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Iran deal now—the delay gave Obama time to win over Congress, but signal of presidential resolve is key—failure causes nuclear war.

Rothkopf 11/12/13

David, Visiting Scholar, Carnegie Endowment, “This Deal Won’t Seal Itself,” http://carnegieendowment.org/2013/11/12/this-deal-won-t-seal-itself/gtpi

Rest assured however, there are several reasons this apparent screwup will not result in a major investigation as to what "went wrong." The most important of these reasons is that Secretary Kerry and his colleagues in the Obama White House were on some level **relieved** to have the clock stopped on the negotiations. One senior administration official acknowledged that late last week as it became clear that growing political opposition to the pending deal both domestically and from allies overseas demanded attention unless it produced a backlash that could have scuttled the agreement. In this official's words, "we were saved by the bell" as the parties agreed to delay further talks until Nov. 20. There are, of course, other reasons why this apparent breakdown between the United States and the ally with whom we have been working very closely on the P5+1 negotiating process for years, will not be overly scrutinized. One is that while in Abu Dhabi yesterday, Secretary Kerry asserted that it was not the French who undid the talks but the Iranians. He explained there was general agreement on terms but Iranian Foreign Minister Mohammad Javad Zarif and his team "couldn't take it at that particular moment, they weren't able to accept that particular thing." Zarif for his part took to Twitter to suggest that "half of the U.S. draft" was "gutted" on Thursday night and not by Iran. He accused Kerry of spinning the breakdown and warned such diplomatic maneuvering could "further erode confidence." In addition to the U.S.-Iranian "he said-he said" debate, there is also the whispered belief among some -- in both the Middle East and in Washington, acknowledged by at least one person with whom I spoke inside the administration -- that the last minute changes in language and the subsequent "rift" between the United States and France was too politically convenient. Both Paris and Washington were starting to feel the heat from allies like Saudi Arabia and Israel, and though France feared an economic squeeze on the big deals it has pending with the Saudis, the Americans could see organized opposition forming on Capitol Hill. The concern was that this opposition would not only result **in the rejection of any deal reached with Iran but** may even **compromise** a new push for **tougher sanctions** even as the administration was negotiating dialing them back. Such a rejection to the initiative would be absolutely **devastating to the president,** creating echoes of his failed effort to get Congressional support for his proposed very limited intervention in Syria to degrade their chemical weapons stores. In other words, it doesn't really matter who threw the monkey wrench. There was work to be done on this deal both in terms of strengthening its terms but also in garnering the necessary support before signatures were actually set to paper. Even given the Geneva agreement's goal of producing a temporary freeze in Iran's nuclear program while a more permanent deal could be struck, legitimate questions linger over whether the near-term deal could achieve that goal if it did not effectively freeze enrichment efforts and shut down work at an Iranian reactor capable of producing plutonium. Further, the Obama team still **has a great deal of work to do** -- some of which is being done this week by Secretary Kerry and Under Secretary of State Wendy Sherman as they meet with allies in the Middle East -- building support for the deal. This will be tough to do on Capitol Hill and in Saudi Arabia given that at, the moment, both environments seethe with distrust for President Obama. No, even the Iranians should be happy with the delay... and not just for the cynical reason that any delay buys them the time they want and need to advance their nuclear weapons program. They also very much want sanctions relief, and to get it, they **need** the deal to win support from the U.S. Congress. Given the efforts of multiple forces to block the deal, this will mean the Obama administration and the president himself will **have to** systematically **engage opponents** in a way they seldom do on anything. Winning support on Capitol Hill and with the American people for such a deal is potentially the president's next big domestic political test. Failure on this after the failure to win support for his Syria efforts, the blowback from the NSA scandal, and his unsteady and confusing Egypt policies would be a big setback for the president during his second term, a period in which chief executives often turn to foreign policy to shape their legacies. Of central concern to those domestic and international skeptics and opponents of any kind of rapprochement with Iran will be how the administration will ensure any deal is being adhered to and whether they have the resolve to punish Iran for any missteps or misrepresentations. If the President and his team can make a compelling case that they do, and then such a deal is certainly a risk worth taking. However, if the deal is seen as a dodge, as a way to avoid testing the president's resolve to do whatever is necessary to stop Iran from developing nuclear weapons, or even as a way to simply punt the hard questions associated with Iranian nukes to the next Oval Office occupant, then few will or should support what would amount to simply papering over one of the Middle East's great problems. In short, the most critical component of this deal is not the words drafted by diplomats but what lies in the heart of the Iranians and the president of the United States. If Iran reverses past patterns and actually complies, the deal could be part of a game-changing **reduction of tension** that **all in the region should welcome**. But because that is a change without precedent and one that goes against the grain of decades' worth of Iranian behavior, as well as the character and commitment of the president of the United States, it is even more important to its success. If the Iranians believe President Obama is resolved to enforce it swiftly and decisively, it may work. If they think he will be reluctant to take tough enforcement measures, if they think he can be played -- either because he wants the legacy of an apparently successful deal or because he simply is loath to run the risk of costly, dangerous military action against Iran -- **then history suggests they will play him** (much as past U.S. leaders have been played in other such "deals" as was the case with North Korea). One more caveat however, has gotten too little attention during the recent debate about these negotiations. Even if an agreement is ultimately successfully structured, implemented, and enforced, solving the Iranian nuclear problem does not resolve the Iran problem for the entire region or for the United States and its allies. But it would be a great step forward. That is not to be minimized. No one should **want a nuclear arms race** **in the Middle East** or allow for such a volatile region (or the world) to be poised on the precipice of the catastrophe of nuclear war or nuclear terrorism. Though Iran has, to date, never been a nuclear power, it has caused plenty of problems nonetheless. It remains the world's leading state sponsor of terror. It seeks to be a regional hegemon with clients at work at its behest in Iraq, Syria, Lebanon, and Gaza. It can **cause havoc in global oil markets** **via** the use of conventional weapons or even just **sabre-rattling** that might jeopardize shipping routes. No proposed deal addresses these threats or those that may emerge elsewhere (as in Western Afghanistan, for example).

Specifically, the plan undermines Obama’s war power credibility which kills negotiations

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The last four years should have been a good period for executive-congressional relations in the areas of national security and foreign affairs. The president, vice president, and secretary of state were former Senators. They all viewed President George W. Bush as too inclined to bypass or ignore Congress and they promised to do better. And the Obama administration started with Democratic majorities in the House and Senate.

It is thus surprising that the past four years have been notable for inter-branch clashes and paralysis on some major national security agenda items, with the administration failing to engage Congress or operating in a slowly reactive mode, while many congressional Republicans remain in an obstructionist mode. In the second term, the Obama administration will need to pick its legislative priorities more deliberately, engage with allies and opponents in Congress more actively, and be willing to negotiate compromises or wage aggressive campaigns on key issues.

Congress has repeatedly stifled the president’s signature counterterrorism promise to close the Guantanamo Bay detention facility. Congress’s opposition has been more than political. Beginning with legislation in 2010 when Democrats controlled both houses of Congress, Congress has consistently placed legal barriers on the president’s ability to transfer Guantanamo detainees or to try them in civilian courts in the United States. After hinting in his speech at the National Archives in 2009 that he would work with Congress on these issues, Obama has put forward no proposal of his own, nor has his administration been willing to explore possible compromises on long-term Guantanamo policies, instead playing defense against moves by congressional blocs with their own Guantanamo agendas. That defensive strategy has included a series of veto threats, which were always abandoned in the end and now carry little credibility.

