. Obama suggested the use of drone strikes would decline. In the May 26 address, he also hinted at his own ambivalence about the controversial tactic, weighing the program’s efficacy against the moral questions and long-term impact. Obama acknowledged that the pluses of drone strikes – no need to put boots on the ground and the accuracy and secrecy they offer – can “lead a president and his team to view drone strikes as a cure-all for terrorism.” He balanced that against words of caution: “To say a military tactic is legal, or even effective, is not to say it is wise or moral in every instance.” The drone strikes, which under Obama have mostly been carried out in secrecy by the CIA, are credited with killing as many as 3,000 terrorists and Islamist militants – at least four of whom were American citizens. Obama is planning to shift most drone operations to the military as part of an effort to make the program more transparent. Americans are by and large comfortable with drone strikes being ordered by the president, the CIA, or by the military, according to the Monitor poll. Less popular is the idea of creating a separate “drone court” – a panel that would presumably increase the accountability of the program. Almost two-thirds of Americans (62 percent) say they approve of drone-strike authorization coming from the president, the Pentagon, or the CIA. About a quarter (26 percent) favor setting up a drone court to sign off on strikes.

### Terrorism

Ant-drone backlash is small and inevitable

Byman 13 (Daniel Byman, Brookings Institute Saban Center for Middle East Policy, Research Director, and Foreign Policy, Senior Fellow, July/Aug 2013, “Why Drones Work: The Case for the Washington's Weapon of Choice”, www.brookings.edu/research/articles/2013/06/17-drones-obama-weapon-choice-us-counterterrorism-byman)

Such concerns are valid, but the level of local anger over drones is often lower than commonly portrayed. Many surveys of public opinion related to drones are conducted by anti-drone organizations, which results in biased samples. Other surveys exclude those who are unaware of the drone program and thus overstate the importance of those who are angered by it. In addition, many Pakistanis do not realize that the drones often target the very militants who are wreaking havoc on their country. And for most Pakistanis and Yemenis, the most important problems they struggle with are corruption, weak representative institutions, and poor economic growth; the drone program is only a small part of their overall anger, most of which is directed toward their own governments. A poll conducted in 2007, well before the drone campaign had expanded to its current scope, found that only 15 percent of Pakistanis had a favorable opinion of the United States. It is hard to imagine that alternatives to drone strikes, such as seal team raids or cruise missile strikes, would make the United States more popular.

Doesn’t help AQAP

Watts 12 (Clinton Watts is a Senior Analyst with the Navanti Group and a Senior Fellow at The George Washington University Homeland Security Policy Institute (HSPI). He is also a former U.S. Army Officer and former Special Agent with the FBI. Frank J. Cilluffo is the Director of the Homeland Security Policy Institute at The George Washington University., 6/21/2012, "Drones in Yemen: Is the U.S. on Target?", www.gwumc.edu/hspi/policy/drones.pdf)

AQAP’s persistence arises not only from internal instability in Yemen but even more from exogenous forces leading this al Qaeda affiliate to be bolstered above all others. Critics of drone strikes myopically focus on this tactic as the singular cause for AQAP’s ascension. Drone strikes at most provide only a peripheral and recent motivation for the growth of a terrorist affiliate that has been aggressively attempting to expand over the past five years. Several phenomena occurring outside Yemen’s borders have been the primary catalyst for AQAP’s emergence. First, foreign fighter records captured by U.S. forces in Iraq in 2007 indicated that Yemeni foreign fighters were the second most likely to choose to be “fighters” rather than “martyrs” when they arrived in Iraq. This data point signaled the intent of some Yemeni al Qaeda members in Iraq to return home should they survive Iraqi battlefields. By 2008, the U.S. “Surge” strategy took effect and foreign fighter flows slowed and largely reversed from Iraq. In turn, terrorist attack data from 2008 showed Yemen as the second highest country for terrorist attacks outside of Iraq and Afghanistan suggesting seasoned Yemeni foreign fighters from Iraq may have returned to wage jihad in their homeland.7 Second, in 2005-2006, Saudi Arabia initiated a major counterterrorism clampdown on AQAP operatives pushing many veteran, Saudi al Qaeda members into Yemen where they helped form AQAP’s second incarnation in 2009.8 Young Saudi men have long filled the ranks of al Qaeda and its affiliates, and Saudi Arabia’s persistent tamping down of internal al Qaeda threats creates terrorist bleedover in nearby Yemen. Third, prior to his death, Bin Laden began searching for a new safe haven for relocating his battered operatives in Pakistan and Afghanistan. As noted by Gabriel Koehler Derrick in recent analysis of the Abbottabad documents declassified in May 2012, Bin Laden envisioned Yemen, “either as a “safe haven” for jihadists or a “reserve” force for al-Qa`ida in Afghanistan or Iraq.” Of all al Qaeda affiliates, Yemen provided the best venue for those al Qaeda operatives (particularly those from the Arabian Peninsula) seeking shelter from U.S. counterterrorism efforts.9 Fourth, Yemen provides Bin Laden and al Qaeda a safe haven more proximate to their essential base of financial support – wealthy Persian Gulf donors. Being bled by middlemen and the endless amount of protection money needed to sustain safe harbor in Pakistan, Bin Laden likely saw Yemen as a more efficient and effective location for securing resources. With his death, financial support for al Qaeda in Pakistan has decreased substantially and many believe that the remaining stream of al Qaeda donor support now flows to AQAP in Yemen, not al Qaeda’s senior leadership in Pakistan.10Even a slight increase in donor support in the wake of Bin Laden’s death would further empower AQAP. Finally, foreign fighters that once would have flocked to Iraq (2005-2007) or Afghanistan (2008-2010) now likely see more opportunity for jihad by migrating to Yemen. While the foreign fighter flow to Yemen represents merely a trickle of what al Qaeda’s recruitment was at its height, AQAP in Yemen likely provides the most appealing option for joining an official affiliate of the al Qaeda movement – especially for those potential recruits in the Arabian Peninsula. Keep in mind that military actions, including the use of drones, have made travel to Pakistan’s Federally Administered Tribal Areas (FATA) less appealing and less hospitable to foreign fighters. These successful U.S. military activities have had significant operational effects on al Qaeda and its affiliates by disrupting pipelines, and they serve as a strong deterrent to future al Qaeda activities in the FATA.11In parallel to the many exogenous factors strengthening AQAP over the past five years, Yemen’s instability and intermittent military commitment to fighting AQAP has provided ample opportunity for the terror groups to expand over the past year. The political struggles of the Saleh regime and its replacement have undermined the country’s military capacity allowing for AQAP and its insurgent arm Ansar al-Sharia to successfully advance and hold territory. The Yemeni government’s continuing inability to provide for portions of the Yemeni population allows AQAP and Ansar al-Sharia space to fill a void in needed social services and secure local popular support. Most importantly, Yemeni incompetence breathed life into a dormant AQAP franchise allowing known al Qaeda operatives on at least two occasions to escape detention providing much of the group’s current energy.12 While some narrowly point to drones for manufacturing AQAP, many exogenous and endogenous factors propel the group’s current external terrorism campaign and internal insurgency against the Yemeni state. What do critics of drones misunderstand about drone operations in Yemen? Critics of the U.S. drone campaign in Yemen confusingly lump together disparate issues related to terminology, intelligence processes, legal authorities and terrorist propaganda to justify stopping the use of the U.S.’s most effective counterterrorism technique – all while failing to offer a viable alternative for countering AQAP’s immediate threat to the U.S. Although an imperfect tool, drone strikes suppress terrorists in otherwise denied safe havens and limit jihadists’ ability to organize, plan and carry out attacks. These strikes help shield us from harm and serve our national interests. Doing nothing is simply not an option. Media accounts of attacks in Yemen often mistakenly credit U.S. drones for every explosion in Yemen. Drones represent one of several technology platforms executing airstrikes that include cruise missiles, potentially U.S. or Yemeni fighter aircraft or even helicopter assaults. Drone critics correctly cite instances where poor intelligence leads to the killing of civilians and/or those in opposition to the Saleh regime. However, one of the instances commonly used in calls to end drone use in Yemen is actually not the result of a drone strike. Critics point to the intelligence failures of a cruise missile attack in al Majalah on December 17, 2009.13 As an example, Gregory Johnsen at Princeton University and Yemen expert writing at Waq-al-Waq led his rebuttal of current drone policy, entitled “Drones, Drift and the (New) American Way of War,” with criticisms of drone warfare by citing this December 17, 2009 cruise missile attack.14Instead of pointing to this incident as justification for halting drone strikes in Yemen, the civilian casualties created by this intelligence failure and use of a cruise missile alternatively suggest the need for the use of drones as a more surgical platform for achieving our counterterrorism objectives while minimizing civilian casualties. Cruise missiles introduce several factors that may contribute to errant targeting. The limitations of cruise missiles, in many ways, provided the impetus for developing the drone platform.15 Cruise missiles 1) require intelligence far in advance of hitting their target, 2) take a considerable amount of time to travel to their target, 3) are difficult to divert from their target once launched and 4) employ large scale and more devastating munitions such as cluster bombs which can lead to increased civilian casualties. In contrast, drones can provide their own targeting intelligence devoid of Yemeni government influence, provide real-time visual surveillance of a target, minimize the time between target engagement and target impact, and use smaller munitions able to reduce civilian casualties. While neither technology platform is a perfect engagement tool, drones vis-à-vis cruise missiles have further improved the U.S. ability to engage terrorists and minimize civilian casualties. Drone critics this past year have also challenged the legality of targeting AQAP members, specifically those members that are American citizens.16 First, drone and legal critics have challenged the legality of the drone strike killing American AQAP cleric Anwar al-Awlaki. In response, the U.S. Department of Justice released a memo in February 2012 detailing its justifications for targeting al-Awlaki in response to his planning and directing the attempted Christmas Day 2009 attempt on an airliner over Detroit.17 Even when given this evidence, these same critics continue to advocate that Awlaki should have been pursued through the U.S. legal system, charged with a federal crime, arrested and then tried in a courtroom. In addition to the obvious limitations the U.S. encounters trying to capture a terrorist residing in a volatile foreign safe haven, these arguments ignore the fact that Awlaki knowingly traveled outside the U.S. and admittedly joined an officially designated Foreign Terrorist Organization (FTO). This action alone permits Awlaki’s targeting and undercuts the claims of illegality by drone critics. These authors believe the legal argument posed by drone critics in the case of Awlaki lacks legitimacy. It is worth emphasizing furthermore that drone strikes may not always be the preferred course. Attempts to capture high value targets are riskier but that downside may be outweighed by the potential intelligence value of key individuals. A case-by-case assessment will always be needed. The second contentious legal debate related to drone targeting comes from the inadvertent killing of Anwar al-Awlaki’s son Abdulrahman al-Awlaki on October 14, 2012. Reporting suggests the intended target of the strike was AQAP’s media chief, Ibrahim al Bana.18 The death of Abdulrahaman al-Awlaki is a tragedy and has become a rallying point for those believing U.S. drone strikes create excessive civilian casualties. However, these same critics cannot explain why Abdulrahman al-Awlaki was present in the home of a suspected AQAP target, nor do they place any responsibility on Anwar al-Awlaki’s family who knowingly placed Abdulrahman in the orbit of terrorists clearly being pursued by the U.S. Third and most recently, anti-drone advocates have rallied against the Obama administration’s recent authorization to implement signature strikes against AQAP in Yemen.19 This argument against drones, above all others, may prove the most credible. The term “signature strikes” suggests the notion that the U.S. fires missiles at unknown targets for simply looking suspicious. Journalists and human rights advocates are right to draw attention to the use of this tactic as it implies the killing of unknown people for unclear reasons. The signature strike tactic, if used injudiciously, will result in the killing of innocent civilians and is certainly more inclined to radicalize local populations and inspire further AQAP recruitment. Those opposing drone use in Yemen commonly cite civilian casualties as reason for stopping drone strikes. Civilian casualties should be avoided at all costs, however drones in comparison to all other kinetic counterterrorism options, likely produce the fewest civilian casualties per engagement. Statistics and ratios remain difficult to calculate, and research has only just begun on this new counterterrorism application. But, in comparison to other forms of warfare, drone strikes may be one of the least civilian casualty producing tools in the history of warfare (See endnote).20 Large scale military intervention (i.e. regime change), broad-based counterinsurgency, backing of the Yemeni military, arming of militias – all of these counterterrorism options are far more likely to produce civilian casualties. Drones supported by intelligence provide U.S. counterterrorism efforts the most surgical and the least casualty-producing tool for engaging AQAP. In conjunction with the debate over drones creating civilian casualties, media debates ignore how al Qaeda deliberately uses civilians as human shields against attack. In documents seized during the Abbottabad raid, Bin Laden instructs his operatives to avoid drone strikes by staying out of cars noting, “We could leave the cars because they are targeting cars now, but if we leave them, they will start focusing on houses and that would increase casualties among women and children.”21 Bin Laden instructed his operatives to use women and children as human shields against drones knowing 1) the U.S. would be more reluctant to target operatives when civilian casualties would be numerous and 2) the U.S. unknowingly killing civilians during drone attacks would undermine local popular support for U.S. counterterrorism efforts providing al Qaeda ample fuel for propaganda – a lesson learned by al Qaeda in past failed jihadi campaigns where their expansive violence against innocent civilians eroded local popular support for the terror group. The U.S. should continue to avoid civilian casualties from drone strikes, but drone critics must also realize how al Qaeda uses civilians as pawns for undermining drone strikes. Some thoughtful critics of U.S. counterterrorism operations in Yemen with whom we respectfully disagree, notably Gregory Johnsen of Princeton University22 and Jeremy Scahill of The Nation (although there are others)23, cite drone strikes as increasing the number of AQAP operatives in Yemen. The logic behind this assertion appears horribly backwards. The U.S. deploys drones where terrorist go – weak and failed states providing adequate safe haven for planning and executing terrorists attacks. However, the U.S. does not deploy drones to countries for the purpose of shooting at innocent people in hopes of creating terrorists. Johnsen24, Scahill, the recent Washington Post article by Sudarsan Raghavan, “In Yemen, U.S. airstrikes breed anger, and sympathy for al-Qaeda,”25 and others (see endnote for summary)26 point to AQAP propaganda citing drones as motivation for terrorist recruitment and in turn suggest this as justification for the U. S. ceasing the tactic – essentially determining that if our terrorist enemies don’t like a tactic we should stop pursuing it. If one wants to assess which counterterrorism techniques are most effective against al Qaeda and affiliated groups, then look no further than al Qaeda’s propaganda. Al Qaeda, the Taliban and now AQAP have all focused their propaganda campaigns on eliminating the U.S. ability to employ night raids and drones. Why do they focus on these two tactics? Because night raids and drones are the most effective means for deterring these groups; Bin Laden admits this in his own internal documents captured in Abbottabad. Unable to leverage effective counter drone operations, al Qaeda, the Taliban and now AQAP seek to use propaganda to enrage local populations in hopes of interrupting this highly effective counterterrorism tool. Letting our adversaries (AQAP) dictate our tactics should never be an option.

Terrorists won’t use WMD

Forest 12 (James, PhD and Director of Terrorism Studies and an associate professor at the United States Military Academy, “Framework for Analyzing the Future Threat of WMD Terrorism,” Journal of Strategic Security, Volume 5, Number 4, Article 9, Winter 2012, <http://scholarcommons.usf.edu/cgi/viewcontent.cgi?article=1193&context=jss>) \*\*NOTE---CBRN weapon = chemical, biological, radiological or nuclear weapon

The terrorist group would additionally need to consider whether a WMD attack would be counterproductive by generating, for example, condemnation among the group's potential supporters. This possible erosion in support, in turn, would degrade the group's political legitimacy among its constituencies, who are viewed as critical to the group's long-term survival. By crossing this WMD threshold, the group could feasibly undermine its popular support, encouraging a perception of the group as deranged mass murders, rather than righteous vanguards of a movement or warriors fighting for a legitimate cause.16 The importance of perception and popular support—or at least tolerance—gives a group reason to think twice before crossing the threshold of catastrophic terrorism. A negative perception can impact a broad range of critical necessities, including finances, safe haven, transportation logistics, and recruitment. Many terrorist groups throughout history have had to learn this lesson the hard way; the terrorist groups we worry about most today have learned from the failures and mistakes of the past, and take these into consideration in their strategic deliberations. Furthermore, a WMD attack could prove counterproductive by provoking a government (or possibly multiple governments) to significantly expand their efforts to destroy the terrorist group. Following a WMD attack in a democracy, there would surely be a great deal of domestic pressure on elected leaders to respond quickly and with a massive show of force. A recognition of his reality is surely a constraining factor on Hezbollah deliberations about attacking Israel, or the Chechen's deliberations about attacking Russia, with such a weapon.

