## 1NC

### 1

Restrictions are limitations imposed on action–not reporting and monitoring

**Schiedler-Brown ‘12**

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

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

“Authority” is the ex-ante allocation of decision rights

Garfagnini, ITAM School of Business, 10/15/2012

(Umberto, italics emphasis in original, “The Dynamics of Authority in Innovating Organizations,” <https://editorialexpress.com/cgi-bin/conference/download.cgi?db_name=MWETFall2012&paper_id=62>)

Why do organizations change their internal allocation of authority over time? We propose a simple theory in which innovation with a new technology generates an *endogenous need for coordination* among divisions. A division manager has private information about the expected productivity of new technologies, which can be communicated strategically to headquarters. The organization has an advantage in coordinating technologies across divisions and can only commit to **an ex-ante allocation of decision rights** (**i.e.**, ***authority***). When the importance of cross-divisional externalities is small and the organization's coordination advantage is moderate, we show that an organization can optimally delegate authority to a division manager initially and then later centralize authority.

Vote negative—

Limits–hundreds of policies raise the costs of Presidential authority – they allow all of them

Ground–the key question is overarching authority in future situations – not programmatic changes

Precision–it’s the most important distinction

Solum, professor of law at UCLA, 2003

(Lawrence, “Legal Theory Lexicon 001: Ex Ante & Ex Post,” <http://lsolum.typepad.com/legal_theory_lexicon/2003/09/legal_theory_le_2.html>)

**If I had to select only one theoretical tool for a** first-year law **student to master**, **it would be the ex post/ex ante distinction**. (Of course, this is cheating, because there is a lot packed into the distinction.) The terminology comes from law and economics, and here is the basic idea:

The ex post perspective is backward looking. From the ex post point of view, we ask questions like: Who acted badly and who acted well? Whose rights were violated? Roughly speaking, we associated the ex post perspective with fairness and rights. The ex post perspective in legal theory is also loosely connected with deontological approaches to moral theory. In general jurisprudence, we might associate the ex post perspective with legal formalism.

The ex ante perspective is forward looking. From the ex ante point of view, we ask questions like: **What affect will this rule have on the future?** Will decision of a case in this way produce good or bad consequences? Again, roughly speaking we associate the ex ante perspective with policy and welfare. The ex ante perspective in legal theory is loosely connected with consequentialist (or utilitarian or welfarist) approaches to moral theory. In general jurisprudence, we might associate the ex ante perspective with legal instrumentalism (or legal realism).

Topicality is a voting issue, or the aff will read a new uncontested aff every debate

### 2

LOAC is a neoliberal security governance strategy that necessitates un-ending violence against innocents and normalizes atrocities.

Dowdeswell ‘13

Tracey, PhD candidate at Osgoode Hall Law School at York University. Her research focuses on the impact of globalisation on the customary laws of war, “How Atrocity Becomes Law: The Neoliberalisation of Security Governance and the Customary Laws of Armed Conflict,” Journal of Critical Globalisation Studies , Issue 6 (2013)

Certain practices of contemporary warfare, such as pre-emptive attacks on civilians, house clearings, air strikes in residential neighbourhoods, **targeted killings,** and attacks on medical personnel and providers of humanitarian assistance, have become increasingly common in the War on Terror, in protest policing, and in counter-insurgent and **urban warfare.** This article will discuss the ways in which the ideologies and practices of neoliberal governance in the security sector are not only facilitating such practices, but are in fact facilitating their justification as lawful within the customary laws of armed conflict. Moreover, these are practices that until recently were **denounced as atrocities** and even prosecuted as war crimes. To a certain extent, it would seem reasonable to assume that modern States have ordinarily **sought to normalise** the atrocities that their security forces commit against civilians, preferring to use the language and logic **of the law** whenever possible to justify such actions. However, there is a distinct pattern to the tactics that are being normalised today, and this is due in part to the widespread adoption of neoliberal ideologies of governance and administration within the security sector. This is enabling the U.S. and its allies to institute what Agamben (2005) has discussed **as a permanent state of exception within the ordinary law,** and **the normalisation of atrocity is a key component of this.** The post-war period has seen an increase in attention to war crimes and the codification of the laws of war, and this has given us such instruments as the Rome Statute of the International Criminal Court, and the United Nations Responsibility to Protect Protocol (UN Res., 2009), as well as the International Committee of the Red Cross which continues to address pressing issues in humanitarian law (Melzer, 2008). At the same time, though, the neoliberalisation of security governance is significantly weakening protections for civilians by permitting and justifying attacks against them as being customary under the laws of armed conflict. There is very little that international law would have to offer such civilians if the harms they suffer are rendered lawful as customary practices of war. Yet, this is indeed what is happening, and one can canvass the above strategies and perceive that their impact on their target populations consists not only of intentional deaths, but also injuries, mayhem, and **widespread social dislocations** that serve to further fracture and marginalise such populations. Whether they are used to justify counter-insurgent strikes in Iraq or Afghanistan, military intervention in Libya, or protest policing in regimes experiencing the Arab Spring, the strategies of what Abrahamsen and Williams (2011) have termed “globalised security governance” are designed to be waged not against states and lawful combatants, but against **'failed States' and 'non-State actors'** – categories that are essentially euphemisms for civilians. The present article focuses on the neoliberal ideologies embedded within globalised governance, arguing that these are having **serious negative impacts** on the development of civil institutions and political mobilisation within a societies already fractured by conflict. Moreover, this development further reinforces the political power of the military hegemons that wield these strategies – whether these are the U.S. in Afghanistan and Iraq, NATO in Libya, or United Nations peacekeepers on the borders of Kosovo and Serbia. The article will first review the orthodox thinking concerning the customary laws of armed conflict, particularly the traditional 'two element' theory that posits that customary norms can be determined by examining the elements of actual state practice and the state's opinio juris that the norm is a legally binding one. It will then present critical alternatives to this view, which posit that customary law is a kind of discursive practice, where customary laws emerge from the overarching normative and ideological framework within which customary norms are articulated and by reference to which they are justified. The second section then describes how neoliberal ideologies of governance have shifted the normative framework within which we understand and justify the customary laws of war, and focuses in particular on how neoliberal ideologies of management have **radically decentralised and disaggregated** the traditional military chain-of-command. It is argued that neoliberal ideologies of individualisation, privatisation, and strategies of risk management are used to promote **the use of force against civilians** as seemingly legitimate acts of 'self-defence' against unknown and unknowable risks – risks that emerge from a conflict zone which the actions of the security forces themselves have **rendered endemically dangerous**. The third section will then illustrate this logic at work through reference to a specific case of atrocities committed against civilians, using the example of Collateral Murder, which is a piece video footage that was recorded by the U.S. First Air Cavalry Brigade in Iraq on 12 July 2007. This footage, which was released in April 2010 by WikiLeaks, depicts the killing of civilians, including civilians who were collecting bodies and aiding the wounded. This case study will then be supplemented by a range other examples which illustrate how justifications for civilian atrocities are **becoming increasingly widespread** throughout the security sector. The argument that I wish to make is not that such acts are illegal under the normative framework of the customary laws of war, but instead that this normative framework **itself is being shifted by neoliberal strategies of security governance** in such a way as **to normalise atrocities** within the customary laws of armed conflict. In order to make this argument, I will pull together diverse strands of thinking in the nature of customary law, the organising principles of the laws of war, and the history of the doctrine of the chain-of-command, and discuss how these **have all been disaggregated and reconfigured by the neoliberalisation of governance** in the security sector. The argument that is developed through the grasping together of these strands will then be illustrated through reference to the events depicted in Collateral Murder, and linked to broader set of examples from elsewhere in the security sector, so as to demonstrate the increasing extent to which these norms are shared. In so doing, I will be examining the problem of intentional – and seemingly justifiable – civilian atrocities from a number of different points of view. More specifically, though, the starting point will be a focus on the customary law principle of distinction, which requires that security forces distinguish between civilian and military targets. Civilians are liable to attack only for such time as they have taken up arms and are actively posing a threat, or if they are part of an organized armed group such that they perform a “continuous combat function” (Melzer, 2008). This article argues that the neoliberalisation of the security sector has shifted the criteria for attack from one based upon an individual's status as a combatant to one of defining and containing risk. Security forces in global war zones are thus shifting the criteria for attack to one in which they use armed force to **define** and then manage 'risky populations' in a way that **subverts** the ability of the **humanitarian law to regulate attacks** against civilians. Typically, violations of the principle of distinction and the killing of civilians have been all-to-commonplace, calling into question the ability of the humanitarian law to play such a regulatory role. However, with the transformations in the customary laws of war called into being by the neoliberalisation of security governance, what is at stake is **not merely the failure of** humanitarian **law** to protect civilians in conflict zones, **but its increasing use as an instrument of their violent repression**.

Legal restraints motivated by conflict narratives cause endless intervention and WMD warfare

John Morrissey, Lecturer in Political and Cultural Geography, National University of Ireland, Galway; has held visiting research fellowships at University College Cork, City University of New York, Virginia Tech and the University of Cambridge. 2011, “Liberal Lawfare and Biopolitics: US Juridical Warfare in the War on Terror,” Geopolitics, Volume 16, Issue 2, 2011

In the ‘biopolitical nomos’ of camps and prisons in the Middle East and elsewhere, managing detainees is an important element of the US military project. As CENTCOM Commander General John Abizaid made clear to the Senate Armed Services Committee in 2006, “an essential part of our combat operations in both Iraq and Afghanistan entails the need to detain enemy combatants and terrorists”.115 However, it is a mistake to characterize as ‘exceptional’ the US military’s broader biopolitical project in the war on terror. Both Minca’s and Agamben’s emphasis on the notion of ‘exception’ is most convincing when elucidating how the US military has dealt with the ‘threat’ of enemy combatants, rather than how it has planned for, legally securitized and enacted, its ‘own’ aggression against them. It does not account for the proactive juridical warfare of the US military in its forward deployment throughout the globe, which rigorously secures classified SOFAs with host nations and protects its armed personnel from transfer to the International Criminal Court. Far from designating a ‘space of exception’, the US does this to establish normative parameters in its exercise of legally sanctioned military violence and to maximize its ‘operational capacities of securitization’.

A bigger question, of course, is what the US military practices of lawfare and juridical securitization say about our contemporary moment. Are they essentially ‘exceptional’ in character, prompted by the so-called exceptional character of global terrorism today? Are they therefore enacted in ‘spaces of exceptions’ or are they, in fact, simply contemporary examples of Foucault’s ‘spaces of security’ that are neither exceptional nor indeed a departure from, or perversion of, liberal democracy? As Mark Neocleous so aptly puts it, has the “liberal project of ‘liberty’” not always been, in fact, a “project of security”?116 This ‘project of security’ has long invoked a powerful political dispositif of ‘executive powers’, typically registered as ‘emergency powers’, but, as Neocleous makes clear, of the permanent kind.117 For Neocleous, the pursuit of ‘security’ – and more specifically ‘capitalist security’ – marked the very emergence of liberal democracies, and continues to frame our contemporary world. In the West at least, that world may be endlessly registered as a liberal democracy defined by the ‘rule of law’, but, as Neocleous reminds us, the assumption that the law, decoupled from politics, acts as the ultimate safeguard of democracy is simply false – a key point affirmed by considering the US military’s extensive waging of liberal lawfare. As David Kennedy observes, the military lawyer who “carries the briefcase of rules and restrictions” has long been replaced by the lawyer who “participate[s] in discussions of strategy and tactics”.118

The US military’s liberal lawfare reveals how **the rule of law is simply another securitization tactic in liberalism’s ‘pursuit of security’;** a pursuit that paradoxically eliminates fundamental rights and freedoms in the ‘name of security’.119 This is a ‘liberalism’ defined by what Michael Dillon and Julian Reid see as a commitment to waging ‘biopolitical war’ for the securitization of life – ‘killing to make live’.120 And for Mark Neocleous, (neo)liberalism’s fetishization of ‘security’ **– as both a discourse and a technique of government** – has resulted in a world defined by anti-democratic technologies of power.121 In the case of the US military’s forward deployment on the frontiers of the war on terror – and its juridical tactics to secure biopolitical power thereat – this has been **made possible by constant reference to a neoliberal ‘project of security’** registered in a language of ‘endless emergency’ to ‘secure’ the geopolitical and geoeconomic goals of US foreign policy.122 The US military’s continuous and indeed growing military footprint in the Middle East and elsewhere can be read as a ‘permanent emergency’,123 the new ‘normal’ in which geopolitical military interventionism and its concomitant biopolitical technologies of power are necessitated by the perennial political economic ‘need’ to securitize volatility and threat.

Conclusion: enabling biopolitical power in the age of securitization

“Law and force flow into one another. We make war in the shadow of law, and law in the shadow of force” – David Kennedy, Of War and Law 124

Can a focus on lawfare and biopolitics help us to **critique our contemporary moment’s proliferation of practices of securitization** – practices that appear to be primarily concerned with coding, quantifying, governing and anticipating life itself? In the context of US military’s war on terror, I have argued above that it can. If, as David Kennedy points out, the “emergence of a global economic and commercial order has amplified the role of background legal regulations as the strategic terrain for transnational activities of all sorts”, this also includes, of course, ‘warfare’; and for some time, the US military has recognized the “opportunities for creative strategy” made possible by proactively waging lawfare beyond the battlefield.125 As Walter Benjamin observed nearly a century ago, at the very heart of military violence is a “lawmaking character”.126 And it is this ‘lawmaking character’ that is integral to the biopolitical technologies of power that secure US geopolitics in our contemporary moment. US lawfare **focuses “the attention of the world on this or that excess**” whilst simultaneously arming “the most heinous human suffering **in legal privilege”,** redefining horrific violence as “collateral damage, self-defense, proportionality, or necessity”.127 It involves a mobilization of the law that is precisely channelled towards “**evasion**”, securing 23 classified Status of Forces Agreements and “offering at once the experience of safe ethical distance and careful pragmatic assessment, while **parcelling out responsibility, attributing it, denying it – even sometimes embracing it – as a tactic of statecraft and war”.128**

Since the inception of the war on terror, the US military has waged incessant lawfare to legally securitize, regulate and empower its ‘operational capacities’ in its multiples ‘spaces of security’ across the globe – whether that be at a US base in the Kyrgyz Republic or in combat in Iraq. I have sought to highlight here these tactics by demonstrating how the execution of US geopolitics relies upon a proactive legal-biopolitical securitization of US troops at the frontiers of the American ‘leasehold empire’. For the US military, legal-biopolitical apparatuses of security enable its geopolitical and geoeconomic projects of security on the ground; they plan for and **legally condition the ‘milieux’ of military commanders**; and in so doing they **render operational** **the pivotal spaces of overseas intervention of contemporary US national security conceived** in terms of ‘**global governmentality’**.129 In the US global war on terror, it is lawfare that facilitates what Foucault calls the “biopolitics of security” – when life itself becomes the “object of security”.130 For the US military, this involves the eliminating of threats to ‘life’, the creating of operational capabilities to ‘make live’ and the anticipating and management of life’s uncertain ‘future’.

Some of the most key contributions across the social sciences and humanities in recent years have divulged how discourses of ‘security’, ‘precarity’ and ‘risk’ function centrally in the governing dispositifs of our contemporary world.131 In a society of (in)security, such discourses have a profound power to invoke danger as “requiring extraordinary action”.132 In the ongoing war on terror, registers of emergency play pivotal roles in the justification of military securitization strategies, where ‘risk’, it seems, has become permanently binded to ‘securitization’. As Claudia Aradau and Rens Van Munster point out, the “perspective **of risk management”** seductively effects practices of military securitization to be seen as necessary, legitimate and indeed therapeutic.133 US tactics of liberal lawfare in the long war – the conditioning of the battlefield, the sanctioning of the privilege of violence, the regulating of the conduct of troops, the interpreting, negating and utilizing 24 of international law, and the securing of SOFAs – are vital security dispositifs of a broader ‘risk- securitization’ strategy involving the deployment of liberal technologies of biopower to “manage dangerous irruptions in the future”.134 It may well be fought beyond the battlefield in “a war of the pentagon rather than a war of the spear”,135 but it is lawfare that ultimately enables the ‘toxic combination’ **of US geopolitics and biopolitics defining the current age of securitization.**

Legal restraints guarantee increasing public resistance and executive secrecy

Michael J. Glennon 14, I-law prof at Tufts, National Security and Double Government, <http://harvardnsj.org/wp-content/uploads/2014/01/Glennon-Final.pdf>

If Bagehot’s theory is correct, the United States now confronts a precarious situation. Maintaining the appearance that Madisonian institutions control the course of national security policy requires that those institutions play a large enough role in the decision-making process to maintain the illusion. But the Madisonians’ role is too visibly shrinking, and the Trumanites’ too visibly expanding, to maintain the plausible impression of Madisonian governance.504 For this reason and others, public confidence in the Madisonians has sunk to new lows.505 The Trumanites have resisted transparency far more successfully than have the Madisonians, with unsurprising results. The success of the whole dual institutional model depends upon the maintenance of public enchantment with the dignified/ Madisonian institutions. This requires allowing no daylight to spoil their magic,506 as Bagehot put it. An element of mystery must be preserved to excite public imagination. But transparency—driven hugely by modern internet technology, multiple informational sources, and social media— leaves little to the imagination. “The cure for admiring the House of Lords,” Bagehot observed, “was to go and look at it.”507 The public has gone and looked at Congress, the Supreme Court, and the President, and their standing in public opinion surveys is the result**.** Justices, senators, and presidents are not masters of the universe after all, the public has discovered. They are just like us. Enquiring minds may not have read enough of Foreign Affairs508 to assess the Trumanites’ national security polices, but they have read enough of People Magazine509 to know that the Madisonians are not who they pretend to be. While the public’s unfamiliarity with national security matters has no doubt hastened the Trumanites’ rise, too many people will soon be too savvy to be misled by the Madisonian veneer,510 and those people often are opinion leaders whose influence on public opinion is disproportionate to their numbers. There is no point in telling ghost stories, Holmes said, if people do not believe in ghosts.511

It might be supposed at this point that the phenomenon of double government is nothing new. Anyone familiar with the management of the Vietnam War 512 or the un-killable ABM program 513 knows that double government has been around for a while. Other realms of law, policy, and business also have come to be dominated by specialists, made necessary and empowered by ever-increasing divisions of labor; is not national security duality merely a contemporary manifestation of the challenge long posed to democracy by the administrative state-cum-technocracy?515 Why is national security different?

There is validity to this intuition and no dearth of examples of the frustration confronted by Madisonians who are left to shrug their shoulders when presented with complex policy options, the desirability of which cannot be assessed without high levels of technical expertise. International trade issues, for example, turn frequently upon esoteric econometric analysis beyond the grasp of all but a few Madisonians. Climate change and global warming present questions that depend ultimately upon the validity of one intricate computer model versus another. The financial crisis of 2008 posed similar complexity when experts insisted to hastily-gathered executive officials and legislators that—absent massive and immediate intervention—the nation’s and perhaps the world’s entire financial infrastructure would face imminent collapse.516 In these and a growing number of similar situations, the “choice” madeby the Madisoniansis increasingly hollow; the real choices are made by technocrats who present options to Madisonians that the Madisonians are in no position to assess. Why is national security any different?

It is different for a reason that I described in 1981: the organizations in question “do not regulate truck widths or set train schedules. They have the capability of radically and permanently altering the political and legal contours of our society.”517 An unrestrained security apparatus has throughout history been one of the principal reasons that free governments have failed. The Trumanite network holds within its power something far greater than the ability to recommend higher import duties or more windmills or even gargantuan corporate bailouts: it has the power to kill and arrest and jail, the power to see and hear and read peoples’ every word and action, the power to instill fear and suspicion, the power to quash investigations and quell speech, the power to shape public debate or to curtail it, and the power to hide its deeds and evade its weak-kneed overseers. It holds, in short, the power of irreversibility. No democracy worthy of its name can permit that power to escape the control of the people.