With regard to war powers, the administration barely escaped a significant congressional rebuke after it failed to obtain congressional authorization for the operations in Libya in 2011 or at least to advance a convincing account for why such authorization was not needed. The administration conducted international diplomacy effectively, and obtained UN Security Council and Arab League endorsement of military operations to protect Libyan civilians from slaughter. However, on the domestic front it alienated even congressional supporters of its policy with poor early consultation on the Hill. In the end, Senate Majority Leader Harry Reid prevented the Senate from taking up a resolution passed by the Foreign Relations Committee that would have authorized the operation but rejected the administration’s strained interpretation of the War Powers Resolution. Throughout the Libya crisis, the administration’s approach toward Congress was passive and tentative. It was fortunate for the administration that Congress was splintered and few members were willing to defend its institutional prerogatives, at least within the limited timeframe of the intervention. But Obama might not be so lucky the next time.

As to treaties, the administration garnered super-majority Senate advice and consent on a record-low number of agreements in its first term. Despite a strong effort by Secretary of State Hillary Clinton and the Navy leadership, the administration failed to get the UN Convention on the Law of the Sea out of the Senate Foreign Relations Committee. Once again, part of the explanation for failure was the administration’s poorly timed and coordinated engagement of the Senate on the issue. In the face of Senate Republican portrayals of other global treaties as threats to US sovereignty, the White House failed to throw its full weight behind its valid arguments that the Law of the Sea Convention would strengthen the US position with respect, for example, to crisis hotspots in Asia and in commercial spheres.

To be clear, the Obama administration has scored successes, too. For example, putting aside the policy merits, it worked reasonably well with Congress on the completed wind-down of the Iraq war. It will need to do the same with respect to the planned wind-down of the Afghanistan war and in developing a long-term strategy for Afghanistan and Pakistan. Much of the blame for policy incoherence on many national security issues such as cybersecurity lies with Congress, which is infected by political polarization and dysfunction as much in international affairs as it is in domestic affairs.

Going forward, the Obama administration will need to bring the same kind of sustained attention and hard-nosed strategic thinking to its legislative agenda on national security issues as it has on some major domestic policy issues. First, it will need to be selective in its legislative agenda and then wage aggressive campaigns on matters it labels national security priorities. It did so early in the first term with respect to the New START Treaty, which was in danger of collapse until the administration went all out for it. Obama’s team enlisted influential allies from previous Republican administrations, engaged in a serious communications campaign at the highest levels, and negotiated as necessary to get the key votes in favor of the treaty.

On some issues, the administration will need to decide on a coherent policy internally and then more actively engage both its allies and opponents on Capitol Hill. One area where this will be important is the legal architecture of counterterrorism policy. It is widely understood that continuing to rely on the September 2001 congressional Authorization for Use of Military Force as the basis for detention and targeting operations is increasingly problematic as al Qaeda splinters apart and as the United States winds down combat operations in Afghanistan. The Obama administration also maintains publicly a commitment to closing Guantanamo. Yet it has not come forward with proposed legislative frameworks for dealing with these issues. Even though the president has said repeatedly that he wants to work with Congress on a more durable legal architecture for counterterrorism operations, the administration has been reactive and appears to be undecided about what, if anything, it wants from Congress.

Another area in which executive-congressional relations will feature heavily is Iran’s nuclear build-up, surely one of the most delicate and complex international crises the administration will face this year. After engaging seriously only at the last minute, it has had to swallow several times congressionally-mandated sanctions that it regards as counterproductive. As the administration tries to ramp up pressure, it will need to convince skeptical members of Congress that it is applying tough diplomatic pressure on other UN Security Council members and on Iran’s trading partners. If—under the most optimistic scenarios—it reaches a satisfactory negotiated solution (or establishes a process toward one) with Iran, it will need Congress onboard; otherwise it will find its freedom to maneuver and deliver on assurances severely constrained.

## K

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

**Margulies ‘11**

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

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

Dossa ‘99

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

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

The alternative is to vote negative to endorse political, rather than legal restrictions.

**Goldsmith ‘12**

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

## CP

The executive branch of the United States federal government should issue and enforce an executive order to establish a national security court housed within the executive branch to oversee targeted killing with an expeditious review process and maintain program transparency.

Counterplan solves the case better—plan crushes drone effectiveness.

Katyal 13 (Neal, a former acting solicitor general, is a professor of national security law at Georgetown and a partner at the law firm Hogan Lovells, “Who Will Mind the Drones?”, February 20, 2013, http://www.nytimes.com/2013/02/21/opinion/an-executive-branch-drone-court.html?\_r=0#h[], ZBurdette)

IN the wake of revelations about the Obama administration’s drone program, politicians from both parties have taken up the idea of creating a “drone court” within the federal judiciary, which would review executive decisions to target and kill individuals.

But the drone court idea is a mistake. It is hard to think of something less suitable for a federal judge to rule on than the fast-moving and protean nature of targeting decisions.

Fortunately, a better solution exists: a “national security court” housed within the executive branch itself. Experts, not generalists, would rule; pressing concerns about classified information would be minimized; and speedy decisions would be easier to reach.

There is, of course, a role for federal courts in national security. In 2006, I argued and won Hamdan v. Rumsfeld, a Supreme Court case that struck down President George W. Bush’s use of military tribunals at Guantánamo Bay. But military trials are a far cry from wartime targeting decisions.

And the Foreign Intelligence Surveillance Court, which reviews administration requests to collect intelligence involving foreign agents inside the country and which some have advocated as a model for the drone court, is likewise appropriately housed within the judicial system — it rules on surveillance operations that raise questions much like those in Fourth Amendment “search and seizure” cases, a subject federal judges know well.

But there is no true precedent for interposing courts into military decisions about who, what and when to strike militarily. Putting aside the serious constitutional implications of such a proposal, courts are simply not institutionally equipped to play such a role.

There are many reasons a drone court composed of generalist federal judges will not work. **They lack national security expertise, they are not accustomed to ruling on** lightning-fast timetables, they are used to being in absolute control, their primary work is on domestic matters and they usually rule on matters after the fact, not beforehand.

Even the questions placed before the FISA Court aren’t comparable to what a drone court would face; they involve more traditional constitutional issues — not rapidly developing questions about whether to target an individual for assassination by a drone strike.

Imagine instead that the president had an internal court, staffed by expert lawyers to represent both sides. Those lawyers, like the Judge Advocate General’s Corps in the military, would switch sides every few years, to develop both expertise as repeat players and the ability to understand the other point of view.

The adjudicator would be a panel of the president’s most senior national security advisers, who would issue decisions in writing if at all possible. Those decisions would later be given to the Congressional intelligence committees for review. **Crucially, the president would be able to overrule this court, and take whatever action he thought appropriate, but would have to explain himself afterward to Congress.**

Such a court would embed accountability and expertise into the drone program. With a federal drone court, it would simply be too easy for a president or other executive-branch official to point his finger at a federal judge for the failure to act. With an internal court, it would be impossible to avoid blame.

It’s true that a court housed within the executive branch might sound nefarious in today’s “Homeland” culture — if Alexander Hamilton celebrated the executive, in Federalist No. 70, for its “decision, activity, secrecy and dispatch,” some now look at those same qualities with skepticism, if not fear.