### Norms

No drone prolif—capabilities and costs

Zenko, Douglas Dillon fellow in the Center for Preventive Action – CFR, ‘13

(Micah, “U.S. Drone Strike Policies”, Council Special Report No. 65, January)

There are also few examples of armed drone sales by other countries. After the United States, Israel has the most developed and varied drone capabilities; according to the Stockholm International Peace Research Institute (SIPRI), Israel was responsible for 41 percent of drones exported between 2001 and 2011.57 While Israel has used armed drones in the Palestinian territories and is not a member of the MTCR, it has pre- dominantly sold surveillance drones that lack hard points and electrical engineering. Israel reportedly sold the Harop, a short-range attack drone, to France, Germany, Turkey, and India. Furthermore, Israel allows the United States to veto transfers of weapons with U.S.-origin technology to select states, including China.58 Other states invested in developing and selling **surveillance drones** have reportedly refrained from selling fully armed versions. For example, the UAE spent five years building the armed United-40 drone with an associated Namrod missile, but there have been no reported deliveries.59 A March 2011 analysis by the mar- keting research firm Lucintel projected that a “fully developed [armed drone] product will take another decade.”60 Based on current trends, it is unlikely that most states will have, within ten years, the complete system architecture required to carry out distant drone strikes that would be harmful to U.S. national interests. However, those candidates able to obtain this technology will most likely be states with the financial resources to purchase or the industrial base to manufacture tactical short-range armed drones with limited firepower that lack the precision of U.S. laser-guided munitions; the intelligence collection and military command-and-control capabilities needed to deploy drones via line-of-sight communications; and cross- border adversaries who currently face attacks or the threat of attacks by manned aircraft, such as Israel into Lebanon, Egypt, or Syria; Russia into Georgia or Azerbaijan; Turkey into Iraq; and Saudi Arabia into Yemen. When compared to distant U.S. drone strikes, these contingen- cies do not require system-wide infrastructure and host-state support. Given the costs to conduct manned-aircraft strikes with minimal threat to pilots, it is questionable whether states will undertake the significant investment required for armed drones in the near term.

China won’t use drones offensively

Erickson, associate professor – Naval War College, associate in research – Fairbank Centre @ Harvard, 5/23/’13

(Andrew, China Has Drones. Now What?", www.foreignaffairs.com/articles/136600/andrew-erickson-and-austin-strange/china-has-drones-now-what)

Beijing, however, is unlikely to use its drones lightly. It already faces tremendous criticism from much of the international community for its perceived brazenness in continental and maritime sovereignty disputes. With its leaders attempting to allay notions that China's rise poses a threat to the region, injecting drones conspicuously into these disputes would prove counterproductive. China also fears setting a **precedent** for the use of drones in East Asian hotspots that the United States could eventually exploit. For now, Beijing is showing that it understands these risks, and to date it has limited its use of drones in these areas to surveillance, according to recent public statements from China's Defence Ministry. What about using drones outside of Chinese-claimed areas? That China did not, in fact, launch a drone strike on the Myanmar drug criminal underscores its caution. According to Liu Yuejin, the director of the anti-drug bureau in China's Ministry of Public Security, Beijing considered using a drone carrying a 20-kilogram TNT payload to bomb Kham's mountain redoubt in northeast Myanmar. Kham had already evaded capture three times, so a drone strike may have seemed to be the best option. The authorities apparently had at least two plans for capturing Kham. The method they ultimately chose was to send Chinese police forces to lead a transnational investigation that ended in April 2012 with Kham's capture near the Myanmar-Laos border. The ultimate decision to refrain from the strike may reflect both a fear of political reproach and a lack of confidence in untested drones, systems, and operators. The restrictive position that Beijing takes on sovereignty in international forums will further constrain its use of drones. China is not likely to publicly deploy drones for precision strikes or in other military assignments without first having been granted a credible mandate to do so. The gold standard of such an authorisation is a resolution passed by the UN Security Council, the stamp of approval that has permitted Chinese humanitarian interventions in Africa and anti-piracy operations in the Gulf of Aden. China might consider using drones abroad with some sort of regional authorisation, such as a country giving Beijing explicit permission to launch a drone strike within its territory. But even with the endorsement of the international community or specific states, China would have to weigh any benefits of a drone strike abroad against the potential for mishaps and perceptions that it was infringing on other countries' sovereignty - something Beijing regularly decries when others do it. The limitations on China's drone use are reflected in the country's academic literature on the topic. The bulk of Chinese drone research is dedicated to scientific and technological topics related to design and performance. The articles that do discuss potential applications primarily point to major combat scenarios -such as a conflagration with Taiwan or the need to attack a US aircraft carrier - which would presumably involve far more than just drones. Chinese researchers have thought a great deal about the utility of drones for domestic surveillance and law enforcement, as well as for non-combat-related tasks near China's contentious borders. Few scholars, however, have publicly considered the use of drone strikes overseas. Yet there is a reason why the United States has employed drones extensively despite domestic and international criticism: it is much easier and cheaper to kill terrorists from above than to try to root them out through long and expensive counterinsurgency campaigns. Some similar challenges loom on China's horizon. Within China, Beijing often considers protests and violence in the restive border regions, such as Xinjiang and Tibet, to constitute terrorism. It would presumably consider ordering precision strikes to suppress any future violence there. Even if such strikes are operationally prudent, China's leaders understand that they would damage the country's image abroad, but they prioritise internal stability above all else. Domestic surveillance by drones is a different issue; there should be few barriers to its application in what is already one of the world's most heavily policed societies. China might also be willing to use stealth drones in foreign airspace without authorisation if the risk of detection were low enough; it already deploys intelligence-gathering ships in the exclusive economic zones of Japan and the United States, as well as in the Indian Ocean. Still, although China enjoys a rapidly expanding and cutting-edge drone fleet, it is bound by the same rules of the game as the rest of the military's tools. Beyond surveillance, the other non-lethal military actions that China can take with its drones are to facilitate communications within the Chinese military, support electronic warfare by intercepting electronic communications and jamming enemy systems, and help identify targets for Chinese precision strike weapons, such as missiles. Beijing's overarching approach remains one of caution - something Washington must bear in mind with its own drone programme.

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Their card proves

Brock Laney 13 Graduates with a BA in International Relations in April 2013 and will begin law school in fall 2013 BYU Prelaw review, vol. 27, 2013

Observed individually, single drone strikes might more closely resemble assassinations than warfare. A more comprehensive view of US drone operations in Pakistan, Yemen, or Somalia, however, reveals several characteristics that place drone strikes campaigns more securely within the category of conventional warfare. Just as Yorktown and Bunker Hill fall under the broader category of the American Revolutionary War, individual drone strikes are often constituent parts of larger campaigns with identifiable goals. Pro longed drone strike campaigns resemble war in levels of casualties, spillover effects into civilian populations, and consistency of attacks. Additionally, the Obama administration has justified drone activity by appealing to international conflict law, calling drone attacks part of a war on a specific belligerent.67 Thus, in this section I discuss similarities between drone strikes campaigns and war to justify the inclusion of drones under the authority of Congress. After establish- ing this, I discuss specific changes to the WPR that can provide an institutionalized accounting for drone activity. (i) War-Like Characteristics of Drone Strikes Campaigns First, drone strikes cause civilian and militant casualties in numbers that resemble trends typical of conventional warfare. Drone strikes’ clandestine nature makes estimates of deaths from attacks difficult to calculate, but careful studies of drone activity in Pakistan, Yemen, and Somalia since 2002 estimate casualties between 3,90068 and 4,700.69 To provide a comparison, the US suffered roughly 4,485 casualties from 2003-2012 in Iraq.70Although US officials have praised drones as capable of conducting surgical strikes with little or no collateral damage,71 third parties estimate hundreds of civilian casualties.72 Drone strikes also cause significant injuries and prop- erty damage.73 Finally, the nearly constant presence of drones over many villages in North and South Waziristan causes psychological and stress-related health problems that affect large proportions of civilian populations.74 Next, drone activity resembles war in its targeting of a specific belligerent over an extended period of time. Drone strikes occur on a monthly basis, with an average of roughly 32 deaths per month.75 Further, most drone strikes have targeted militants, the majority of which were associated with the Taliban and al-Qaeda.76 Attorney General Holder argued that the US faces a “stateless enemy,”77 but it is a specific enemy nonetheless. These facts, along with the regional focus of anti-militant drone strikes, bear similarity to conventional warfare wherein belligerents remain fixed and identifiable through- out the duration of a conflict. Finally, the Obama administration consistently justifies drone activity by citing international law as it relates to war, referring to individual drone strikes as part of a war on al-Qaeda and the Tali- ban.78 Harold Koh, for example, defended drones by referencing the right of the US to self-defense, which is sanctioned by international law.79 Koh stated that “the U.S. is in armed conflict with al-Qaeda as well as the Taliban and associated forces in response to the horrific acts of 9/11.”80 The administration’s explicit and repeated branding of drone activity in the Middle East as war provides strong evidence that drone campaigns deserve attention under the WPR alongside conventional warfare. Admittedly, drone campaigns are not identical to other forms of war. Pakistan, for example, has not reacted to US military activity in its country with physical retributive action. In drone warfare, how- ever, countries are not the targets, which explains in great measure Pakistan’s lack of military retaliation. Classifying drone campaigns as war does not require complete uniformity of attributes with other implements of traditional warfare because the nature of war is con- text dependent. Drones, deployed in the name of national defense, should not be subject to a separate list of constraints than are other instruments of war deployed for similar reasons.81 (ii) Accounting for Drones in the War Powers Resolution The inclusion of drone strikes in the WPR would duly anticipate an increasing trend towards fighting through unmanned vehicles.82 This global trend has indicated that “technologies that remove humans from the battlefield are becoming the new normal in war.”83 The costs to the US in terms of personnel casualties and political capital remain so low relative to other types of conflict that drone usage will likely persist or increase in frequency. The changing nature of international conflict suggests that drones and other un- ~~man~~ned military assets will probably become important aspects of war. Properly classifying drones and implementing a congressional check on their usage at a time when they are emerging as conventional weapons is therefore very important. Accounting for drones through the WPR would require only small modifications to the legislation. The resolution refers to “armed forces” as the asset of interest that Congress seeks to regulate.84 To induct drones into the WPR, legislators can expand the definition of armed forces therein to explicitly include drones and other un- manned military assets. Specifically, the resolution should define “armed forces” as any US military asset, manned or unmanned, deployed in the interest of national security with specific military target(s). Similar to the current version of the resolution, the updated law should require any President that deploys these military assets to abide by the restrictions and protocols outlined therein. An effective definition of drone strikes as part of the armed forces must necessarily address conditional factors since drones are not used exclusively for long-term campaigns. Drones are sometimes used for assassinations and other objectives, and although guidelines for controlling their use in these other areas are too broad to be dis- cussed here, modifications to the resolution should account for those distinct circumstances. To avoid unnecessary and possibly detrimental consequences of reporting covert operations to Congress, the updated resolution should include a clause that limits the type of drone activity the President must report to Congress. To distinguish between long-term campaigns and single attacks, the law should specify that two attacks targeting the same group or occurring in the same country within one month of each other constitute the beginning of a campaign. Once this condition is met, proceeding with the campaign would require presidential action as outlined in the WPR. Although seemingly arbitrary, two drone strikes in one month is likely an effective indicator that a series of attacks is becoming a campaign, and Congress should have the power to exert its constitu- tional authority when such a benchmark is reached. Reports indicate that there have been, on average, 2.84 drone attacks per month in Pakistan since 2004.85 Attacks in Yemen exhibit similar patterns, although the consistency of those attacks has not risen to Pakistan’s levels until recently.86 Using these current trends as a baseline helps determine the appropriate attack frequency for determining the starting point of a campaign. Because unsuccessful assassination at- tempts may necessitate a second attack in a relatively short period of time, the success of an attack should be considered in the definition of which attacks count towards defining a series of attacks as a cam- paign. Only attacks that successfully eliminate the intended target should be counted towards the limit. This will allow for repeated attempts if an assassination or other single operation endeavor fails after an initial attempt. Some might argue that including drone strikes in the WPR raises the cost of using drones to an unacceptably high level because their use would require formal sanction. Congressional approval, however, does not necessarily constitute an official declaration of war. Presidents have reported a number of conflicts to Congress consistent with the WPR that have proceeded without an official declaration from Congress.87 Additionally, the Obama administra- tion explicitly classifies the conflict with al-Qaeda and the Taliban as “armed conflict”88 and gaining explicit approval from Congress would not change the costs of moving forward with the conflict. Finally, obtaining congressional approval would potentially create greater domestic legitimacy for a campaign, thereby strengthening the President’s political position instead of weakening it. These considerations indicate that Congress can justifiably and easily address the lack of institutional oversight for drone warfare through modifying the WPR.

### At: we’re targeted killing

This allows them to access their adventurism advantage and interstate war b/c they restrict drone usage in future WARS—not the same thing as TK—they blow the lid off the topic

Silva, LL.M. from the University of Montreal, 2003

(Jose Sebastian, “Death for Life: A Study of Targeted Killing by States In International Law,” https://papyrus.bib.umontreal.ca/xmlui/handle/1866/2372)

As defined by Steven R. David, targeted killing is the "intentional slaying of a specific individual or group of individuals undertaken with explicit governmental approval.,,25 Though concise, the problem with this definition is that it fails to specify the intended targets and ignores the context in which they are carried out. **By failing to define targeted killings as measures of counter-terrorism**, **killings of all types may indiscriminately fall under its mantle with devastating consequences**. As such, the killing of political leaders in peacetime, which amounts to assassination, can fall within its scope. The same can be said about the killing of specific enemy combatants in armed conflict, which amounts to targeted military strikes, and the intentional slaying of common criminals, dissidents, or opposition leaders. Actions carried-out by governments within their jurisdictions can also be interpreted as targeted killings. Although the killing of terrorists abroad may constitute lawful and proportionate self-defense in response to armed attacks, the use of such measures by states for an unspecified number of reasons renders shady their very suggestion. David's definition is **essentially correct** **but over-inclusive**. As discussed in the following chapters, targeted killing will refer to lethal action taken by states against wanted individuals on foreign soil that have, or are preparing, to attack it. They must also not be equated with killings that occur during armed conflicts between states nor in the context of occupation or civil war. For the purpose of this study, **targeted killing will be defined as the *premeditated killing by states of specific individuals on foreign soil outside the context of armed conflict to prevent acts of international terrorism***. This definition covers almost any use of lethal force by states on foreign soil whose purpose is the prevention of international terrorism, provided that it is *not* carried-out in the context of an armed conflict as understood by the Geneva Conventions. Generally, this implies any military confrontation between "two or more of the High Contracting Parties, even if the state of war is not recognized by one of them,,,26 as well as armed conflicts not of an international character occurring in the territory of one of the High Contracting Parties. The limitation imposed by the proposed definition is that an armed conflict not already exist against the sanctuary-state or an armed group within it, as it would automatically render lawful the use of proportionate military force, including targeted killing. The purpose of the absence of armed conflict qualification is to remove from the analysis any possibility that targeted killings will be *automatically* justified as the killing combatants.

### --- 2NC – Military Personnel

“Armed Forces” is limited to human members of the military – it excludes civilians, contractors, weapons systems, and technologies

Chen 12 – JD, Boston College Law School, BA Rice (Julia, 11-26-2012, “Restoring Constitutional Balance: Accommodating the Evolution of War,” http://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=3263&context=bclr)JCP

The scope of actors that fall within the War Powers Consultation proposal should be broadened.344 The proposal currently is limited to “combat operation[s] by U.S. armed forces.”345 The legislation should be more expansive, and closer to the reality of modern war fighting, which is conducted by many actors in addition to the military.346 **This change could be accomplished by omitting the words “armed forces**.”347 Therefore, the scope of the legislation should be modified to encompass “any combat operation by the United States.”348 **This change to the proposed legislation would encompass military, government civilians, contractors, UAVs and other technological innovations that act on behalf of the nation**.349

### AT: Reasonability

#### Reasonability is impossible – it’s arbitrary and undermines research and preparation

Resnick, assistant professor of political science – Yeshiva University, ‘1

(Evan, “Defining Engagement,” Journal of International Affairs, Vol. 54, Iss. 2)

In matters of national security, establishing a clear definition of terms is a precondition for effective policymaking. Decisionmakers who invoke critical terms in an erratic, ad hoc fashion risk alienating their constituencies. They also risk exacerbating misperceptions and hostility among those the policies target. Scholars who commit the same error undercut their ability to conduct valuable empirical research. Hence, if scholars and policymakers fail rigorously to define "engagement," they undermine the ability to build an effective foreign policy.