It might also be supposed that existing, non-Madisonian, external restraints pose counterweights that compensate for the weakness of internal, Madisonian checks. The press, and the public sentiment it partially shapes, do constrain the abuse of power—but only up to a point. To the extent that the “marketplace of ideas” analogy ever was apt, that marketplace, like other marketplaces, is given to distortion. Public outrage is notoriously fickle, manipulable, and selective, particularly when driven by anger, fear, and indolence. Sizeable segments of the public—often egged on by public officials—lash out unpredictably at imaginary transgressors, failing even in the ability to identify sympathetic allies.518 "[P]ublic opinion," Sorensen wryly observed, "is not always identical with the public interest."519 The influence of the media, whether to rouse or dampen, is thus limited. The handful of investigative journalists active in the United States today are the truest contemporary example of Churchill's tribute to the Royal Air Force.520 In the end, though, access remains everything to the press. Explicit or implicit threats by the targets of its inquiries to curtail access often yield editorial acquiescence. Members of the public obviously are in no position to complain when a story does not appear. Further, even the best of investigative journalists confront a high wall of secrecy**.** Finding and communicating with (on deep background, of course) a knowledgeable, candid source within an opaque Trumanite network resistant to efforts to pinpoint decision-makers 521 can take years. Few publishers can afford the necessary financial investment; newspapers are, after all, businesses, and the bottom line of their financial statements ultimately governs investigatory expenditures. Often, a second corroborating source is required. Even after scaling the Trumanite wall of secrecy, reporters and their editors often become victims of the deal-making tactics they must adopt to live comfortably with the Trumanites. Finally, members of the mass media are subject to the same organizational pressures that shape the behavior of other groups. They eat together, travel together, and think together. A case in point was the Iraq War. The Washington Post ran twenty seven editorials in favor of the war along with dozens of op-ed pieces, with only a few from skeptics.522 The New York Times, Time, Newsweek, the Los Angeles Tunes, and the Wall Street Journal all marched along in lockstep.523 As Senator Eugene McCarthy aptly put it, reporters are like blackbirds; when one flies off the telephone wire, they all fly off.524

More importantly, the premise—that a vigilant electorate fueled by a skeptical press together will successfully fill the void created by the hollowed-out Madisonian institutions—is wrong.525 This premise supposes that those outside constraints operate independently, that their efficacy is not a function of the efficacy of internal, Madisonian checks.526 But the internal and external checks are woven together and depend upon one another.527 Non-disclosure agreements (Judicially-enforced gag orders, in truth) are prevalent among those best positioned to criticize/28 Heightened efforts have been undertaken to crush vigorous investigative journalism and to prosecute and humiliate whistleblowers and to equate them with spies under the espionage laws. National security documents have been breathtakingly over-classified. The evasion of Madisonian constraints by these sorts of policies has the net effect of narrowing the marketplace of ideas, curtaining public debate, and gutting both the media and public opinion as effective restraints.529 The vitality of external checks depends upon the vitality of internal Madisonian checks, and the internal Madisonian checks only minimally constrain the Trumanites.

Some suggest that the answer is to admit the failure of the Madisonian institutions, recognize that for all their faults the external checks are all that really exist, acknowledge that the Trumanite network cannot be unseated, and try to work within the current framework.530 But the idea that external checks alone do or can provide the needed safeguards is false**.** If politics were the effective restraint that some have argued it is,531 politics—intertwined as it is with law—would have produced more effective legalist constraints. It has not. The failure of law is and has been a failure of politics. If the press and public opinion were sufficient to safeguard what the Madisonian institutions were designed to protect, the story of democracy would consist of little more than a series of elected kings, with the rule of law having frozen with the signing of Magna Carta in 1215. Even with effective rules to protect free, informed, and robust expression—which is an enormous assumption—public opinion alone cannot be counted upon to protect what law is needed to protect. The hope that it can do so recalls earlier reactions to Bagehot’s insights—the faith that “the people” can simply “throw off” their “deferential attitude and reshape the political system,” insisting that the Madisonian, or dignified, institutions must “once again provide the popular check” that they were intended to provide.532

That, however, is exactly what many thought they were doing in electing Barack Obama as President. The results need not be rehearsed; little reason exists to expect that some future public effort to resuscitate withered Madisonian institutions would be any more successful. Indeed, the added power that the Trumanite network has taken on under the BushObama policies would make that all the more difficult. It is simply naive to believe that a sufficiently large segment of informed and intelligent voters can somehow come together to ensure that sufficiently vigilant Madisonian surrogates will somehow be included in the national security decisionmaking process to ensure that the Trumanite network is infused with the right values. Those who believe that do not understand why that network was formed, how it operates, or why it survives. They want it, in short, to become more Madisonian. The Trumanite network, of course, would not mind appearing more Madisonian, bul its enduring ambilion is lo become, in reality, less Madisonian.

It is not clear what precisely might occur should Bagehot's cone of government "fall to earth." United States history provides no precedent. One possibility is a prolongation of what are now long-standing trends, with the arc of power continuing to shift gradually from the Madisonian institutions to the Trumanite network. Under this scenario, those institutions continue to subcontract national security decisionmaking to the Trumanites; a majority of the public remains satisfied with tradeoffs between liberty and security; and members of a dissatisfied minority are at a loss to know what to do and are, in any event, chilled by widely-feared Trumanite surveillance capabilities. The Madisonian institutions, in this future, fade gradually into museum pieces, like the British House of Lords and monarchy; Madisonians kiss babies, cut ribbons, and read Trumanite talking points, while the Trumanite network, careful to retain historic forms and familiar symbols, takes on the substance of a silent directorate.

Another possibility, however, is that the fall to earth could entail consequences that are profoundly disruptive, both for the government and the people. This scenario would be more likely in the aftermath of a catastrophic terrorist attack that takes place in an environment lacking the safety-valve checks that the Madisonian institutions once provided. In this future, an initial "rally round the flag" fervor and associated crack-down are followed, later, by an increasing spiral of recriminatory reactions and counter-reactions. The government is seen increasingly by elements of the public as hiding what they ought to know, criminalizing what they ought to be able to do, and spying upon what ought to be private. The people are seen increasingly by the government as unable to comprehend the gravity of security threats, unappreciative of its security-protection efforts, and unworthy of its own trust. Recent public opinion surveys are portentous. A September 2013 Gallup Poll revealed that Americans' trust and confidence in the federal government's ability to handle international problems had reached an all-time low;533 a June 2013 Time magazine poll disclosed that 70% of those age eighteen to thirty-four believed that Edward Snowden "did a good thing" in leaking the news of the NSA's surveillance program.534 This yawning attitudinal gap between the people and the government could reflect itself in multiple ways. Most obviously, the Trumanite network must draw upon the U.S. population to fill the five million positions needed to staff its projects that require security clearances.535 That would be increasingly difficult, however, if the pool of available recruits comprises a growing and indeterminate number of Edward Snowdens—individuals with nothing in their records that indicates disqualifying unreliability but who, once hired, are willing nonetheless to act against perceived authoritarian tendencies by leaving open the vault of secrecy.

A smaller, less reliable pool of potential recruits would hardly be the worst of it, however. Lacking perceived legitimacy, the government could expect a lesser level of cooperation, if not outright obstruction, from the general public. Many national security programs presuppose public support for their efficient operation. This ranges from compliance with national security letters and library records disclosure under the PATRIOT Act to the design, manufacture, and sale of drones, and cooperation with counterintelligence activities and criminal investigations involving national security prosecutions. Moreover, distrust of government tends to become generalized; people who doubt governmental officials' assertions on national security threats are inclined to extend their skepticism.

Governmental assurances concerning everything from vaccine and food safety to the fairness of stock-market regulation and IRS investigations (not without evidence536) become widely suspect. Inevitably, therefore, daily life would become more difficult. Government, after all, exists for a reason. It carries out many helpful and indeed essential functions in a highly specialized society. When those functions cannot be fulfilled, work-arounds emerge, and social dislocation results. Most seriously, the protection of legitimate national security interests would itself suffer if the public were unable to distinguish between measures vital to its protection and those assumed to be undertaken merely through bureaucratic inertia or lack of imagination.

The government itself, meanwhile, could not be counted upon to remain passive in the face of growing public obduracy in response to its efforts to do what it thinks essential to safeguard national security. Here we do have historical precedents, and none is comfortably revisited. The Alien and Sedition Acts in the 1790s;537 the Palmer Raids of 1919 and 1920;538 the round-up of Japanese-American citizens in the 1940s;539 governmental spying on and disruption of civil rights, draft protesters, and anti-war activists in the 1960s and 1970s;540 and the incommunicado incarceration without charges, counsel, or trial of "unlawful combatants" only a few short years ago541—all are examples of what can happen when government sees limited options in confronting nerve-center security threats. No one can be certain, but the ultimate danger posed if the system were to fall to earth in the aftermath of a devastating terrorist attack could be intensely divisive and potentially **destabilizing**—not unlike what was envisioned by conservative Republicans in Congress who opposed Truman's national security programs when the managerial network was established.542 It is therefore appropriate to move beyond explanation and to turn to possibilities for reform—to consider steps that might be taken to prevent the entire structure from falling to earth.

Vote neg to debase the aff’s reliance securitized law in favor of democratic restraints on the President

Stephanie A. Levin 92, law prof at Hampshire College, Grassroots Voices: Local Action and National Military Policy, 40 Buff. L. Rev. 372

In this sense, what is important about federalism is not that it locates power "here" or "there" — not that some things are assigned irretrievably to the federal government or others to the states — but that it creates a tension about power, so that there are competing sources of authority rather than one unitary sovereign. Hannah Arendt has written that "perhaps the greatest American innovation in politics as such was the consistent abolition of sovereignty within the body politic of the republic, the insight that in the realm of human affairs sovereignty and tyranny are the same."194 Akhil Amar has expressed what is actually the same basic insight in a very different formulation, writing that the American innovation was to place sovereignty "in the People themselves. "I9S Whether one views unitary sovereignty as abolished or relocated to the people, the key point is that it is no longer considered to be in any unitary government. Governmental institutions are divided and kept in tension. At the federal level, this is the familiar doctrine of separation of powers. The same principle animates federalism. The tension is valued because it creates space for the expression of suppressed viewpoints and helps to prevent any one orthodoxy from achieving complete hegemony. Amar sums up the contribution that this governmental innovation makes to the liberty of the people by writing: "As with separation of powers, federalism enabled the American People to conquer government power by dividing it. Each government agency, state and national, would have incentives to win the principal's affections by monitoring and challenging the other's misdeeds."196 This is a compelling insight, but the way Professor Amar has framed it presents two difficulties for present purposes. First, by naming only the "state" and "national" governments, it ignores the field of local government action, a field particularly accessible to the direct involvement of the very citizens who constitute Amar's sovereign "People."197 Second, by making the subject of the verb the "government agency," the sentence makes it sound as if it were the "government agency" which acts, rather than recognizing that it is people who act though the agencies of government. Since the focus here is on federalism as a means of fostering civic participation, both of these qualifications are crucial. While state government will sometimes be an excellent locus for citizen action, often local government will provide the best forum for ordinary citizens to find their voices in civic conversation. And because the value of federalism for our purposes is in the enhanced opportunities it provides for citizen participation in policy development, the focus must be not on government institutions acting, but on people acting through them. In summary, three key attributes of participatory federalism must be highlighted. The first is that what is most important is not where government power is assigned — to the federal government, the states, or the localities — but the very fact that there are shared and overlapping powers. This dispersion of power means that the citizen is better protected from the dangers that are inherent in being subject to any one unitary sovereign.198 A second key attribute is that the value of this federalism lies not in the empowerment of government, but in the empowerment of people. Its animating purpose is not to add to or detract from the powers of any particular level of government, but to provide the most fruitful arrangements for enhancing the possibility of genuine citizen control over government. Third, the only meaningful measure of the success or failure of this type of federalism is the extent to which it contributes to increased opportunities for citizens to have a voice in government. This must be not at the level of deceptive abstraction — "the People speak" — but at the very concrete level of actual people with actual voices. The goal is for more people to be able to speak up in settings more empowering than their living rooms — and certainly state and local governments, while not the only possible settings, provide such an opportunity. In conclusion, these general principles of participatory federalism must be linked to the specific case of federalism in connection with military policy. The constitutional arrangements concerning military power which were described in Section II fit with these three attributes of participatory federalism quite well. The first attribute calls for dispersing power by sharing it. As has already been suggested, the military arrangements in the Constitution were designed to achieve exactly this sort of liberating tension between the national government's military powers and the decentralized state and locally-controlled institutions by which these powers were to be carried out. The second attribute calls for empowering people rather than governmental institutions. Here, too, the constitutional arrangements seem to fit. The purpose of the grants of power in the relevant constitutional clauses was not to endow any unit of government with the prerogatives of military power for its own sake. The reason for creating these powers was not to strengthen government but to protect the citizenry — to "provide for the common defense." Given this, it seems anomalous for the federal government — or any branch of the American government — to claim a right to control or use military violence as an inherent attribute of sovereignty.'99 The only justification for this power is in whether it contributes to the security of the citizens. Finally, the idea that federalism should serve the purpose of enhancing citizen voice can also be linked to decentralized arrangements for the control of military power. In the eighteenth century, as I have suggested earlier, the mechanism for expressing "voice" was physical: the militiamember showed up at muster, rifle on shoulder, to participate bodily in a "conversation" about military force.200 Today, it can be hoped that our civic conversation can be more verbal. However, we should translate the underlying meaning of the eighteenth century mechanism — a meaning of citizen participation and consent — into a modality more appropriate to contemporary life rather than relinquish it altogether. I would argue that such a translation leads to three central conclusions. The first is theoretical: we must challenge those mental preconceptions which favor totally centralized power in the military policy arena. We must stop seeing control over military power as belonging "naturally" to the federal government and even more narrowly to the executive branch within it. Instead, we must reconceptualize our understanding of the national arrangements to envision a dynamic and uncertain balance among different sources of power, not only among the three branches of the federal government, but between centralized and decentralized institutions of government as well.201 While the role of the federal government is, of course, crucial, the roles of the states and localities are more than interstitial and should not be allowed to atrophy. Only in this dynamic tension does the best protection for the citizenry lie.

### 3

#### Sanctions are failing, but GOP is trying to revive the push

Greg Sargent, WaPo, 2/3/14, Another big blow to the Iran sanctions bill, www.washingtonpost.com/blogs/plum-line/wp/2014/02/03/another-big-blow-to-the-iran-sanctions-bill/

**The push for a new Iran sanctions bill may have stalled in the Senate, but it’s still alive and kicking** in the House, where **leaders are telling members such a measure could still be considered** this year. Indeed, proponents of more sanctions appear to be clinging to the hope that if something passes the House with broad bipartisan support, it could pressure the Senate to act. But here’s something that could help block that from happening — in the process delivering yet another big blow to the prospects of a new Iran sanctions measure. I’m told more than 70 House Dems — from a diverse ideological background — have now signed a new letter coming out against any new sanctions measure and calling for diplomacy to be given a chance. This represents the first public statement from House Dems **en masse** against the measure and for diplomacy, matching what we’ve been seeing in the Senate. Here’s the text, which hasn’t yet been released but was sent over by a source: Dear Mr. President: As Members of Congress — and as Americans — we are united in our unequivocal commitment to prevent Iran from obtaining a nuclear weapon. The proliferation of nuclear weapons in the Middle East would threaten the security of the United States and our allies in the region, particularly Israel. The ongoing implementation of the Joint Plan of Action agreed to by Iran and the “P5+1 nations last November increases the possibility of a comprehensive and verifiable international agreement. We understand that there is no assurance of success and that, if talks break down or Iran reneges on pledges it made in the interim agreement, Congress may be compelled to act as it has in the past by enacting additional sanctions legislation. At present, however, we believe that Congress must give diplomacy a chance. A bill or resolution that risks fracturing our international coalition or, worse yet, undermining our credibility in future negotiations and jeopardizing hard-won progress toward a verifiable final agreement, must be avoided. We remain wary of the Iranian regime. But we believe that robust diplomacy remains our best possible strategic option, and we commend you and your designees for the developments in Geneva. Should negotiations fail or falter, nothing precludes a change in strategy. But we must not imperil the possibility of a diplomatic success before we even have a chance to pursue it. Dem Rep. Lloyd Doggett — a senior member of the House Ways and Means Committee who spearheaded this letter along with Dem Rep. David Price – tells me in a statement: “Iranian hard liners may ultimately obstruct a meaningful permanent agreement, but Congress should not give them a pretext for doing so. The support for this letter from a broad and growing coalition of more than 70 Members sends a strong signal that Democrats stand for peace and diplomacy.” Aides who have seen the letter tell me it’s been signed by some prominent Jewish Democrats and at least one member of the Dem leadership (James Clyburn). This comes after former Secretary of State Hillary Clinton (belatedly) weighed in against the sanctions bill, another blow to its prospects. While it does appear that the push for a sanctions vote has run aground, **it’s worth reiterating** that if something goes wrong in the talks, those who want a vote — including **Republicans** who **appear to be using this as a way to divide Dems**, **and** Democrats who refuse to be swayed by the administration’s insistence that a vote could derail diplomacy — **could have a hook to** revive their push. Eric Cantor is still said to want to move an Iran sanctions bill, and Dems have been wary of the possibility that Steny Hoyer — the number two Dem in the House — could join Cantor’s effort, thus giving it bipartisan legitimacy and perhaps leading more Dems to support it. The new letter from around six dozen House Dems opposing such a move could make that outcome that much less likely — particularly if it continues to pick up more signatures.

#### The plan’s authority restriction is a loss for Obama—causes defections

Dr. Andrew J. Loomis, Visiting Fellow at the Center for a New American Security, and Department of Government at Georgetown University, 3/2/2007, Leveraging legitimacy in the crafting of U.S. foreign policy, http://citation.allacademic.com//meta/p\_mla\_apa\_research\_citation/1/7/9/4/8/pages179487/p179487-36.php

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

#### The GOP will exploit this to flip Democratic votes on Iran—causes sanctions

Josh Rogin, Daily Beast, 2/5/14, GOP Will Force Reid to Save Obama’s Iran Policy—Over and Over Again, www.thedailybeast.com/articles/2014/02/05/gop-will-force-reid-to-save-obama-s-iran-policy-over-and-over-again.html

Dozens of Republican senators joined Wednesday to demand that Harry Reid allow a floor vote on a new Iran sanctions bill. If he doesn’t, they are planning to make his life miserable.

The Republican Senate caucus is planning to use every parliamentary trick in the book to push Senate Majority Leader Harry Reid to allow a floor vote on a new Iran sanctions bill that the Obama administration strenuously opposes. The Obama White House has succeeded in keeping most Democrats in line against supporting quick passage of the “Nuclear Weapon Free Iran Act,” which currently has 59 co-sponsors, including 13 Democrats. Reid has faithfully shelved the bill, pending the outcome of negotiations between Iran and the world’s major powers—the so-called “P5+1.” But tomorrow, Republicans plan to respond by using an array of floor tactics—including bringing up the bill and forcing Reid to publicly oppose it—as a means of putting public pressure on Reid and Democrats who may be on the fence. “Now we have come to a crossroads. Will the Senate allow Iran to keep its illicit nuclear infrastructure in place, rebuild its teetering economy and ultimately develop nuclear weapons at some point in the future?” 42 GOP senators wrote in a letter sent to Reid late Wednesday and obtained by The Daily Beast. “The answer to this question will be determined by whether you allow a vote on S. 1881, the bipartisan Nuclear Weapon Free Iran Act, which is cosponsored by more than half of the Senate.” The GOP letter calls on Reid to allow a vote on the bill during the current Senate work period—in other words, before the chamber’s next recess. Senate GOP aides said that until they get a vote, **GOP senators are planning to** use a number of procedural tools at their disposal to **keep this issue** front and center **for Democrats**. Since the legislation is already on the Senate’s legislative calendar, any senator can bring up the bill for a vote at any time and force Democrats to publicly object. Senators can also try attaching the bill as an amendment to future bills under consideration. Senate Minority Leader Mitch McConnell has been a harsh critic of Reid’s shelving of the bill, so he could demand a vote on it as a condition of moving any other legislation. If those amendments are blocked by Reid, Senators can then go to the floor and make speech after speech calling out Reid for ignoring a bill supported by 59 senators—and calling on fence-sitting Democrats to declare their position on the bill. “This letter is a final warning to Harry Reid that if Democrats want to block this bipartisan legislation, they will own the results of this foreign policy disaster,” one senior GOP senate aide said. The Republican senators believe, based on recent polls, that the majority of Americans support moving forward with the Iran sanctions bill now. They also believe that if Reid did allow a vote, the bill would garner more than the 59 votes of its co-sponsors and that Democrats vulnerable in 2014 races would support it, **pushing the vote total past a veto-proof two-thirds supermajority**.

#### New sanctions cause negotiation collapse and Middle East War

Rachel Kleinfeld, Carnegie Endowment For International Peace, 1/31/14, Sanctions Could Disrupt Negotiations With Iran, carnegieendowment.org/2014/02/03/sanctions-could-disrupt-negotiations-with-iran/h02v

Facing skyrocketing inflation, a collapsing currency and a sudden loss of imported goods, Iranians voted last year to kick out Mahmoud Ahmadinejad and elected a government they thought might jump-start their economy.

The new government of President Hassan Rouhani is not "moderate" - but it is practical**. It would like a nuclear weapon, but it wants economic relief more**. Rouhani knows his only bargaining chip to end sanctions is to stop the nuclear weapons program.

But the Rouhani government is on a short leash. Iran's supreme leader, Ali Khamenei, holds the ultimate power - and he is skeptical that a deal can be struck. Hardliners in Iran who benefit from sanctions are against it, as are many in the U.S. Congress. Khamenei needs to walk a careful line: If he looks like he's capitulating too much, then he'll face domestic backlash. He knows he has only a few months to deliver.

That is why the congressional threat of more sanctions - even if they take effect only if the deal fails - is so dire. Hardliners and Khamenei will take such legislation as proof that the United States wants regime change, not an end to Iran's nuclear program. Rouhani himself has said that if sanctions legislation passes, negotiations are off.