In contrast, advocates of a drone court say it would bring independent, constitutional values of reasoned decision making to a process that is inherently murky.

But simply placing a drone court in the judicial branch is not a guaranteed check. The FISA Court’s record is instructive: between 1979 and 2011 it rejected only 11 out of more than 32,000 requests — making the odds of getting a request rejected, around 1 in 3,000, approximately the same as those of being struck by lightning in one’s lifetime. What reason does the FISA Court give us to think that judges are better than specialists at keeping executive power in check?

The written decisions of an internal national security court, in contrast, would be products of an adversarial system (unlike the FISA Court), and later reviewed by Congressional intelligence committees. If members of Congress saw troublesome trends developing, it could push legislation to constrain the executive. That is something a federal judge cannot do.

One of our Constitution’s greatest virtues is that it looks to judges as a source of reasoned, practical, rights-minded decision making. But judges should be left to what they know. A national security court inside the executive branch **may not be a perfect solution, but it is a better way** to balance the demands of secrecy and speed with those of liberty and justice.

## DA 2

Plan shifts the balance of war powers—kills war fighting.

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

Look up: that buzz you hear overhead is the "drone court."

Washington's idea of the week is a secret court, based on the Foreign Intelligence Surveillance Court, which issues secret wiretap warrants in certain espionage cases. Executive officials would go before the drone court and present their evidence that an individual abroad, perhaps a U.S. citizen, is an Al Qaeda affiliate and an imminent danger. Judges on the panel would issue, in effect, a secret death warrant--a certification that lethal force can be used against the "enemy combatant."

Sen. Dianne Feinstein spoke favorably about the idea at confirmation hearings for C.I.A. Director-designate John Brennan. So did former Defense Secretary Robert Gates. Thursday, the New York Times joined in the chorus.

Americans love courts and judges. But they trust them because, in our system, they are independent of elected officials--not part of the political machine. They are also what lawyers call "courts of limited jurisdiction." In carefully chosen language, Article III of the Constitution extends "the judicial power" of the United States to a specific and limited set of "cases and controversies." Federal courts decide cases; they do not fight wars, collect the garbage, or set health-care policy. And most particularly, they may not become an advisory agency of the executive branch.

The idea of a "drone court" would send federal courts into areas they have never gone before, and indeed from which, I think, the text of the Constitution bars them. It could also put the integrity of our court system at risk.

Let's frame the issue properly. The present administration does not claim that the president has "inherent authority" to attack anyone anywhere. Instead, from the documents and speeches we've seen, the administration says it can order drone attacks only as provided by the Authorization for the Use of Military Force passed by Congress after the September 11 attacks--that is, against "those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons."

Unlike the fictional President Bennett in Tom Clancy's Clear and Present Danger, then, President Obama can't suddenly send the drone fleet down to take out, say, Colombian drug lords or the Lord's Resistance Army in Uganda. That's a marked change from the overall position of the last administration, and it's an important limitation on the president's claimed authority.

But because of that limitation, a court would be supervising the president's command decisions in a time of authorized military action--after, that is, the legal equivalent of a "declaration of war." As commander in chief, the president has been given a mission by Congress. By passing the AUMF, Congress has delegated to him its full war power to use in that mission. Nothing in the AUMF is directed to the courts; in fact, I have trouble finding authority for target selection anywhere in Article III. And whatever the technological changes, constitutionally I see no difference between targeting an enemy with a drone and doing the same thing with a Cruise missile or a SEAL Team. Courts simply aren't equipped to decide military tactics.

The FISA Court, on the other hand, doesn't really reach beyond Article III--judges since ancient times have issued warrants for searches and arrests, and the individuals being spied on are suspected of crimes against the United States. But I don't know of a deep-rooted tradition of common-law courts telling the shire reeve he can hunt someone down and kill him without trial.

There's yet another problem: what criteria would a "drone court" apply? In the "white paper" obtained by NBC News earlier this month, the Department of Justice says that a decision to order a strike involves three requirements: (1) the target represents "an imminent threat of violent attack"; (2) capturing the target would be "infeasible"; and (3) a lethal attack can be carried out "in a manner consistent with law of war principles." A court might be able to apply the first criterion, though just barely; but there is simply no precedent for an Article III judge balancing the prospective risks of a capture operation vs. that of a missile, or assessing the probability of "collateral damage" if the strike goes forward. We have left "the judicial power" behind altogether, and created a panel of poorly trained generals in sloppy black uniforms.

Finally, in time of war, there will be occasions when a target emerges and decisions must be made too quickly for even a secret court proceeding. And thus the "drone court" would not be able to rule on some cases; an ambitious president could find many exceptions.

It spills over to destabilize all war powers.

Heder ’10

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

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

That goes nuclear

**Li ‘9**

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

A. The Emergence of Non-State Actors

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

## DA 3

Obama pushing immigration—it’ll get through

Reid Epstein, Politico, 11/13/13, Obama: Don't let ACA problems stop immigration, dyn.politico.com/printstory.cfm?uuid=D92FF3A4-19D5-41D2-A8F1-C56D6BC23E08

President Barack Obama gave immigration reform advocates a simple message Wednesday: Don’t let Obamacare get you down. In an Oval Office meeting with eight Christian faith leaders, the president said he remains engaged on immigration legislation and hopes the reform effort can get a fair hearing despite his other political problems, several faith leaders told POLITICO. “He said he doesn’t want other debates that are going on to hurt this,” said Jim Wallis, the president and CEO of the Christian social justice agency Sojourners. “He doesn’t want all the other debates going on to prevent this from passing. It’s caught up in all the other debates and he wants this to be looked at on his own merits.” Obama’s exhortation came during a meeting just hours before his administration released the first batch of Affordable Care Act enrollment numbers – a figure the White House had for weeks telegraphed as far lower than expected. Much of Obama’s Oval Office conversation with the faith leaders, Biden and top aides Valerie Jarrett, Cecilia Munoz and Melissa Rogers centered around the idea that contemporary Washington politics is blocking reform efforts, the faith leaders said. Obama, they said, didn’t make a direct ask for them to press Congress to back the reform effort, as Vice President Joe Biden implored Catholic leaders to do during a call Tuesday night. Instead he asked for their input on how the current immigration system is harming their communities and echoed the urgency to pass reform legislation by the end of the year. But with House Speaker John Boehner (R-Ohio) announcing earlier in the day that he has “no intention of ever going to conference on the Senate bill,” it was clear to all in the room that immigration reform has lost momentum it had after the Senate immigration bill passed. “This can be a companion issue that also deserves some attention because we’ve come so far on this issue and we can’t let it get lost in the battle du jour,” said Joel Hunter, the senior pastor at Northland Church in suburban Orlando. “I think all of us are hoping that the headlines of the daily accusations don’t bury what is a very important and urgent issue in our time.” And **still**, Obama told the faith leaders **he remains optimistic there will be progress by the end of December**. “I did get the sense that he was wanting to reassure us that this is a priority for him,” said Russell Moore, the president of the Southern Baptist Ethics and Religious Liberty Commission. “He actually does want to work with Congress to get a bill, not to just to have an issue.” White House officials declined to comment on specifics of the meeting. In an official readout, the White House said Obama once again blamed House Republicans for blocking a vote. “The president and the leaders discussed their shared commitment to raise the moral imperative for immigration reform and said they will continue keeping the pressure on Congress so they can swiftly pass commonsense reform,” the statement said. “The president commended the faith leaders for their tireless efforts in sharing their stories with Congress. He noted there is no reason for House Republicans to continue to delay action on this issue that has garnered bipartisan support. Moore, a conservative evangelical leader, said he warned Obama not to make immigration a partisan political issue. “I did say to the president that I think he needs to take seriously that the Republicans in Congress are operating out of what I believe to be good motives and that there needs to be a sense of cooperation and not divisiveness on this issue,” Moore said. “I think that was well received. I think the president seemed to indicate that that’s what he wants to do.” Wallis said there was a discussion during the meeting that the upcoming holiday season could give a boost to the reform efforts as families and churches gather. “The holiday season now happens to be coming in the end game. Here are the holidays, religious holidays, maybe there is something there,” Wallis said. “We are hearing a president say, ‘I don’t want politics to prevent this. How can we transcend and reach people to make this not just political. What can you do to help us get this beyond the politics?’” Biden on Tuesday night told Catholic officials to make their opinions known forcefully to House Republicans. He said they can’t repeat the mistakes of the gun control fight, when opponents of expanding background checks on gun purchases outnumbered White House allies in calls and e-mails to senators debating the legislation. “Thank the representatives when you call who are already in favor of reform, especially the 32 Republicans who have expressed for a path to citizenship,” Biden said. “Give them a little bit of love and appeal to their better angels, the better angels of those who are still on the fence to take a politically courageous decision.” Hunter said the push will require some help from the public to spur House Republican leadership to call a vote. “We think that the votes are there and we think it is tricky for folks to vote the way they want to,” Hunter said. “They just need some momentum from the public in order to have the justification for voting the way they already want to.”