### CP

### 2nc top level

Their whole solvency mechanism is based on building public acknowledgment of drones—the CP does that through transparency, which 1AC ev says is sufficient

Judah A. Druck 12, B.A., Brandeis University, 2010; J.D. Candidate, Cornell Law School, 2013, CORNELL LAW REVIEW, Vol. 98:209, http://www.lawschool.cornell.edu/research/cornell-law-review/upload/Druck-final.pdf

B. Why Existing Theories of Presidential Constraint Are No Longer Sufficient Naturally, some have argued that an unchecked President is not necessarily an issue at all. Specifically, in The Executive Unbound, Eric Posner and Adrian Vermeule argue that the lack of presidential constraint is actually a rational development: we want a President who can act with alacrity, especially in a world where quick decisions may be necessary (e.g., capturing a terrorist).153 But rather than worry about this progression, Posner and Vermeule argue that sufficient political restraints remain in place to prevent a president from acting recklessly, making the inability of legal constraints (such as the WPR) to curtail presidential action a moot point.154 Specifically, a mix of “elections, parties, bureaucracy, and the media” acts as an adequate constraint on presidential action, even absent any legal checks on the executive.155 Posner and Vermeule find that presidential credibility and popularity create a deep incentive for presidents to constrain their own power. This restraint does not arise from a sense of upholding the Constitution or fear of political backlash, but from the public itself.156 Because of these nonlegal constraints, the authors conclude that the fear of an unconstrained President (one that has the potential to go so far as tyranny) is unwarranted.157 The problem with such a theory is that the requisite social and political awareness that might have existed in large-scale wars has largely disappeared, allowing the President to act without any fear of diminished credibility or popularity. Specifically, Posner and Vermeule seem to rely on public attentiveness in order to check presidential action but do not seem to consider a situation where public scrutiny fails to materialize. The authors place an important caveat in their argument: “As long as the public informs itself and maintains a skeptical attitude toward the motivations of government officials, the executive can operate effectively only by proving over and over that it deserves the public’s trust.”158 But what happens when such skepticism and scrutiny vanish? The authors premise their argument on a factor that does not exist in a regime that utilizes technology-driven warfare. If credibility is what controls a President, and an apathetic populace does not care enough to shift its political views based on the use of technology-driven warfare abroad, then a President need not worry about public sentiment when deciding whether to use such force. This in turn means that the theory of self-restraint on the part of the President fails to account for contemporary warfare and its social impact, making the problem of public numbing very pertinent.159 CONCLUSION On June 21, 2011, the United States lost contact with a Fire Scout helicopter flying over Libya. Military authorities ultimately concluded that Qaddafi forces shot the helicopter down, adding to the final cost of America’s intervention.160 Yet there would be no outrage back home: no candlelit vigils, no congressional lawsuits, no protests at the White House gates, no demands for change. Instead, few people would even know of the Fire Scout’s plight, and even fewer would care. That is because the Fire Scout helicopter was a drone, a pilotless machine adding only a few digits to the final “cost” of the war, hardly worth anyone’s time or effort. As these situations become more and more common—where postwar assessments look at monetary, rather than human costs—the fear of unilateral presidential action similarly becomes more pertinent. Unlike past larger-scale wars, whose traditional harms provided sufficient incentive for the populace to exert pressure on the President (either directly or via Congress), technology-driven warfare has removed the triggers for checks on presidential action. And though the military actions that have raised WPR issues involved limited, small-scale operations, the volatile and unpredictable nature of warfare itself could eventually put American lives in danger, a risk worth considering given the increased use of drones abroad. Thus, the same conditions are now in place as when the WPR was enacted, creating a need to revisit the importance of the WPR in light of the numbing effect of technology-driven warfare. Although it might be tempting to simply write off the WPR as a failed experiment in aggressive congressional maneuvering given its inability to prevent unilateral presidential action in the past, the new era of warfare and its effects on the populace has created a newfound sense of urgency, one that requires a strong statutory barrier between the President and military action abroad. Thus, we need stronger WPR enforcement as it becomes easier to enter into “hostilities.” While others focus on the WPR itself,161 the emphasis of this Note is on the public’s role in preventing unilateral presidential action. In this respect, the simplest solution for the numbing effect of contemporary warfare is an increased level of public attentiveness and scrutiny concerning military actions abroad, regardless of the lack of visible costs at home. As we have seen, once the public becomes vigilant about our less-visible foreign actions, we can expect our politicians to become receptive to domestic law. But as this Note points out, the issues surrounding a toothless WPR will continue to grow and amplify as society enters a new age of technology-driven warfare. Thus, there is a pressing need for greater public awareness of the new, and perhaps less obvious, consequences of our actions abroad.162 Perhaps taking note of these unforeseen costs will improve the public’s inquiry into potential illegal action abroad and create real incentives to enforce the WPR.

Solves advantage 1 and the signal of the plan—their author

Singer, director – Center for 21st Century Security and Intelligence @ Brookings, and Wright, senior fellow – Brookings, 2/7/’13

(Peter W. and Thomas, "Obama, own your secret wars", www.nydailynews.com/opinion/obama-secret-wars-article-1.1265620)

It is time for a new approach. And all that is required of the President is to do the thing that he does perhaps best of all: to speak.

Obama has a unique opportunity — in fact, an urgent obligation — to create a new doctrine, unveiled in a major presidential speech, for the use and deployment of these new tools of war.

While the Republicans tried to paint the President as weak on security issues in the 2012 elections, history will record instead that his administration pushed into new frontiers of war, most especially in the new class of technologies that move the human role both geographically and chronologically further from the point of action on the battlefield.

The U.S. military’s unmanned systems, popularly known as “drones,” now number more than 8,000 in the air and 12,000 on the ground. And in a parallel development, the U.S. Cyber Command, which became operational in 2010, has added an array of new (and controversial) responsibilities — and is set to quintuple in size.

This is not just a military matter. American intelligence agencies are increasingly using these technologies as the tips of the spear in a series of so-called “shadow wars.” These include not only the more than 400 drone strikes that have taken place from Pakistan to Yemen, but also the deployment of the Stuxnet computer virus to sabotage Iranian nuclear development, the world’s first known use of a specially designed cyber weapon.

Throughout this period, the administration has tried to have it both ways — leaking out success stories of our growing use of these new technologies but not tying its hands with official statements and set policies.

This made great sense at first, when much of what was happening was ad hoc and being fleshed out as it went along.

But that position has become unsustainable. The less the U.S. government now says about our policies, the more that vacuum is becoming filled by others, in harmful ways.

By acting but barely explaining our actions, we’re creating precedents for other states to exploit. More than 75 countries now have military robotics programs, while another 20 have advanced cyber war capacities. Rest assured that nations like Iran, Russia and China will use these technologies in far more crude and indiscriminate ways — yet will do so while claiming to be merely following U.S. footsteps.

In turn, international organizations — the UN among them — are pushing ahead with special investigations into potential war crimes and proposing new treaties.

Our leaders, meanwhile, stay mum, which isolates the U.S. and drains its soft power.

The current policy also makes it harder to respond to growing concerns over civilian casualties. Indeed, Pew polling found 96% levels of opposition to U.S. drones in the key battleground state of Pakistan, a bellwether of the entire region. It is indisputable than many civilians have been harmed over the course of hundreds of strikes. And yet it is also indisputable that various groups have incentives to magnify such claims.

Yet so far, U.S. officials have painted themselves into a corner — either denying that any collateral losses have occurred, which no one believes, or reverting to the argument that we cannot confirm or deny our involvement, which no one believes, either.

Finally, the domestic support and legitimacy needed for the use of these weapons is in transition. Polling has found general public support for drone strikes, but only to a point, with growing numbers in the “not sure” category and growing worries around cases of targeting U.S. citizens abroad who are suspected of being terrorists.

The administration is so boxed in that, even when it recently won a court case to maintain the veil of semi-silence that surrounds the drone strike program, the judge described the current policy as having an “Alice in Wonderland” feel.

The White House seems to be finally starting to realize the problems caused by this disconnect of action but no explanation. After years of silence, occasional statements by senior aides are acknowledging the use of drones, while lesser-noticed working level documents have been created to formalize strike policies and even to explore what to do about the next, far more autonomous generation of weapons.

These efforts have been good starts, but they have been disjointed and partial. Most important, they are missing the much-needed stamp of the President’s voice and authority, which is essential to turn tentative first steps into established policy.

Much remains to be done — and said — out in the open.

This is why it’s time for Obama’s voice to ring loud and clear. Much as Presidents Harry Truman and Dwight Eisenhower were able keep secret aspects of the development of nuclear weapons, even as they articulated how and when we would use them, Obama should publicly lay out criteria by which the United States will develop, deploy and use these new weapons.

The President has a strong case to make — if only he would finally make it. After all, the new weapons have worked. They have offered new options for military action that are more accurate and proportionate and less risky than previously available methods.

But they have also posed many new complications. Explaining our position is about embracing both the good and the bad. It is about acknowledging the harms that come with war regardless of what technology is being used and making clear what structures of accountability are in place to respond.

It’s also about finally defining where America truly stands on some of the most controversial questions. These include the tactics of “signature” strikes, where the identity is not firmly identified, and “double tap” strikes, where rescuers aiding victims of a first attack are also brought under fire. These have been reported as occurring and yet seem to run counter to the principles under which the programs have been defended so far.

The role of the President is not to conduct some kind of retrospective of what we have done and why, but to lay out a course of the future. What are the key strategic goals and ethical guidelines that should drive the development and use of these new technologies? Is current U.S. and international law sufficient to cover them?

There are also crucial executive management questions, like where to draw the dividing line between military and civilian intelligence agency use of such technologies, and how to keep a growing range of covert actions from morphing into undeclared and undebated wars.

And, finally, the President must help resolve growing tensions between the executive branch and an increasingly restive Congress, including how to handle situations where we create the effect of war but no U.S. personnel are ever sent in harm’s way.

Given the sprawling complexity of these matters, only the President can deliver an official statement on where we stand. If only we somehow had a commander in chief who was simultaneously a law professor and Nobel Peace Prize winner!

The President’s voice on these issues won’t be a cure-all. But it will lay down a powerful marker, shaping not just the next four years but the actions of future administrations.

Solves drone prolif and backlash in Yemen—their author

Michael J. **Boyle 13**, Assistant Professor, Political Science – La Salle, International Affairs 89: 1 (2013) 1–29

In his second term, President Obama has an opportunity to reverse course

and establish a new drones policy which mitigates these costs and **avoids** some of

the long-term **consequences** that flow from them. A more sensible US approach

would impose some limits on drone use in order to minimize the political costs

and long-term strategic consequences. One step might be to limit the use of drones

to HVTs, such as leading political and operational figures for terrorist networks,

while reducing or eliminating the strikes against the ‘foot soldiers’ or other Islamist

networks not related to Al-Qaeda. This approach would reduce the number of

strikes and civilian deaths associated with drones while reserving their use for those

targets that pose a direct or imminent threat to the security of the United States.

Such a **self-limiting approach** to drones might also **minimize the degree of political**

**opposition** that US drone strikes generate in states such as Pakistan and Yemen, as

their leaders, and even the civilian population, often tolerate or even **approve of**

**strikes** against HVTs. Another step might be to **improve the levels of transparency**

of the drone programme. At present, there are no publicly articulated guidelines

stipulating who can be killed by a drone and who cannot, and no data on drone

strikes are released to the public.154

Even a Department of Justice memorandum

which authorized the Obama administration to kill Anwar al-Awlaki, an American

citizen, remains classified.155

Such **non-transparency fuels suspicions** that the US is

indifferent to the civilian casualties caused by drone strikes, a perception which in

turn magnifies the deleterious political consequences of the strikes. Letting some

sunlight in on the drones programme would not eliminate all of the opposition to

it, but it would go some way towards undercutting the worst conspiracy theories

about drone use in these countries while also signalling that the US government

holds itself legally and morally accountable for its behaviour.

156

Now, the plan clarifies definitions and relies on the executive to comply with WPR. The CP has the president INTERPRET THE WPR to include offensive drone strikes, which means that the President will go to Congress IF THE PLAN WORKS, but it doesn’t create a political constraint from the Congress.

Lederman, law professor at Georgetown, former Deputy Assistant Attorney General, 9/1/2013

(Marty, “Syria Insta-Symposium: Marty Lederman Part I–The Constitution, the Charter, and Their Intersection,” http://opiniojuris.org/2013/09/01/syria-insta-symposium-marty-lederman-part-constitution-charter-intersection/)

In the past two generations, there have been three principal schools of thought on the question of the President’s power to initiate the use of force unilaterally, i.e., without congressional authorization:

a. The traditional view, perhaps best articulated in Chapter One of John Hart Ely’s War and Responsibility, is that except in a small category of cases where the President does not have time to wait for Congress before acting to interdict an attack on the United States, the President must always obtain ex ante congressional authorization, for any use of military force abroad. That view has numerous adherents, and a rich historical pedigree. But whatever its merits, it has not carried the day for many decades in terms of U.S. practice.

b. At the other extreme is the view articulated at pages 7-9 of the October 2003 OLC opinion on war in Iraq, signed by Jay Bybee (which was based upon earlier memos written by his Deputy, John Yoo). The Bybee/Yoo position is that there are virtually no limits whatsoever: The President can take the Nation into full-fledged, extended war without congressional approval, as President Truman did in Korea, as long as he does so in order to advance the “national security interests of the United States.” With the possible exception of Korea itself, this theory has never reflected U.S. practice. (Indeed, even before that OLC opinion was issued, President Bush sought and obtained congressional authorization for the war in Iraq.) Notably, it was even rejected by William Rehnquist when he was head of OLC in 1970 (see the opinion beginning at page 321 here).

c. Between these two categorical views is what I like to call the Clinton/Obama “third way”—a theory that has in effect governed, or at least described, U.S. practice for the past several decades. It is best articulated in Walter Dellinger’s OLC opinions on Haiti and Bosnia, and in Caroline Krass’s 2011 OLC opinion on Libya. The gist of this middle-ground view (this is my characterization of it) is that the President can act unilaterally if two conditions are met: (i) the use of force must serve significant national interests that have historically supported such unilateral actions—of which self-defense and protection of U.S. nationals have been the most commonly invoked; and (ii) the operation cannot be anticipated to be “sufficiently extensive in ‘nature, scope, and duration’ to constitute a ‘war’ requiring prior specific congressional approval under the Declaration of War Clause,” a standard that generally will be satisfied “only by prolonged and substantial military engagements, typically involving exposure of U.S. military personnel to significant risk over a substantial period” (quoting from the Libya opinion).

Largely for reasons explained by my colleague and Dean, Bill Treanor, I am partial to this “third way,” at least in contrast to the two more categorical views described above. (I do not subscribe to every detail of the Dellinger and Krass opinions—in particular, I’m wary of resort to the interest in “regional stability,” which has never been used as a stand-alone justification for unilateral executive action—but I concur in the broad outlines sketched out above.) Regardless of whether Dean Treanor and I—and Presidents Clinton and Obama—are right or wrong about that, however, what’s important for present purposes is that U.S. practice after World War II (with the possible exception of Korea and Kosovo) reflects, and is consistent with, this “third way” view: When a prolonged campaign has been anticipated, with great risk to U.S. blood and treasure, congressional authorization has been necessary—and has, in fact been secured (think Vietnam, both Gulf Wars, and the conflict with al Qaeda). Otherwise, the President has considered himself free to act unilaterally, in support of important interests that have historically justified such unilateral action—subject, however, to any statutory limitations, including the time limits imposed by the War Powers Resolution. See, e.g., Libya (twice, 1986 and 2011), Panama (1989), Somalia (1992), Haiti (twice, 1994 and 2004), and Bosnia (1995).

Assuming this “third way” view is correct—or, in any event, that it establishes the relevant historical baseline against which to measure the case of Syria—Peter Spiro makes a valid point about the second of the two criteria. As he puts it, “[a]t no point in the last half century . . . has a president requested advance congressional authorization for anything less than the full-scale use of force.”

But that does not mean that the President’s turn to Congress yesterday is a “watershed,” for Peter overlooks the important first condition. All of the examples of unilateral presidential use of force since 1986 that he implicitly invokes (with the possible exception of Kosovo, discussed below) have been in the service of significant national interests that have historically supported such unilateral actions—such as self-defense, protection of U.S. nationals, and/or support of U.N. peacekeeping or other Security Council-approved endeavors and mandates (e.g., Bosnia and Libya).