So why have more than 50 senators signed up as co-sponsors of new sanctions? Some do want regime change. So would we all - Iran is a noxious, terrorist-supporting, human-rights-destroying government. But regime change wouldn't end the security threat. Even the "Green Movement" that marched for democracy a few years ago wanted to obtain a nuclear weapon.

Others think that sanctions got Iran to the negotiating table, so more sanctions will push them even harder. This is a miscalculation. Negotiations have begun. Iran has allowed nuclear inspectors to seal up their nuclear plants. More sanctions will simply seem like bad faith on our part. They also could provide the excuse other countries are looking for to break with the sanctions regime. Bans on oil imports are causing real economic hardship to allies such as Japan who depended on Iran for much of their energy, and export bans are hurting European companies desperate to restart growth. If the United States looks like the bad guy, these governments are likely to give in to domestic pressure and reduce their sanctions against Iran.

Finally, the American Israel Public Affairs Committee is lobbying Congress hard with the message that a vote against sanctions is a vote against Israel. To me, as a Jew and a Zionist, this is not only hogwash: It is allowing an unelected American nongovernmental organization to wrap itself in the Israeli flag while suggesting actions that threaten Israel.

**If we cannot end Iran's nuclear program with diplomacy, we will end it through war**. Two years ago, the national security organization I founded worked with Pentagon planners on a simulation game to look at what would happen after the United States bombed Iran. In all the possible scenarios, Iran was likely to do one thing: attack Israel to open up a two-front war and further drag America into conflict in the Middle East. A vote for sanctions at this point is a vote for war - and for Iranian missile attacks on Israel.

#### Nuclear war

James A. **Russell,** Senior Lecturer, National Security Affairs, Naval Postgraduate School, ‘9 (Spring) “Strategic Stability Reconsidered: Prospects for Escalation and Nuclear War in the Middle East” IFRI, Proliferation Papers, #26, http://www.ifri.org/downloads/PP26\_Russell\_2009.pdf

Strategic stability in the region is thus undermined by various factors: (1) asymmetric interests in the bargaining framework that can introduce unpredictable behavior from actors; (2) the presence of non-state actors that introduce unpredictability into relationships between the antagonists; (3) incompatible assumptions about the structure of the deterrent relationship that makes the bargaining framework strategically unstable; (4) perceptions by Israel and the United States that its window of opportunity for military action is closing, which could prompt a preventive attack; (5) the prospect that Iran’s response to pre-emptive attacks could involve unconventional weapons, which could prompt escalation by Israel and/or the United States; (6) the lack of a communications framework to build trust and cooperation among framework participants. These systemic weaknesses in the coercive bargaining framework all suggest that escalation by any the parties could happen either on purpose or as a result of miscalculation or the pressures of wartime circumstance. Given these factors, it is disturbingly easy to imagine scenarios under which a conflict could quickly escalate in which the regional antagonists would consider the use of chemical, biological, or nuclear weapons. It would be a mistake to believe the nuclear taboo can somehow magically keep nuclear weapons from being used in the context of an unstable strategic framework. Systemic asymmetries between actors in fact suggest a certain increase in the probability of war – a war in which escalation could happen quickly and from a variety of participants. Once such a war starts, events would likely develop a momentum all their own and decision-making would consequently be shaped in unpredictable ways. The international community must take this possibility seriously, and muster every tool at its disposal to prevent such an outcome, which would be an unprecedented disaster for the peoples of the region, with substantial risk for the entire world.

### 4

Judicial restrictions on targeted killing destroys the PQD

Rosen ‘11

Richard, Professor of Law and Director, Center for Military Law and Policy, Texas Tech University School of Law. Colonel, U.S. Army (retired), “DRONES AND THE U.S. COURTS,” Wm. Mitchell L. Rev. 5281 2010-2011 http://repository.law.ttu.edu/bitstream/handle/10601/1918/Drones%20and%20the%20U.S.%20Courts.pdf?sequence=1

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

PQD key to global intelligence and cooperation—solves terrorism

Dhooge ‘7

Lucien, Sue and John Staton Professor of Law, Georgia Institute of Technology, “THE POLITICAL QUESTION DOCTRINE AND CORPORATE COMPLICITY IN EXTRAORDINARY RENDITION,” 21 Temp. Int'l & Comp. L.J. 311 2007

The complaint alleges the existence of a clandestine U.S. intelligence program involving the apparent cooperation of foreign intelligence services and law enforcement authorities **throughout the world**. 145 Adjudicating the complaint would result in further disclosures regarding the means and methods utilized to seize suspected terrorists by the United States and its allies to an **undesirable degree**. Such disclosures may include the policies and practices underlying **rendition**, including the number and identity of participants in rendition operations; the identity of their employer; the extent of CIA participation; operational details associated with the flights serviced by Jeppesen; and the other operational details which have not been publicly disclosed. This information **is essential** to prove the underlying human rights violations committed by the CIA and Jeppesen's complicity as a conspirator and aider and abettor. Access to this information would also be necessary, given the enhanced degree of specificity required of claims of conspiracy and aiding and abetting, as well as claims asserted pursuant to the ATS. 146 Access could also be justified based on the serious nature of the allegations and their potential to cause considerable financial injury to Jeppesen through the magnitude of potential damage awards and resulting harm to corporate reputation. The disclosure of such information would virtually **create an extraordinary rendition playbook.** The creation of such a playbook, however, interferes with the President's responsibility for national security and authority over foreign affairs. The **continued viability of antiterrorism programs** is essential to preserving national security, a responsibility clearly within the President's constitutional obligations and which includes authority to protect national security information. 147 Publishing the details of the extraordinary rendition program, necessitated by the complaint, to a branch of the government ill-suited to evaluate the consequences of the release of such sensitive information can only further harm the program and, as a result, weaken a course of action selected by the executive branch in furtherance of fulfilling its national security obligations. 148 The possibility of compulsive disclosures regarding the extraordinary rendition program may also disrupt U.S. diplomatic relations. The extraordinary rendition program has proven controversial; it has already led to two national investigations by British and Swedish authorities, with several more currently pending.149 Further strain may be placed on U.S. relations with European states as a result of the investigation conducted by the Council of Europe into the complicity of numerous national governments in extraordinary renditions. The number of potentially impacted relations with European states is significant and includes some of the United States' closest allies in the so-called "war on terror," such as Italy, Poland, Spain, and the United Kingdom. 150 Diplomatic relations with non-European states that have permitted extraordinary renditions to occur within their territories may also be negatively impacted. This group of states includes numerous crucial allies in U.S. antiterrorism efforts such as **Canada**, **Indonesia**, **Pakistan, and Turkey**. Another set of potentially impacted diplomatic relations are those with foreign states that have accepted persons subject to rendition and have subsequently utilized detention and interrogation methods that do not comport with U.S. law or international standards. States that fall within this category include Afghanistan, **Egypt, Iraq, Jordan, Morocco, Pakistan, Poland, Syria, Romania, Thailand, and Uzbekistan**.' 51 The vast majority of these states are key participants in combating terrorism on the basis of their own struggles against terrorist organizations. Such disclosures regarding the extent of national cooperation or indifference to extraordinary renditions occurring within their territories may embarrass these governments. Western European states may suffer embarrassment for their failure to uphold human rights protections deeply engrained in their national cultures as well as in regional and global instruments. Other governments may be reluctant to confirm their cooperation with U.S. intelligence forces in extraordinary renditions for other reasons, including previous denials of such cooperation, maintenance of standing in the international community, concerns about abdication of national sovereignty, and potential inflammation of public opposition within their constituencies. Particularly susceptible governments in this regard include states with populations deeply skeptical of U.S. foreign policy in general and those with antiterrorism initiatives such as Egypt, Indonesia, Iraq, Pakistan, and Turkey. Some of these governments may re-evaluate further operations with U.S. intelligence services if their complicity is exposed. 152 Such a result is not only inimical to present U.S. foreign policy goals and future initiatives, but also undermines the international consensus **necessary** to successfully combat the spread of global terrorism. **This potential impact upon U.S. foreign relations** **compel** imposition of the political question doctrine.

### 5

The executive branch should establish ex ante transparency of targeted killing standards and procedures and limit self-defense targeted killings to those that are not guided by specific reference to the armed attacks that justify it, how the group that is the object of the use of force is responsible for the attacks, and how the state in which the group is being targeted can itself be held legally responsible for the operations of that group so as to justify the use of force against the state.

Executive order establishing 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

Solves the second advantage

Craig Martin 11, Associate Professor of Law at Washburn University School of Law, “GOING MEDIEVAL: TARGETED KILLING, SELF-DEFENSE AND THE JUS AD BELLUM REGIME”, SSRN

Without going through the analysis for each of these scenarios in detail, we can nonetheless conclude that while it may be possible to justify the use of force against these states on the basis of self-defense, the crucial point is that the justificatory analysis is case-dependent. When the United States engages in strikes that constitute the use of force against each of these states, the claim of the right of self-defense must make specific reference to the armed attacks that justify it, how the group that is the object of the use of force is responsible for the attacks, and how the state in which the group is being targeted can itself be held legally responsible for the operations of that group so as to justify the use of force against the state. The problem with the current U.S. claim of self-defense is that it does none of this, but rather asserts a general right to use force against Al Qaeda, the Taliban, and any other groups associated with them; and against any country in which the members of such groups are located, not based on the state’s actual involvement in the group’s attacks, but merely on it being insufficiently willing or able to suppress the group’s operations.96¶ It almost goes without saying that the principles of necessity and proportionality cannot be satisfied under such sweeping and general claims of self-defense. It is not possible to demonstrate that the use of force was strictly necessary when there has been no identification of the armed attacks in question, or explanation of how the specific groups being targeted pose the threat of imminent armed attacks, that can only be stopped through the use of force. Similarly, there can be no proportionality analysis without the identification of the harm that would be caused by specific attacks, against which one can compare the harm being inflicted by the defensive use of force.97 Thus, in order to satisfy the necessity and proportionality principles that are at the core of the doctrine, the United States must provide the information required for such analysis.¶ In sum, the U.S. government’s reliance upon self-defense as a justification for the targeted killing policy in countries such as Yemen, Somalia, and Pakistan, at least in the very general terms with which it has been asserted, is not consistent with the principles of self-defense under the jus ad bellum regime. This finding would suggest that, unless and until the administration offers more particularized support for this justification, the ongoing use of missile strikes for the purposes of killing suspected “terrorists,” “militants” and “insurgents” in countries like Somalia, Yemen, and Pakistan, is a violation of the prohibition on the use of armed force.¶

Such a conclusion is troubling enough. But even more important in the long run is the potential harm this continued practice could cause to the jus ad bellum regime, and to the relationship between the jus ad bellum and IHL regimes, to which we turn next.

### Accountability

Groupthink is wrong, relies on flawed methodologies, and it can be beneficial

Anthony Hempell 4 [User Experience Consulting Senior Information Architect, “Groupthink: An introduction to Janis' theory of concurrence-seeking tendencies in group work., http://www.anthonyhempell.com/papers/groupthink/, March 3]

In the thirty years since Janis first proposed the groupthink model, there is still little agreement as to the validity of the model in assessing decision-making behaviour (Park, 2000). Janis' theory is often criticized because it does not present a framework that is suitable for empirical testing; instead, the evidence for groupthink comes from largely qualitative, historical or archival methods (Sunstein, 2003). Some critics go so far as to say that Janis's work relies on "anecdote, casual observation, and intuitive appeal rather than rigorous research" (Esser, 1998, cited in Sunstein, 2003, p.142). While some studies have shown support for the groupthink model, the support tends to be mixed or conditional (Esser, 1998); some studies have revealed that a closed leadership style and external threats (in particular, time pressure) promote groupthink and defective decision making (Neck & Moorhead, 1995, cited by Choi & Kim, 1999); the effect of group cohesiveness is still inconclusive (Mullen, Anthony, Salas & Driskel, 1994, cited by Choi & Kim, 1999). Janis's model tends to be supported by studies that employ a qualitative case-study approach as opposed to experimental research, which tends to either partially support or not support Janis's thesis (Park, 2000). The lack of success in experimental validation of groupthink may be due to difficulties in operationalizing and conceptualizing it as a testable variable (Hogg & Hains, 1998; Park, 2000).

Some researchers have criticized Janis for categorically denouncing groupthink as a negative phenomenon (Longley & Pruitt, 1980, cited in Choi & Kim, 1999). Sniezek (1992) argues that there are instances where concurrence-seeking may promote group performance. When used to explain behaviour in a practical setting, groupthink has been frames as a detrimental group process; the result of this has been that many corporate training programs have created strategies for avoiding groupthink in the workplace (Quinn, Faerman, Thompson & McGrath, 1990, cited in Choi & Kim, 1999).

Yemen backlash is wrong and drones solve stability --- best studies

Swift 12 (Christopher, a fellow at the University of Virginia's Center for National Security Law, Foreign Affairs, “The Drone Blowback Fallacy: Strikes in Yemen Aren't Pushing People to Al Qaeda”, July 1, 2012)

Recent revelations that the White House keeps a secret terrorist kill list, which it uses to target al Qaeda leaders, have spurred a debate over drone warfare. Progressive pundits excoriate the Obama administration for expanding the power of the executive branch. Senate Republicans, in turn, have demanded the appointment of aspecial counsel to probe the alleged leaks of classified information that brought the kill list to light. As the political drama unfolds in Washington, however, the United States is intensifying its drone campaign in the arid mountains and remote plateaus of Yemen. With al Qaeda's center of gravity shifting from Pakistan to Yemen, the Central Intelligence Agency recently sought authority to conduct **"signature strikes,"** in which drone pilots engage targets based on behavioral profiles rather than on positive identifications. The move marks a significant increase in the intensity and extensity of the drone campaign -- in the first six months of 2012, the Obama administration conducted approximately 43 drone strikes in Yemen, nearly twice the total from the three preceding years. Critics argue that drone strikes create new adversaries and drive al Qaeda's recruiting. As the Yemeni youth activist Ibrahim Mothana recently wrote in The New York Times, "Drone strikes are causing more and more Yemenis to hate America and join radical militants; they are not driven by ideology but rather by a sense of revenge and despair." The Washington Post concurs. In May, it reported that the "escalating campaign of U.S. drone strikes [in Yemen] is stirring increasing sympathy for al Qaeda-linked militants and driving tribesmen to join a network linked to terrorist plots against the United States." The ranks of al Qaeda in the Arabian Peninsula (AQAP) have tripled to 1,000 in the last three years, and the link between its burgeoning membership, U.S. drone strikes, and local resentment seems obvious. Last month, I traveled to Yemen to study how AQAP operates and whether the conventional understanding of the relationship between drones and recruitment is correct. While there, I conducted 40 interviews with tribal leaders, Islamist politicians, Salafist clerics, and other sources. These subjects came from 14 of Yemen's 21 provinces, most from rural regions. Many faced insurgent infiltration in their own districts. Some of them were actively fighting AQAP. Two had recently visited terrorist strongholds in Jaar and Zinjibar as guests. I conducted each of these in-depth interviews using structured questions and a skilled interpreter. I have withheld my subjects' names to protect their safety -- a necessity occasioned by the fact that some of them had survived assassination attempts and that others had recently received death threats. These men had little in common with the Yemeni youth activists who capture headlines and inspire international acclaim. As a group, they were older, more conservative, and more skeptical of U.S. motives. They were less urban, less wealthy, and substantially less secular. But to my astonishment, **none of the individuals** I interviewed **drew a** causal relationship **between U.S. drone strikes and al Qaeda recruiting**. Indeed, of the 40 men in this cohort, only five believed that U.S. drone strikes were helping al Qaeda more than they were hurting it. Al Qaeda exploits U.S. errors, to be sure. As the Yemen scholar Gregory Johnsen correctly observes, the death of some 40 civilians in the December 2009 cruise missile strike on Majala infuriated ordinary Yemenis and gave AQAP an unexpected propaganda coup. But the **fury produced by** such **tragedies** **is** not systemic, not sustained, and, ultimately, not sufficient. As much as al Qaeda might play up civilian casualties and U.S. intervention in its recruiting videos, the Yemeni tribal leaders I spoke to reported that the factors driving young men into the insurgency are overwhelmingly economic. From al Hudaydah in the west to Hadhramaut in the east, AQAP is building complex webs of dependency within Yemen's rural population. It gives idle teenagers cars, khat, and rifles -- the symbols of Yemeni manhood. It pays salaries (up to $400 per month) that lift families out of poverty. It supports weak and marginalized sheikhs by digging wells, distributing patronage to tribesmen, and punishing local criminals. As the leader of one Yemeni tribal confederation told me, "Al Qaeda attracts those who can't afford to turn away." Religious figures echoed these words. Though critical of the U.S. drone campaign, none of the Islamists and Salafists I interviewed believed that drone strikes explain al Qaeda's burgeoning numbers. "The driving issue is development," an Islamist parliamentarian from Hadramout province said. "Some districts are so poor that joining al Qaeda represents the best of several bad options." (Other options include criminality, migration, and even starvation.) A Salafi scholar engaged in hostage negotiations with AQAP agreed. "Those who fight do so because of the injustice in this country," he explained. "A few in the north are driven by ideology, but in the south it is mostly about poverty and corruption." Despite Yemenis' antipathy toward drones, my conversations also revealed a surprising degree of pragmatism. Those living in active conflict zones drew clear distinctions between earlier U.S. operations, such as the Majala bombing, and more recent strikes on senior al Qaeda figures. "Things were very bad in 2009," a tribal militia commander from Abyan province told me, "but now the drones are seen as helping us." He explained that Yemenis could "accept [drones] as long as there are no more civilian casualties." An Islamist member of the separatist al-Harak movement offered a similar assessment. "**Ordinary people have become very practical about drones**," he said. "**If the U**nited **S**tates **focuses on the leaders and civilians aren't killed, then drone strikes will hurt al Qaeda more than they help them**." Some of the men I interviewed admitted that they had changed their minds about drone strikes. Separatists in Aden who openly derided AQAP as a proxy of Yemen's recently deposed president, Ali Abdullah Saleh, privately acknowledged the utility of the U.S. drone campaign. "Saleh created this crisis in order to steal from America and stay in power," a former official from the now-defunct People's Democratic Republic of Yemen told me. "Now it is our crisis, and we need every tool to solve it." Yemeni journalists, particularly those with firsthand exposure to AQAP, shared this view: "I opposed the drone campaign until I saw what al Qaeda was doing in Jaar and Zinjibar," an independent reporter in Aden said. "**Al Qaeda hates the drones, they're absolutely terrified of the drones ... and that is why we need them.**" My interviewees also offered deeper insight into the sentiments described by Western journalists and Yemeni activists. In their view, public opposition to drones had little to do with a desire for revenge or increasing sympathy for al Qaeda. Instead, they argued, ordinary Yemenis see the drones as an affront to their national pride. "Drones remind us that we don't have the ability to solve our problems by ourselves," one member of the Yemeni Socialist Party said. "If these were Yemeni drones, rather than American drones, there would be no issue at all." Surprisingly, Islamist politicians said much the same. "**No one resents a drone strike if the target was a terrorist," a member of the Muslim Brotherhood told me**. "What we resent is the fact that outsiders are involved." A leader from the Zaydi Shia community framed the sovereignty issue in even starker terms. "The problem is not killing people like [Anwar] al-Awlaki," he said, referring to the Yemeni-American al Qaeda propagandist killed in 2011 by a U.S. drone strike in Yemen. "The problem is when the U.S. ambassador goes on television and takes credit for it." None of these reactions address the legal dimensions of drone warfare. Although drones don't drive al Qaeda recruiting, policymakers must still balance the tactical benefits of targeted, proportional force with the risks of rapid military escalation and broadening executive powers. As they weigh their options, they should consider two lessons. First, as long as drones target legitimate terrorists, Yemenis grudgingly acknowledge their utility. And second, the more Yemenis perceive the United States as a serious partner, the less drones will pique their national pride.

Safeguards and organizational problems in Al Qaeda prevent an attack on oil fields

**Pippard 10** (Tim, Senior Consultant in the Security and Military Intelligence Practice of IHS Jane's, “‘Oil-Qaeda’: Jihadist Threats to the Energy Sector,” Perspectives on Terrorism, Vol 4, No 3 (2010), <http://www.terrorismanalysts.com/pt/index.php/pot/article/view/103/html>)

Al-Qaeda's Operational Limitations

Why then, despite the strategic discourse on the legitimacy of targeting and sabotaging oil infrastructure, is Al-Qaeda yet to make a significant impact on the energy sector? There are some important limiting factors that help explain Al-Qaeda's operational shortcomings, not the least of which is the fact that strategic energy targets – especially large refineries – are among the most heavily guarded and secured. For instance at the time of the Abqaiq attack in February 2006, the Saudi government was spending $1.5 billion on energy security, and providing around-the-clock surveillance from military helicopters and F15 patrols. In addition, an estimated 25,000 to 30,000 troops were protecting SaudiArabia's energy infrastructure, and each terminal has its own dedicated security unit, comprised of Saudi Aramco security personnel, and specialized units of the National Guard and Ministry of Interior. [20] In addition, Saudi Aramco announced the creation of the Abqaiq Area Emergency Control Center in November 2002, housing advanced command, control and communication systems to manage emergency and supply disruptions to pipelines and processing hubs.[21] In Iraq, as a reaction to the deliberate targeting of the country's pipeline infrastructure during the past few years, the government, with U.S. financial support, has established a series of pipeline exclusion zones (PEZs), consisting of layers of berm, fences, razor-wire, walls and trenches, as well as armed guards and patrols placed at strategic locations or at locations from which rockets and other types of attacks can be launched. [22] In the 12 months following completion of the Kirkuk to Baiji PEZ in northern Iraq from July 2007 to July 2008, exports through the pipeline increased ten-fold and no serious disruptions were reported. The relatively high level of security at strategic energy infrastructure is clearly then an important hindrance to successful jihadist attacks on oil interests. Nevertheless, a more complete and fundamental explanation for the disconnect between Al-Qaeda's strategic objectives and its operational capabilities relates to a number of critical dynamics shaping Al-Qaeda's broad aims and objectives, as well as determining the group's underlying capacity to realize its agenda.