The plan sparks an inter-branch fight – kills the agenda

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

Raising or Lowering Political Costs by Affecting Presidential Political Capital

Shaping both real and anticipated public opinion are two important ways in which Congress can raise or lower the political costs of a military action for the president. However, focusing exclusively on opinion dynamics threatens to obscure the much broader political consequences of domestic reaction—particularly congressional opposition—to presidential foreign policies. At least since Richard Neustadt's seminal work Presidential Power, presidency scholars have warned that **costly political battles in one policy arena frequently have significant ramifications for presidential power in other realms**. Indeed, two of Neustadt's three "cases of command"—Truman's seizure of the steel mills and firing of General Douglas MacArthur—explicitly discussed the broader political consequences of stiff domestic resistance to presidential assertions of commander-in-chief powers. In both cases, Truman emerged victorious in the case at hand—yet, Neustadt argues, each victory cost Truman dearly in terms of his future power prospects and leeway in other policy areas, many of which were more important to the president than achieving unconditional victory over North Korea."

While congressional support leaves the president's reserve of political capital intact, congressional criticism saps energy from other initiatives on the home front by forcing the president to expend energy and effort defending his international agenda. **Political capital spent shoring up support for a president's foreign policies is capital that is unavailable for his future policy initiatives**. Moreover, any weakening in the president's political clout may have immediate ramifications for his reelection prospects, as well as indirect consequences for congressional races." Indeed, Democratic efforts to tie congressional Republican incumbents to President George W. Bush and his war policies paid immediate political dividends in the 2006 midterms, particularly in states, districts, and counties that had suffered the highest casualty rates in the Iraq War.6°

In addition to boding ill for the president's perceived political capital and reputation, such partisan losses in Congress only further imperil his programmatic agenda, both international and domestic. Scholars have long noted that President Lyndon Johnson's dream of a Great Society also perished in the rice paddies of Vietnam. Lacking both the requisite funds in a war-depleted treasury and the political capital needed to sustain his legislative vision, Johnson gradually let his domestic goals slip away as he hunkered down in an effort first to win and then to end the Vietnam War. In the same way, many of President Bush's **highest second-term domestic priorities**, such as Social Security and immigration reform, **failed** perhaps in large part **because the administration had to expend so much energy** and effort **waging a rear-guard action against congressional critics** of the war in Iraq.

When making their cost-benefit calculations, presidents surely consider these wider political costs of congressional opposition to their military policies. If **congressional opposition in the military arena stands to** derail other elements of his agenda, all else being equal, the president will be more likely to judge the benefits of military action insufficient to its costs than if Congress stood behind him in the international arena

That destroys immigration’s passage—otherwise Obama will lock-up a House vote

Bill Scher, The Week, 10/18/13, How to make John Boehner cave on immigration, theweek.com/article/index/251361/how-to-make-john-boehner-cave-on-immigration

Speaker John Boehner (R-Ohio) generally adheres to the unwritten Republican rule that bars him from allowing votes on bills opposed by a majority of Republicans, even if they would win a majority of the full House.

But he's caved four times this year, allowing big bills to pass with mainly Democratic support. They include repealing the Bush tax cuts for the wealthiest Americans; providing Hurricane Sandy relief; expanding the Violence Against Women act to better cover immigrants, Native Americans, and LGBT survivors of abuse; and this week's bill raising the debt limit and reopening the federal government.

Many presume the Republican House is a black hole sucking President Obama's second-term agenda into oblivion. But the list of Boehner's past retreats offers a glimmer of hope, especially to advocates of immigration reform. Though it has languished in the House, an immigration overhaul passed with bipartisan support in the Senate, and was given a fresh push by Obama in the aftermath of the debt limit deal.

The big mystery that immigration advocates need to figure out: What makes Boehner cave? Is there a common thread? Is there a sequence of buttons you can push that forces Boehner to relent?

Two of this year's caves happened when Boehner was backed up against hard deadlines: The Jan. 1 fiscal cliff and the Oct. 17 debt limit. Failure to concede meant immediate disaster. Reject the bipartisan compromise on rolling back the Bush tax cuts, get blamed for jacking up taxes on every taxpayer. Reject the Senate's three-month suspension of the debt limit, get blamed for sparking a global depression. Boehner held out until the absolute last minute both times, but he was not willing to risk blowing the deadline.

A third involved the response to an emergency: Hurricane Sandy. Conservative groups were determined to block disaster relief because — as with other federal disaster responses — the $51 billion legislative aid package did not include offsetting spending cuts. Lacking Republican votes, Boehner briefly withdrew the bill from consideration, unleashing fury from New York and New Jersey Republicans, including Gov. Chris Christie. While there wasn't a hard deadline to meet, disaster relief was a time-sensitive matter, and the pressure from Christie and his allies was unrelenting. Two weeks after pulling the bill, Boehner put it on the floor, allowing it to pass over the objections of 179 Republicans.

The fourth cave occurred in order to further reform and expand a government program: The Violence Against Women Act. The prior version of the law had been expired for over a year, as conservatives in the House resisted the Senate bill in the run-up to the 2012 election. But after Mitt Romney suffered an 18-point gender gap in his loss to Obama, and after the new Senate passed its version again with a strong bipartisan vote, Boehner was unwilling to resist any longer. Two weeks later, the House passed the Senate bill with 138 Republicans opposed.

Unfortunately for immigration advocates, there is no prospect of widespread pain if reform isn't passed. There is no immediate emergency, nor threat of economic collapse.

But there is a deadline of sorts: The 2014 midterm elections.

If we've learned anything about Boehner this month, it's that he's a party man to the bone. He dragged out the shutdown and debt limit drama for weeks, without gaining a single concession, simply so his most unruly and revolutionary-minded members would believe he fought the good fight and stay in the Republican family. What he won is party unity, at least for the time being.