The Syria operation, however, would have had no significant precedent in unilateral executive practice; it would not have been been supported by one of those historically sufficient national interests. That’s not to say that that operation would not be in the service of a very important national interest. For almost a century the U.S. has worked assiduously, with many other nations, to eliminate the scourge of chemical weapons. If Syria’s use of such weapons were to remain unaddressed, that might seriously compromise the international community’s hard-won success in establishing the norm that such weapons are categorically forbidden, and should not even be contemplated as instruments of war. As Max Fisher has written, “it’s about every war that comes after, about what kind of warfare the world is willing to allow, about preserving the small but crucial gains we’ve made over the last century in constraining warfare in its most terrible forms.”

Preventing that degradation of the strong international norm against use of chemical weapons is, indeed, an important national (and international) interest of the first order. (To be clear: I am not remotely qualified to opine on whether and to what extent the contemplated action would advance that interest—my point is only that the interest is undoubtedly an important one.) And perhaps that should be enough to justify discrete, unilateral presidential action short of “war in the constitutional sense.” But if so, it would nevertheless be an unprecedented basis for unilateral executive action, and it would open up a whole new category of uses of force that Presidents might order without congressional approval, even where such actions could have profound, longstanding consequences: Most obviously, think, for example, of possible strikes on Iran in order to degrade its nuclear capabilities. Is Peter so sure that that’s the sort of thing that a President should be able to do without obtaining congressional approval? At a minimum, it’s a profound, and heretofore unresolved, question, one that any President should be wary of raising.

But there’s yet another reason why unilateral action in Syria would have been especially troubling—a reason that hasn’t received the attention it warrants in recent days. As I discuss in my next post, I agree with the majority of OJ commentators that the Syrian operation would violate Article 2(4) of the U.N. Charter. Indeed, it’s not really a close question. But this is not merely a point about international law. The Charter is a treaty of the United States. It is therefore the “supreme Law” of the land under Article VI of the Constitution, and the President has a constitutional obligation (under Article II) to take care that it is faithfully executed. Unless and until Congress passes a “later in time” statute, under what authority can the President deliberately put the U.S. in breach of the Charter? That is to say: Whatever one’s views might be on the scope of the President’s authority to unilaterally use force abroad—whether you subscribe to the traditional view, the Bybee/Yoo view, or the Clinton/Obama “third way” (or any variant in between)—what is the possible justification for a unilateral presidential decision to violate a treaty that is binding as a matter of domestic law?

This is, I think, the most troubling thing about the 1999 Kosovo precedent. The Clinton Administration virtually conceded that the operation was in breach of the Charter. Of course, as a matter of domestic law, Congress can pass a statute authorizing violation of the Nation’s treaty obligation. And OLC concluded that Congress effectively authorized the Kosovo operation eight weeks after it began. But why did President Clinton have the authority, without congressional authorization, to order the operation, and to breach Article 2(4), during those first eight weeks? The notion that the President may unilaterally cause the U.S. to breach a treaty raises deep and unresolved questions of constitutional law: Just as Presidents Obama and Clinton were correct to assume that their unilateral uses of force (in Kosovo and Libya, respectively) were subject to the constraints of the War Powers Resolution, so, too, should the President act within the constraints of binding treaty obligations. The Clinton Administration never did address this problem in connection with Kosovo. (I should note that in 1989, OLC reasoned that because Article 2(4) of the Charter is non-self-executing, in the sense that it does not establish a rule for court adjudication, it is “not legally binding on the political branches,” and thus “as a matter of domestic law, the Executive has the power to authorize actions inconsistent with Article 2(4) of the U.N. Charter.” 13 Op. O.L.C. 163, 179. In my view, this understanding of the effect of a “non-self-executing” treaty is importantly mistaken—but that’s a much broader topic, for another day. I am not aware of any indication that the Clinton Administration adopted this position.)

For these reasons, I think that President Obama’s decision to ask Congress for authorization for the use of force in Syria is to be commended, and welcomed. Moreover, I agree with Jack Goldsmith that this decision will not result in any “surrender” of existing executive authority: When in the future the two “third way” criteria for unilateral action articulated in the Haiti, Bosnia and Libya OLC opinions are satisfied, and where the use of force does not violate the Charter, Presidents will certainly continue to assert the power to act unilaterally, subject to statutory and international law constraints. But if and when a President wishes to act for a reason that has not previously been the basis for unilateral action (such as to degrade another nation’s ability to use certain weapons), and/or in a manner that violates a U.S. treaty obligation, past practice will support obtaining congressional authorization, even as the question of the President’s unilateral authority in such circumstances remains untested and unresolved.

### 2nc yemen

Their ev says transparency is key, not WPR and prior congressional review—if the CP doesn’t solve Yemen, neither do they

Greenfield et al 2013 (March 26, Danya Greenfield , Deputy Director, Rafik Hariri Center for the Middle East at the Atlantic Council Ambassador, Barbara Bodine , Former US Ambassador to Yemen, Daniel Brumberg, Professor, Georgetown University, Robert D. Burrowes , Adjunct Professor , Emeritus , University of Washington, Sheila Carapico , Professor, University of Richmond, Juan Cole, Professor, University of Michigan, Isobel Coleman , Senior Fellow, The Council on Foreign Relations, Megan Corrado, Legal Counsel and Director of Yemen program , Public International Law & Policy Group, Stephen Day , Professor, Stetson University Charles Dunne , Director of Middle East and North Africa Programs, Freedom House Joshua Foust , National Security Columnist, PBS Need to Know, Stephen Grand , Nonresident Fellow , The Brookings Institution Steven Heydemann , Adjunct Professor, Georgetown University, James Hooper , Managing Director, Public International Law & Policy Group Michael Hudson , Director, Middle East Institute, National University of Singapore Brian Katulis , Senior Fellow, Center for American Progress, Stephen McInerney , Executive Director, Project on Middle East Democracy, David Kramer , President, Freedom House Peter Mandaville, Professor, George Mason University Ambassador, Richard W. Murphy, Former Assistant Secretary of State for Near Eastern and South Asian Affairs, Department of State Emile Nakhleh, Professor, University of New Mexico Shuja Nawaz , Director of South Asia Center at the Atlantic Council Stacey Philbrick Yadav, Professor, Hobart and William Smith Colleges Sarah Phillips , Senior Lecturer, the University of Sydney Charles Schmitz , Professor, Towson University Jillian Schwedler , Associate Professor, University of Massachusetts Daniel Serwer , Professor, Johns Hopkins University Anne - Marie Slaughter , Former Director of Policy Planning, Department of State Christopher Swift , Professor, Georgetown University Ambassador Edward Walker , Former Assistant Secretary of State for Near Eastern and South Asian Affairs , Department of State Wayne White, Former Deputy Director, Office of Analysis for the Near East and South Asia, Bureau of Intelligence and Research, Department of State, “Yemen Policy Initiative”, Coordinated by the Hairi Center for the Middle East at the Atlantic Council and the Project on Middle East Democracy, <http://pomed.org/wordpress/wp-content/uploads/2013/03/YPI-Letter-March-2013.pdf>)

The United States is right to invest in enhancing the capacity and operational effectiveness of Yemen’s armed forces. We have worked to provide training and technical assistance to Yemeni security forces for the purpose of combating extremism. President Hadi’s decision to restructure the security forces will help the government respond to domestic threats , and US support for a Yemeni - led process to implement this reorganization with a unified, centralized command structure will enhance the effectiveness of security forces . This will ultimately enhance their capability to provide security to Yemeni citizens and disrupt terrorist networks throughout the country. However, the increased reliance on drones undermines our long - term interest in a stable, secure, and sustainable partner in Yemen. A growing body of research indicates that civilian casualties and material damage from drone strikes discredit the central government and engender resentment towards the United States. Where drone strikes have hit civilians, news reports and first - hand accounts increasingly indicate that affected families and villages are demonstrating and chanting against the Yemeni and US government. This creates fertile ground for new recruits and sympathizers who might provide safe haven or direct support to AQAP and its local affiliate, Ansar al - Sharia. The collateral damage produced by drone strikes, along with the political cost of alienating Yemenis, reduces the political space within which we can cooperate with and help strengthen the Yemeni government. By embracing the expansive use of US drones, President Hadi risks undermining the legitimacy of his government. The vast majority of Yemenis likely accept that the Yemeni government must combat violent extremists that have found safe haven in Yemen, but reject US control of this campaign. The US strategy in Yemen is based on the core assumption that a strong and legitimate government is essential to overcome the myriad of challenges the country faces. By associating itself with drone strikes, the Yemeni government unwittingly undercuts its credibility amongst the population. Opposition to drone strikes is becoming a national rallying cry for those distrustful of the central government — from Ansar al - Sharia , to Houthis , to Southerners. Ultimately, the United States will not be able to overcome the threat of AQAP by military means alone – we cannot simply kill our way out of this problem. The only effective long - term strategy will prioritize helping the Yemeni government address the very factors that allow extremist ideology to spread: the absence of basic social services, a worsening food shortage, and chronic unemployment . The US government has made some positive changes over the past four years in terms of its policy toward Yemen, but more can and must be done to set our policy on the right course. Senior administration officials already emphasize our commitment to Yemen’s economic development and political transition, but actions speak louder than words. This is the moment to strengthen this commitment with concrete action. With the development of a new national security team, your administration is well positioned to make the following changes in US policy:  Leverage the US government’s close relationship with President Hadi to strongly encourage his government to meet the reform benchmarks to which he has committed and address human rights violations. These commitments arose from a process that President Hadi himself set forth as a result of the GCC agreement, and implementation is critical for the credibility of the process and international support. Your Administration should continue to work with Hadi and his government to empower democratic institutions and processes rather than individuals . Even in a transitional phase, Hadi and his government should focus on combating corruption, while rewarding merit rather than personal relationships.  Support the National Dialogue in ways that empower independent voices — not only political party elites — and include more extensive outreach to Southerners and Yemenis outside of Sanaa and other urban areas . The United States should encourage President Hadi to implement the twenty points recommended by the Technical Committee of the National Dialogue Conference to generate confidence among Yemenis in the dialogue process itself. Credible Southern participation is essential for the success of the dialogue, and concrete measures should be taken to demonstrate the government’s commitment to a fair process that will address Southern grievances. Beyond the National Dialogue, the United States should reach out more broadly to youth and civil society groups and work with new leaders capable of leading Yemen past the Saleh - era status quo .  Work within the Friends of Yemen group to ensure that the generous pledges committed to Yemen are delivered and that the government of Yemen has the capacity and resources it needs to implement projects . Beyond the moral imperative of providing assistance to avoid famine and extreme suffering, there is an acute security risk of this crisis leading to greater instability. The US should work with President Hadi and his government to activate and empower the new ly - established Executive Bureau with real decision - making powers to expedite donor - funded development projects, including leverage to push implementing agencies to action. Moving quickly to impleme nt development projects in the S outh and other vulnerable areas will help instill confidence in Hadi’s government and the dial ogue process.  Implement a more robust public diplomacy strategy to demonstrate that US interests in Yemen are not limited to counterterrorism and security issues . Although the State Department and USAID are engaging President Hadi’s government on economic , political, and humanitarian issues, most Yemenis are unaware of such initiatives and feel only the negative aspects of US counterterrorism policy. A visit by Secretary of State John Kerry would send a strong signal of support for Yemen’s transition and its democratic aspirations. Additionally, other high - level civilian officials — who are not connected to defense or security issues — should make public statements and speeches conveying a sustained US commitment to ensuring Yemen’s economic well - being and democratic development through the transition process.  Reevaluate our reliance on drone strikes with the recognition that this approach is generating significant anti - American sentiment and could strengthen the appeal of extremist groups. While the tactical costs and benefits are weighed by your Administration, the same degree of attention should be paid to the corrosive political costs of such strikes . Particular attention must be focused on the effect of strikes on the central government’s legitimacy and its ability to cooperate with the United States. At the same time, the Administration should work with Congress to develop a more transparent process and robust legal framework to govern the use of drone strikes in Yemen and elsewhere.  Ensure that security restructuring achieves a unified command structure under civilian leadership and that US military assistance does not perpetuate the same mistakes made during Saleh ’s tenure . US assistance should focus on strengthening institutions to enhance the long - term capacity of Yemen’s security forces to address armed threats to internal security — not only counterterrorism operations. Within such programs, the United States should prioritize the need for Yemeni forces to respect human rights and the rule of law . US security assistance and the delivery of defense articles should reflect progress on reform benchmarks to which President Hadi has already committed .  Increase economic assistance and draw upon regional funds to support Yemen, in addition to a bilateral assistance package. The US should allocate funds for Yemen from the Middle East Response Fund and the FY13 budget, as approved by Congress. Over the past year, US assistance has increased and shifted the proportion of economic aid relative to military assistance – this is a positive change that deserves recognition. USAID should continue this trend, and funding should focus specifically on job creation, improving the business and regulatory environments , enhancing civil society capacity and democratic institution - building . As individuals who care deeply about the United State s and the future of Yemen, representing a diversity of experience, opinion, and political affiliation, the undersigned urge you and those in your administration to consider and implement these recommendations with the utmost urgency. We lend our names in our personal, not institutional, capacity.

### --- Durable Fiat / AT: Rollback

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

Brecher, JD University of Michigan, December 2012

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

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

#### Epirics prove

Jensen, JD Drake University, Summer 2012

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

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

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

### Effective Constraint – 2NC

Transparency creates an incentive to constrain drone strikes

Gregory McNeal, Pepperdine University Professor, 3/15/13, Presidential Politics, International Affairs and (a bit on) Pakistani Sovereignty, www.lawfareblog.com/2013/03/presidential-politics-international-affairs-and-a-bit-on-pakistani-sovereignty/

Despite this lack of interest, some evidence exists to suggest that presidents do care about how their activities may be viewed by the public. As Baker has noted, during the bombing campaign in Kosovo, the possibility of civilian casualties from any given airstrike was seen as both a legal and political constraint. Due to this fact, some individual target decisions were deemed to have strategic policy implications that only the president could resolve (and we see similar presidential approvals for certain strikes in current operations). Moreover, **even in the absence of effective judicial constraints, and even without evidence of public concern** over matters of foreign policy, **the president is still constrained by politics and public opinion**. As Posner and Vermeule state, the president needs “both popularity, in order to obtain political support for his policies, and credibility, in order to persuade others that his factual and causal assertions are true and his intentions are benevolent.”

As was described in prior posts, the President is oftentimes directly involved in targeting decisions. This is due in part to globalized communications and also because as precision has increased, so too has the expectation (unrealistic as it is) that civilian casualties will be low or nonexistent. Given these expectations, presidents have oftentimes felt compelled to involve themselves to a greater degree in targeting decisions. This involvement brings with it enhanced political accountability. It allows for greater public awareness of kinetic operations and creates direct responsibility for results tied to the commander in chief’s immediate involvement in the decision-making process. Successes and failures are imputed (or at least can be imputed) directly to the president.

Presidential decision-making brings to light public recognition that the military and intelligence community are implementing rather than making policy. Moreover, when the president chooses to nominate people to assist him in making targeted killing decisions, the nomination process provides a mechanism of political accountability over the executive branch. This was aptly demonstrated by President Obama’s nomination of John Brennan to head the CIA. Given Brennan’s outsized role as an adviser to the president in the supervision of targeted killings, his nomination provided an opportunity to hold the president politically accountable by allowing senators to openly question him about the targeted killing process, and by allowing interest groups and other commentators to suggest questions that should be asked of him. Of course, secrecy can stifle some aspects of political accountability, but secrecy also has costs. Presidents require public support for their actions, and if the public does not trust him, that lack of trust may undermine other items on the administration’s agenda.

INTERNATIONAL POLITICAL CONSTRAINTS

Other political constraints from outside the U.S. may also impose costs on the conduct of targeted killings and those costs may serve as a form of accountability. For example, in current operations, targeted killings that affect foreign governments (as in domestic public opinion in Pakistan) or alliances (as in the case of UK support to targeting) all have associated with them higher political costs. Other **international political constraints can impose accountability on the targeting process**. For example, if Pakistan wanted to credibly protest the U.S. conduct of targeted killings, they could do so through formal mechanisms such as complaining at the UN General Assembly, petitioning the UN Security Council to have the matter of strikes in their country added to the Security Council’s agenda, or they could lodge a formal complaint with the UN Human Rights Committee. (UPDATE: In Emmerson’s letter he notes that the Pakistani government says they have at least made “public statements” regarding their lack of consent and their calls for “an immediate end to the use of drones by any other State on the territory of Pakistan.”). Pakistan could also expel U.S. personnel from their country, reject U.S. foreign aid, cut off diplomatic relations, and even threaten to shoot down U.S. aircraft. Despite apoplectic headlines, ledes and press releases, the fact that Pakistan has not pursued these means of international political accountability says a lot about the credibility of the sovereignty complaint.