MidEast conference failing now – they don’t solve

Penketh, 10

Anne Penketh, BASIC Program Director, 2010, Peeling the Onion Towards a Middle East nuclear weapons free zone, http://www.basicint.org/sites/default/files/BASIC-PeelingtheOnion.pdf

The main obstacle to negotiations stems from the lack of political will. But there is concern over the officially unacknowledged Israeli nuclear weapons and the deep sense of injustice among Arab states which accuse the nuclear weapons states of double standards. They are accused of shielding Israel while sanctioning states like Iran which continues to insist on its treaty right to pursue civilian nuclear energy.

On the other side, the lack of diplomatic recognition by Israel’s neighbors, except for Egypt and Jordan, is another obstacle. Arab states remain reluctant to recognize Israel in the absence of a Middle East settlement, and continuing conflict. Israel – backed by the United States – has continued to link the establishment of the nuclear free zone to progress on the Middle East process.

But if this Catch-22 situation is allowed to continue at the Review Conference, it would be tantamount to handing Israel, a non-NPT member, a veto over the future of the entire NPT treaty.

This would be the effect if Egypt and its allies withdraw support in other areas of the treaty should the United States, seen as acting in the interests of Israel, withhold support at the conference for a definitive process leading towards establishment of a zone.

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

Relations resilient – conflicts are inevitable but won’t escalate

Weitz 11 (Richard, senior fellow at the Hudson Institute and a World Politics Review senior editor 9/27/2011, “Global Insights: Putin not a Game-Changer for U.S.-Russia Ties,” <http://www.scribd.com/doc/66579517/Global-Insights-Putin-not-a-Game-Changer-for-U-S-Russia-Ties>)

Fifth, there will inevitably be areas of conflict between Russia and the United States regardless of who is in the Kremlin. Putin and his entourage can never be happy with having NATO be Europe's most powerful security institution, since Moscow is not a member and cannot become one. Similarly, the Russians will always object to NATO's missile defense efforts since they can neither match them nor join them in any meaningful way. In the case of Iran, Russian officials genuinely perceive less of a threat from Tehran than do most Americans, and Russia has more to lose from a cessation of economic ties with Iran -- as well as from an Iranian-Western reconciliation. On the other hand, these conflicts can be managed, since they will likely **remain limited and compartmentalized**. Russia and the West **do not have fundamentally conflicting vital interests of the kind countries would go to war over**. And as the Cold War demonstrated, nuclear weapons are a great pacifier under such conditions. Another novel development is that Russia is much more integrated into the international economy and global society than the Soviet Union was, and Putin's popularity depends heavily on his economic track record. Beyond that, there are objective criteria, such as the smaller size of the Russian population and economy as well as the difficulty of controlling modern means of social communication, that will constrain whoever is in charge of Russia.

### Preemption

Nonunique – the self defense ship has sailed

Rivkin 4 [David B. Rivkin Jr. (non-staff member@the Heritage Foundation, writes on federal and international law); Lee A. Casey (Attorney and renowned political commentator on I-Law and foreign policy); Mark W. DeLaquil (JD from Harvard); “Preemption and Law in the Twenty-First Century”; 2004; 5 Chi. J. Int'l L. 467-498 (2004-2005)]

In the years since the UN Charter was adopted, **states have frequently invoked the right to use** armed force to defend their interests, particularly the right to use anticipatory or preemptive force.4' Indeed, as Professor Michael Glennon (who argues that the Charter was designed to forbid preemptive or **anticipatory self-defense**) has noted:

States can no longer be said to regard the Charter's rules concerning anticipatory self-defense--or concerning the use of force in general, for that matter-as **binding**. The question-the sole question, in the consent-based international legal system-is whether states have in fact agreed to be bound by the Charter's use-of-force rules. If states had truly intended to make those rules obligatory, they would have made the cost of violation greater than the perceived benefits.

They have not. The Charter's **use-of-force rules have been widely and regularly disregarded**. Since 1945, **two-thirds** of the members of the United Nations-126 states out of 189-have fought **291 interstate conflicts** in which over 22 million people have been killed. 42

The 1956 "Suez Crisis," where France, Britain, and Israel launched military operations against Egypt based on President Nasser's seizure of the Suez Canal, must be counted as among the most important post-Charter uses of force without Security Council authorization. The affair was a political disaster for the governments involved, but it is highly significant that Britain and France-both charter members of the United Nations and permanent members of the Security Council-claimed that the Israeli-Egyptian military clash, which took place in close proximity to the Suez Canal, was a threat to the world's economy and therefore adequate to justify armed action. Needless to say, **this was a very broad formulation of** anticipatory **self-defense indeed**, since the fighting around the Suez Canal posed no threat to the British or French territories.

Been around for centuries

Rivkin 4 [David B. Rivkin Jr. (non-staff member@the Heritage Foundation, writes on federal and international law); Lee A. Casey (Attorney and renowned political commentator on I-Law and foreign policy); Mark W. DeLaquil (JD from Harvard); “Preemption and Law in the Twenty-First Century”; 2004; 5 Chi. J. Int'l L. 467-498 (2004-2005)]

Although **the doctrine of anticipatory self-defense has existed for centuries**, international law experts generally cite the 1837 Caroline incident for its modern exposition. That case involved the British destruction of an American steamship in US territorial waters, near the New York shore of the Niagara River.' Britain claimed the right to take this action because the Caroline had been used, and would likely be used again, to support a rebellion then ongoing in Canada. Despite calls for war as a result of this British "invasion," the United States ultimately accepted a British apology. In that context, American Secretary of State Daniel Webster acknowledged that anticipatory action may be taken in selfdefense, although he sought to define those circumstances more narrowly than those actually presented by the Caroline case: "Undoubtedly it is just, that, while it is admitted that exceptions growing out of the great law of self-defence do exist, those exceptions should be confined to cases in which the 'necessity of that self-defence is instant, overwhelming, and leaving no choice of means, and no moment for deliberation. '' 6

In fact, by the mid-nineteenth century, the actual practice of states suggested a **far broader rule** than that articulated by Webster in relation to the Caroline! In 1587, for example, England's Queen Elizabeth I sent a fleet commanded by Sir Francis Drake to attack Spanish and Portuguese harbors primarily Cadiz-in an effort to **prevent**, or at least delay, the arrival of the "Invincible Armada." 8 Similarly, in 1801 and 1807, Britain launched **preemptive attacks** on the Danish navy to ensure that these "assets" did not fall into French hands during the Napoleonic Wars. More recently, in 1939, Britain and France exercised their **anticipatory self-defense** right in warning Hitler that they would consider an attack on Poland to be a casus belli, and acted accordingly once their warnings were disregarded. Germany's armed forces were not, of course, at that time menacing either Britain or France, and the only legal right either state would have had to issue an ultimatum to Germany-since Poland was not British or French territory-was rooted in their right to **anticipate future attacks.** 9

No modeling – Friendly democracies can decipher between good and bad US norms, and authoritarian ones don’t care

John O. McGinnis 7, Professor of Law, Northwestern University School of Law. \*\* Ilya Somin \*\* Assistant Professor of Law, George Mason University School of Law. GLOBAL CONSTITUTIONALISM: GLOBAL INFLUENCE ON U.S. JURISPRUDENCE: Should International Law Be Part of Our Law? 59 Stan. L. Rev. 1175

The second benefit to foreigners of distinctive U.S. legal norms is information. The costs and benefits of our norms will be visible for all to see. n268 Particularly in an era of increased empirical social science testing, over time we will be able to analyze and identify the effects of differences in norms between the United States and other nations. n269 Such diversity benefits foreigners as foreign nations can decide to adopt our good norms and avoid our bad ones.

The only noteworthy counterargument is the claim that U.S. norms will have more harmful effects than those of raw international law, yet other nations will still copy them. But both parts of this proposition seem doubtful. First, U.S. law emerges from a democratic process that creates a likelihood that it will cause less harm than rules that emerge from the nondemocratic processes [\*1235] that create international law. Second, other democratic nations can use their own political processes to screen out American norms that might cause harm if copied.

Of course, many nations remain authoritarian. n270 But our norms are not likely to have much influence on their choice of norms. Authoritarian states are likely to select norms that serve the interests of those in power, regardless of the norms we adopt. It is true that sometimes they might cite our norms as cover for their decisions. But the crucial word here is "cover." They would have adopted the same rules, anyway. The cover may bamboozle some and thus be counted a cost. But this would seem marginal compared to the harm of allowing raw international law to trump domestic law.

Multiple alt causes to norm collapse – their author

Martin 13 [[Craig Martin](http://www.huffingtonpost.com/craig-martin) (Associate Professor of Law, Washburn University School of Law); “When Should We Violate International Law in Order to Enforce It?”; 09/09/2013; <http://craigxmartin.com/2013/09/when-should-we-violate-international-law-in-order-to-enforce-it/#more-626>]

This harm has been made apparent in the aftermath of **recent violations**. Without getting into the list of controversial uses of force by the U.S. during the Cold War, the invasion of Iraq in 2003 is widely viewed as having been an unlawful act of aggression, and the ramifications of that conflict on the legal system are still unfolding**.** Moreover, not only has the U.S. **caused harm to the authority of the norm itself** but to the **institutions designed to enforce it** — by flouting judgments of the International Court of Justice in relation to its use of force, as in the [Nicaragua case](http://www.icj-cij.org/docket/index.php?sum=367&p1=3&p2=3&case=70&p3=5) of 1986;  by explicitly rejecting the UN Security Council process, as in the invasion of Iraq in 2003; and by exceeding UN Security Council authority as in the NATO intervention in Libya in 2011. **These all gravely weakened the** UN **system**.

No risk of China War – mutual cooperation

**Friedberg 2005**, Professor of Politics and International Affairs at Princeton University, Deputy Assistant for National Security Affairs and Director of Policy Planning in the Office of the Vice President, International Security, Vol. 30, No. 2 (Fall 2005), pp. 7–45

Fortunately, a number of the factors to which the optimists point seem likely to continue to act as a brake on what might otherwise be an unchecked slide toward mounting competition and increasingly open confrontation. Assuming that they persist and grow, the mutual gains from an expanding economic relationship will remain the single most important peace-inducing force at work in U.S.-China relations. The potential costs of a conflict between the two powers, especially given that both possess nuclear weapons, should also help to keep competitive impulses within bounds and to make both sides very wary of embarking on any course that could risk direct conflict. The emergence of a group of Chinese “new thinkers” could also contribute to a less zero-sum, hard realpolitik approach to relations with the United States. As with the Soviet Union during the era of perestroika, so also in this case changes in high-level thinking could have a calming effect on bilateral relations, even if they were not accompanied immediately by more profound and far-reaching domestic political reforms.

Won’t escalate

AP, 3/9/’11

(“China challenges U.S. edge in Asia-Pacific”)

The U.S. Pacific Command has 325,000 personnel, five aircraft-carrier strike groups, 180 ships and nearly 2,000 aircraft. Tens of thousands of forces stay on China's doorstep at long-established bases in South Korea and Japan.

China's defense spending is still dwarfed by the United States. Even if China really invests twice as much in its military as its official $91.5 billion budget, that would still be only about a quarter of U.S. spending. It has no aircraft carriers and lags the United States in defense technology. Some of its most vaunted recent military advances will take years to reach operation.

For example, China test-flew its stealth fighter in January, months earlier than U.S. intelligence expected, but U.S. Defense Secretary Robert M. Gates says China will still only have a couple of hundred of these "fifth-generation" jets by 2025. The United States should have 1,500 by then.

## 2NC

### 2nc ov

Restriction on war powers authority” must limit presidential discretion

**Lobel, 8** - Professor of Law, University of Pittsburgh Law School (Jules, “Conflicts Between the Commander in Chief and Congress: Concurrent Power over the Conduct of War” 392 OHIO STATE LAW JOURNAL [Vol. 69:391, <http://moritzlaw.osu.edu/students/groups/oslj/files/2012/04/69.3.lobel_.pdf>)

So  too, the congressional power to declare or authorize war has been long held to permit Congress to authorize and wage a limited war—“limited in place, in objects, and in time.” 63 When Congress places such restrictions on the President’s authority to wage war, it limits the President’s discretion to conduct battlefield operations. For example, Congress authorized President George H. W. Bush to attack Iraq in response to Iraq’s 1990 invasion of Kuwait, but it confined the President’s authority to the use of U.S. armed forces pursuant to U.N. Security Council resolutions directed to force Iraqi troops to leave Kuwait. That restriction would not have permitted the President to march into Baghdad after the Iraqi army had been decisively ejected from Kuwait, a limitation recognized by President Bush himself.64

This distinction is important – “targeted killing authority” is the decision to determine who can be killed – ex post doesn’t challenge that authority, but is just after-the-fact supervision on if the president used the right definition

McKelvey 11 (Benjamin, JD Candidate, Senior Editorial Board – Vanderbilt Journal of Transnational Law, “Due Process Rights and the Targeted Killing of Suspected Terrorists: The Unconstitutional Scope of Executive Killing Power,” Vanderbilt Journal of Transnational Law, November, 44 VAND. J. TRANSNAT'L L. 1353, <http://www.vanderbilt.edu/jotl/2012/06/due-process-rights-and-the-targeted-killing-of-suspected-terrorists-the-unconstitutional-scope-of-executive-killing-power/>)

Therefore, the President was justified in using lethal force to protect the nation against Aulaqi, or any other American, if that individual presented a concrete threat that satisfied the “imminence” standard.109 However, the judiciary may, as a matter of law, review the use of military force to ensure that it conforms with the limitations and conditions of statutory and constitional grants of authority.110 In the context of targeted killing, a federal court could evaluate the targeted killing program to determine whether it satisfies the constitutional standard for the use of defensive force by the Executive Branch. Targeted killing, by its very name, suggests an entirely premeditated and offensive form of military force.111 Moreover, the overview of the CIA’s targeted killing program revealed a rigorous process involving an enormous amount of advance research, planning, and approval.112 While the President has exclusive authority over determining whether a specific situation or individual presents an imminent threat to the nation, the judiciary has the authority to define “imminence” as a legal standard.113 These are general concepts of law, not political questions, and they are **subject to judicial review**.114

[Continues to Footnote]

114. Al-Aulaqi Response, supra note 2, at 24–25 (acknowledging its authority to define “imminence” yet declining to do so because it would require the court to determine “ex ante the permissible scope of particular tactical decisions”); Dehn & Heller, supra note 16, at 179 (referring to the government’s motion to dismiss on the basis that it “involv[es] an executive-branch decision to target an individual in the context of a congressionally authorized, armed conflict”); id. at 187 (noting Aulaqi’s request for the court to make a legal determination of the correct standard for the targeted killing of a U.S. citizen).

### CP

### 2nc ov

Executive-branch transparency and bringing U.S. practice in line with policy builds international norms---their author

Kristin Roberts 13, News Editor, National Journal, 3/22/13, “When the Whole World Has Drones,” <http://www.nationaljournal.com/magazine/when-the-whole-world-has-drones-20130321>

But even without raising standards, tightening up drone-specific restrictions in the standing control regime, or creating a new control agreement (which is never easy to pull off absent a bad-state actor threatening attack), just the process of lining up U.S. policy with U.S. practice would go a long way toward establishing the kind of precedent on use of this technology that America—in five, 10, or 15 years—might find helpful in arguing against another’s actions.

A not-insignificant faction of U.S. defense and intelligence experts, Dennis Blair among them, thinks norms play little to no role in global security. And they have evidence in support. The missile-technology regime, for example, might be credited with slowing some program development, but it certainly has not stopped non-signatories—North Korea and Iran—from buying, building, and selling missile systems. But norms established by technology-leading countries, even when not written into legal agreements among nations, have shown success in containing the use and spread of some weapons, including land mines, blinding lasers, and nuclear bombs.

Arguably more significant than spotty legal regimes, however, is the behavior of the United States. “History shows that how states adopt and use new military capabilities is often influenced by how other states have—or have not—used them in the past,” Zenko argued. Despite the legal and policy complexity of this issue, it is something the American people have, if slowly, come to care about. Given the attention that Rand Paul’s filibuster garnered, it is not inconceivable that public pressure on drone operations could force the kind of unforeseen change to U.S. policy that it did most recently on “enhanced interrogation” of terrorists.

The case against open, transparent rule-making is that it might only hamstring American options while doing little good elsewhere—as if other countries aren’t closely watching this debate and taking notes for their own future policymaking. But the White House’s refusal to answer questions about its drone use with anything but “no comment” ensures that the rest of the world is free to fill in the blanks where and when it chooses. And the United States will have already surrendered the moment in which it could have provided not just a technical operations manual for other nations but a legal and moral one as well.

Prez clarification solves adv 2---about the way we use self-D TK, we fiat out of that

Solves the second advantage

Craig Martin 11, Associate Professor of Law at Washburn University School of Law, “GOING MEDIEVAL: TARGETED KILLING, SELF-DEFENSE AND THE JUS AD BELLUM REGIME”, SSRN

Without going through the analysis for each of these scenarios in detail, we can nonetheless conclude that while it may be possible to justify the use of force against these states on the basis of self-defense, the crucial point is that the justificatory analysis is case-dependent. When the United States engages in strikes that constitute the use of force against each of these states, the claim of the right of self-defense must make specific reference to the armed attacks that justify it, how the group that is the object of the use of force is responsible for the attacks, and how the state in which the group is being targeted can itself be held legally responsible for the operations of that group so as to justify the use of force against the state. The problem with the current U.S. claim of self-defense is that it does none of this, but rather asserts a general right to use force against Al Qaeda, the Taliban, and any other groups associated with them; and against any country in which the members of such groups are located, not based on the state’s actual involvement in the group’s attacks, but merely on it being insufficiently willing or able to suppress the group’s operations.96¶ It almost goes without saying that the principles of necessity and proportionality cannot be satisfied under such sweeping and general claims of self-defense. It is not possible to demonstrate that the use of force was strictly necessary when there has been no identification of the armed attacks in question, or explanation of how the specific groups being targeted pose the threat of imminent armed attacks, that can only be stopped through the use of force. Similarly, there can be no proportionality analysis without the identification of the harm that would be caused by specific attacks, against which one can compare the harm being inflicted by the defensive use of force.97 Thus, in order to satisfy the necessity and proportionality principles that are at the core of the doctrine, the United States must provide the information required for such analysis.¶ In sum, the U.S. government’s reliance upon self-defense as a justification for the targeted killing policy in countries such as Yemen, Somalia, and Pakistan, at least in the very general terms with which it has been asserted, is not consistent with the principles of self-defense under the jus ad bellum regime. This finding would suggest that, unless and until the administration offers more particularized support for this justification, the ongoing use of missile strikes for the purposes of killing suspected “terrorists,” “militants” and “insurgents” in countries like Somalia, Yemen, and Pakistan, is a violation of the prohibition on the use of armed force.¶

Such a conclusion is troubling enough. But even more important in the long run is the potential harm this continued practice could cause to the jus ad bellum regime, and to the relationship between the jus ad bellum and IHL regimes, to which we turn next.

### 2nc groupthink

Groupthink is not a threat in the context of the military specifically – officers have control over how a policy is implemented and perceived and can push back against bad orders

**Sulmasy 6** - Professor of Law U.S. Coast Guard Academy(2006, Glenn, “Challenges to Civilian Control of the Military: A Rational Choice Approach to the War on Terror,” http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=2188&context=facpubs)JCP

In principal-agent models of business activity, the interest of the agent is usually taken to be shirking. In other words, the employees of a company wish to be paid for working, but wish to work as little as possible. In the public administration context, shirking does not make as much sense. Instead of wanting to do less work, agents have a different interest than principals. Agents in the bureaucracy want to maximize their autonomy and follow their preferred policies, not necessarily the policies preferred by the principal. Exactly what counts as the principal or the agent prevailing can be difficult, at times, to determine. If the agent has succeeded, for example, by manipulating information and events such that the principal has its way, but only in a very limited sphere, shirking has probably still occurred. If the agent, who presumably has specialized experience and better information, provides advice to the principal that influences the latter's decision, shirking may not have occurred. 9

In the civilian-military context, the actors may well have different ideal points for issues of when and how to use force, force structure, strategy, tactics, and the rules governing the military. If civilian and military preferences are identical, there should be little conflict in their strategic interaction. Perhaps the most important variable in their interaction will be a difference in preferences. As we have seen, in the post-Cold War period, significant problems in the relationship arose when civilians and military leaders held sharply different views about the merits of using force in Bosnia, for example, or the role of gays in the military. Separate, but related to a difference in preferences, is a desire for autonomy. Military leaders, like the leaders of other agencies, would prefer to have independence in setting and implementing policy.