What Boehner lost for his Republicans is national respectability. Republican Party approval hit a record low in both the most recent NBC/Wall Street Journal poll and Gallup poll.

Here's where immigration advocates have a window of opportunity to appeal to Boehner's party pragmatism. Their pitch: The best way to put this disaster behind them is for Republicans to score a big political victory. You need this.

A year after the Republican brand was so bloodied that the Republican National Committee had to commission a formal "autopsy," party approval is the worst it has ever been. You've wasted a year. Now is the time to do something that some voters will actually like.

There's reason to hope he could be swayed. In each of the four cases in which he allowed Democrats to carry the day, he put the short-term political needs of the Republican Party over the ideological demands of right-wing activists.

Boehner will have to do another round of kabuki. He can't simply swallow the Senate bill in a day. There will have to be a House version that falls short of activists' expectations, followed by tense House-Senate negotiations. Probably like in the most formulaic of movies, and like the fiscal cliff and debt limit deals, there will have to be an "all-is-lost moment" right before we get to the glorious ending. Boehner will need to given the room to do all this again.

But he won't do it without a push. A real good push.

Reform is key sticking point in the India relationship

Neil Ruiz, Brookings Institute, 9/18/13, H-1B Visas and Immigration Reform: A Sticking Point in the U.S.-India Relationship , www.brookings.edu/blogs/up-front/posts/2013/09/18-immigration-reform-us-india-ruiz

Indian Prime Minister Manmohan Singh will be meeting with President Obama in Washington next week to discuss economic and trade cooperation between the United States and India. One of **the most critical topics on the table will be immigration reform** as it relates to Indian workers in the United States. Indian immigrants are the third-largest immigrant group in the United States. In 2012, Indians made up the largest proportion (64 percent) of temporary immigrants entering the U.S. on an H-1B visa for highly specialized workers. During the 2011-2012 school year, foreign students from India accounted for 13.1 percent of all foreign students in the U.S. with about 72 percent of them enrolled in science, technology, engineering and mathematics (STEM) degree programs. With the possibility of enacting immigration reform this fall still up in the air, current legislative proposals concern the Indian government. The Senate and House are divided on whether to continue allowing employers to hire a large proportion of their U.S. workforce on an H-1B or L-1 visa. While the comprehensive immigration bill passed by the Senate earlier this summer would increase the total annual number of H-1B visas, companies that employ more than 75 percent of their U.S. workforce on H-1B or L-1 visas would be banned from obtaining additional H-1B visas (excluding pending green card applicants) by 2015. The bill contains a sunset clause that would bring this threshold down to 50 percent beginning in 2017. The senators behind these restrictions, Sens. Chuck Grassley (R-Iowa) and Richard Durbin (D- Ill.), are concerned that H-1B-dependent companies displace qualified Americans from IT industry.U.S. labor groups complain that companies use the H-1B visa program to hire cheaper foreign workers. Meanwhile, the high-skilled immigration bill introduced by Representative Darrell Issa (R-Calif.) and passed in June by the House Judiciary Committee contains no such restrictions on employers. If the full House eventually votes on and passes the SKILLS Act, the question becomes whether the Senate and House will send President Obama a bill that includes these restrictions. **The Indian government has been especially anxious**. Indian IT companies that are popular for providing services to U.S. firms, such as Infosys, Tata Consultancy Services, and Wipro, also have a large business of “insourcing” jobs into the United States. Their U.S. business model relies on hiring workers (who are mostly on H-1B or L-1 visas) to provide technology-related services to American companies. India’s tech industry argues that their IT companies contribute enormously to the U.S. economy and have a hard time filling these jobs from the American talent pool. American-based IT companies like Accenture, Deloitte, and IBM that are in the same business of providing professional services with a much smaller proportion of their U.S. workforce on an H-1B or L-1 visa stand to benefit from the Senate restrictions. An unintended consequence of the Senate bill could be stifled competition for these IT-staffing services. American-based IT companies could charge higher fees for these client services and Indian IT companies with visa restrictions would be less competitive. As the immigration reform debate continues in Congress and among the American people, it remains to be seen whether H-1B visas will be a sticking point in next week’s U.S.-India talks.

That’s key to central Asian stability

**Gupta 5**, Visiting Professor in the Department of Strategy and International Security at the U.S. Air War College, (Amit, “ THE U.S.-INDIA RELATIONSHIP: STRATEGIC PARTNERSHIP OR COMPLEMENTARY INTERESTS?” February, http://www.strategicstudiesinstitute.army.mil/pdffiles/pub596.pdf)

The other area where Indian military capability could be harnessed to facilitate American interests is in Central Asia. Indian interests there are driven by three factors: the need for energy resources and the potential of the Central Asian market; the attempt to counterbalance Chinese and Pakistani presence in the region; and the concern about radical Islam spreading from the region into India (especially Kashmir).65 India viewed with concern the rise of the Taliban in Afghanistan and the subsequent destabilization of the region caused by that fundamentalist regime. It provided support to the Northern Alliance and, with the Taliban’s ouster, has sought to develop a presence in Central Asia. India has increased its cooperation with the Central Asian states, particularly Tajikistan, where it has reportedly established an air base.66 Such a base would not only permit military action against anti-government forces in Central Asia, but also serve to counter Pakistan’s efforts to establish “defense in depth” in the region. Like India, the Central Asian states are concerned about the growth of radical Islam and the threat it poses to their regimes that, because they are post-Soviet in orientation, tend to be secular. It has also actively engaged the Karzai government and established a major diplomatic presence in Afghan cities and has reached an agreement to train the Afghan national army.67 Like most regional countries, India would like to prevent the reemergence of radical Islamic groups in Central Asia and therefore would be willing to help build the indigenous security capabilities of these countries. For a United States strapped for manpower, Indian security assistance especially would be welcome since it would further Washington’s own goal of checking radical Islam in the region―thereby freeing U.S. troops for action in other theaters in the war against terror. In terms of energy and economics, India would like to play a growing role in Central Asia both to check the role of China and Pakistan but also to satisfy its own developmental needs. By 2010, Indian demand for natural gas may be as high as 77 billion cubic meters, and a steady supply of gas from the resource rich Central Asian countries would satisfy this demand.68 India, with Russia and Iran, is engaged, therefore, in the development of a NorthSouth corridor (one that passes from Mumbai to Tehran and from there to St. Petersburg) that would, among other things, open the Central Asian economies to the outside world.69 India’s stakes in Central Asia are, therefore, expanding, and we are seeing a series of complementary U.S. interests emerge. For both countries, checking the rise of radical Islam in the region is important. The opening of the Central Asian economies, in which India is participating, will reduce these countries’ crippling dependence on the other former Soviet states, particularly Russia. And if India is able to help bring Iran back into the international community of nations, it will create a safer energy corridor than the one currently proposed to run through Afghanistan and Pakistan. As mentioned earlier, a growth in security cooperation between the United States and India would rest on the removal of constraints on Indian military and technological development, as well as an appreciation of India’s emerging power potential. This, however, is likely to be a long-term process and one marked with several speed bumps as the American war against terror and the global policies of nonproliferation work to limit what can be achieved in IndoU.S. relations. Given these limitations, it is important that India, in the short-to-medium term, look for other avenues for successfully engaging the United States. Two such avenues are that both the United States and India share democratic values, and the other is to look at nonmilitary approaches to engagement. Both these avenues intersect in the growth of India’s soft power.