Another international political mechanism can be seen in the form of overflight rights. As Zenko notes, sovereign states can constrain U.S. intelligence and military activities; “[t]hough not sexy and little reported, deploying CIA drones or special operations forces requires constant behind-the-scenes diplomacy: with very rare exceptions—like the Bin Laden raid—the U.S. military follows the rules of the world’s other 194 sovereign, independent states.” Other international political checks can be seen in the conduct of military operations. For example, during the 1991 Gulf War, the U.S. lawfully targeted Iraqi troops as they fled on what became known as the “highway of death.” The images of destruction broadcast on the news caused a rift in the coalition. Rather than lose coalition partners, the U.S. chose to stop engaging fleeing Iraqi troops, even though those troops were lawful targets. The U.S. government has similarly noted the importance of international public opinion, even highlighting its importance in its own military manuals. For example, the Army’s Civilian Casualty Mitigation manual states civilian casualties may “lead to ill will among the host-nation population and political pressure that can limit freedom of action of military forces. If Army units fail to protect civilians, for whatever reason, the legitimacy of U.S. operations is likely to be questioned by the host nation and other partners.”(See more here).

Critics of targeted killings tend to favor judicial mechanisms of accountability, believing that such externally imposed measures are the only effective mechanism of control over executive action. However, judicial accountability is not the only mechanism of control over targeted killings — **political accountability can**, under the right circumstances, **serve as an effective mechanism of control**. In the paper I also discuss bureaucratic and professional accountability, two of the less visible mechanisms of control in the targeted killing process. My next post will discuss reform recommendations that can enhance accountability for targeted killings.

### --- Solves Modeling

Solves drone modeling

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

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

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

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

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

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

### AT: Links to Net Benfit

Changes in policy don’t trigger the DA

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

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

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

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

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

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

### 1nc self defense shift

They only do offense—self-defense authority shift means they don’t solve

Steve Vladeck, American University Washington College of Law Associate Dean, Professor, 5/16/13, The Washington Post, the AUMF, and Self-Defense, www.lawfareblog.com/2013/05/the-washington-post-the-aumf-and-self-defense/

Ben quotes from this morning’s Washington Post editorial on AUMF reform, the last two sentences of which assert that “Countering the jihadists with intelligence and law enforcement tools manifestly failed before Sept. 11, 2001. Congress would be wise to ensure that this president and his successors have the authority they need to defend the country.” There are at least two problems with this statement, both of which go right to the core of the editorial–and of the larger debate over whether a new AUMF is necessary: First, is it really “wise” for Congress to spend its limited time providing the President with use-of-force authority **he doesn’t think he needs**? Second, and **more significantly**, a lack of congressional action does not prevent the President from acting in self-defense where necessary. The age-old debate over the scope of the President’s “inherent war powers” is primarily about their scope, not their existence. Put another way, the Post‘s not-so-subtle insinuation to the contrary notwithstanding, it wasn’t the absence of an AUMF-like statute that prevented the Bush Administration from stopping the 9/11 attacks; it was a breakdown in the sharing of intelligence and law enforcement information. (That’s why Jen and I dismissed this argument in our paper as a “red herring.”) Instead, the real question is why self-defense authorities would be inadequate in cases in which law enforcement and intelligence tools prove insufficient and/or unavailable. To that, this morning’s editorial has no answer. [Update: As several readers have written in to point out, the best evidence that the U.S. did not lack legal authority to use force against al Qaeda on or before September 11 is the fact that we did in fact use such force--e.g., in response to the 1998 embassy bombings.]

### Drone Prolif

### at autonomous drones

Their first impact is sci fi

Schmitt, chairman and professor of international law – US Naval War College, and Thurnher, military professor – US Naval War College, ‘13

(Martin and Jeffrey, 4 Harv. Nat'l Sec. J. 231)

[\*241] Before turning to the legal issues surrounding autonomous weapon systems, it is necessary to debunk a number of myths about autonomous weapon systems that are clouding public debate. First, the idea of "robot wars" is pure science fiction. As noted by a Department of Defense Task Force, "the true value of these systems is not to provide a direct human replacement, but rather to extend and complement human capability by providing potentially unlimited persistent capabilities, reducing human exposure to life threatening tasks, and, with proper design, reducing the high cognitive load currently placed on operators/supervisors." n40 Autonomous weapon systems will be integrated into human warfare, but are highly unlikely to replace it. n41 Second, neither the United States nor any other country is contemplating the development of any systems that would simply hunt down and kill or destroy enemy personnel and objects without restrictive engagement parameters, such as limiting the area of operation or nature of the target. As the Defense Science Board points out, "all autonomous systems are supervised by human operators at some level, and autonomous systems' software embodies the designed limits on the actions and decisions delegated to the computer. Instead of viewing autonomy as an intrinsic property of an unmanned vehicle in isolation, the design and operation of autonomous systems needs to be considered in terms of human-system collaboration." n42 At least for the foreseeable future, autonomous weapon systems will only attack tar-gets meeting predetermined criteria and will function within an area of operations set by human operators. The U.S. Department of Defense is exceptionally sensitive to the human interface issue. It has recently promulgated policy guidance that [\*242] requires the Secretaries of the military departments, the Commander of U.S. Special Oper-ations Command, and certain other high-level officials to: [d]esign human-machine interfaces for autonomous and semi-autonomous weapon systems to be readily understandable to trained operators, provide traceable feedback on system status, and provide clear pro-cedures for trained operators to activate and deactivate system functions . . . ; [c]ertify that operators of autonomous and semiautonomous weapon systems have been trained in system capabilities, doctrine, and [tactics, techniques, and procedures] in order to exercise appropriate levels of human judgment in the use of force and employ systems with appropriate care and in accordance with the law of war, applicable treaties, weapon system safety rules, and applicable [rules of engagement] . . . ; [and e]stablish and peri-odically review training, and [tactics, techniques, and procedures], and doctrine for autonomous and sem-iautonomous weapon systems to ensure operators and commanders understand the functioning, capabili-ties, and limitations of a system's autonomy in realistic operational conditions, including as a result of possible adversary actions. n43 Finally, robots will not "go rogue." While autonomous and semiautonomous weapon systems will be susceptible to mal-function, that is also the case with weapon systems ranging from catapults to computer attack systems. Like a missile that "goes ballistic" (loses guidance), future autonomous systems could fall out of parameters. However, the prospect of them "taking on a life of their own" is a fantastical Hollywood invention. n44

### 2nc at china impact

No impact to China drones—international backlash to SCS adventurism prevents use—they don’t want to set a precedent for use in East Asia—drones are for domestic surveillance only—that’s Erickson

Even if, SCS wouldn’t escalate

Kania 13 [Elsa Kania, Harvard Political Review, 1/11/13, “The South China Sea: Flashpoints and the U.S. Pivot,” <http://www.iop.harvard.edu/south-china-sea-flashpoints-and-us-pivot>, accessed 9/14/13, JTF]

One paradox at the heart of the South China Sea is the uneasy equilibrium that has largely been maintained. Despite the occasional confrontation and frequent diplomatic squabbling, **the situation has never escalated into full-blown physical conflict.** The main stabilizing factor has been that the countries involved have too much to lose form turmoil, and so much to gain from tranquility. Andrew Ring—former Weatherhead Center for International Affairs Fellow—emphasized that “With respect to the South China Sea, we all have the same goals” in terms of regional stability and development. With regional trade flows and interdependence critical to the region’s growing economies, conflict could be devastating. Even for China—the actor with by far the most to gain from such a dispute—taking unilateral action would irreparably tarnish its image in the eyes of the international community. With the predominant narrative of a “rising” and “assertive China”—referred to as a potential adversary by President Obama in the third presidential debate—China’s behavior in the South China Sea may be sometimes exaggerated or sensationalized. Dr. Auer, former Naval officer and currently Director of the Center for U.S.-Japan Studies and Cooperation at the Vanderbilt Institute for Public Policy Studies, told the HPR that “China has not indicated any willingness to negotiate multilaterally” and remains “very uncooperative.” Across its maritime territorial disputes—particularly through recent tensions with Japan in the East China Sea—Auer sees China as having taken a very aggressive stance, and he claims that “Chinese behavior is not understandable or clear.”

Their impact is alarmism—US lead is locked in and other modernization makes their impact inevitable

Moss, writer – The Diplomat, former editor for the Asia-Pacific – Jane’s Defence Weekly, 3/2/’13

(Trefor, “Here Come…China’s Drones,” http://thediplomat.com/2013/03/02/here-comes-chinas-drones/?all=true)

Unmanned systems have become the legal and ethical problem child of the global defense industry and the governments they supply, rewriting the rules of military engagement in ways that many find disturbing. And this sense of unease about where we’re headed is hardly unfamiliar. Much like the emergence of drone technology, the rise of China and its reshaping of the geopolitical landscape has stirred up a sometimes understandable, sometimes irrational, fear of the unknown. It’s safe to say, then, that Chinese drones conjure up a particularly intense sense of alarm that the media has begun to embrace as a license to panic. China is indeed developing a range of unmanned aerial vehicles/systems (UAVs/UASs) at a time when relations with Japan are tense, and when those with the U.S. are delicate. But that **hardly justifies claims** that “drones have taken center stage in an escalating arms race between China and Japan,” or that the “China drone threat highlights [a] new global arms race,” as some observers would have it. This hyperbole was perhaps fed by a 2012 U.S. Department of Defense report which described China’s development of UAVs as "alarming." That’s quite unreasonable. All of the world’s advanced militaries are adopting drones, not just the PLA. That isn’t an arms race, or a reason to fear China, it’s just the direction in which defense technology is naturally progressing. Secondly, while China may be demonstrating impressive advances, Israel and the U.S. retain a substantial lead in the UAV field, with China—alongside Europe, India and Russia— still in the second tier. And thirdly, China is modernizing in all areas of military technology – unmanned systems being no exception.

They overinflate the China threat

Zhao 13 [Zhao Xiaozhuo, senior colonel and deputy director of the Center for China-America Defense Relations, the Academy of Military Science, 5/13/13, China Daily, “US and the art of exaggeration,” <http://usa.chinadaily.com.cn/epaper/2013-05/13/content_16494719.htm>, accessed 9/15/13, JTF]

The annual report of the US Department of Defense on Chinese military and security development, released on May 6, is full of groundless speculations on the strength and aim of China's armed forces. In fact, it is out of tune with the development trend of Sino-US relations.

Briefing reporters at the Pentagon, David F. Helvey, US deputy assistant secretary of defense for East Asia, claimed the report was not speculative. The report has six chapters and four additional special topics on China's combat capability and its main body is 68 pages long compared with the 19 pages of the 2012 report. It covers an entire gamut of cases and data, which have been selectively included to show that China poses a military threat to other countries.

For instance, in the chapter titled "Understanding China's Strategy", the report says China employed "punitive trade policies" in response to the arrest of the captain of a Chinese fishing vessel after it collided with Japan coast guard boats in the disputed waters off the Diaoyu Islands in 2010. It also says the Philippines and Vietnam have had to bear the brunt of China's pressure in the South China Sea and misinterprets China's assertiveness in defending its sovereignty and territorial integrity as a deviation from the path of peaceful development.

The report mentions China's internal debate on its long-held principle of maintaining a low profile and alleges that Beijing may seek to play an aggressive role in regional and global issues. Even China's proposal of building a new type of power relationship has been misinterpreted as its aspiration to be regarded as a great power. And the commissioning of first and only aircraft carrier, Liaoning, the report says, is a sign of China flexing its military muscles to win regional maritime conflicts.

The report is littered with what the US claims is "evidence", to exaggerate China's military strength. For instance, it says that up to five Jin-class nuclear-powered, ballistic missile-carrying submarines may enter the services of the Chinese navy to give it the first credible sea-based nuclear deterrent, which is nothing but a baseless guess.

Pivot makes it inevitable but no impact

Zhouin 12 (Dillon, graduate of the International Relations Program at the University of Massachusetts Boston, PolicyMic, “China Drones Prompt Fears of a Drone Race With the US”, <http://www.policymic.com/articles/19753/china-drones-prompt-fears-of-a-drone-race-with-the-us>, ZBurdette)

During China’s twice-a-year show, visitors got to see an impressive and, to some, alarming fleet of drones developed by Chinese companies, including many models resembling U.S. drones with their body shape, flight specs, and their missile and surveillance capabilities. It’s evident that China intends to take full advantage of using unmanned aerial vehicles (UAVs) to achieve its national interests – including their territorial disputes over the Senkaku Islands and South China Sea. The U.S. and the World should, therefore, be concerned with this development given that this may lead to a drone race between the top two producers of drones – the U.S. and China. In a world whose militaries and governments are buzzing about the potential of the drones, it is no surprise that China is working to bring their drone program up to speed to compete with America just as President Obama is executing his "Asia Pivot" through strengthening U.S. military, political and economic presence in Asia. China is rising – as evident in its growing economic and military power – but the U.S. should not treat the Chinese drone program as a cause for panic. If the U.S. works towards countermeasures against drones from rival states – like China – the risk posed by the development of competing drone programs can be minimized allowing the U.S. to implement its "Asia Pivot" with one less impediment. The Rise of the Drones Drones are the strategic tools of the future, especially when it comes to the political contests between the major players in global affairs. The Department of Defense’s Defense Science Board (DSB) released a report on the future of drones as a potent tool of great powers like the U.S. and China. The report notes that drones are fast becoming a “tipping point” in global affairs because: “Armed forces in the United States and around the world have actively embraced unmanned systems. The advantages of these systems in terms of persistence, endurance and generally lower costs and deployment footprint have been highlighted in recent conflicts ... Unmanned systems have become an established part of military operations and will play an increasing role in the modern military machine.” The value of the drone lies in its capacity to radically expand a military’s ability to gather intelligence and expand its ability to project its power beyond limits faced by frontline personnel. It can also carry out the unpleasant business of neutralizing enemies, including Anwar al-Awlaki and Abu Yahya al-Libi, Al Qaeda’s last number two leaders, with some civilian casualties. However, the drone is not as precise or accurate as described by the defense industry – as shown by a joint study published by Stanford Law School and NYU School of Law, which detailed the considerable toll taken on civilians in Pakistan – and causes unintended consequences in its search and kill operations in multiple areas of U.S. intelligence operations. The U.S. remains the leading market for drones, but other powers like China, Russia, Europe and the Middle East are also working to develop their own drone capabilities. Unlike the other powers, China is the most prolific developer of a rival drone program to America's program. The DSB report said “[i]n a worrisome trend, China has ramped up research in recent years faster than any other country.” China’s New “Dragons” in the Sky Like the U.S., China has given its new fleet of UAVs unique code names – which often include the character for “dragon” or "long" – and designed them with comparable capabilities as their U.S. counterparts. Many of its newer models – including the CH-4, the Wing Loong and Xianglong – appears to be copies of the U.S. Reaper, Predator and Global Hawk designs. The drone program has had a profound effect on China’s defense industry. The DSB report notes that “[China] displayed its first unmanned system model at the Zhuhai air show five years ago, and now every major manufacturer for the Chinese military has a research center devoted to unmanned systems.” One unique aspect of the Chinese drone program is that the cost of the drones are significantly cheaper than those made by the U.S. and Israel. For example, according to Wired, "[t]he Wing Loong [the Chinese equivalent of the U.S. Reaper] reportedly comes at a rather incredible bargain price of $1 million (£625,000), compared to the Reaper's varying price tags in the $30 million (£18.7 million) range." For China, their nascent drone program provides a valuable tool for projecting its power in Asia, especially in a time when it’s engaged in territorial disputes with its neighbors. More importantly, China feels a need to meet the threat in perceives in President Obama’s so-called “Asia Pivot.” The drones could act as the ideal surveillance tool in tracking U.S. and its Asian allies' military movements in the event of a crisis or international spat and act as a proxy weapon to deter assertive behavior over the South China Sea and Senkaku Islands. At the same time, the cheaper Chinese drones are a hot export product line for the Chinese defense industry. Many African and Asian states have placed orders for the economic Chinese drones. "We've been contacting many countries, especially from Africa and Asia," Guo Qian, a director at a division of the state-owned China Aerospace Science and Technology Corporation. The geostrategic impact of the advent of these new "dragons" is to stoke fears of a drone race between the U.S. and China, which have already manifested at the Pentagon. Worried About the Dragons’ Reach The U.S. is deeply concerned with the speed of the Chinese drone program and the growing resources being devoted to the program. The main concern, according to the DSB report, is as follows: “The military significance of China’s move into unmanned systems is alarming. [China] has a great deal of technology, seemingly unlimited resources and clearly is leveraging all available information on Western unmanned systems development. China might easily match or outpace U.S. spending on unmanned systems, rapidly close the technology gaps and become a formidable global competitor in unmanned systems.” Basically, the U.S. is afraid that it won't be able to keep up with a China that has invested itself in a intensive government-sponsored effort to compete with the U.S. drone program in terms of technical quality, quantity, and as a export product to clients in the developing world. On a strategic level, the Chinese drones could be the "tipping point" for giving the Chinese the edge in possible future disputes in Asia with the U.S. as it attempts to create regional security as part of its "Asia Pivot." There are several facts that provide some solace to the U.S. as China's drones are far from being a real challenge to the American drone program. First, the Chinese drones are nowhere as sophisticated as U.S. drones in their range and proper hardware for optic systems and motors to power the "dragons." The DSB report notes that the U.S. technical systems are almost unrivaled at present. Second, China lacks the manpower to properly support their new fleet of drones. Whereas the U.S. has been training and honing a large force of UAV pilots, technicians and operation managers for 15 years. Finally, the U.S. drone program is about 20 years ahead of the Chinese program. The current models on show are considered to be prototypes and not finished products. The Chinese also have not had a chance to gain real experience with their drones during real operation. The U.S. shouldn't be alarmed given these facts. Nor should it be overly critical of the Chinese drone program. Scott Shane of The New York Times observes that the U.S. has set the "international norms" for using drones: "If China, for instance, sends killer drones into Kazakhstan to hunt minority Uighur Muslims it accuses of plotting terrorism, what will the United States say? What if India uses remotely controlled craft to hit terrorism suspects in Kashmir, or Russia sends drones after militants in the Caucasus? American officials who protest will likely find their own example thrown back at them." The U.S. needs to take countermeasures against future risks from Chinese drones, but it needs not be overly alarmed or antsy. Clearly, President Obama and the U.S. has a need to work hard to keep the U.S. ahead of the competition from the "dragons" in order to implement the "Asia Pivot" and pursue U.S. interest in a balance of power in the region.