This is not to say that civilians and the military disagree on the ultimate goal of providing adequate security for the United States from external threat. Yet they may hold different views on the best policies to achieve that outcome. Military leaders, for example, may wish to use force with a higher probability of victory, which may mean attacking with a larger advantage in forces than civilians might prefer, or with less political restraint on the tactics and strategies available, or with more information about the abilities and the plans of the enemy. Military leaders would favor higher defense expenditures under this theory, and perhaps also be reluctant to adopt radical changes in force structure and rules of engagement. Civilians may be more sensitive to cost, or more favorable toward limited uses of military force so as to achieve other diplomatic or political goals.

Putting differences over substantive policy to one side, military leaders could also present principal-agent problems if they are drawing more decisionmaking authority for themselves, even if the substantive decisions are the same ones that the civilians would ultimately reach. If military leaders are the ones who make the actual policy calls, or define which decisions are civilian and which are military, or manage circumstances so as to severely limit the choices available to civilians, then military preferences are prevailing rather than civilian ones

An example, according to Feaver, is the military's change in its force structure after the Vietnam War to place greater reliance upon reserves.' This change made it difficult for civilian leaders to use force abroad without mobilizing the reserves, which, it was thought, would require presidents to build broad public support for a war before committing the military to hostilities.

Military resistance to civilian policies with which military leaders disagree could take several forms short of an outright refusal to obey orders. Military officers can leak information to derail civilian initiatives. They could "slow roll" civilian orders by delaying implementation. They could inflate the estimates of the resources needed, or the possible casualties and time needed to achieve a military objective. And perhaps a relatively unnoticed but effective measure is to divide the principal-if the number of institutions forming the principal increases, it will be more difficult to monitor the performance of the agent and to hold it accountable. Deborah Avant argues, for example, that civilians exercise greater control of the military in Great Britain than in the United States, because the parliamentary system merges the executive and legislative branches of the government." Greater agency slack may result from information asymmetries that may favor the military, such as information and expertise about warfare, adverse selection that may cause the promotion of officers resentful of civilian meddling, and moral hazard in which the inability of civilians to directly observe the performance of the military may allow the military to pursue its own preferences.

Doesn’t apply to this administration

Pillar, 13 -- Brookings Foreign Policy Senior Fellow

[Paul, "The Danger of Groupthink," The National Interest, 2-26-13, webcache.googleusercontent.com/search?q=cache:6rnyjYlVKY0J:www.brookings.edu/research/opinions/2013/02/26-danger-groupthink-pillar+&cd=3&hl=en&ct=clnk&gl=us, accessed9-21-13, mss]

David Ignatius has an interesting take on national security decision-making in the Obama administration in the wake of the reshuffle of senior positions taking place during these early weeks of the president's second term. Ignatius perceives certain patterns that he believes reinforce each other in what could be a worrying way. One is that the new team does not have as much “independent power” as such first-term figures as Clinton, Gates, Panetta and Petraeus. Another is that the administration has “centralized national security policy to an unusual extent” in the White House. With a corps of Obama loyalists, the substantive thinking may, Ignatius fears, run too uniformly in the same direction. He concludes his column by stating that “by assembling a team where all the top players are going in the same direction, he [Obama] is perilously close to groupthink.” We are dealing here with tendencies to which the executive branch of the U.S. government is more vulnerable than many other advanced democracies, where leading political figures with a standing independent of the head of government are more likely to wind up in a cabinet. This is especially true of, but not limited to, coalition governments. Single-party governments in Britain have varied in the degree to which the prime minister exercises control, but generally room is made in the cabinet for those the British call “big beasts”: leading figures in different wings or tendencies in the governing party who are not beholden to the prime minister for the power and standing they have attained. Ignatius overstates his case in a couple of respects. Although he acknowledges that Obama is “better than most” in handling open debate, he could have gone farther and noted that there have been egregious examples in the past of administrations enforcing a national security orthodoxy, and that the Obama administration does not even come close to these examples. There was Lyndon Johnson in the time of the Vietnam War, when policy was made around the president's Tuesday lunch table and even someone with the stature of the indefatigable Robert McNamara was ejected when he strayed from orthodoxy. Then there was, as the most extreme case, the George W. Bush administration, in which there was no policy process and no internal debate at all in deciding to launch a war in Iraq and in which those who strayed from orthodoxy, ranging from Lawrence Lindsey to Eric Shinseki, were treated mercilessly. Obama's prolonged—to the point of inviting charges of dithering—internal debates on the Afghanistan War were the polar opposite of this. Ignatius also probably underestimates the contributions that will be made to internal debate by the two most important cabinet members in national security: the secretaries of state and defense. He says John Kerry “has the heft of a former presidential candidate, but he has been a loyal and discreet emissary for Obama and is likely to remain so.” The heft matters, and Kerry certainly qualifies as a big beast. Moreover, the discreet way in which a member of Congress would carry any of the administration's water, as Kerry sometimes did when still a senator, is not necessarily a good indication of the role he will assume in internal debates as secretary of state. As for Chuck Hagel, Ignatius states “he has been damaged by the confirmation process and will need White House cover.” But now that Hagel's nomination finally has been confirmed, what other “cover” will he need? It's not as if he ever will face another confirmation vote in the Senate. It was Hagel's very inclination to flout orthodoxy, to arrive at independent opinions and to voice those opinions freely that led to the fevered opposition to his nomination.

### Signal – 2NC

Obama key to signal and sustainability

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.

#### CP sends the most powerful signal (while avoiding Congressional confrontation)

Zbigniew Brzezinski, national security advisor under U.S. President Jimmy Carter, 12/3/12, Obama's Moment, www.foreignpolicy.com/articles/2012/12/03/obamas\_moment

In foreign affairs, the central challenge now facing President Barack Obama is how to regain some of the ground lost in recent years in shaping U.S. national security policy. Historically and politically, in America's system of separation of powers, it is the president who has the greatest leeway for decisive action in foreign affairs. He is viewed by the country as responsible for Americans' safety in an increasingly turbulent world. He is seen as the ultimate definer of the goals that the United States should pursue through its diplomacy, economic leverage, and, if need be, military compulsion. And the world at large sees him -- for better or for worse -- as the authentic voice of America.

To be sure, he is not a dictator. Congress has a voice. So does the public. And so do vested interests and foreign-policy lobbies. The congressional role in declaring war is especially important not when the United States is the victim of an attack, but when the United States is planning to wage war abroad. Because America is a democracy, public support for presidential foreign-policy decisions is essential. But no one in the government or outside it can match the president's authoritative voice when he speaks and then decisively acts for America.

This is true even in the face of determined opposition. Even when some lobbies succeed in gaining congressional support for their particular foreign clients in defiance of the president, for instance, many congressional signatories still quietly convey to the White House their readiness to support the president if he stands firm for "the national interest." And a president who is willing to do so publicly, while skillfully cultivating friends and allies on Capitol Hill, can then establish such intimidating credibility that it is politically unwise to confront him. This is exactly what Obama needs to do now.

### AT: Object Fiat

#### Internal constraints are key neg ground – it matches the academic debate

Sinnar, assistant professor of law at Stanford Law School, May 2013

(Shirin, “Protecting Rights from Within? Inspectors General and National Security Oversight,” 65 Stan. L. Rev. 1027, Lexis)

More than a decade after September 11, 2001, the debate over which institutions of government are best suited to resolve competing liberty and national security concerns continues unabated. While the Bush Administration's unilateralism in detaining suspected terrorists and authorizing secret surveillance initially raised separation of powers concerns, the Obama Administration's aggressive use of drone strikes to target suspected terrorists, with little oversight, demonstrates how salient these questions remain. Congress frequently lacks the [\*1029] information or incentive to oversee executive national security actions that implicate individual rights. Meanwhile, courts often decline to review counterterrorism practices challenged as violations of constitutional rights out of concern for state secrets or institutional competence. n1

These limitations on traditional external checks on the executive - Congress and the courts - have led to increased academic interest in potential checks within the executive branch. Many legal scholars have argued that executive branch institutions supply, or ought to supply, an alternative constraint on executive national security power. Some argue that these institutions have comparative advantages over courts or Congress in addressing rights concerns; others characterize them as a second-best option necessitated by congressional enfeeblement and judicial abdication.

### AT: Links to Politics

#### Only Congressional moves to reclaim war power authority triggers the war power and politics disad

William Howell, Sydney Stein professor in American politics at the University of Chicago, 9/3/13, All Syria Policy Is Local, www.foreignpolicy.com/articles/2013/09/03/all\_syria\_policy\_is\_local\_obama\_congress?page=full

From a political standpoint, seeking congressional approval for a limited military strike against the Syrian regime, as President Barack Obama on Saturday announced he would do, made lots of sense. And let's be clear, **this call has everything to do with political considerations**, and close to nothing to do with a newfound commitment to constitutional fidelity.

The first reason is eminently local. Obama has proved perfectly willing to exercise military force without an express authorization, as he did in Libya -just as he has expanded and drawn down military forces in Afghanistan, withdrawn from Iraq, significantly expanded the use of drone strikes, and waged a largely clandestine war on terrorism with little congressional involvement. The totality of Obama's record, which future presidents may selectively cite as precedent, hardly aligns with a plain reading of the war powers described in the first two articles of the constitution.

Obama isn't new in this regard. Not since World War II has Congress declared a formal war. And since at least the Korean War, which President Harry Truman conveniently called a "police action," commanders-in-chief have waged all sorts of wars -small and large -without Congress's prior approval.

Contemporary debates about Congress's constitutional obligations on matters involving war have lost a good deal of their luster. Constitutional law professors continue to rail against the gross imbalances of power that characterize our politics, and members of whichever party happens to be in opposition can be counted on to decry the abuses of war powers propagated by the president. **But these criticisms** -no matter their interpretative validity -**rarely gain serious political traction**. Too often they appear as arguments of convenience, duly cited in the lead-up to war, but serving primarily as footnotes rather than banner headlines in the larger case against military action.

**Obama's recent decision to seek congressional approval is not going to upend a half-century of practice that has shifted the grounds of military decision-making decisively in the president's favor**, any more than it is going to imbue the ample war powers outlined in Article I with newfound relevance and meaning. For that to happen, Congress itself must claim for itself its constitutional powers regarding war.

Obama did not seek Congress's approval because on that Friday stroll on the White House lawn he suddenly remembered his Con Law teaching notes from his University of Chicago days. He did so for political reasons. Or more exactly, he did so to force members of Congress to go on the record today in order to mute their criticisms tomorrow.

And let's be clear, **Congress** -for all its dysfunction and gridlock -**still has the capacity to kick up a good dust storm** over the human and financial costs of military operations. Constitutional musings from Capitol Hill -of the sort a handful of Democrats and Republicans engaged in this past week -rarely back the president into a political corner. The mere prospect of members of Congress casting a bright light on the human tolls of war, however, will catch any president's attention. Through hearings, public speeches, investigations, and floor debates, members of Congress can fix the media's attention -and with it, the public's -on the costs of war, which can have political repercussions both at home and abroad.

Think, then, about the stated reasons for some kind of military action in Syria. No one is under the illusion that a short, targeted strike is going to overturn the Assad regime and promptly restore some semblance of peace in the region. In the short term, the strike might actually exacerbate and prolong the conflict, making the eventual outcome even more uncertain. And even the best-planned, most-considered military action won't go exactly according to plan. Mishaps can occur, innocent lives may be lost, terrorists may be emboldened, and anti-American protests in the region will likely flare even hotter than they currently are.

The core argument for a military strike, however, centers on the importance of strengthening international norms and laws on chemical and biological weapons, with the hope of deterring their future deployment. The Assad regime must be punished for having used chemical weapons, the argument goes, lest the next autocrat in power considering a similar course of action think he can do so with impunity.

But herein lies the quandary. The most significant reasons for military action are abstract, largely hidden, and temporally distant. The potential downsides, though, are tangible, visible, and immediate. And in a domestic political world driven by visual imagery and the shortest of time horizons, it is reckless to pursue this sort of military action without some kind of political cover.

Were Obama to proceed without congressional authorization, he would invite House Republicans to make all sorts of hay about his misguided, reckless foreign policy. But by putting the issue before Congress, these same Republicans either must explain why the use of chemical weapons against one's people does not warrant some kind of military intervention; or they must concede that some form of exacting punishment is needed. Both options present many of the same risks for members of Congress as they do for the president. But crucially, if they come around to supporting some form of military action -and they just might -**members of Congress will have an awfully difficult time criticizing the president for the fallout**.

Will the decision on Saturday hamstring the president in the final few years of his term? **I doubt it.** Having gone to Congress on this crisis, must he do so on every future one? No. Consistency is hardly the hallmark of modern presidents in any policy domain, and certainly not military affairs. Sometimes presidents seek Congress's approval for military action, other times they request support for a military action that is already up and running, and occasionally they reject the need for any congressional consent at all. And for good or ill, it is virtually impossible to discern any clear principle that justifies their choices.

The particulars of every specific crisis -its urgency, perceived threat to national interests, connection to related foreign policy developments, and what not -can be expected to furnish the president with ample justification for pursuing whichever route he would like. Like jurists who find in the facts of a particular dispute all the reasons they need for ignoring inconvenient prior case law, presidents can characterize contemporary military challenges in ways that render past ones largely irrelevant. Partisans and political commentators will point out the inconsistencies, but their objections are likely to be drowned out in rush to war.

**Obama's decision does not usher in a new era of presidential power**, nor does it permanently remake the way we as a nation go to war. **It reflects a temporary political calculation** -and in my view, the right one -of a president in a particularly tough spot. Faced with a larger war he doesn't want, an immediate crisis with few good options, and yet a moral responsibility to act, he is justifiably expanding the circle of decision-makers. But don't count on it to remain open for especially long.

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

Executive order binds future administrations

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

### --- 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.

### 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.

### preventive war

### 2nc psd n/u

Drones not key---their card

Ariel Colonomos 13, Director of Research at the French National Centre for Scientific Research, Ph.D. in political science from the Institut d'Etudes Politiques de Paris, “The Gamble of War: Is it Possible to Justify Preventive War?” p 72-75, google books

John Yoo holds that the American interventions in Afghanistan or Iraq fulfilled the criteria of necessity and proportionality. To support this argument (which was contested on the invasion of Iraq), he contends that technological change has a direct impact on the calculation of proportionality and the definition of what constitutes an emergency. The proliferation of WMDs, the networking potential of the United States’ enemies, involving also transnational movements, required the adoption of an anticipatory mode of use of force.

Preventive war has been our policy since 1941

Trachtenberg 7 [Marc Trachtenberg (Prof of PoliSci @ UCLA); “Preventive War and U.S. Foreign Policy”; 17 April 2007; Security Studies 16, no. 1 (January–March 2007): 1–31]

This article examines the claim that the Bush strategy of dealing with developing threats “preemptively” marked a total break with American tradition. It turns out that preventive war **thinking played a much greater role in shaping U.S. policy than most people realize**. During the early Cold War period, this sort of thinking was by no means limited to the lunatic fringe. Could the United States simply sit back and allow ﬁrst the Soviets and then the Chinese to develop nuclear capabilities of their own? Many people, both inside and outside the government, were worried about what would happen if America did nothing and thought that the possibility of **preventive action had to be taken seriously**. In the post-Cold War period, the Clinton administration seemed ready to do whatever was necessary to prevent North Korea from going nuclear; it seemed prepared, in fact, **to go to war** over the issue. Even in the pre-nuclear world, **preventive war thinking played a major role in shaping policy**: American policy in 1941 was strongly inﬂuenced by this kind of thinking.

Pounds conflation—blurs the imminence standard that defines self-defense

Rivkin 4 [David B. Rivkin Jr. (non-staff member@the Heritage Foundation, writes on federal and international law); Lee A. Casey (Attorney and renowned political commentator on I-Law and foreign policy); Mark W. DeLaquil (JD from Harvard); “Preemption and Law in the Twenty-First Century”; 2004; 5 Chi. J. Int'l L. 467-498 (2004-2005)]

However, the 1962 **Cuban Missile Crisis** is probably the most important modern example, before **Operation Iraqi Freedom** was launched, of preemptive or anticipatory self-defense. In order to prevent the installation of Russian short-and intermediate-range offensive nuclear missiles in Cuba-which could have reached most of the continental United States in a matter of minutes-the Kennedy Administration imposed a "quarantine" on the island. This was, in reality, a blockade, directed at the Soviet ships delivering nuclear missiles to arm the installations, and constituted **a** belligerent act **under the traditional rules of international law. This blockade was publicly justified as an act of self-defense,** both of the United States and the Western Hemisphere, **by senior US government officials, up to and including President Kennedy.** This was the case even though **no actual attack had been launched** by either the Soviet Union or Cuba, **nor was there any** imminent threat that the Russian missiles would be launched at the United States once they were in place.

Pounds US modeling—response to the Cuban Missile Crisis relied on preventive self-defense justifications

Trachtenberg 7 [Marc Trachtenberg (Prof of PoliSci @ UCLA); “Preventive War and U.S. Foreign Policy”; 17 April 2007; Security Studies 16, no. 1 (January–March 2007): 1–31]

**What about the international law argument—the claim that the U.S. government at that time “did not invoke any notion of ‘anticipatory self-defense”**’?

**The fact is that the government did defend its policy in those terms.** The original draft of Kennedy’s October 22 speech to the nation in fact explicitly invoked Article 51 of the U.N. Charter, the article referring to **a nation’s right to defend itself**, as justifying the course of action the government was pursuing. That reference, however, was dropped from the ﬁnal version, because the State Department legal advisor’s ofﬁce thought it amounted “to a full-scale adoption of the doctrine of anticipatory self-defense.”30 But although Article 51 was not mentioned explicitly, **the president in that speech did in substance invoke that doctrine. The situation now, as he laid out the argument, was different from what it had been in the past.** Given the threat posed by nuclear weapons, a country did not have to wait until it was actually attacked before it could legitimately use force. **The United States**, in this case, **thus had the right to deal with the threat before the missiles were actually launched. “We no longer live in a world,” he declared, “where only the actual ﬁring of weapons represents a sufﬁcient challenge to a nation’s security to constitute maximum peril.** Nuclear weapons are so destructive, and ballistic missiles are so swift, that any substantially increased possibility of their use or any sudden change in their deployment may well be regarded as a deﬁnite threat to peace”—that is, as the sort of threat that warranted military action.31 And Adlai Stevenson, the U.N. ambassador, made the same basic point in a famous speech he gave at the height of the crisis. “**Were we to do nothing until the knife was sharpened?”** he asked. “Were we to stand idly by **until it was at our throats**?”32 **If this was not an argument for “anticipatory self-defense,” it is hard to imagine what would be.**

### 1nc norms

The US can’t set drone norms

Wright, Pulitzer-winning journalist, former writer and editor – The Atlantic, 11/14/’12

(Robert, citing Max Boot, senior fellow @ CFR, “The Incoherence of a Drone-Strike Advocate,” http://www.theatlantic.com/international/archive/2012/11/the-incoherence-of-a-drone-strike-advocate/265256/)

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

### 2nc – no escalation

No incent for China first strike

Jones 7 – foreign affairs at University of St. Andrew (“China’s Rise and American Hegemony: Towards a Peaceful Co-Existence?” E-International Relations, <http://www.e-ir.info/?p=149>)

However, the degree to which a state attempts to change the status quo can vary. Thus, China does not currently demonstrate a fundamental revolutionary wish to overthrow the entire international system, but rather a minor tweaking. Indeed, China’s rise has come by playing by Western capitalist rules. Therefore, this essay cautions against sensationalism. In the regional sphere, China now appears unimpeded by either Japan or Russia for the first time in two centuries, and thus is beginning to project its influence in the region. Cooperation on North Korea illustrates that the United States is willing to collaborate with China to reach its regional security goals. Additionally, China has also used liberal institutionalism to increase political power and further engage with the region. The recent October 2006 ASEAN-China Commemorative Summit sought to deepen political, security and economic ties, and concluded that the strategic partnership had ‘boosted…development and brought tangible benefits to their peoples, [and] also contributed significantly to peace, stability and prosperity in the region.’ China’s gradual, natural progression of influence should not be feared. Alluding to soft power, liberal theorist Joseph Nye illustrates China’s slow shift by contending that ‘it will take much longer before [China] can make an impact close to what the U.S. enjoys now.’