Extinction

**Blank 2k** [Stephen J. - Expert on the Soviet Bloc for the Strategic Studies Institute, “American Grand Strategy and the Transcaspian Region”, World Affairs. 9-22]

Thus many structural conditions for conventional war or protracted ethnic conflict where third parties intervene now exist in the Transcaucasus and Central Asia. The outbreak of violence by disaffected Islamic elements, the drug trade, the Chechen wars, and the unresolved ethnopolitical conflicts that dot the region, not to mention the undemocratic and unbalanced distribution of income across corrupt governments, provide plenty of tinder for future fires. Many Third World conflicts generated by local structural factors also have great potential for unintended escalation. Big powers often feel obliged to rescue their proxies and proteges. One or another big power may fail to grasp the stakes for the other side since interests here are not as clear as in Europe. Hence commitments involving the use of nuclear weapons or perhaps even conventional war to prevent defeat of a client are not well established or clear as in Europe. For instance, in 1993 Turkish noises about intervening on behalf of Azerbaijan induced Russian leaders to threaten a nuclear war in that case. Precisely because Turkey is a NATO ally but probably could not prevail in a long war against Russia, or if it could, would conceivably trigger a potential nuclear blow (not a small possibility given the erratic nature of Russia's declared nuclear strategies), the danger of major war is higher here than almost everywhere else in the CIS or the "arc of crisis" from the Balkans to China. As Richard Betts has observed, The greatest danger lies in areas where (1) the potential for serious instability is high; (2) both superpowers perceive vital interests; (3) neither recognizes that the other's perceived interest or commitment is as great as its own; (4) both have the capability to inject conventional forces; and (5) neither has willing proxies capable of settling the situation.(77)

## Solvency

Drone court is unworkable—doesn’t solve legitimacy

Vladeck, professor of law – American University Washington College of Law, 2/27/’13

(Stephen I., “Statement of Stephen I. Vladeck Professor of Law and Associate Dean for Scholarship American University Washington College of Law,” TARGETING AMERICAN TERRORISTS OVERSEAS; HOUSE JUDICIARY COMMITTEE, CQ)

This ties together with the related point of just how difficult it would be to actually have meaningful ex ante review in a context in which time is so often of the essence. If, as I have to think is true, many of the opportunities for these kinds of operations are fleeting and often open and close within a short window then a requirement of judicial review in all cases might actually prevent the government from otherwise carrying out authority that, in at least some cases, most would agree it has. This possibility is exactly why FISA itself was enacted with a pair of emergency provisions (one for specific emergencies;18 one for the beginning of a declared war19), and comparable emergency exceptions in this context would almost necessarily swallow the rule. Indeed, the narrower a definition of imminence that we accept, the more this becomes a problem, since the time frame in which the government could simultaneously demonstrate that a target (1) poses such a threat to the United States; and (2) cannot be captured through less lethal measures will necessarily be a vanishing one. Even if judicial review were possible in that context, it's hard to imagine that it would produce wise, just, or remotely reliable decisions. That brings me to perhaps the biggest problem we should all have with a "drone court"-the extent to which, even if one could design a legally and practically workable regime in which such a tribunals could operate, its existence would put irresistible pressure on federal judges to sign off even on those cases in which they have doubts. As a purely practical matter, it would be next to impossible meaningfully to assess imminence, the existence of less lethal alternatives, or the true nature of a threat that an individual suspect poses in advance of a targeted killing operation. Indeed, it would be akin to asking law enforcement officers to obtain judicial review before they use lethal force in defense of themselves or third persons when the entire legal question turns on what was actually true in the moment, as opposed to what might have been predicted to be true ex ante. At its core, this is why the analogy to search warrants utterly breaks down and why it would hardly be surprising if judges in those circumstances approved a far greater percentage of applications than they might have on a complete after-the-fact record. Judges, after all, are humans. In the process, the result would be that such ex ante review would do little other than to add the vestiges of legitimacy to operations the legality of which might have otherwise been questioned ex post. Put another way, ex ante review in this context would most likely lead to a more expansive legal framework within which the targeted killing program could operate, one sanctioned by judges asked to decide these cases behind closed doors; without the benefit of adversary parties, briefing, or presentation of the facts; and with the very real possibility that the wrong decision could directly lead to the deaths of countless Americans. Thus, even if it were legally and practically possible, a drone court would be a very dangerous idea.

## Adv 2

No groupthink

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).

Another criticism of groupthink is that Janis overestimates the link between the decision-making process and the outcome (McCauley, 1989; Tetlock, Peterson, McGuire, Chang & Feld, 1992; cited in Choi & Kim, 1999). Tetlock et al argue that there are many other factors between the decision process and the outcome. The outcome of any decision-making process, they argue, will only have a certain probability of success due to various environmental factors (such as luck).

A large-scale study researching decision-making in seven major American corporations concluded that decision-making worked best when following a sound information processing method; however these groups also showed signs of groupthink, in that they had strong leadership which attempted to persuade others in the group that they were right (Peterson et al, 1998, cited in Sunstein, 2003).

Esser (1998) found that groupthink characteristics were correlated with failures; however cohesiveness did not appear to be a factor: groups consisting of strangers, friends, or various levels of previous experience together did not appear to effect decision-making ability. Janis' claims of insulation of groups and groups led by autocratic leaders did show that these attributes were indicative of groupthink symptoms.

Moorhead & Montanari conducted a study where they concluded that groupthink symptoms had no significant effect on group performance, and that "the relationship between groupthink-induced decision defects and outcomes were not as strong as Janis suggests" (Moorhead & Montanari, 1986, p. 399; cited by Choi & Kim, 1999).

Overall, the groupthink hypothesis appears to be valuable as a descriptive, analytic and heuristic tool (Esser, 1998) **but is not a good model for empirical testing;** it attempts to explain a complex phenomenon but is **difficult to operationalize into testable variables**. While some areas of Janis' theory have been supported by empirical or experimental, others remain ambiguous or even contradictory (Sunstein, 2003). When reading the assessments of others, it begs the question of whether groupthink is suited to being used as a model for empirical analysis: is it fair to measure groupthink theory on the basis of laboratory tests, when in real life groupthink occurs within a complex and volatile environment? Janis's original method was one of inductive reasoning from archival records and case studies; perhaps it is better left as a qualitative model that can help illuminate the inexact spheres of organizational behaviour and communications theory.

Their backlash link is about drone strikes, not all drone tech – no current strikes against AQIM – their card:

Zenko, CFR Center for Preventive Action Douglas Dillon fellow, 2013

(Micah, Council Special Report No. 65, January 2013, “Reforming U.S. Drone Strike Policies,” http://www.cfr.org/wars-and-warfare/reforming-us-drone-strike-policies/p29736?co=C009601)

In his Nobel Peace Prize acceptance speech, President Obama declared: “Where force is necessary, we have a moral and strategic interest in binding ourselves to certain rules of conduct. Even as we confront a vicious adversary that abides by no rules, I believe the United States of America must remain a standard bearer in the conduct of war.”63 Under President Obama drone strikes have expanded and intensified, and they will remain a central component of U.S. counterterrorism operations for at least another decade, according to U.S. officials.64 But much as the Bush administration was compelled to reform its controversial coun- terterrorism practices, it is likely that the United States will ultimately be forced by domestic and international pressure to scale back its drone strike policies. The Obama administration can preempt this pressure by clearly articulating that the rules that govern its drone strikes, like all uses of military force, are based in the laws of armed conflict and inter- national humanitarian law; by engaging with emerging drone powers; and, most important, by matching practice with its stated policy by limiting drone strikes to those individuals it claims are being targeted (which would reduce the likelihood of civilian casualties since the total number of strikes would significantly decrease).