### Terror

### Mid east impact

#### No escalation

Fettweis, Asst Prof Poli Sci – Tulane, Asst Prof National Security Affairs – US Naval War College, ‘7

(Christopher, “On the Consequences of Failure in Iraq,” *Survival*, Vol. 49, Iss. 4, December, p. 83 – 98)

Without the US presence, a second argument goes, nothing would prevent Sunni-Shia violence from sweeping into every country where the religious divide exists. A Sunni bloc with centres in Riyadh and Cairo might face a Shia bloc headquartered in Tehran, both of which would face enormous pressure from their own people to fight proxy wars across the region. In addition to intra-Muslim civil war, cross-border warfare could not be ruled out. Jordan might be the first to send troops into Iraq to secure its own border; once the dam breaks, Iran, Turkey, Syria and Saudi Arabia might follow suit. The Middle East has no shortage of rivalries, any of which might descend into direct conflict after a destabilising US withdrawal. In the worst case, Iran might emerge as the regional hegemon, able to bully and blackmail its neighbours with its new nuclear arsenal. Saudi Arabia and Egypt would soon demand suitable deterrents of their own, and a nuclear arms race would envelop the region. Once again, however, none of these outcomes is particularly likely.

Wider war

No matter what the outcome in Iraq, the region is not likely to devolve into chaos. Although it might seem counter-intuitive, by most traditional measures the Middle East is very stable. Continuous, uninterrupted governance is the norm, not the exception; most Middle East regimes have been in power for decades. Its monarchies, from Morocco to Jordan to every Gulf state, have generally been in power since these countries gained independence. In Egypt Hosni Mubarak has ruled for almost three decades, and Muammar Gadhafi in Libya for almost four. The region's autocrats have been more likely to die quiet, natural deaths than meet the hangman or post-coup firing squads. Saddam's rather unpredictable regime, which attacked its neighbours twice, was one of the few exceptions to this pattern of stability, and he met an end unusual for the modern Middle East. Its regimes have survived potentially destabilising shocks before, and they would be likely to do so again.

The region actually experiences very little cross-border warfare, and even less since the end of the Cold War. Saddam again provided an exception, as did the Israelis, with their adventures in Lebanon. Israel fought four wars with neighbouring states in the first 25 years of its existence, but none in the 34 years since. Vicious civil wars that once engulfed Lebanon and Algeria have gone quiet, and its ethnic conflicts do not make the region particularly unique.

The biggest risk of an American withdrawal is intensified civil war in Iraq rather than regional conflagration. Iraq's neighbours will likely not prove eager to fight each other to determine who gets to be the next country to spend itself into penury propping up an unpopular puppet regime next door. As much as the Saudis and Iranians may threaten to intervene on behalf of their co-religionists, they have shown no eagerness to replace the counter-insurgency role that American troops play today. If the United States, with its remarkable military and unlimited resources, could not bring about its desired solutions in Iraq, why would any other country think it could do so?17

Common interest, not the presence of the US military, provides the ultimate foundation for stability. All ruling regimes in the Middle East share a common (and understandable) fear of instability. It is the interest of every actor - the Iraqis, their neighbours and the rest of the world - to see a stable, functioning government emerge in Iraq. If the United States were to withdraw, increased regional cooperation to address that common interest is far more likely than outright warfare.

#### No Saudi-Iran hot war

Hokayem, senior fellow for regional security – International Institute for Strategy Studies, and Esfandiary, research analyst and project coordinator – IISS, 10/27/’11

(Emile and Dina, “Rising tensions in Iran and Saudi Arabia's Cold War,” <http://www.iiss.org/whats-new/iiss-experts-commentary/rising-tensions-in-iran-and-saudi-arabias-cold-war/>)

The failed assassination attempt on the Saudi ambassador to Washington, allegedly master-minded by the Iranian government, has led to a heightening of tension between two countries that have been stuck in a Cold War for many years. Saudi condemnation of the foiled plot has been voracious, and threats have not been veiled. But while the US sent an envoy to Europe to convince allies of the need for imposing sanctions against the Iranian Central Bank, the Saudis have yet to take decisive action.

So what can they do? One thing is certain; there will be no conventional retaliation. Although Saudi Arabia spends as much as four times more than Iran on its military, it could not afford such a conflict. The political cost of a war is unconscionable for everyone. But Saudi Arabia does have other options:

Firstly, the economic option. Saudi Arabia can influence the price of oil to affect Iran’s exports and revenues. This would mean increasing oil production by up to 3 million barrels a day; a lengthy process with no guarantee of success. At first, many analysts thought this would be the most likely outcome, especially after Prince Turki outlined the kingdom’s ideal position to ‘squeeze’ Iran economically at a meeting in the UK this summer.

It is not the first time that Saudi Arabia and other Gulf states are thought to be considering oil as a weapon. Many analysts speculated that they could guarantee oil supply to China in exchange for a tougher Chinese approach at the UN Security Council over Iran’s nuclear programme. But it is unlikely that Saudi Arabia would pull this off. Saudi Arabia’s own budgetary requirements necessitate a high oil price. In March, the Kingdom unveiled a 130-billion dollars package to pre-empt any unrest related to popular dissatisfaction and its own financial prospects on the long term are dire.

Politically, Saudi Arabia could use its clout in the region, and more importantly, through regional organisations such as the Gulf Cooperation Council and the Arab League, to bring other Arab states in line with its anti-Iran stance. Not all Arab states are comfortable with a tough approach toward Iran, and Arab public opinion itself is largely opposed to direct pressure on Iran, which it sees as a Western and Israeli-driven conspiracy.

The Saudis could take it a step further by condemning Iranian action in international forums such as the Organisation of Islamic Cooperation, within the presence of Iranian diplomats. This would effectively humiliate them in front of their peers, and force countries on the fence to take a position. The plot also gives Riyadh a way to press China and Russia harder on their support of Iran at the UN Security Council. An assertive Saudi Arabia could convince or even shame these reluctant powers to re-examine their posture.

Another proposed option is a reduction in the Saudi diplomatic presence in Iran, and a push to convince others to follow suit. This may not work given the close political and economic ties between Iran and countries in the region, such as Oman and Qatar. But the plot has presented the Saudis with a golden opportunity to cry out ‘Iran’ anytime they want to justify intervention in other states, including Yemen, Syria, Lebanon and Bahrain.

The Saudis have also unleashed a media campaign against Iran. Saudi-owned newspapers and TV networks have unconditionally espoused the official line on the alleged plot. A Saudi columnist wrote that Iran is the real enemy of the Arabs, while Israel comes only second.

Finally, the Saudis could respond to the plot asymmetrically, by targeting Iranian interests, businessmen and diplomats in countries such as Afghanistan, Iraq and Pakistan. This would not be unheard of: while Saudis traditionally shun confrontation, they too have developed proxies throughout the region and could make Iran’s life difficult. Saudi Arabia already blames Iran for the killing of a Saudi diplomat in Pakistan in May, and may see a need to retaliate in kind.

### 1nc retaliation

Public won’t demand retaliation

Smith and Herron 5, \*Professor, University of Oklahoma, \* University of Oklahoma Norman Campus, (Hank C. Jenkins-Smith, Ph.D., and Kerry G., "United States Public Response to Terrorism: Fault Lines or Bedrock?" Review of Policy Research 22.5 (2005): 599-623, <http://works.bepress.com/cgi/viewcontent.cgi?article=1000&context=hjsmith>)

Our final contrasting set of expectations relates to the degree to which the public will support or demand retribution against terrorists and supporting states. Here our data show that support for using conventional United States military force to retaliate against terrorists initially averaged above midscale, but did not reach a high level of demand for military action. Initial support declined significantly across all demographic and belief categories by the time of our survey in 2002. Furthermore, panelists both in 2001 and 2002 preferred that high levels of certainty about culpability (above 8.5 on a scale from zero to ten) be established before taking military action. Again, we find the weight of evidence supporting revisionist expectations of public opinion.

Overall, these results are inconsistent with the contention that highly charged events will result in volatile and unstructured responses among mass publics that prove problematic for policy processes. The initial response to the terrorist strikes demonstrated a broad and consistent shift in public assessments toward a greater perceived threat from terrorism, and greater willingness to support policies to reduce that threat. But even in the highly charged context of such a serious attack on the American homeland, the overall public response was quite measured. On average, the public showed very little propensity to undermine speech protections, and initial willingness to engage in military retaliation moderated significantly over the following year.

Perhaps most interesting is that the greatest propensity to change beliefs between 2001 and 2002 was evident among the best-educated and wealthiest of our respondents— hardly the expected source of volatility, but in this case they may have represented the leading edge of belief constraints reasserting their influence in the first year following 9/11. This post-9/11 change also reflected an increasing delineation of policy preferences by ideological and partisan positions. Put differently, those whose beliefs changed the most in the year between surveys also were those with the greatest access to and facility with information (the richest, best educated), and the nature of the changes was entirely consistent with a structured and coherent pattern of public beliefs. Overall, we find these patterns to be quite reassuring, and consistent with the general findings of the revisionist theorists of public opinion. Our data suggest that while United States public opinion may exhibit some fault lines in times of crises, it remains securely anchored in bedrock beliefs.

### 2nc no WMD

Framing: the bigger the attack, the less probable it gets

Chivers 3/11

(Tom, “'Superbugs' aren't as much of a threat as terrorism: they're hundreds of times more dangerous than that” March 11, 2013, The Telegraph)

That's not the whole story, of course. As His Worshipfulness Nate Silver points out, like earthquakes and meteorite strikes, the risk of terror attacks of different magnitudes displays a power-law pattern: there are lots of little ones, but they get exponentially rarer the bigger they get. His data, taken from Aaron Clauset's study of terrorism in Nato member countries, suggested that attacks that kill 100 or more people should happen about once every five years. (In fact there have been seven such attacks in the last 31 years: pretty close.) Attacks causing 1,000 or more deaths should happen about once every 22 years, and September 11-style attacks about once every 40 to 80 years, depending on whether or not you include September 11 in your data. The attacks form a remarkably straight line when plotted on a double-logarithmic scale. What's interesting about that is that it allows us to make predictions. Just as we could have predicted the possibility of mega-earthquakes like the one that hit Japan in 2011 by looking at the likelihood of smaller ones, we can say that "magnitude 9 terror attacks" (as Silver describes them, putting September 11 at magnitude 8), which would kill tens or hundreds of thousands, should not be unthinkable, just rare. On the power-law graph, a terror attack killing one million people in a Nato country should happen about once every 1,600 years: but that would be such a massive event that it would constitute the large majority of the total number of deaths caused by terrorism in that entire millennium-and-a-half period. In that time, at the current rate of deaths, 240,000,000 people would have died worldwide from MDR-TB alone, and 2,643,200 from MRSA in Britain.

Low threshold – even if a few terrorists don’t want WMDs, that causes the operation to fall apart

Stern, fellow – CFR, ‘99

(Jessica, Suvival 40:4, p. 177 – 178, Winter)

Falkenrath describes the obstacles that terrorists would have to overcome before they could use NBC weapons to create mass casualties. A specific threat of NBC terrorism arises, Falkenrath writes, when a group falls into three categories simultaneously: it must be capable of acquiring and using NBC weapons; it must be interested in mass murder; and it must want to use NBC weapons to achieve it. But analysis of groups that have attempted to cause mass casualties (not necessarily with NBC weapons) shows that the obstacles to such attacks are not only technical, but also organizational.5 Terrorist groups are not monolithic. Even if most members of a group are committed to an attack, a single defector can mean the difference between success and failure. For example, in April 1997, the FBI prevented four members of a Texas-based chapter of the Ku Klux Klan from blowing up a natural-gas refinery. The chapter’s leader had misgivings about the plot and informed the FBI about his colleagues’ plans.6 Operatives can be struck with moral scruples at the critical moment, even if they were committed to carrying out an attack in advance. For example, an *Aum Shinrikyo* member reportedly did not arm a biological weapon because he suddenly felt that attacking innocent people was wrong.7 Operatives (including former members aware of plots) sometimes turn their colleagues over to the authorities in return for a promise of clemency. The ‘Covenant, the Sword, and the Arm of the Lord’, and American neo-Nazi group active in the mid-1980s, plotted to poison municipal water supplies in major US cities. But a number of participants, in exchange for leniency, became FBI informants after their arrest on unrelated charges.8 Groups capable of carrying out mass-casualty attacks would have to be unusually organized, disciplined and ruthless to avoid being penetrated by law enforcement and intelligence agencies. *Ad hoc* groups that come together to carry out a specific attack or a series of attacks are more likely to meet these organizational requirements than traditional terrorist organizations. A number of Middle Eastern groups are structured along these lines, as are some American anti-government ones. Governments should focus their efforts on learning how to penetrate such groups.

## 1NR

### adventurism

#### No war – deterrence checks escalation

Ganguly, 8

[Sumit Ganguly is a professor of political science and holds the Rabindranath Tagore Chair at Indiana University, Bloomington. “Nuclear Stability in South Asia,” International Security, Vol. 33, No. 2 (Fall 2008), pp. 45–70]

As the outcomes of the 1999 and 2001–02 crises show, nuclear deterrence is robust in South Asia. Both crises were contained at levels considerably short of full-scale war. That said, as Paul Kapur has argued, Pakistan’s acquisition of a nuclear weapons capability may well have emboldened its leadership, secure in the belief that India had no good options to respond. India, in turn, has been grappling with an effort to forge a new military doctrine and strategy to enable it to respond to Pakistani needling while containing the possibilities of conflict escalation, especially to the nuclear level.78 Whether Indian military planners can fashion such a calibrated strategy to cope with Pakistani probes remains an open question. This article’s analysis of the 1999 and 2001–02 crises does suggest, however, that nuclear deterrence in South Asia is far from parlous, contrary to what the critics have suggested. Three specific forms of evidence can be adduced to argue the case for the strength of nuclear deterrence. First, there is a serious problem of conflation in the arguments of both Hoyt and Kapur. Undeniably, Pakistan’s willingness to provoke India has increased commensurate with its steady acquisition of a nuclear arsenal. This period from the late 1980s to the late 1990s, however, also coincided with two parallel developments that equipped Pakistan with the motives, opportunities, and means to meddle in India’s internal affairs—particularly in Jammu and Kashmir. The most important change that occurred was the end of the conflict with the Soviet Union, which freed up military resources for use in a new jihad in Kashmir. This jihad, in turn, was made possible by the emergence of an indigenous uprising within the state as a result of Indian political malfeasance.79 Once the jihadis were organized, trained, armed, and unleashed, it is far from clear whether Pakistan could control the behavior and actions of every resulting jihadist organization.80 Consequently, although the number of attacks on India did multiply during the 1990s, it is difficult to establish a firm causal connection between the growth of Pakistani boldness and its gradual acquisition of a full-fledged nuclear weapons capability.