### accountability

### 2nc no blowback

B --- Demographics disprove

Emker 13 (Stacey – MA Candidate (2013) in International Security and Foreign Policy Analysis with a focus on asymmetric warfare, BA – Political Science, current writer @ Journal of Diplomacy and International Relations @ Seton Hall University, former Research Assistant at William J. Perry Center for Hemispheric Defense Studies @ National Defense University, “Analyzing the US Counterterrorism Strategy in Yemen” Jan 14, 2013, Journal of Diplomacy and International Relations Blog)

The conventional understanding of drones and collateral damage is **not a sufficient or systematic explanation of recruitment within the domestic context of Yemen**. Christopher Swifts’ interviews with tribal leaders, Islamic Politicians, Salafist clerics, and other sources all revealed that AQAP recruitment is not motivated solely by U.S. drone strikes, but driven by **economic desperation**. AQAP insurgents lure young Yemeni men with the promise of a rifle, a car, and a salary of four-hundred dollars a month, which is a fortune when half the population is living on less than two dollars a day. AQAP has employed a soft power approach by fulfilling social needs in order to build networks of mutual dependency. Despite the general antipathy for drone strikes, a majority of the Yemeni’s interviewed expressed that AQAP posed a serious threat to their country and had a pragmatic view of the U.S. drone campaign. As long as drones target legitimate terrorists, Yemenis grudgingly acknowledge their utility. With this, it is important to note Yemen’s religious majority and nationalism. The population of Yemen is almost entirely Muslim, made up of Zaydis and Shaf’is. Zaydis are found mostly in North and Northwest Yemen and belong to a branch of Shi’a Islam. Zaydis form the the Huthi insurgent movement, and AQAP statements in Inspire have connected the movement to threats posed by Shi’a in eastern Saudi Arabia, Iran and Iraq. Since AQAP has attacked two Huthi processions in 2010 and threatened supporters, Zaydi Yemenis do not represent practical recruitment options for AQAP. On the hand, the majority of Yemenis are Shafi’is making up the South and East. The Shafi’is school follows one of the four Sunni schools of Islamic jurisprudence and is considered a relatively moderate form of Islam. While Islamic radicalism is prevalent within the country, Shafi’is is culturally very different and is not exactly fertile breeding grounds for extremist ideology. As a result, the Al-Qaeda ideology does not go hand-in-hand with the majority of the Yemeni people.

No backlash and no impact

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.

### AT: Saudi Spillover

**Empirically denied**

**Hiltermann 9** (Joost, Deputy Program Director for MENA at the International Crisis Group, “Disorder on the Border,” Foreign Affiars, 12/16/09, <http://www.foreignaffairs.com/articles/65730/joost-r-hiltermann/disorder-on-the-border?page=show> )

In June 2004, the Houthis, a group of rebels in the Sa'dah governorate of northwest Yemen, began taking up arms against the Yemeni national army. They claimed, and continue to claim, to be defending their own specific branch of Shia Islam -- Zaydism -- from a Yemeni regime they say is too dependent on its northern neighbor, Saudi Arabia, and its partner in the war on terrorism, the United States. Yemen's political and military leaders have labeled the Houthis a terrorist group supported by Iran. This smoldering civil war attracted little outside attention until last month, when, on November 5, Saudi Arabia sent its warplanes to bomb Houthi positions around the border, both on Saudi territory and inside Yemen. It was Saudi Arabia's first cross-border military intervention since the Gulf War in 1991.

This sudden escalation alarmed analysts in the United States and the European Union, as well as those in the Middle East. The conflict, they fear, could evolve into a proxy war between Iran and Saudi Arabia, which perceive themselves as the contemporary standard-bearers of the Shia and Sunni branches of Islam, respectively. Equally worrying is that the latest attack could further destabilize the already fragile Yemeni state, which is confronted by a series of crises and a structural inability to govern its territory and population. In recent years, Yemen has rightfully gained a reputation as a safe haven for violent groups linked to al Qaeda.

#### Saudi involvement in the conflict makes it inevitable

**Hiltermann 9** (Joost, Deputy Program Director for MENA at the International Crisis Group, “Disorder on the Border,” Foreign Affiars, 12/16/09, <http://www.foreignaffairs.com/articles/65730/joost-r-hiltermann/disorder-on-the-border?page=show> )

Saudi Arabia's continued involvement in the counterinsurgency effort is another driver of the conflict. The recent military offensive was perceived by many parties (especially the Houthis) as just the latest episode in a history of covert involvement in Yemeni politics and, in particular, in the war in Sa'dah. Ever since the war began, Saudi rulers have officially claimed that it was an internal Yemeni matter and condemned foreign interference, hinting that Iran was supporting the rebels. But the Saudi government itself has most likely funded the Yemeni government and its tribal allies since 2004. In June 2008, the Saudis allegedly started funding pro-government tribal militias in Yemen that were once headed by Husayn al-Ahmar, a prominent tribal leader and member of the Yemeni parliament. Such a strategy is counterproductive. § Marked 17:23 § Foreign money contributes to the Sa'dah governorate's war economy, which is built on the trafficking of weapons, drugs, and diesel to Saudi Arabia and the Horn of Africa. These inflows offer an additional incentive to fight, as army officers, tribal sheikhs, arms dealers, and rebels all gain a shared interest in the war.

#### Strong security improvements now

**Hill and Nonneman 11** (Ginny and Gerd, Associate Fellows of the Middle East and North Africa Programme at Chatham House, “Yemen, Saudi Arabia and the Gulf States: Elite Politics, Street Protests and Regional Diplomacy”, 5/11, <http://humansecuritygateway.com/documents/CH_YemenSaudiArabiaandGulfStatesPolPrtsRegDip.pdf>)

However, the campaign also enjoyed significant public support in Saudi Arabia and was ‘spun’ by the media as ‘a heroic and successful struggle to protect Saudi sovereignty’. 80 Some satisfaction is derived from the fact that there have been no further incursions since the intervention, and that Saudi Arabia was able to turn the episode to its advantage by securing the border area. There is now a semi-permanent military complex around the southern Saudi city of Najran. Nearly 80 border villages have been evacuated and the villagers are being re-housed in 10,000 purpose-built units. Visible security improvements have been reported, including earthen berms, concertina wire, floodlights and thermal cameras. 81 These measures serve Saudi Arabia’s longer-term objective of containing AQAP, as well as constraining cross-border flows of drugs, weapons and illegal migrants.

## 1NR

### da

Mid East war guarantees miscalc and nuclear escalation—that’s Russell

Deal failure is sufficient to trigger miscalc and global war

PressTV, 13(“Global nuclear conflict between US, Russia, China likely if Iran talks fail,” <http://www.presstv.ir/detail/2013/11/13/334544/global-nuclear-war-likely-if-iran-talks-fail/>)

A global conflict between the US, Russia, and China is likely in the coming months should the world powers fail to reach a nuclear deal with Iran, an American analyst says.

“If the talks fail, if the agreements being pursued are not successfully carried forward and implemented, then there would be enormous international pressure to drive towards a conflict with Iran before [US President Barack] Obama leaves office and that’s a very great danger that no one can underestimate the importance of,” senior editor at the Executive Intelligence Review Jeff Steinberg told Press TV on Wednesday.

“The United States could find itself on one side and Russia and China on the other and those are the kinds of conditions that can lead to miscalculation and general roar,” Steinberg said.

“So the danger in this situation is that if these talks don’t go forward, we could be facing a global conflict in the coming months and years and that’s got to be avoided at all costs when you’ve got countries like the United States, Russia, and China with” their arsenals of “nuclear weapons,” he warned.

Causes accidents – extinction

Fraser, former PM of Australia, 7/4/’11

(Malcom, “Dealing with nuclear terror means plants and weapons,” Taipei Times)

Recent history is peppered with a litany of false alerts and near misses, each unforeseen, each a combination of technical and human failure. The growing potential for a nuclear disaster by cyber attack adds to the existential danger.

We now know that just 100 relatively “small” Hiroshima-size nuclear weapons, less than one-thousandth of the global nuclear arsenal, could lift millions of tonnes of dark smoke high into the atmosphere. There, it would abruptly cool and darken the planet, slashing rainfall and food production in successive years — and thus causing worldwide starvation on a scale never before witnessed.

This could result from the arsenals of any of the 10 currently nuclear-armed states, with the exception of North Korea.

Intent, miscalculation, technical failure, cyber attack, or accident could cause the nuclear escalation of a conflict between India and Pakistan, in the Middle East (embroiling Israel’s nuclear weapons), or on the Korean Peninsula. Such outcomes are at least as plausible or likely — if not more so — than a massive earthquake and tsunami causing widespread damage to four Japanese nuclear reactors and their adjacent spent-fuel ponds.

### at: impact d

D = 2011, says Turkey can check, that predates Syria – sanctions are the make it or break it

William Davnie, Former State Dept Officer, Chief of State at Iraq provincial office, 1/5/14, Iran sanctions bill threatens progress; pressure is on Franken, Klobuchar, http://www.startribune.com/opinion/commentaries/238660021.html

The historic Geneva deal to limit Iran’s nuclear program is scheduled to go into effect later this month. Once it does, the world will be farther away from a devastating war and a nuclear-armed Iran. As U.S. Rep. Betty McCollum, D-Minn., rightly pointed out, “this initial deal is a triumph for engagement and tough diplomacy.” However, **the U.S. Senate could reverse that progress through a vote on new sanctions as early as this week,** putting the United States and Iran on a collision course toward war.

For the first time in a decade, the Geneva deal presses pause on Iran’s nuclear program, and presses the rewind button on some of the most urgent proliferation concerns. In exchange, the United States has committed to pause the expansion of its sanctions regime, and in fact rewind it slightly with limited sanctions relief. **Imposing new sanctions now would be just as clear a violation of the Geneva agreement as it would be for Iran to expand its nuclear program.**

That’s why the Obama administration has committed to vetoing any such measures and has warned that torpedoing the talks underway could put our country on a march toward war. A recent, unclassified intelligence assessment concurred with the White House’s caution, asserting that new sanctions “would undermine the prospects for a successful comprehensive nuclear agreement with Iran.”

However, in an open rebuke of the White House, the intelligence community and the 10 Senate committee chairs who cautioned against new sanctions, Sens. Robert Menendez, D-N.J.; Chuck Schumer, D-N.Y., and Mark Kirk, R-Ill., have introduced a bill (S. 1881) to impose new oil and financial sanctions on Iran.

Supporters of this measure stress that new sanctions would take effect only if Iran violates the Geneva agreement or fails to move toward a final deal at the end of the six-month negotiation period. And some dismiss this congressional threat as toothless, given President Obama’s vow to veto any sanctions legislation. But **simply passing these sanctions would dangerously escalate tensions with Iran**. U.S. Rep. Keith Ellison, D-Minn., put it best: “**New sanctions stand to kill any hope for diplomacy.”**

Already, anti-Geneva-deal counterparts in Iran’s parliament have responded with their own provocation, introducing legislation to require Iran to enrich near weapons grade if the United States imposes new sanctions.

Like the Senate sanctions bill, the Iranian parliament’s legislation would have a delayed trigger. Like the Senate bill, the mere introduction of this reckless legislation isn’t a violation of the letter of the Geneva agreement per se. But **both bills risk** restarting the vicious cycle of confrontation **that has defined the U.S.-Iran relationship for decades.**

Without a significant public outcry, **support for this sanctions bill could potentially reach a veto-proof majority** of 67 senators and 290 representatives in the House.

Minnesota could play an important role in this showdown between supporters of using hard-nosed diplomacy to avoid military action and reduce nuclear risk, and those who would upend sensitive negotiations and make war likely. About half of the senators have staked out their positions, but neither Sen. Amy Klobuchar nor Sen. Al Franken have yet taken a public stance.

Minnesota is one of just 10 states where neither senator has taken a public position on whether or not to sign onto **sanctions** that **would sink the deal — and** risk another war in the Middle East.

While some new-sanctions proponents are banking on partisan politics to earn support from Republicans, it would still take seven of the remaining 23 undecided Democrats, along with all Republicans, to reach a veto-proof majority. All eyes will be on those 23 undecided Democrats — including Klobuchar and Franken.

### at: negotiations

Negotiations likely to succeed and be durable

Colin Kahl, 1/7/14, Still Not Time to Attack Iran, www.foreignaffairs.com/articles/140633/colin-h-kahl/still-not-time-to-attack-iran

In my article “Not Time to Attack Iran” (March/April 2012), I made the case for pursuing a diplomatic solution to the Iranian nuclear challenge, arguing that, because of the risks and costs associated with military action, “force is, and should remain, a last resort, not a first choice.” Key developments in 2013 -- namely, the election of Hassan Rouhani, a moderate, as Iran’s new president and the signing of an interim nuclear deal by Iran and the United States and its negotiating partners -- reinforce this conclusion. Whatever hawks such as Reuel Marc Gerecht or Matthew Kroenig might argue, it is still not time to attack Iran. Indeed, the prospects for reaching a comprehensive agreement to resolve the nuclear impasse peacefully, while far from guaranteed, have never been brighter. A LIGHT AT THE END OF THE TUNNEL After decades of isolation, the Iranian regime may finally be willing to place meaningful limits on its nuclear program in exchange for relief from punishing economic sanctions. In Iran’s June 2013 presidential election, Rouhani handily defeated a slate of conservative opponents, including the hard-line nuclear negotiator Saeed Jalili, who had campaigned on continuing Iran’s strategy of “nuclear resistance.” Rouhani, in contrast, pledged to reach a nuclear accommodation with the West and free Iran from the economic burden imposed by sanctions. Rouhani, also a former nuclear negotiator, believes he has the support of the Iranian people and a green light from Supreme Leader Ayatollah Ali Khamenei to reach a comprehensive nuclear accord with the United States and the other members of the P5+1 (Britain, China, France, Germany, and Russia). The first step on the road to a comprehensive deal came in November 2013 with an interim agreement in Geneva, in which Tehran agreed to freeze and modestly roll back its nuclear program in exchange for a pause in new international sanctions and a suspension of some existing penalties. The deal represents the most meaningful move toward a denuclearized Iran in more than a decade. It neutralizes Iran’s stockpile of 20 percent uranium and therefore modestly lengthens Iran’s “breakout” timeline -- the time required to enrich uranium to weapons grade -- by one or two months. A new inspections regime also means any breakout attempt would be detected soon enough for the international community to react, and expanded International Atomic Energy Agency (IAEA) access to Iran’s nuclear infrastructure will make it more difficult for Iran to divert critical technology and materials to new secret sites. The terms also preclude the new plutonium reactor at Arak from becoming operational, halting the risk that Iran could soon use plutonium to build a bomb. For all its good points, the interim agreement does not by itself resolve the Iranian nuclear challenge. Rather, the accord is designed to create at least a six-month diplomatic window (the initial period of the agreement), or longer if the agreement is extended, to negotiate a final, comprehensive solution. At the very least, U.S. officials have suggested that the ultimate deal must permanently cap Iran’s enrichment at five percent; substantially reduce Iran’s low-enriched uranium stockpile; place significant limits on the number of Iranian centrifuges and enrichment facilities; dismantle Arak or convert it to a proliferation-resistant light-water reactor; allow much more intrusive inspections of both declared and undeclared facilities; and account for the “past military dimensions” of Iran’s nuclear research. In exchange, Iran would receive comprehensive relief from multilateral and national nuclear- and proliferation-related sanctions. GOING FOR BROKE Some analysts argue that U.S. negotiators should use the leverage created by crippling economic sanctions and Iran’s apparent willingness to negotiate to insist on a total dismantling of Iran’s fuel-cycle activities. The maximalist approach is reflected in Israeli Prime Minister Benjamin Netanyahu’s stated requirements for a final deal: no uranium enrichment at any level, no stockpile of enriched uranium, no centrifuges or centrifuge facilities, and no Arak heavy-water reactor or plutonium reprocessing facilities. Attempting to keep Iran as far away from nuclear weapons as possible seems prudent and reasonable. It is imperative that any final deal prohibits Iran from possessing facilities that would allow it to produce weapons-grade plutonium, for example. But in reality, the quest for an optimal deal that requires a permanent end to Iranian enrichment at any level would likely doom diplomacy, making the far worse outcomes of unconstrained nuclearization or a military showdown over Tehran's nuclear program much more probable. Regardless of pressure from the United States, its allies, and the wider international community, the Iranian regime is unlikely to agree to end all enrichment permanently. Khamenei, the ultimate decider on the nuclear file, has invested far too much political capital and money (more than $100 billion over the years) in mastering enrichment technology and defending Iran's nuclear rights (defined as domestic enrichment). The nuclear program and “resistance to arrogant powers” are firmly imbedded in the regime’s ideological raison d’être. So, even in the face of withering economic sanctions, Khamenei and hard-liners within the Revolutionary Guard are unlikely to sustain support for further negotiations -- let alone acquiesce to a final nuclear deal -- if the end result reflects a total surrender for the regime. As Alireza Nader, an Iran analyst at the RAND Corporation, observes, “[S]anctions are a danger to their rule, but weakness in the face of pressure might be no less a threat.” Nor are Rouhani and his negotiating team likely to agree to halt enrichment or advocate for such a policy, since doing so would be political suicide. In 2003, during Rouhani’s previous role as Iran's chief nuclear negotiator, he convinced Khamenei to accept a temporary suspension of enrichment. But further talks with the international community stalled in early 2005 over a failure to agree on Iran’s asserted right to enrichment, and Tehran ended its suspension shortly thereafter. Rouhani is unlikely to let that happen again.

PLAYING CHICKEN Given the certainty that Iran will reject maximalist demands from the United States, the United States should only make such demands if it is willing to go to the brink of the abyss with Iran, escalating economic and military threats to the point at which the regime’s survival is acutely and imminently in danger. Yet pursuing such a high-risk strategy is unlikely to succeed, and the consequences of failure would be profound. First, it is unclear whether any escalation of sanctions could bring the regime to its knees in time to prevent Iran from achieving a breakout capability. Iran’s apparent willingness to negotiate under pressure is not, in and of itself, evidence that more pressure will produce total surrender. Iran’s economy is in dire straits, but the country does not appear to be facing imminent economic collapse. Khamenei and the Revolutionary Guard also seem to believe that the Islamic Republic weathered far worse during the Iran-Iraq War, an eight-year conflict that killed hundreds of thousands of Iranians and produced over half a trillion dollars in economic losses before Iran agreed to a cease-fire. Even if Washington goes forward with additional sanctions, economic conditions are not likely to produce enough existential angst among Iranian leaders, generate mass unrest, or otherwise implode the regime before Iran achieves a nuclear breakout capability. And even if they did lead to regime change, it still might not prove sufficient to force a nuclear surrender. After all, the imprisoned leaders of the Green Movement and Iranian secularists opposed to the Islamic Republic, as well as a significant majority of the Iranian people, also support Iran’s declared right to enrichment. Second, and somewhat paradoxically, ramping up sanctions to force regime capitulation now could end up weakening international pressure on Iran. For better or worse, Rouhani has already succeeded in shifting international perceptions of Iran. If the United States, rather than Iran, comes across as intransigent, it will become much more difficult to maintain the international coalition currently isolating Tehran, particularly on the parts of China, Russia, and numerous other European and Asian nations. Some fence sitters in Europe and Asia will start to flirt with Iran again, leaving the United States in the untenable position of choosing between imposing extraterritorial sanctions on banks and companies in China, India, Japan, South Korea, Turkey, and elsewhere, or acquiescing to the erosion of the international sanctions architecture. Third, issuing more explicit military threats (through public warning by U.S. President Barack Obama or congressional passage of a resolution authorizing the use of military force, for example) is also unlikely to achieve a maximalist diplomatic outcome. There is little doubt that maintaining a credible military option affects the Iranian regime’s calculations, raising the potential costs associated with nuclearization. And if diplomacy fails, the United States should reserve the option of using force as a last resort. But threats to strike Iranian nuclear sites surgically, no matter how credible, would not create a sufficient threat to the survival of the regime to compel it to dismantle its nuclear program completely. Finally, attempting to generate an existential crisis for the Islamic Republic could backfire by increasing the regime’s incentives to acquire nuclear weapons. If the United States escalates economic or military pressure at the very moment when Iran has finally begun to negotiate in earnest, Khamenei will likely conclude that the real and irrevocable goal of U.S. policy is regime change. Solidifying this perception would enhance, rather than lessen, Tehran’s motivation to develop a nuclear deterrent. In short, playing chicken with Iran will not work and is likely to result in a dangerous crash. Gambling everything by insisting on an optimal deal could result in no deal at all, leaving Iran freer and potentially more motivated to build atomic arms and making a military confrontation more likely. STILL TIME FOR DIPLOMACY During a December 2013 forum hosted by the Brookings Institution, Obama said, “It is in America’s national security interests . . . to prevent Iran from getting a nuclear weapon. . . . But what I’ve consistently said is, even as I don’t take any options off the table, what we do have to test is the possibility that we can resolve this issue diplomatically.” When asked by a former Israeli general in the audience what he would do if diplomacy with Iran breaks down, Obama said, “The options that I’ve made clear I can avail myself of, including a military option, is one that we would consider and prepare for.”

Given the dangers associated with a nuclear-armed Iran, Obama is right to keep the military option alive. But he is also right to strongly prefer a diplomatic outcome. **Leadership changes in Tehran and the diplomatic momentum created by the Geneva interim accord mean that there is a real chance that the Iranian nuclear crisis** -- a challenge that has haunted the international community for decades -- **could finally be resolved peacefully**. No one can say for sure how high the odds of success are. But given the enormous dangers associated with both an Iranian bomb and the bombing of Iran, it is imperative to give diplomacy every chance to succeed.