The choice the United States faces is not between unfettered drone use and sacrificing freedom of action, but between drone policy reforms by design or drone policy reforms by default. Recent history dem- onstrates that domestic political pressure could severely limit drone strikes in ways that the CIA or JSOC have not anticipated. In support of its counterterrorism strategy, the Bush administration engaged in the extraordinary rendition of terrorist suspects to third countries, the use of enhanced interrogation techniques, and warrantless wiretapping. Although the Bush administration defended its policies as critical to protecting the U.S. homeland against terrorist attacks, unprecedented domestic political pressure led to significant reforms or termination.

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Recommendations 23

Compared to Bush-era counterterrorism policies, drone strikes are vulnerable to similar—albeit still largely untapped—moral outrage, and they are even more susceptible to political constraints because they occur in plain sight. Indeed, a negative trend in U.S. public opinion on drones is already apparent. Between February and June 2012, U.S. support for drone strikes against suspected terrorists fell from 83 per- cent to 62 percent—which represents less U.S. support than enhanced interrogation techniques maintained in the mid-2000s.65 Finally, U.S. drone strikes are also widely opposed by the citizens of important allies, emerging powers, and the local populations in states where strikes occur.66 States polled reveal overwhelming opposition to U.S. drone strikes: Greece (90 percent), Egypt (89 percent), Turkey (81 percent), Spain (76 percent), Brazil (76 percent), Japan (75 percent), and Pakistan (83 percent).67

This is significant because the United States cannot conduct drone strikes in the most critical corners of the world by itself. Drone strikes require the tacit or overt support of host states or neighbors. If such states decided not to cooperate—or to actively resist—U.S. drone strikes, their effectiveness would be immediately and sharply reduced, and the likelihood of civilian casualties would increase. This danger is not hypothetical. In 2007, the Ethiopian government terminated its U.S. military presence after public revelations that U.S. AC-130 gun- ships were launching attacks from Ethiopia into Somalia. Similarly, in late 2011, Pakistan evicted all U.S. military and intelligence drones, forc- ing the United States to completely rely on Afghanistan to serve as a staging ground for drone strikes in Pakistan. The United States could attempt to lessen the need for tacit host-state support by making signifi- cant investments in armed drones that can be flown off U.S. Navy ships, conducting electronic warfare or missile attacks on air defenses, allow- ing downed drones to not be recovered and potentially transferred to China or Russia, and losing access to the human intelligence networks on the ground that are critical for identifying targets.

According to U.S. diplomats and military officials, active resis- tance—such as the Pakistani army shooting down U.S. armed drones— is a legitimate concern. In this case, the United States would need to either end drone sorties or escalate U.S. military involvement by attack- ing Pakistani radar and antiaircraft sites, thus increasing the likelihood of civilian casualties.68 Beyond where drone strikes currently take place, political pressure could severely limit options for new U.S. drone bases.

24 Reforming U.S. Drone Strike Policies

For example, the Obama administration is debating deploying armed drones to attack al-Qaeda in the Islamic Maghreb (AQIM) in North Africa, which would likely require access to a new airbase in the region. To some extent, anger at U.S. sovereignty violations is an inevitable and necessary trade-off when conducting drone strikes. Nevertheless, in each of these cases, domestic anger would partially or fully abate if the United States modified its drone policy in the ways suggested below.

But our effort in Africa is only surveillance – and drones can’t solve AQIM – Obama will never commit

Giorgis, visiting fellow at the Foundation for the Defense of Democracies and former senior official in the Ethiopian government, 8/13/2013

(Dawit, “Absent from Africa,” http://www.ethiomedia.com/2013report/4600.html)

For Africans, the concern is that President Obama did not read the second half of Mr. Mandela’s quote. In both the Libyan and Malian crises, America opted for a supporting role while Europe, and especially France, took the lead. With the French expected to pull out as soon as they are able, how long can we realistically expect Mali and the region to remain secure without U.S. help? Similarly, can Libya stabilize itself without extensive assistance? The president’s reluctance to lead the fight against Islamist extremists in Africa is particularly worrying, as Al Qaeda affiliates and other jihadi groups increasingly destabilize the continent.

Despite President Obama’s assertions to the contrary, the Global War on Terror is very much alive. That’s why the United States has ramped up its drone capabilities in Africa. America maintains drone-operations bases in Burkina Faso, where surveillance drones feed French forces in Mali with intelligence on Al Qaeda affiliates. Similar programs are active in Ethiopia, the Seychelles and Djibouti, while South Sudan, Kenya and Uganda are rumored to have active drone bases as well. The Pentagon also established a new drone base in Niger at the beginning of this year to monitor Islamist extremists and other groups in the region. Although it is not inconceivable that the two countries could one day agree upon the use of armed drones, the agreement only stipulates the use of unmanned surveillance drones.

If the United States were simply claiming an end to the War on Terror while at the same time conducting a well-thought-out campaign to end the jihadi threat to Africa, most African governments would not be concerned. But U.S. policy currently precludes meaningful engagement on the African continent, instead focusing on “African solutions to African problems.” This effectively means that because the United States is apprehensive of committing its own forces in the wake of bruising conflicts in Afghanistan and Iraq, it is only willing to send drones to troubled areas that do not directly impact its interests.

But expanding drone bases in Africa will not offset the recent gains made by Al Qaeda’s affiliates across the region. And it is not as if the African militaries can handle the job themselves. Indeed, the U.S. military has little to no confidence in African troops. Michael Sheehan, assistant secretary of defense for special operations,told a Senate Armed Services subcommittee in April of this year that troops from the Economic Community of West African States deployed in Mali, now under the UN mandate, are a “completely incapable force.” Sheehan concluded that unless African troops were better trained, Al Qaeda would attempt to take back the territory it had conceded. Since the United States is only willing to commit drones, how does he propose to train them?

African problems are growing. In the Sahel, Al Qaeda has affiliates and sympathetic groups, including the Movement for Unity and Jihad in West Africa, Ansar Dine and Al Qaeda in the Islamic Maghreb (AQIM). Elsewhere, in the Horn of Africa, Somali Al Qaeda affiliate Al Shabaab is still actively fighting to retake territory lost to African Union forces, while in West Africa, Nigerian jihadist group Boko Haram—whose members have been tied to AQIM—continues to wage war against the government.

Unfortunately, solutions to these problems are less apparent. African governments that are prepared to combat radical Islamists lack training and leadership, and even the more professional African militaries don’t have the appropriate resources or training. For example, Chad, one of the poorest countries in the world, whose soldiers have been involved in some of the fiercest fighting and are credited with some of the biggest successes combating jihadi forces in Mali, withdrew its two thousand troops from the battlefield because it does not have the resources to fight a protracted war.

American surveillance drones are not helping. They are merely giving American intelligence agencies an accurate picture of what is happening on the ground. This may suggest that Washington now understands the challenge, but remains reluctant to become involved in a meaningful capacity.