Second, India did respond with considerable force once its military planners realized the full scope and extent of the intrusions across the Line of Control. Despite the vigor of this response, India did exhibit restraint. For example, Indian pilots were under strict instructions not to cross the Line of Control in pursuit of their bombing objectives.81 They adhered to these guidelines even though they left them more vulnerable to Pakistani ground ªre.82 The Indian military exercised such restraint to avoid provoking Pakistani fears of a wider attack into Pakistan-controlled Kashmir and then into Pakistan itself. Indian restraint was also evident at another level. During the last war in Kashmir in 1965, within a week of its onset, the Indian Army horizontally escalated with an attack into Pakistani Punjab. In fact, in the Punjab, Indian forces successfully breached the international border and reached the outskirts of the regional capital, Lahore. The Indian military resorted to this strategy under conditions that were not especially propitious for the country. Prime Minister Jawaharlal Nehru, India’s first prime minister, had died in late 1964. His successor, Lal Bahadur Shastri, was a relatively unknown politician of uncertain stature and standing, and the Indian military was still recovering from the trauma of the 1962 border war with the People’s Republic of China.83 Finally, because of its role in the Cold War, the Pakistani military was armed with more sophisticated, U.S.-supplied weaponry, including the F-86 Sabre and the F-104 Starfighter aircraft. India, on the other hand, had few supersonic aircraft in its inventory, barring a small number of Soviet-supplied MiG-21s and the indigenously built HF-24.84 Furthermore, the Indian military remained concerned that China might open a second front along the Himalayan border. Such concerns were not entirely chimerical, because a Sino-Pakistani entente was under way. Despite these limitations, the Indian political leadership responded to Pakistani aggression with vigor and granted the Indian military the necessary authority to expand the scope of the war. In marked contrast to the politico-military context of 1965, in 1999 India had a self-confident (if belligerent) political leadership and a substantially more powerful military apparatus. Moreover, the country had overcome most of its Nehruvian inhibitions about the use of force to resolve disputes.85 Furthermore, unlike in 1965, India had at least two reserve strike corps in the Punjab in a state of military readiness and poised to attack across the border if given the political nod.86 Despite these significant differences and advantages, the Indian political leadership chose to scrupulously limit the scope of the conflict to the Kargil region. As K. Subrahmanyam, a prominent Indian defense analyst and political commentator, wrote in 1993:.

The awareness on both sides of a nuclear capability that can enable either country to assemble nuclear weapons at short notice induces mutual caution. This caution is already evident on the part of India. In 1965, when Pakistan carried out its “Operation Gibraltar” and sent in infiltrators, India sent its army across the cease-fire line to destroy the assembly points of the infiltrators. That escalated into a full-scale war. In 1990, when Pakistan once again carried out a massive infiltration of terrorists trained in Pakistan, India tried to deal with the problem on Indian territory and did not send its army into Pakistan-occupied Kashmir.87

### politics ov

Depression means more terror recruitment and motivation

Fandl, Adjunct Law Professor @ Washington College of Law, ‘4

(Kevin J, 19 Am. U. Int'l L. Rev. 587)

In his final speech in the United Kingdom as President of the United States, Bill Clinton stressed: "we have seen how abject poverty accelerates conflict, how it creates recruits for terrorists and those who incite ethnic and religious hatred, [and] how it fuels a violent rejection of the economic and social order on which our future depends." 50 His words carried more significance than he could have known at that moment. 51

The terrorist networks that have come about in recent history are a significant threat to world security not only because of the suicidal methods they employ, but also because of the status of the countries [\*598] where these networks recruit new members, engage in training exercises and where the leadership seeks refuge. These countries are not equipped politically or economically to design proactive plans to uproot such organizations in their own countries, despite their expressed efforts to do so. 52 They are developing countries with weak, or no, democratic political structure with which to coordinate such efforts. They do not have the resources that European countries, for instance, have in place to take preventative measures in order to sustain peace. 53

The George W. Bush Administration indicated that it "is aware of the link between desperate economic circumstances and terrorism." 54 Yet, rather than working to develop sustainable economies capable of both directly (through increased political pressure and rule of law programs) and indirectly (through increased employment opportunities and social stability) eradicating terrorism, President Bush has chosen to dedicate significant resources to a military conquest against the elusive concept of terrorism itself. 55 Many Americans and, to a much lesser extent, other Western citizens, support the view that terrorism can be fought with tanks and [\*599] bombs. 56 They obstinately believe that military technology is capable of uncovering each potentially threatening terrorist cell and keeping the West safe. 57 This conventional method of warfare, while effective in pinpointing targets in complete darkness, will be useless in eliminating the ideology that fuels terrorism. Terrorists are non-conventional actors using non-conventional means through amorphous concepts that cannot be identified, contained, or labeled. These are actors whose most potent weapon is the communication of ideas among masses of people awaiting an opportunity for a better life. Many of us watch in excited anticipation for Osama bin Laden's capture and/or death. However, we should rest assured that whether he is still alive will have no bearing on the control that his ideas, and the ideas of those like him, have on the impoverished and desperate in the Middle East, South Asia, and perhaps beyond. No military technology will be able to destroy the prevalence and furtherance of those ideas. 58

Growth solves terrorism

Becker, Senior Lecturer-Law @ Chicago and Posner, Prof. Business @ Chicago, ‘5

(Gary and Richard, http://www.becker-posner-blog.com/archives/2005/05/terrorism\_and\_p\_1.html)

A second possible qualification would arise if the process of rapid economic development reduces terrorism by orienting more educated and abler individuals toward advancing economically rather than toward terrorist activities. I have not done a systematic study of the link between say economic growth and terrorism, but nations or regions that are experiencing rapid growth appear to have lower incidences of terrorism. Continuing economic growth also eventually leads to greater democracy, so a positive link between economic growth and democracy and a negative link between growth and terrorism could help explain the observed negative relation between terrorism and democracy. To be sure, terrorism may be less common when nations are growing rapidly because the causation goes from terrorism to little growth; that is, terrorism discourages investments and other engines of growth. Whether the causation is from growth to little terrorism or from terrorism to little growth would have to be discovered from systematic and careful studies. But I believe that some of the causation runs from growth to reduced terrorism because it becomes harder to interest many individuals in risky terrorist activities (and other political activism) when economies are expanding rapidly and opportunities are booming.

#### Causes instability in Pakistan – government’s on the brink

Ferguson, Prof. History @ Harvard, April, ‘9

(Niall, <http://www.foreignpolicy.com/story/cms.php?story_id=4681&page=0>)

The democratic governments in Kabul and Islamabad are two of the weakest anywhere. Among the biggest risks the world faces this year is that one or both will break down amid escalating violence. Once again, the economic crisis is playing a crucial role. Pakistan’s small but politically powerful middle class has been slammed by the collapse of the country’s stock market. Meanwhile, a rising proportion of the country’s huge population of young men are staring unemployment in the face. It is not a recipe for political stability.

### impact d

#### Yes collapse – perception

Adam Davidson, NYTimes, 9/10/13, Our Debt to Society, http://www.nytimes.com/2013/09/15/magazine/our-debt-to-society.html?pagewanted=all&\_r=0

This is the definition of a deficit, and it illustrates why the government needs to borrow money almost every day to pay its bills. Of course, all that daily borrowing adds up, and we are rapidly approaching what is called the X-Date — the day, somewhere in the next six weeks, when the government, by law, cannot borrow another penny. Congress has imposed a strict limit on how much debt the federal government can accumulate, but for nearly 90 years, it has raised the ceiling well before it was reached. But since a large number of Tea Party-aligned Republicans entered the House of Representatives, in 2011, raising that debt ceiling has become a matter of fierce debate. This summer, House Republicans have promised, in Speaker John Boehner’s words, “a whale of a fight” before they raise the debt ceiling — if they even raise it at all.

If the debt ceiling isn’t lifted again this fall, some serious financial decisions will have to be made. Perhaps the government can skimp on its foreign aid or furlough all of NASA, but eventually the big-ticket items, like Social Security and Medicare, will have to be cut. At some point, **the government won’t be able to pay interest on its bonds and will enter what’s known as sovereign default, the ultimate national financial disaster** achieved by countries like Zimbabwe, Ecuador and Argentina (and now Greece). In the case of the United States, though, it won’t be an isolated national crisis. **If the American government can’t stand behind the dollar, the world’s benchmark currency, then the global financial system will** very likely **enter a new era in which there is much less trade and much less economic growth**. It would be, by most accounts, **the largest self-imposed financial disaster in history**.

Nearly everyone involved predicts that someone will blink before this disaster occurs. Yet a small number of House Republicans (one political analyst told me it’s no more than 20) appear willing to see what happens if the debt ceiling isn’t raised — at least for a bit. This could be used as leverage to force Democrats to drastically cut government spending and eliminate President Obama’s signature health-care-reform plan. In fact, Representative Tom Price, a Georgia Republican, told me that the whole problem could be avoided if the president agreed to drastically cut spending and lower taxes. Still, it is hard to put this act of game theory into historic context. Plenty of countries — and some cities, like Detroit — have defaulted on their financial obligations, but only because their governments ran out of money to pay their bills. No wealthy country has ever voluntarily decided — in the middle of an economic recovery, no less — to default. And there’s certainly no record of that happening to the country that controls the global reserve currency.

Like many, I assumed a self-imposed U.S. debt crisis might unfold like most involuntary ones. If the debt ceiling isn’t raised by X-Day, I figured, the world’s investors would begin to see America as an unstable investment and rush to sell their Treasury bonds. The U.S. government, desperate to hold on to investment, would then raise interest rates far higher, hurtling up rates on credit cards, student loans, mortgages and corporate borrowing — which would effectively put a clamp on all trade and spending. **The U.S. economy would collapse far worse than anything we’ve seen** in the past several years.

Instead, Robert Auwaerter, head of bond investing for Vanguard, the world’s largest mutual-fund company, told me that the collapse might be more insidious. “You know what happens when the market gets upset?” he said. “There’s a flight to quality. Investors buy Treasury bonds. It’s a bit perverse.” In other words, if the U.S. comes within shouting distance of a default (which Auwaerter is confident won’t happen), the world’s investors — absent a safer alternative, given the recent fates of the euro and the yen — might actually buy even more Treasury bonds. Indeed, interest rates would fall and the bond markets would soar.

While this possibility might not sound so bad, it’s really far more damaging than the apocalyptic one I imagined. Rather than resulting in a sudden crisis, failure to raise the debt ceiling would lead to a slow bleed. Scott Mather, head of the global portfolio at Pimco, the world’s largest private bond fund, explained that while governments and institutions might go on a U.S.-bond buying frenzy in the wake of a debt-ceiling panic, they would eventually recognize that the U.S. government was not going through an odd, temporary bit of insanity. They would eventually conclude that it had become permanently less reliable. Mather imagines institutional investors and governments turning to a basket of currencies, putting their savings in a mix of U.S., European, Canadian, Australian and Japanese bonds. Over the course of decades, the U.S. would lose its unique role in the global economy.

The U.S. benefits enormously from its status as global reserve currency and safe haven. Our interest and mortgage rates are lower; companies are able to borrow money to finance their new products more cheaply. As a result, there is much more economic activity and more wealth in America than there would be otherwise. If that status erodes, the U.S. economy’s peaks will be lower and recessions deeper; future generations will have fewer job opportunities and suffer more when the economy falters. And, Mather points out, no other country would benefit from America’s diminished status. When you make the base risk-free asset more risky, the entire global economy becomes riskier and costlier.

#### Government shutdown collapses the economy

Yi Wu, Policy Mic, 8/27/13, Government Shutdown 2013: Still a Terrible Idea , www.policymic.com/articles/60837/government-shutdown-2013-still-a-terrible-idea

Around a third of House Republicans, many Tea Party-backed, sent a letter last week calling on Speaker John Boehner to reject any spending bills that include implementation of the Affordable Care Act, otherwise known as Obamacare. Some Senate Republicans echo their House colleagues in pondering this extreme tactic, which is nothing other than a threat of government shutdown as neither congressional Democrats nor President Obama would ever agree on a budget that abolishes the new health care law. Unleashing this threat would amount to holding a large number of of the federal government's functions, including processing Social Security checks and running the Centers for Disease Control, hostage in order to score partisan points. **It would be an irresponsible move inflicting enormous damage to the U.S. economy** while providing no benefit whatsoever for the country, and Boehner is rightly disinclined to pursue it.

Government shutdowns are deleterious to the economy. Two years ago in February 2011, a similar government shutdown was looming due to a budget impasse, and a research firm estimated that quater's GDP growth would be reduced by 0.2 percentage points if the shutdown lasted a week. After the budget is restored from the hypothetical shutdown, growth would only be "partially recouped," and a longer shutdown would result in deeper slowdowns. Further, the uncertainties resulting from a shutdown would also discourage business. A shutdown was avoided last-minute that year, unlike in 1995 during the Clinton administration where it actually took place for four weeks and resulted in a 0.5 percentage-point dent in GDP growth. Billions of dollars were cut from the budget, but neither Boehner nor the Republicans at the time were reckless enough to demand cancellation of the entire health care reform enacted a year before.

Besides the economic effects in numbers, a shutdown this year will harm some of the most vulnerable, while at the same time not shutting down government policies that have been the most intrusive upon American people. "Essential services" would continue running, but what the federal government deems "essential" often does not coincide with what we consider essential. In the 1995 shutdown, the cleanup of toxic waste at 609 sites came to a halt. Who knows how many people were affected by the poisonous substances left over unattended?Similarly, health and welfare services for veterans were pulled back as well. Yet, a government shutdown does nothing to stop the operations of Drug Enforcement Administration (DEA), which is considered an "essential service" despite the failed War on Drugs having done much more harm than good. The NSA wiretapping program, which some consider to violate civil liberties, would likely be unaffected, as would the TSA pat-downs.

To force a budget without Obamacare, the signature legislation of the administration, in this manner would be akin to threatening to shut down all government agencies unless Social Security or the EPA is done away with here and now. If during the Bush years in 2006 the Democrats told the president to sign a budget ceasing all military operations in Iraq and Afghanistan or face a shutdown, not only would Bush refuse to comply, Republicans would be calling Democrats traitors to the country. One can in principle support privatization of Social Security or oppose government regulation of health care, but legislating by hostage-taking is inimical to democracy. American people should be worried, additionally, as some Republicans are also considering using the debt ceiling this fall to bring down Obamacare. Not raising the debt ceiling when it is reached can be even more dangerous for us than a government shutdown. As economist Alice Rivlin explained, it would cause the U.S. to default and become a "deadbeat country" like Greece. In the stern words of Austan Goolsbee, such default would be "the first default in history caused purely by insanity."

### summers

#### Backing off on Summers saved leverage

Kevin Carmichael, Globe and Mail, 9/17/13, With Summers out of running, a fractious fall looms in U.S., Lexis

Ms. Warren was one of four Democrats on the banking committee who said they would vote against Prof. Summers. That meant the White House would have had to have sought Republican support to get Prof. Summers through the committee stage of the nomination process and onto the Senate floor. **That's more political capital than the President** currently **has to spend.** "Republicans would have wanted something in return," Mr. Bosworth said. **"It wasn't worth it."** More of the contentious fiscal showdowns that have characterized Mr. Obama's relationship with the Republican-led House of Representatives are on the horizon. While the U.S. government's fiscal year ends on Sept. 30, Democrats and Republicans appear nowhere near agreement on a new budget, despite promises earlier in the year that they would do so. Failure to come up with a fiscal plan, or extend existing spending authority, would force the government to cease operations.