Iran is behind the agreement—squo disproves the logic of scuttling

Reuters, 2/1/14, Iran's top clergy back Rouhani's nuclear approach, mobile.reuters.com/article/idUSBREA100FP20140201?irpc=932

President Hassan **Rouhani has secured the backing of senior conservative clerics against hardliners opposed to a nuclear deal** reached with major powers, Iran's official news agency IRNA said on Saturday.

His first vice president, Eshaq Jahangiri, visited clerics in the Shi'ite Muslim holy city of Qom to explain the deal and seek their blessing over "complex foreign policy issues" ahead of talks next month on a long-term accord, IRNA said.

An interim deal between Iran and the five permanent members of the U.N. Security Council plus Germany was reached in November in Geneva, aimed at persuading Iran to curb parts of its nuclear work, in return for a limited easing of sanctions.

Hardline clerics close to Iranian Supreme Leader Ali Khamenei, Revolutionary Guards commanders and the intelligence services have attacked the temporary concessions Rouhani has made, although Khamenei has so far backed the president.

Khamenei has the final say on all state matters, including the nuclear issue.

The talks on February 18 will seek a comprehensive agreement defining the permissible scope of Iran's nuclear activity. Western powers fear the nuclear program is aimed at creating atomic weapons capabilities. Iran denies this.

IRNA said **the response of from the clerics** in Qom, in central Iran, **was unanimously positive**.

Support from Qom, whose clerics traditionally have influence among core supporters of the establishment, is likely to boost Rouhani's government's position in the next round of talks in Vienna, having already won over more reform-minded clerics.

The backing of the clergy is essential as they have direct access to ordinary Iranians in their sermons when they can mobilize people to display their support for the deal, under which Tehran seeks to end painful economic sanctions that have severely damaged its oil-dependent economy.

"This government has inspired hope in our society. Its way of communicating has put us in line with other cultures," said Grand Ayatollah Lotfollah Safi Golpaygani, referring to Rouhani's tone compared to his hardline predecessor, Mahmoud Ahmadinejad, since his landslide election win.

Demonstrating their support for Rouhani, some clerics blamed Ahmadinejad's government for the struggling economy as well as Iran's political isolation.

"Poor leadership by the previous government is at the root of much of our problems today," IRNA quoted conservative Ayatollah Abdollah Javadi-Amoli as saying.

Rouhani, whose election led to a thaw in ties with the West after years of confrontation and hostile rhetoric, has promised to pursue a consistent foreign policy of "prudence and moderation" to revive the economy.

### uq

Iran sanctions is an ongoing showdown

Jennifer Rubin, 2/7/14, Menendez’s blasts Obama’s Iran policy, www.washingtonpost.com/blogs/right-turn/wp/2014/02/07/menendezs-blasts-obamas-iran-policy/

The administration has a big problem on Iran. It has for now successfully fended off sanctions, but in doing so it helped forge consensus about the flaws in its approach and set the scene for a major showdown with Congress when, as everyone but Secretary of State John Kerry expects, Iran refuses to agree to even minimal steps to dismantle its nuclear weapons program. In other words, it has set itself up for failure with no back-up plan. Thursday, Sen. Robert Menendez (D-N.J.), denied by his majority leader a vote on a sanctions bill that would pass with more than 70 votes, explained in detail the administration’s gross mishandling of negotiations. It is worth reading in full, but some portions deserve emphasis. After describing in detail the requirements the administration, the United Nations and former administration official Dennis Ross have confirmed are needed to prevent a nuclear-capable Iran, the New Jersey Democrat summed up the flaws in the interim deal:

Pro-sanction groups are only tactically retreating—they’ll pounce on the plan

Stephen Collinson, AFP, 1/29/14, Obama repels new Iran sanctions push... for now, news.yahoo.com/obama-repels-iran-sanctions-push-now-032127269.html

President Barack Obama appears to have prevailed, for now, in a campaign to stop Congress from imposing new sanctions on Iran he fears could derail nuclear diplomacy.

Several Democratic senators who previously backed a bipartisan sanctions bill publicly stepped back after Obama threatened a veto during his State of the Union address Tuesday.

Several sources familiar with behind-the-scenes maneuvring say a number of other Democratic senators signed up for more sanctions had privately recoiled from a damaging vote against their own president.

According to some counts in recent weeks, the measure had 59 likely votes, including 16 Democrats, and was even approaching a two-thirds veto-proof majority in the 100-seat Senate.

But **latest developments** appear to **have checked that momentum**.

"I am strongly supporting the bill but I think a vote is unnecessary right now as long as there's visible and meaningful progress" in the Iran negotiations, Senator Richard Blumenthal told AFP, after expressing reservations earlier this month.

Democratic Senator Chris Coons made a similar declaration at a post-State of the Union event hosted by Politico.

"Now is not the time for a vote on an Iran sanctions bill," he said.

Another Democratic Senator, Joe Manchin, hopes Senate Majority Leader Harry Reid will not bring it up.

"I did not sign it with the intention that it would ever be voted upon or used upon while we're negotiating," Manchin told MSNBC television.

"I signed it because I wanted to make sure the president had a hammer if he needed it and showed him how determined we were to do it and use it if we had to."

The White House mounted an intense campaign against a bill it feared would undermine Tehran's negotiators with conservatives back home or prompt them to ditch diplomacy.

Obama aides infuriated pro-sanctions senators by warning the measure could box America into a march to war to halt Tehran's nuclear program if diplomacy died.

The campaign included a letter to Reid from Democratic committee chairs urging a vote be put off.

Another letter was orchestrated from a group of distinguished foreign policy experts.

Multi-faith groups weighed in and coordinated calls from constituents backing Obama on nuclear diplomacy poured into offices of key Democrats.

The campaign appears for now to have overpowered the pro-sanctions push by hawkish senators and the Israel lobby, whose doubts on the Iran nuclear deal mirror those of Israeli Prime Minister Benjamin Netanyahu.

Senator Johnny Isakson, a Republican co-sponsor of the legislation, said: "It looks like we're kind of frozen in place."

Those behind the anti-sanctions campaign though privately concede they may have won a battle, not a war.

'A crucial victory'

**The push for new sanctions will flare again** ahead of the American Israel Public Affairs Committee's (AIPAC) annual conference in March, which Netanyahu is expected to address.

It could also recur if the talks with Iran on a final pact extend past the six-month window set by the interim deal.

But for now, groups that supported the push against sanctions are jubilant.

"This is a major victory, a crucial victory for the American public who don't want to see a war," said Kate Gould of the Friends Committee on National Legislation.

But she warned: "There'll be other efforts to try and sabotage the process."

It’s a question of momentum—that can still shift back

Sara Sorcher, National Journal, 1/29/14, Inhofe: Obama 'Naive,' but Winning, on Iran, www.nationaljournal.com/defense/inhofe-obama-naive-but-winning-on-iran-20140129

President Obama used his State of the Union address Tuesday to threaten a veto of any congressional plan to slap Iran with new sanctions, and he just might have gotten his way. The top Republican on the Senate Armed Services Committee thinks Obama is "naive" to believe the U.S. is having any "great success" in persuading Iran to curb parts of its nuclear program—**but he is not optimistic there's enough momentum in the Senate,** all told, **to ram through new sanctions against the wishes of the president.** "[Obama] said last night he would veto any [new sanctions]," Sen. Jim Inhofe said in an interview. "The question is, is there support to override a veto on that? I say, 'No.' " The Nuclear Weapon Free Iran Act, authored by two senators, Illinois Republican Mark Kirk and New Jersey Democrat Robert Menendez, has 59 cosponsors, and includes measures to punish Iran's oil industry if it breaches diplomatic commitments. Inhofe does not believe a vote now would result in the majority necessary to override a presidential veto, because enough Democrats would still side with their president. Even some of the Senate bill's Democratic cosponsors, including Joe Manchin of West Virginia and Christopher Coons of Delaware, have also backed away from the sanctions bill since Obama's speech, The Hill reported. In his address Tuesday night, Obama defended the interim deal, which he said "has halted the progress of Iran's nuclear program--and rolled parts of that program back--for the very first time in a decade." Iran has started eliminating its stockpile of higher levels of enriched uranium, Obama said, and is no longer installing advanced centrifuges. If diplomacy fails, then all options--presumably even military force--remain on the table, Obama promised. "I will be the first to call for more sanctions, and stand ready to exercise all options to make sure Iran does not build a nuclear weapon." Inhofe, though, isn't buying it. New Iranian President Hassan Rouhani is not to be trusted; inspections won't be enough, he said. "They," Inhofe said, referring to the Obama administration, "seem to think, for some reason, that this new president is a president they can talk to, and negotiate with…. This guy, I don't think we can trust him more than anybody else, [even former President Mahmoud] Ahmadinejad." Even though the momentum may be slipping, Inhofe said, Democrats loyal to Obama are quickly becoming "endangered species." So if talks between world powers and Iran fall apart, or new revelations emerge that Iran is breaking its diplomatic commitments, it's possible **the** political winds could shift**. For now, though, Obama may be in the clear**.

### waivers

The deal’s set – that means waivers are a violation

Paul Blumenthal, HuffPo, 1/30/14, Pro-Israel PACs Went All In For Senators Supporting Iran Sanctions, But They're Still Losing, www.huffingtonpost.com/2014/01/30/iran-sanctions-pacs\_n\_4695417.html

In fact, the sanctions would go into force 90 days after the legislation became law. Supporters note that the bill provides for a presidential waiver to push that date back to the end of the interim deal, but, according to National Iranian American Council policy director Jamal Abdi, the waiver would be impossible to invoke.

"The waiver that it gives him requires him to make certifications to Congress that go above and beyond what's inside the deal," Abdi said.

It can’t unlock reciprocal concessions

Paul Pillar, Nonresident Senior Fellow at the Center for Security Studies at Georgetown University and Nonresident Senior Fellow in Foreign Policy at the Brookings Institution, 10/17/13, Iran and the Quelling of Congressional Troublemaking, server1.nationalinterest.org/print/blog/paul-pillar/iran-the-quelling-congressional-troublemaking-9258

The attempt to play chicken with government operations and the nation's creditworthiness, and the shutdown and anxiety in financial markets resulting from the attempt, already have harmed U.S. foreign relations and interests overseas [4]. This is part of a much broader array of major costs and damages [5] that will be adding up for a long time. But if you are interested in avoiding an Iranian nuclear weapon—the focus of negotiations this week in Geneva—at least the way the crisis of governance in Washington ended provides a silver lining to this sorry chapter in American political history. This is because if President Obama is going to reach an agreement to keep the Iranian nuclear program peaceful and to make that agreement stick, he needs to demonstrate the ability and willingness to rein in destructive behavior in Congress that would preclude such an agreement.

The administration will need Congressional cooperation to undo sanctions that were erected supposedly to induce the Iranians to accept just such an agreement. The president can accomplish some rollback of sanctions on **his own authority**, and that might be sufficient for some sort of partial, interim, confidence-building deal. But it would not be sufficient, and would not be a fair trade, **for** the **concessions** and restrictions we want from Iran **in a comprehensive and lasting agreement**. Nor would it be sufficient for the president, as has been suggested [6], merely to be lax in the enforcement of legislatively impose sanctions. Besides showing disrespect for the law, this would hardly reassure the Iranians that an agreement would stick. They would understandably fear that what one U.S. president might decline to enforce the next one would.

Even before getting to the point of striking a deal, **Congressional action can scuttle the prospects for one** or at least make it far harder to reach an agreement. The imposition of still more sanctions, and the rattling of more sabers through legislation that refers to military force, are the sorts of Congressional actions that would be a slap in the face of a new Iranian administration that has just placed a constructive proposal on the negotiating table [7], would feed already understandable Iranian suspicions that the United States is interested only in regime change and not in an agreement, and thereby would weaken the Iranian incentive to make still more concessions. Unfortunately legislation for more sanctions and more saber-rattling has already been introduced in Congress.

Pushing back against the promoters of such legislation involves some of the same perpetrators who had to be pushed back to avoid default and to end the shutdown. All of the co-sponsors of a bill from Rep. Trent Franks (R-AZ) that is a thinly disguised authorization for launching a war against Iran were among those who this week voted against the resolution that ended the funding and debt crisis.

Mr. **Obama's** demonstration of backbone **this month will help on the Iran issue**, but there still are other reasons to question whether the administration will similarly show sufficient fortitude on behalf of an agreement to keep the Iranian nuclear program peaceful. For one thing, the president does not have the unanimous support of his own party, as he did in the standoff that just ended. A significant number of Democrats, not just Republicans, have come under the sway of those determined to prevent an agreement. Also, even those who consider the Iranian issue important have to admit that avoidance of default (and keeping the U.S. government running) is about as serious a matter as the president is likely to face, and he cannot be expected to give as much priority to every issue as he did to that one.

**Besides** political capital **it also takes** time and attention **to tend directly to a foreign policy initiative,** and **to keep beating back unhelpful behavior in Congress that threatens to undermine the initiative**. The attempt of Congressional miscreants to play chicken has taken a toll here, too. The president skipped a couple of East Asian summit meetings to deal with that problem in Washington. Secretary of State Kerry subbed for him, which meant Kerry had that much less time and attention to devote to other matters that are his responsibility, such as the Israeli-Palestinian talks (remember those?) and the Iranian nuclear negotiations.

That senior policymakers have only so much energy and so many hours in a day is an understandable drag on many things we expect them to do. But Obama and Kerry have to muster the time and attention for what is happening on these other issues and particularly Iran, not only at negotiating tables in the Middle East or Geneva but also on Capitol Hill.

### tpa

Obama avoiding controversial fights and loses

Darrell Delamaide, Market Watch, 1/29/14, Obama’s State of the Union: The Audacity of Caution, www.marketwatch.com/story/obama-skirts-controversy-in-timid-election-year-speech-2014-01-29?pagenumber=1

The speech, in short, followed the “first, do no harm” principle. With Democrats facing an uphill battle in midterm elections this year to retain control of the Senate and hold their own in the House, Obama seemed determined to do no further damage to the Democratic brand.

By the same token, he was not whiny or apologetic or resigned. Limited as the scope for action through executive order is, it at least keeps him from appearing as a loser in his battle with Republican lawmakers.

He did call on Congress to restore long-term unemployment insurance that just expired for 1.6 million people and to expand the earned income tax credit. And he promised to veto any bill that sought to impose new sanctions on Iran while the administration is negotiating a way to contain that country’s nuclear program.

It was a cautious, even timid, speech from a politician whose modus operandi — aside from sweeping rhetoric in his presidential campaigns — has been very cautious.

This State of the Union was seen by many as Obama’s last chance to give himself some breathing room in his second term to cement his legacy. With its upbeat and confident tone, its determination to avoid confrontation and skip over controversy, it may have — barely — done that.

#### Obama not spending capital on TPA

Phil Levy, Foreign Policy, 1/29/14, Is Obama even trying on trade, shadow.foreignpolicy.com/posts/2014/01/29/is\_obama\_even\_trying\_on\_trade

The president faces an enormous challenge on trade. He has built much of his Asian foreign policy around the Trans-Pacific Partnership (TPP) and much of his European foreign policy around the Transatlantic Trade and Investment Partnership (TTIP). In each case, he did so on the promise to our international partners -- explicit or implicit -- that he would sooner or later bring Congress around.

It is now later. The TPP was nominally to conclude last year. Other countries' trade ministers have stated their desire to see it wrap up as soon as possible. They are waiting on White House efforts to win a negotiating mandate from Congress (known as TPA). While such a measure has met some Republican opposition, the most serious challenge has come from Democrats, particularly in the House. The Senate looked safer, at least before the president sent the bill's key Democratic backer, Finance Committee Chairman Max Baucus (D-MT), off to Beijing.

In the House, members of the president's party have voiced skepticism about what trade deals do. They believe those deals cost jobs, damage the environment, and harm workers. A key part of the president's task in his State of the Union address was to speak to these members of his party and their constituents watching at home. **He had to persuade them that**, while he had once espoused such positions and empathized, the critics were mistaken. **Instead, here was the sum total of the president's pitch**:

"...when 98 percent of our exporters are small businesses, new trade partnerships with Europe and the Asia-Pacific will help them create even more jobs. We need to work together on tools like bipartisan trade promotion authority to protect our workers, protect our environment and open new markets to new goods stamped 'Made in the USA.'"

Even had the president made this statement at the beginning of last summer, when discussions were just starting up on the TPA, it would have been cursory. **Few people are persuaded by the bare assertion** that their strong beliefs are false and the opposite is true. Usually, to change minds, some supporting detail is required, some evidence, or a carefully structured argument. Weak mercantilist claims are easily rejected by skeptics (e.g. if trade is good because exports bring jobs, what does it mean when we run a trade deficit and imports exceed exports?).

**Not only did the president fail to make much of a sales pitch, but his vague call to ‘work together' comes at a time when a bipartisan bill has been crafted and the battle lines are drawn**. **By not mentioning the bill, nor taking a stance on the controversial facets under debate** -- currency provisions, intellectual property protection clauses, trade adjustment assistance -- **the White House remains on the sidelines, hoping that TPA will simply fall into its lap without** much **expenditure of effort or political capital**.

Success on the trade front was going to require experienced leadership in the Congress and a concerted public and private persuasion campaign from the President. Instead, the last month has brought the removal of an irreplaceable Capitol Hill proponent and noncommittal nods from the White House. This does not bode well.

#### Obama avoiding a fight on TPA now

Peter Baker, NYTimes, 2/3/14, Trade Issue Goes Untouched as Obama and Reid Meet, www.nytimes.com/2014/02/04/us/politics/trade-issue-goes-untouched-as-obama-and-reid-meet.html?partner=rss&emc=rss&\_r=0

President Obama met with Senator Harry Reid, Democrat of Nevada, at the White House on Monday **but** made no effort **to change** Mr. **Reid’s mind on the trade initiative that has divided them,** according to Democrats briefed on the session. Last week, the day after Mr. Obama vowed to fight for additional authority to negotiate trade deals with Europe and Asia, Mr. Reid, the majority leader, effectively slammed the door on the idea and publicly **warned the president not to push it**. The White House said Mr. Obama would keep pressing for his initiative because it would bolster the economy and create jobs. But when Mr. Obama and Mr. Reid sat down on Monday, trade did not come up, according to the Democrats. Instead, the discussion focused on the coming midterm elections, in which Republicans could capture control of the upper chamber if they pick up six seats. Also present were Senator Michael Bennet of Colorado, chairman of the Democratic Senatorial Campaign Committee, and Guy Cecil, the committee’s executive director. Democrats, who said the meeting had been scheduled before Mr. Reid’s comments last week, are seeking political help from Mr. Obama. Despite the president’s sagging poll numbers, he remains an effective fund-raiser and can motivate the party base in some parts of the country. The dispute over trade, though, highlights the challenges facing Mr. Obama as he tries to advance his agenda in a campaign year. As he negotiates trade pacts with Europe and Asia, he wants Congress to give him authority to submit agreements for up-or-down votes, as previous presidents have been able to do, rather than allowing lawmakers to amend them. So-called fast-track authority is viewed as essential to passing any agreements, and it is one area where the president and Republicans agree. But the Democratic base, particularly labor unions and environmental activists, has long been skeptical of such trade agreements, and Mr. Reid opposes giving the authority to the president. “Everyone would be well advised just to not push this right now,” he said the day after Mr. Obama’s State of the Union address. Republicans have needled Mr. Obama about the schism. “He’s absolutely right,” Senator Mitch McConnell of Kentucky, the Republican leader, said of Mr. Obama on Monday. “But now the president’s own party is now standing in the way of getting anything done. So if ever there was a moment for the president to use his phone, this is it.” Mr. Obama’s aides said he would continue to seek the authority. “These trade agreements would significantly boost our exports,” Jay Carney, the White House press secretary, said shortly before the meeting with Mr. Reid. “And the president’s going to push hard for this because he believes it’s the right thing to do for our economy, the right thing to do for American workers.” **But** Mr. Obama did not make that case to Mr. Reid when he had the chance. **White House** officials are trying to avoid a public fight that they see as self-destructive. Asked before the meeting if the president would raise the issue, Mr. Carney suggested it did not have to come up on that particular day because Mr. Obama and Mr. Reid were in regular communication. “They talk all the time,” he said.