Their ev is media hype—GOP opposition isn’t immovable—House GOP strategy makes a deal likely

Chris Weignant, 9/18/13, The Boehner and the Restless, www.chrisweigant.com/2013/09/18/the-boehner-and-the-restless/

The politico-media empire which writes the rules of the Washington "What Serious People Are Saying" game have apparently decided that the government shutdown is now melodramatically going to happen. Cue ominous organ music blast (dum Dum DUM!). The key word in that opening sentence is "melodramatically," because our government can now be seen as nothing more than a continuing soap opera. Call it "As The Boehner Turns," or perhaps more appropriately "The Boehner And The Restless." Personally, I don't buy it. I'm taking the contrarian position on this one. John Boehner just announced that the House will vote on a continuing resolution (to continue funding the government past the first of October) which attempts to "defund" Obamacare, and that the vote will happen this Friday. Across Washington, in newsrooms everywhere, pearls were clutched and editors swooned (and had to be revived with smelling salts). The sky is falling! The shutdown will happen! Oh, my goodness! What a calamity! The melodrama was turned up to eleven, and the knob was then snapped off. The car was about to careen off the cliff (right before the commercial break), so stay tuned, folks.... But, as I said, I don't buy it. In fact, I will go so far as to say that **the timing of the vote increases the chances that the** government shutdown will not in fact happen. The vote, I suspect, is nothing more than John Boehner showboating within his own caucus -- nothing more than a sop to the rabid Tea Party members who are demanding this showdown. The reason I reach this conclusion is that if Boehner were truly serious about using this bill as his only negotiating position, he would have waited until the last minute to introduce it. Instead, he's going to hold a vote this Friday. There are three basic endgames which are possible in the showdown. The first is that Senate Democrats and President Obama wake up one morning and, in astonishment, blurt out, "What were we thinking? Obamacare sucks! Let's repeal the signature legislation of Barack Obama's term in office!" They then leap out of bed, pass the House's bill and sign it into law. Obamacare is dead! Well, this isn't really true, since the House "defunding" Obamacare doesn't actually defund something like 80 percent of Obamacare, but whatever. The chances of this scenario happening are precisely zero, so it's a moot point. The second endgame is that the House Republicans refuse to budge, the Senate and the House can't agree on a continuing resolution, and the government shuts down at the start of next month. This is what the media is salivating over, with full soundtrack and all the melodrama they can heap upon it. What a great start to the fall season for the soap opera that is Washington! The chances of this happening are unknown, but I predict that they are one whale of a lot smaller than the media would have you currently believe. And, as I said, holding the vote this Friday means the chances of a shutdown actually happening have just grown even smaller. If Boehner really wanted this scenario to happen (he's publicly said he does not, for the record), then he would use the clock to his advantage and delay the vote on the Tea Party bill until, perhaps, next Friday -- giving the Senate almost no time to react. But he's not taking this route, which is the main point everyone seems to be missing (or willfully ignoring, to boost ratings for the soap opera). The third scenario is the most likely. John Boehner, following a script he has used in the past, allows the Tea Party to pillage and riot for a very precise amount of time. He allows their "take no prisoners" bill to be voted on. There is no guarantee that it'll even pass -- another fact many media types are ignoring today. Boehner has had to ignobly yank quite a few bills from the floor before the vote because he simply cannot round up enough votes within his own party to pass them. This could happen with Friday's bill, although it is more likely that Boehner will allow the vote even if he knows it will fail (because doing so will strengthen his position). But say for the sake of conversation that it does pass. The Tea Party will triumphantly proclaim victory, and the Senate will quickly dispose of the bill in one fashion or another -- leaving us right back at square one. The Senate leaders will then meet with the White House and come up with a budget bill which is acceptable to sane Republicans in the Senate, but which does not touch Obamacare's funding. The Senate will pass this bill, and send it over to the House (technically the House has to originate spending bills, but this can be dealt with by a gimmick, as it always is). The ball will be back in Boehner's court. Boehner has already cancelled vacation days scheduled for next week. The House will be in session. And it'll have enough time to act before the deadline is reached. Boehner will (again, he's done this before, folks) reluctantly tell his Tea Party members "well, we tried our hardest, but it didn't work." And then -- at the last minute, no doubt -- he'll put the Senate bill on the House floor for a vote, breaking the Republican "Hastert Rule" once again. Virtually all the Democrats will vote for it, and at least a few dozen Republicans will join them (those in such safe districts that they don't worry about Tea Party primary challenges, for the most part). The bill will pass. A few minor concessions may be wrung from the budget itself, as a sort of consolation prize for House Republicans ("See? We did get some sort of victory!"), and this tweaked bill will go back to the Senate for a vote. The Senate will pass it, and it will thus be placed upon Obama's desk for his signature. Obama, of course, will sign it. The only real question in this scenario is how close we come to hitting the deadline. Maybe the government will temporarily "shut down" for a day or two as the last Senate vote happens, at worst. But some sort of budget will be in place, until the next time this budgetary plot device arises (which seems to be planned for December, just so we can all have a holiday special for the Washington soap opera). Call me an optimist if you will, but this still seems the most-likely scenario. Boehner, by holding the big vote early, is signaling that there will be plenty of time to fix things at the last minute after he tosses the Tea Party their bone. The Tea Partiers will experience a few days of euphoria and then be consumed with white-hot rage when they don't ultimately get their way. Primary challenges will be threatened all around. Talk radio and the conservative echo chamber in the media will explode with angst and denunciation. But we will have a budget, and the government will not shut down.

Trends go neg—GOP crazies are uniting under Boehner

Ryan Grim, HuffPo, 9/19/13, Ted Cruz, Liberal Hero, May Have Just Bailed Washington Out Of The Shutdown Crisis , www.huffingtonpost.com/2013/09/19/ted-cruz-shutdown-house-republicans\_n\_3954461.html?utm\_hp\_ref=politics

In one moment, with one statement, Sen. Ted Cruz (R-Texas) managed Wednesday to accomplish what House GOP leaders, Republican senators and the Wall Street Journal editorial page had failed to do for months: Persuade rank-and-file House Republicans that shutting down the government in an attempt to defund Obamacare was simply impossible.

On Wednesday, after House leaders said they'd go forward with the defund strategy Cruz had been pitching with ads on Fox News, his response boiled down to 'Thanks, you're on your own.'

"Harry Reid will no doubt try to strip the defund language from the continuing resolution, and right now he likely has the votes to do so," Cruz said in a statement. "At that point, House Republicans must stand firm, hold their ground, and continue to listen to the American people."

On the surface, House Republicans were seething. Members openly accused Cruz and his allies, Sens. Mike Lee (R-Utah) and Marco Rubio (R-Fla.), of waving the white flag before the fight had even begun. One House GOP aide even called Cruz a "joke, plain and simple."

But by admitting that he had no ability in the Senate to back up the House effort to defund Obamacare, and saying so on the same day that House Republicans had announced they would support the Cruz-inspired strategy, Cruz has inadvertently done more than any other lawmaker to avert a government shutdown.

"Cruz officially jumped the shark this week," said one GOP operative allied with House leadership, who, like others, requested anonymity to speak critically about fellow Republicans. "He's doing for the House Leaders what they couldn't do for themselves. House rank-and-file members are uniting with Boehner, Cantor over Ted Cruz's idiotic position."

### obama unilat

#### The White House has ruled out invoking the 14th amendment this time – and 2011 proves they won’t do it

Bendery, writer for the Huffington Post, 12/7/2012

(Jennifer, “In Debt Ceiling Standoff, 14th Amendment Is Not An Option, Says White House,”

http://www.huffingtonpost.com/2012/12/07/debt-ceiling-14th-amendment\_n\_2257610.html)

The White House signaled Thursday that President Barack **Obama would not use the Constitution to unilaterally raise the debt ceiling** in the event of a standoff with Republicans. But there are plenty of key Democrats who think that wouldn't be such a bad idea.

During his Thursday briefing, White House Press Secretary Jay Carney dismissed the idea that Obama has the constitutional authority to increase the debt limit himself if Congress doesn't do it by early February, when the government is expected to run out of money. The debt ceiling is currently capped at $16.4 trillion.

"**This administration does not believe that the 14th Amendment gives the president the power to ignore the debt ceiling** -- period," Carney said.

Carney said the White House has been consistent in opposing that approach, though he noted "there was a period where this was under discussion" during the 2011 debt ceiling fight. Ultimately, though, the White House dismissed the idea, questioning the legality of that option, he said.

#### Latest evidence proves – political capital is still key

Weyl, writer for Roll Call, 1/2/2013

(Ben, “Lawmakers Eye Policy Actions on Debt Limit,” http://www.rollcall.com/news/lawmakers\_eye\_policy\_actions\_on\_debt\_limit-220488-1.html)

Many Republicans think Obama would ultimately fold, recalling how they secured more than $2 trillion in spending reductions over 10 years as part of the 2011 debt ceiling law (PL 112-25). **The White House has already** ruled out **claiming that the Constitution’s 14th Amendment allows the president to raise the debt ceiling unilaterally**, **a position that may constrain** Obama’s choices and resign **the White House to** something of a stare-down.

### politics link

Limiting drone authority causes a congressional-executive turf war.

**Berger 8/12/13** (Judson, Fox, “Yemen drone strikes may revive war-powers battle between administration, Congress”, <http://www.foxnews.com/politics/2013/08/12/yemen-drone-strikes-could-revive-war-powers-battle-between-administration/>, ZBurdette)

The escalation of drone strikes in Yemen, presumably in response to the ongoing Al Qaeda threat, and other technology-based military options could fuel calls to re-write laws that govern such actions to give Congress greater oversight over the administration's remote-controlled warfare.

"Some of these campaigns by the administration clearly constitute an act of war," said Jonathan Turley, an attorney and professor at George Washington University Law School.

To date, the administration has claimed broad latitude in its authority to launch limited military operations -- including drone strikes -- without congressional authorization. There's no indication this time will be any different.

A total of nine suspected drone strikes reportedly have been recorded in Yemen since late July, taking out dozens of alleged Al Qaeda operatives and other militants. The most recent strike was on Saturday. The Washington Post reported last week that the strikes were authorized by the Obama administration in connection with the ongoing terror threat.

If challenged on the strikes, the president is likely to argue that the operation is contained and does not require congressional authorization. He has in the past.

This debate flared during the 2011 operation in Libya, when the administration launched a series of air and drone strikes in support of the campaign against Muammar Qaddafi.

Any modification to the WPR is a lightning rod

**CCR 9** (Center for Constitutional Rights, “Restore. Protect. Expand. Amend the War Powers Resolution”, <http://ccrjustice.org/files/CCR_White_WarPowers.pdf>, ZBurdette)

Secondly, the War Powers Resolution correctly recognized that even congressional silence, inaction or even implicit approval does not allow the president to engage in warfare – but it failed to provide an adequate enforcement mechanism if the president did so. Under the resolution, wars launched by the executive were supposed to be automatically terminated after 60 or 90 days if not affirmatively authorized by Congress – but this provision proved unenforceable. Presidents simply ignored it, Congress had an insufficient interest in enforcing it and the courts responded by effectually saying: if Congress did nothing, why should we?

Reforming the War Powers Resolution is a project that will require leadership from the President and the political will of Congress, working together in the service and preservation of the Constitution. In light of the abuses that have taken place under the Bush administration, it is the responsibility of a new administration to insist on transparency in the drafting of new legislation.

There is a long history of attempts to revise the War Powers Resolution. As new legislation is drafted, though, it will be important to focus on the central constitutional issues. Much time has been spent in debating how to address contingencies. It will be impossible to write into law any comprehensive formula for every conceivable situation, though; much more important will be establishing the fundamental principles of reform:

### IBC link

#### Inter-branch fight undermines the agenda even if political capital theory is wrong—out link synthesizes the debate

Aziz Huq, Assistant Professor of Law, University of Chicago Law School, 2012, Binding the Executive (by Law or by Politics), https://lawreview.uchicago.edu/sites/lawreview.uchicago.edu/files/uploads/79\_2/06%20Huq%20BKR.pdf

Consider first a simple measure of Presidents’ ability to obtain policy change: Do they obtain the policy changes they desire? Every President enters office with an agenda they wish to accomplish.53 President Obama came into office, for example, promising health care reform, a cap-and-trade solution to climate change, and major immigration reform.54 President George W. Bush came to the White House committed to educational reform, social security reform, and a new approach to energy issues.55 One way of assessing presidential influence is by examining how such presidential agendas fare, and asking whether congressional obstruction or legal impediments— which could take the form of existing laws that preclude an executive policy change or an absence of statutory authority for desired executive action—is correlated with presidential failure. Such a correlation would be prima facie evidence that institutions and laws play some meaningful role in the production of constraints on executive discretion. Both recent experience and long-term historical data suggest presidential agenda items are rarely achieved, and that legal or institutional impediments to White House aspirations are part of the reason. In both the last two presidencies, the White House obtained at least one item on its agenda—education for Bush and health care for Obama—but failed to secure others in Congress. Such limited success is not new. His famous first hundred days notwithstanding, Franklin Delano Roosevelt saw many of his “proposals for reconstruction [of government] . . . rejected outright.”56 Even in the midst of economic crisis, Congress successfully resisted New Deal initiatives from the White House. This historical evidence suggests that the diminished success of presidential agendas cannot be ascribed solely to the narrowing scope of congressional attention in recent decades; it is an older phenomenon. Nevertheless, in more recent periods, presidential agendas have shrunk even more. President George W. Bush’s legislative agenda was “half as large as Richard Nixon’s first-term agenda in 1969–72, a third smaller than Ronald Reagan’s first-term agenda in 1981–84, and a quarter smaller than his father’s first-term agenda in 1989–92.”57 The White House not only cannot always get what it wants from Congress but has substantially downsized its policy ambitions. Supplementing this evidence of presidential weakness are studies of the determinants of White House success on Capitol Hill. These find that “**presidency-centered explanations” do little work**.58 **Presidents’ legislative agendas succeed not because of the** intrinsic institutional characteristics of the **executive branch, but rather as a consequence of favorable political conditions within the momentarily dominant legislative coalition**.59 Again, correlational evidence suggests that institutions and the legal frameworks making up the statutory status quo ante play a role in delimiting executive discretion.

### red sea

#### Cooperation solves escalation

Hossein-zadeh 9

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 Despite the fact that oil companies nowadays view war and political turmoil in the Middle East as detrimental to their long-term interests and, therefore, do not support policies that are conducive to war and militarism, and despite the fact that war is no longer the way to gain access to oil, the widespread perception that every US military engagement in the region, including the current invasion of Iraq , is prompted by oil considerations continues. Th e question is why? Behind the Myth of War for Oil The widely-shared but erroneous view that recent US wars of choice are driven by oil concerns is partly due to precedence: the fact that for a long time military force was key to colonial or imperialist control and exploitation of foreign markets and resources, including oil. It is also partly due to perception: the exaggerated notion that both President Bush and Vice President Cheney were “oil men” before coming to the White House. But, as noted earlier, George W. Bush was never more than an ineff ective minor oil prospector and Dick Cheney was never really an oil man; he headed the notorious Halliburton company that sold, and still sells, services to oil companies and the Pentagon .

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Finally, a statutory definition of hostilities will provide the judiciary with a meaningful standard for determining presidential compliance with the WPR - assuming the future existence of a plaintiff able to surmount the various prudential doctrines that have counseled against entertaining WPR cases thus far. Finally, Congress should insist that force used under the covert action legal regime actually be covert. That is, force used under covert action's permissive accountability regime should demonstrate an objective intent to avoid the apparent or publicly acknowledged role of the U.S. government. [\*424] Where a use of force is extensive and U.S. involvement is apparent, that use of force should be subject to the more rigorous WPR regime. The U.S. drone campaign over Pakistan may present just such a case - those strikes ceased being covert in any meaningful way years ago. Thus, the current regime reduces the barriers to a more permissive accountability scheme to a mere labeling exercise. Of course, there are other methods by which accountability for the use-of-force decisions - particularly, use-of-force decisions employing drones - might be increased. Some have suggested the establishment of a "drone court," modeled on the Foreign Intelligence Surveillance Court, to provide ex ante judicial review of targeted strikes, at least. n215 Others have suggested the creation of a new cause of action for the families of drone strike targets who argue their family members were wrongly targeted, and the imposition of ex post accountability. n216 Each suggestion has merit; however, neither suggestion will impose substantially greater accountability on the President as long as the judiciary maintains its historical deference to the President in matters implicating use of force. Regardless, these new judicially-focused schemes require Congressional action, too. Thus, even these schemes require Congress to do what it has so far been unwilling to do: legislate mechanisms that enhance accountability for policymakers charged with deciding when and how force is used.

**He says congress needs to vote within the 60 day window – but they’ve never done that and the plan gives them zero incentive to do so**

Congress should no longer tolerate scenarios like Kosovo or Libya in which the President uses force beyond the sixty-day window without congressional authorization. Moreover, Congress should not allow such a scenario to arise in the first place. When the President uses force abroad, Congress should take up the matter immediately and determine well before the expiration of the sixty-day clock whether the United States will go to war.