### NSA

#### NSA not controversial

Lucia Graves, Natl Journal, 1/22/14, Why Americans Got Bored of the NSA Story, www.nationaljournal.com/politics/why-americans-got-bored-of-the-nsa-story-20140122

When President Obama announced his long-awaited reforms to the National Security Agency's controversial surveillance program, it was met by a collective yawn. It was the Friday before a holiday weekend, and not many Americans were listening. Those who were were finding it difficult. Fifty percent of Americans have heard nothing about the president's proposals, and 41 percent said they'd heard just a little, according to a new Pew Research Center/USA Today poll. Taken together the numbers mean that nine out of 10 citizens had little interest in what Obama had to say following six months of heated policy debate in Washington. It's not that the issue isn't important (the poll also found 53 percent of respondents disapprove of the government's bulk collection practices around Internet and telephone metadata), but that something was missing—an element that would capture the imagination of Americans and allow them to pay attention to an important (wonky!) area of policy. In his speech, Obama stuck to policy, avoiding nearly all talk of controversial leaker Edward Snowden. "I am not going to dwell on Mr. Snowden's actions or his motivations," Obama said. That, perhaps, is where he lost much of America. The question of whether Edward Snowden is a hero or a villian has been a favorite debate topic of Americans since news of the survellaince program first broke in June. Google trends shows a spike of interest back in June when Snowden first went public with information detailing the NSA's vast data-collection programs. Interest in Snowden climbed even higher later that month, as publications probed the privacy implications for Americans and ramifications for his personal life. By August interest levels had dropped to less than a quarter of that peak interest and never regained momentum, with interest in the NSA running roughly parallel to interest in Edward Snowden over time. There was another spike in interest around late October, when news broke of the NSA using its surveillance operation to spy on German Chancellor Angela Merkel. By avoiding talk of Snowden, Obama seems to think he's taking the high road. "The sensational way in which these disclosures have come out has often shed more heat than light," Obama said in his speech. There's certainly truth to that, but as any journalist who's written an anecdotal lede can tell you, you lose something when you take the human element out of your argument: people's ability to care. Libertarian critic Rand Paul, the senator from Kentucky who has been outspoken in his opposition to the NSA's intelligence-gathering practices, has a different way of looking at it. "I think there would have been absolutely no reform without Snowden," Paul said after Obama's speech. "We wouldn't have any of this, we wouldn't have any discussion." Snowden isn't just the person who birthed the story; he also helped keep it in the conversation. A Google search for "Edward Snowden" and "hero or villain" turns up close to 10,000 results. And anyone who attended a holiday party this year was likely asked to weigh in on the dichotomy by at least one well-meaning relative. If the reception of the president's speech on Twitter is any measure, Paul may be right about how deeply bound Snowden is to the story, or at least to the hearts and attention spans of Americans. The press conference was held just before MLK Day weekend, and practically everyone—from citizens to journalists to whole news outlets—was tweeting like they were already halfway out the door. Some even surmised **the boringness of Obama's speech was employed as a political strategy**. It wouldn't be the first time in 2014 that politicians have employed such a strategy. Earlier this month, Chris Christie patented the boringness strategy when the New Jersey governor spoke for nearly two hours about traffic delays on the George Washington Bridge and, mostly, how he is really, truly a Good Guy™ and how badly hurt you can get when you trust people. It was a master class in political gloss: He seemed transparent (because there were so many words!), but he didn't actually answer any useful questions about say, whether his deputy chief of staff even had the authority to implement the alleged "traffic study" or why people in his office sought revenge on Fort Lee in the first place. He did, however, manage to keep talking until there was nothing reporters wanted more than for him to stop. Obama isn't trying to cover up a personal scandal, but, like Christie, he may benefit from taking out the heat. Snowden was the lens that made Americans pay attention to this issue in the first place. By excising him from the conversation, Americans might just forget why they were so mad to begin with.

#### Obama isn’t pushing the issue

Benjamin Wittes, Brookings Institute, TNR, 1/21/14, Obama's NSA Speech Wasn't an Apology. It Was a Clever Defense. , www.newrepublic.com/article/116284/obamas-nsa-speech-wasnt-apology-it-was-clever-defense

Obama kicks a few other things to Congress too: broader reforms of NSLs and greater reform of the FISA court system. The message here is that these are areas in which Obama is not going to put his own prestige at issue, but if Congress wants to take them on, he’ll engage. That seems right to me. Neither of these areas represents the core of the Snowden-era problems. **Neither is worth the administration’s energy or the President’s clout**.

### links

Only defections matter

Josh Kraushaar, National Journal, 11/22/13, The Iran Deal Puts Pro-Israel Democrats in a Bind, http://www.nationaljournal.com/magazine/the-iran-deal-puts-pro-israel-democrats-in-a-bind-20131122

All of this puts Democrats, who routinely win overwhelming support from Jewish Americans on Election Day, in an awkward position. Do they stand with the president on politically sensitive foreign policy issues, or stake their own course? That difficult dynamic is currently playing out in Congress, where the Obama administration is resisting a Senate push to maintain tough sanctions against Iran. This week, Obama met with leading senators on the Banking and Foreign Relations committees to dissuade them from their efforts while diplomacy is underway.

"There's a fundamental disagreement between the vast majority of Congress and the president when it comes to increasing Iran sanctions right now," said one Democratic operative involved in the advocacy efforts. "Pro-Israel groups, like AIPAC, try to do things in a bipartisan way; they don't like open confrontation. But in this instance, it's hard."

That awkwardness has been evident in the lukewarm reaction from many of Obama's Senate Democratic allies to the administration's outreach to Iran. Senate Foreign Relations Committee Chairman Robert Menendez of New Jersey said last week he was concerned that the administration seems "to want the deal almost more than the Iranians." Normally outspoken Sen. Chuck Schumer of New York, a reliable ally of Israel, has been conspicuously quiet about his views on the negotiations. In a CNN interview this month, Democratic Rep. Debbie Wasserman Schultz of Florida, whose job as chairwoman of the Democratic National Committee is to defend the president, notably declined to endorse the administration's approach, focusing instead on Obama's past support of sanctions. This, despite the full-court press from Secretary of State John Kerry, a former congressional colleague.

On Tuesday, after meeting with Obama, Menendez and Schumer signed a bipartisan letter to Kerry warning the administration about accepting a deal that would allow Iran to continue its nuclear program. The letter was also signed by Sens. John McCain, R-Ariz., Lindsey Graham, R-S.C., Susan Collins, R-Maine, and Robert Casey, D-Pa.

Democrats, of course, realize that the president plays an outsized role in the policy direction of his party. Just as George W. Bush moved the Republican Party in a more hawkish direction during his war-riven presidency, Obama is nudging Democrats away from their traditionally instinctive support for the Jewish state. "I can't remember the last time the differences [between the U.S. and Israel] were this stark," said one former Democratic White House official with ties to the Jewish community. "There's now a little more freedom [for progressive Democrats] to say what they want to say, without fear of getting their tuchus kicked by the organized Jewish community."

A Gallup survey conducted this year showed 55 percent of Democrats sympathizing with the Israelis over the Palestinians, compared with 78 percent of Republicans and 63 percent of independents who do so. A landmark Pew poll of American Jews, released in October, showed that 35 percent of Jewish Democrats said they had little or no attachment to Israel, more than double the 15 percent of Jewish Republicans who answered similarly. At the 2012 Democratic National Convention, many delegates booed a platform proposal supporting the move of the U.S. Embassy in Israel from Tel Aviv to Jerusalem. In 2011, Democrats lost Anthony Weiner's heavily Jewish, solidly Democratic Brooklyn House seat because enough Jewish voters wanted to rebuke the president's perceived hostility toward Israel.

Pro-Israel advocacy groups rely on the mantra that support for Israel carries overwhelming bipartisan support, a maxim that has held true for decades in Congress. But most also reluctantly acknowledge the growing influence of a faction within the Democratic Party that is more critical of the two countries' close relationship. Within the Jewish community, that faction is represented by J Street, which positions itself as the home for "pro-Israel, pro-peace Americans" and supports the Iran negotiations. "Organizations that claim to represent the American Jewish community are undermining [Obama's] approach by pushing for new and harsher penalties against Iran," the group wrote in an action alert to its members.

Some supporters of Israel view J Street with concern. "There's a small cadre of people that comes from the progressive side of the party that are in the business of blaming Israel first. There's a chorus of these guys," said a former Clinton administration foreign policy official. "But that doesn't make them the dominant folks in the policy space of the party, or the Hill."

Pro-Israel activists worry that one of the ironies of Obama's situation is that as his poll numbers sink, his interest in striking a deal with Iran will grow because he'll be looking for any bit of positive news that can draw attention away from the health care law's problems. Thus far, Obama's diminished political fortunes aren't deterring Democrats from protecting the administration's prerogatives. Congressional sources expect the Senate Banking Committee, chaired by South Dakota Democrat Tim Johnson, to hold off on any sanctions legislation until there's a resolution to the Iranian negotiations.

**But if Obama's standing continues to drop**, and if Israel doesn't like the deal, **don't be surprised to see Democrats become less hesitant about going their own way**.

War powers fights independently scuttles the deal

Jon Alterman, CSIS Global Security Chair and Middle East Program Director, 9/4/13, US-Iran Nuclear Deal Hinges On Syria Vote, www.al-monitor.com/pulse/originals/2013/09/us-iran-nuclear-deal-hinges-on-syria-vote.html

**Focusing** solely **on** events in **Syria**, **however, misses a large part of the Iranian calculus, if not the largest**. What really matters to Iran is how successful Obama is in winning congressional support for his Syria policy. If he fails, it will deal a double blow to the president. Not only will the Iranian government dismiss the possibility of negotiations with his administration, it will also **conclude that Obama can be defied with impunity**. The international cost of domestic political failure would be profound.

To start, it is worth noting the extent to which foreign governments are sophisticated consumers of American political information. Decades of international cable news broadcasts and newspaper websites have brought intimate details of US politics into global capitals. Foreign ministers in the Middle East and beyond are US news junkies, and they seem increasingly distrustful of their embassies. For key US allies, the foreign minister often seems to have made him- or herself the US desk officer. Most can have a quite sophisticated discussion on congressional politics and their impact on US foreign relations.

The Iranian government is no exception. While former president Mahmoud Ahmedinejad was emotional and shrill in his opposition to the United States, there remains in Iran a cadre of Western-trained technocrats, fluent in English and nuanced in their understanding of the world. President Hassan **Rouhani has surrounded himself with such people**, and Supreme Leader Ayatollah Ali Khamenei has charged them with investigating a different relationship between Iran and the United States.

As they do so, they cannot help but be aware that on the eve of Rouhani’s inauguration, the US House of Representatives voted 400–20 to impose stiff additional sanctions on Iran. The House saw Rouhani’s electoral victory as a call for toughness, not potential compromise.

If Iran were to make concessions in a negotiation with the United States, they would surely seek sanctions relief and other actions **requiring congressional approval**. To make such concessions to Obama, they would need some confidence that he can deliver. **A president who cannot bring around** a hostile **Congress is not a president with whom it is worth negotiating**.

Plan passage enables Iran sanction passage—only potential bill for amendment

JTA, staff writer, 2/6/14, GOP senators press Reid on Iran sanctions vote, www.jta.org/2014/02/06/news-opinion/politics/gop-senators-press-reid-on-iran-sanctions-vote

**Reid has so far resisted bringing the bill to the floor**. Proponents of the new sanctions say they would strengthen the West’s hand in Iran negotiations, adding that without new sanctions, the momentum in the talks is moving in Iran’s favor.

According to the Daily Beast, **Republicans may attempt to** attach the bill to must-pass legislation **as an amendment, and could refuse cooperation on other bills in order to force Reid to call a vote**.

Capital key

Peter Nicholas, WSJ, 1/21/14, The Missing Pieces in Obama’s Bully Pulpit, blogs.wsj.com/washwire/2014/01/21/the-missing-pieces-in-obamas-bully-pulpit/

Mr. Obama has never been one for strong-arm tactics: intimidating opponents or striking fear into lawmakers who’ve crossed him.  It’s not part of his emotional wiring.

Nor has he put much stock in seducing lawmakers in the manner, say, of a Lyndon Johnson.

**He prefers making a reasonable argument** that resonates with the broader public, pressuring Congress to fall in line.

Mr. Obama got a huge laugh at the [White House Correspondence Association dinner](http://blogs.wsj.com/washwire/2013/04/28/transcript-of-obamas-remarks-at-white-house-correspondents-dinner/) last year when he said: “Some folks still don’t think I spend enough time with Congress. ‘Why don’t you get a drink with [Senate Republican leader] [Mitch McConnell](http://topics.wsj.com/person/M/mitch-mcconnell/7788?lc=int_mb_1001)?’ they ask. Really? Why don’t you get a drink with Mitch McConnell?”

Robert Gates, the former defense secretary who served under both George W. Bush and Mr. Obama has just come out with a memoir describing his time in office. Meeting with reporters over breakfast last week, Mr. Gates said of Messrs. Bush and Obama: “They were neither much liked nor much feared on the Hill.”

With three years left in his presidency, White House advisers say Mr. Obama is charting a course that ensures his agenda won’t be hostage to a polarized Congress. He’ll make more use of his executive authority to curb global warming and boost the economy.

Yet the president won’t be able to bypass his legislative adversaries altogether. **He needs to fend off a push by some in Congress to impose new sanctions on Iran, a move that could complicate his efforts to thwart Iran’s nuclear program through diplomatic means**. He wants to pass an immigration bill, a promise left over from his 2008 campaign.

Obama’s standing with Dems is critical

David Rhode, The Atlantic, 1/15/14, Democrats Could Wreck Obama's Biggest Foreign-Policy Success, www.theatlantic.com/international/archive/2014/01/democrats-could-wreck-obamas-biggest-foreign-policy-success/283103/

By design or accident, it is increasingly clear that the centerpiece of President Barack Obama’s second-term foreign policy is a nuclear agreement with Iran. Whether Obama can succeed, however, now depends on Congress staying out of the negotiations.

Over the last few weeks, 16 Democratic senators have supported a bill that would impose new sanctions on Iran over its nuclear program. They have defied the White House’s intense campaign to block Congress from adding new conditions to any deal.

In this way, Obama is the victim of an increasingly craven Washington—where members of his own party are abandoning him out of political expedience. At the same time, the White House is also a victim of its sometimes erratic responses to events in the Middle East.

For the last six years, the president has repeatedly declared that he does not want the United States entangled in another conflict in the Middle East. As a result, allies and enemies at home and abroad, from members of Congress to Israeli and Iranian hawks, question his commitment to use force against Iran if negotiations fail.

Experts warn that the stakes are enormous. Political opportunism, maximalist positions, and mixed messages could take on a life of their own, scuttle the talks, and inadvertently spark military action.

George Perkovich, director of the Nuclear Policy Program at the Carnegie Endowment for International Peace, lambasted the bill’s congressional sponsors in Foreign Affairs. He accused the Democratic senators Robert Menendez and Charles Schumer, and the Republican senator Mark Kirk, of reckless grandstanding. “The Menendez-Kirk-Schumer bill may be politically expedient,” Perkovich wrote, “but it is also entirely unnecessary and dangerous.”

Much of the Democrats’ maneuvering is old-fashioned political posturing. All the Democratic officeholders now supporting the sanctions bill, David Weigel noted in Slate Tuesday, face tough re-election battles. Rejecting calls from the American Israel Public Affairs Committee to support the new sanctions bill could make them vulnerable to attacks of capitulating to Iran. So far, Democrats from “safer, bluer” turf—including Senators Tim Kaine and Chris Murphy—are not supporting the bill.

Ambition also plays a role here. Schumer, who is safe in New York, is looking to succeed Senator Harry Reid as majority leader. His chief rival for this job, Senator Dick Durbin, who was the senior senator from Illinois when Obama was the junior senator, is backing the administration.

Democrats who support the new sanctions bill claim that their goal is to give Obama greater leverage in talks with Tehran. But Perkovich and other experts warn that the proposed sanctions threaten to spark a tit-for-tat cycle of escalation.

As American hard-liners saber rattle, Iranian hard-liners are saber rattling back. If Congress does pass the new sanctions bill, a senior member of the Iranian parliament has threatened, his nation would respond by beginning to enrich uranium to 60 percent—a level close to that needed for a nuclear bomb.

The major unresolved issue—and the biggest threat to a comprehensive deal—is whether Iran should be allowed any enrichment capability. The White House has signaled that it would accept a tightly monitored program in Iran—one that enriches uranium only to the level used for energy and research. Israeli Prime Minister Benjamin Netanyahu and hawkish members of Congress argue that increased sanctions will force the regime to give up enrichment or collapse.

Reza Marashi, research director of the National Iranian American Council, an advocacy group that supports the nuclear talks, said it is political suicide for any Iranian official to accept no enrichment. Tehran’s hard-liners would accuse them of capitulation to the United States and Israel.

“I don’t know any Iran analyst—except for those on the far, far right,” Marashi told me in a telephone interview Tuesday, “who think that zero enrichment is possible.”

Obama has also made foreign policy missteps. As I wrote last week, the administration’s shifting positions on Syria—from demanding President Bashar al-Assad “must go” to declaring “red lines” on chemical weapons use and then backing away from military action—has hurt his credibility in the region.

Perkovich said **domestic missteps have played a role** as well. The interim agreement with Iran was announced just as the Obamacare website began its botched rollout. **Congressional Democrats facing tough re-election battles decided they simply could not trust the White House**. “The timing was disastrous [to Congress],” Perkovich told me in a telephone interview Tuesday. “They thought ‘these guys are totally incompetent.’”

In addition, the president’s disinterest—or inability—to develop close relationships with members of Congress is now coming back to haunt him. As former Defense Secretary Bob Gates noted in his new memoir, Duty, Obama and President George W. Bush each loathed dealing with Congress. “Both, I believe, detested Congress,” Gates writes, “and resented having to deal with it, including members of their own party.”

Perkovich argues that Congress should allow negotiations to succeed or fail. A deal that blocks Iran from obtaining a weapon would bolster the nuclear non-proliferation regime, in place since the 1970s, and reduce tensions in the Middle East. A collapse in the talks would weaken the non-proliferation regime and even spark a U.S.-Israeli military strike on Iran.

More decisive leadership from Obama and less opportunism from Democratic senators will not magically stabilize the Middle East. **But there is no need for Democratic senators to add to the chaos for political gain**.

## 2NR

### Deal

Khamenei will support the deal and he is key

Kahl 12/31 (Colin, Colin H. Kahl is an associate professor in Georgetown University’s Edmund A. Walsh School of Foreign Service and a senior fellow and director of the Middle East Security Program at the Center for a New American Security. From 2009 to 2011, he was the Deputy Assistant Secretary of Defense for the Middle East, National Interest, “The Danger of New Iran Sanctions”, 2012, http://nationalinterest.org/commentary/the-danger-new-iran-sanctions-9651)

History thus suggests that external economic pressure matters, but the balance of domestic political forces in Iran matters at least as much—and it is the interaction between the two that matters most of all. The Islamic Republic's authoritarian political system is not nearly as static or monolithic as many casual observers assume. Rather, it is an arena for contestation between competing political actors and interests—and the winners of these battles can have considerable influence over the ultimate course Iran takes. To be sure, Supreme Leader Khamenei is the most powerful actor in the Iranian government, and he is the ultimate decider on the nuclear issue. But he is not omnipotent or unmovable. More often than not, Khamenei stays above the political fray, waiting to weigh in on controversial decisions until he has assessed the domestic power balance and the direction the political winds are blowing.

Iran’s domestic politics matter because competing factions place different values on the nuclear program relative to other national priorities, and they have fundamentally divergent diplomatic and economic worldviews. Iranian moderates—including both pragmatic conservatives and reformers—believe Iran’s national interests are best served by international recognition and integration. They value the country’s nuclear program, but they also worry that pursuing nuclear weapons could ultimately leave Iran less secure by worsening regional tensions and, by making Iran the target of sanctions, ruining the nation’s economy. Consequently, they may be willing to settle for a nuclear outcome in which Iran maintains some distant, latent capability to develop nuclear weapons under significant international constraints. Such a capability, in their view, would be sufficient to deter foreign adversaries if security conditions deteriorate, but would not put Iran so close to an actual bomb that it results in international isolation. For pragmatists like Rouhani, that latent status was achieved once Iran mastered uranium-enrichment technology, and they seem willing to trade away more advanced nuclear capabilities to achieve their higher-order objectives of sanctions relief and reintegration into the international community.

In contrast, Iranian hardliners—including so-called Principlists and traditional clerical conservatives—do not seek integration with the wider world. They embrace a narrative that portrays the United States, Israel and the West as unrelenting enemies hellbent on toppling the Islamic Republic and depriving Iran of the economic and scientific wherewithal to take its rightful place among the world’s great nations. They see resistance to the West as the core of Iran’s national identity. And they view economic self-reliance and the acquisition of a one-turn-of-the-screwdriver-away “threshold” nuclear capability or actual nuclear weapons as the only means of deterring Western aggression and realizing Iran’s regional ambitions. For this group, international threats and sanctions simply vindicate their worldview, encouraging them to escalate their own provocative counter-reactions.

In this clash of perspectives, Khamenei appears closer to the hardliners’ camp. But Khamenei is also concerned about the legitimacy and survival of the system as a whole, which was badly damaged by the rigged 2009 elections and the mishandling of foreign and economic policy during Ahmadinejad’s tenure. Rouhani's sweeping election victory thus mattered not only because of the new president’s own preferences, but because the election itself signaled to Khamemei that some policy shift was required in order to maintain domestic legitimacy. Anxious to shore up the system, Khamenei appears willing to give Rouhani a chance to resolve the nuclear impasse, but only so long as the president and his negotiating team do not cross the leader’s red lines, especially as it relates to defending Iran’s asserted right to enrichment.