Terrorists won’t use WMD

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

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

No risk of bioterror

Keller 13 (Rebecca, 7 March 2013, Analyst at Stratfor, “Bioterrorism and the Pandemic Potential,” Stratfor, http://www.stratfor.com/weekly/bioterrorism-and-pandemic-potential)

The risk of an accidental release of H5N1 is similar to that of other infectious pathogens currently being studied. Proper safety standards are key, of course, and experts in the field have had a year to determine the best way to proceed, balancing safety and research benefits. Previous work with the virus was conducted at biosafety level three out of four, which requires researchers wearing respirators and disposable gowns to work in pairs in a negative pressure environment. While many of these labs are part of universities, access is controlled either through keyed entry or even palm scanners. There are roughly 40 labs that submitted to the voluntary ban. Those wishing to resume work after the ban was lifted must comply with guidelines requiring strict national oversight and close communication and collaboration with national authorities. The risk of release either through accident or theft cannot be completely eliminated, but given the established parameters the risk is minimal. The use of the pathogen as a biological weapon requires an assessment of whether a non-state actor would have the capabilities to isolate the virulent strain, then weaponize and distribute it. Stratfor has long held the position that while terrorist organizations may have rudimentary capabilities regarding biological weapons, the likelihood of a successful attack is very low. Given that the laboratory version of H5N1 -- or any influenza virus, for that matter -- is a contagious pathogen, there would be two possible modes that a non-state actor would have to instigate an attack. The virus could be refined and then aerosolized and released into a populated area, or an individual could be infected with the virus and sent to freely circulate within a population. There are severe constraints that make success using either of these methods unlikely. The technology needed to refine and aerosolize a pathogen for a biological attack is beyond the capability of most non-state actors. Even if they were able to develop a weapon, other factors such as wind patterns and humidity can render an attack ineffective. Using a human carrier is a less expensive method, but it requires that the biological agent be a contagion. Additionally, in order to infect the large number of people necessary to start an outbreak, the infected carrier must be mobile while contagious, something that is doubtful with a serious disease like small pox. The carrier also cannot be visibly ill because that would limit the necessary human contact.

No impact to oil shocks

Perumal, business reporter – Gulf Times, 9/14/’11 (Santhosh, http://www.gulf-times.com/site/topics/article.asp?cu\_no=2&item\_no=458158&version=1&template\_id=48&parent\_id=28)

Oil price shocks are not always costly for oil-importing countries as a 25% increase in oil prices causes their GDP (gross domestic product) to fall by about half of 1% or less, according to an International Monetary Fund (IMF) working paper. “Across the world, oil price shock episodes have generally not been associated with a contemporaneous decline in output but, rather, with increases in both imports and exports,” the paper said. There is evidence of lagged negative effects on output, particularly for the Organisation for Economic Cooperation and Development (OECD) economies, but the magnitude has typically been small, said the paper, authored by Tobias N Rasmussen and Agustín Roitman. For a given level of world GDP, the paper found that oil prices have a negative effect on oil-importing countries and also that cross-country differences in the magnitude of the impact depend to a large extent on the relative magnitude of oil imports.  “The effect is still not particularly large, however, with our estimates suggesting that a 25% increase in oil prices will cause a loss of real GDP in oil-importing countries of less than half of 1%, spread over 2–3 years,” the authors said.

One likely explanation for this relatively modest impact is that part of the greater revenue accruing to oil exporters will be recycled in the form of imports or other international flows, thus contributing to keep up demand in oil-importing economies, the paper said. “The negative impact of oil price shocks on oil-importing countries is partly offset by concurrent increases in exports and other income flows,” it said.

## Adv 1

Drones are sustainable—US government won’t react to backlash

Benjamin Wittes, editor in chief of Lawfare and a Senior Fellow in Governance Studies at the Brookings Institution. He is the author of several books and a member of the Hoover Institution's Task Force on National Security and Law, 2/27/13, In Defense of the Administration on Targeted Killing of Americans, www.lawfareblog.com/2013/02/in-defense-of-the-administration-on-targeted-killing-of-americans/

This view has currency among European allies, among advocacy groups, and in the legal academy. **Unfortunately for its proponents, it has no currency among the three branches of government** of the United States. The courts and the executive branch have both taken the opposite view, and the Congress passed a broad authorization for the use of force and despite many opportunities, has never revisited that document to impose limitations by geography or to preclude force on the basis of co-belligerency—much less to clarify that the AUMF does not, any longer, authorize the use of military force at all. Congress has been repeatedly briefed on U.S. targeting decisions, including those involving U.S. persons.[5] It was therefore surely empowered to either use the power of the purse to prohibit such action or to modify the AUMF in a way that undermined the President’s legal reasoning. Not only has it taken neither of these steps, but Congress has also funded the relevant programs. Moreover, as I noted above, Congress’s recent reaffirmation of the AUMF in the 2012 NDAA with respect to detention, once again contains no geographical limitation. There is, in other words, a consensus among the branches of government on the point that the United States is engaged in an armed conflict that involves co-belligerent forces and follows the enemy to the new territorial ground it stakes out. It is a consensus that rejects the particular view of the law advanced by numerous critics. And it is a consensus on which the executive branch is entitled to rely in formulating its legal views.

Existing norms solve and precedent isn’t key

Anderson, professor of international law – American University, ‘13

(Kenneth, "The Case for Drones", https://www.commentarymagazine.com/articles/the-case-for-drones/)

The objection to civilian deaths draws out a related criticism: Why should the United States be able to conduct these drone strikes in Pakistan or in Yemen, countries that are not at war with America? What gives the United States the moral right to take its troubles to other places and inflict damage by waging war? Why should innocent Pakistanis suffer because the United States has trouble with terrorists? The answer is simply that like it or not, the terrorists are in these parts of Pakistan, and it is the terrorists that have brought trouble to the country. The U.S. has adopted a moral and legal standard with regard to where it will conduct drone strikes against terrorist groups. It will seek consent of the government, as it has long done with Pakistan, even if that is contested and much less certain than it once was. But there will be no safe havens. If al-Qaeda or its affiliated groups take haven somewhere and the government is unwilling or unable to address that threat, America’s very long-standing view of international law permits it to take forcible action against the threat, sovereignty and territorial integrity notwithstanding. This is not to say that the United States could or would use drones anywhere it wished. Places that have the rule of law and the ability to respond to terrorists on their territory are different from weakly governed or ungoverned places. There won’t be drones over Paris or London—this canard is popular among campaigners and the media but ought to be put to rest. But the vast, weakly governed spaces, where states are often threatened by Islamist insurgency, such as Mali or Yemen, are a different case altogether. This critique often leads, however, to the further objection that the American use of drones is essentially laying the groundwork for others to do the same. Steve Coll wrote in the New Yorker: “America’s drone campaign is also creating an ominous global precedent. Ten years or less from now, China will likely be able to field armed drones. How might its Politburo apply Obama’s doctrines to Tibetan activists holding meetings in Nepal?” The United States, it is claimed, is arrogantly exerting its momentary technological advantage to do what it likes. It will be sorry when other states follow suit. But the United States does not use drones in this fashion and has claimed no special status for drones. The U.S. government uses drone warfare in a far more limited way, legally and morally, and entirely within the bounds of international law. The problem with China (or Russia) using drones is that they might not use them in the same way as the United States. The drone itself is a tool.

How it is used and against whom—these are moral questions. If China behaves malignantly, drones will not be responsible. Its leaders will be.

# 2NC

## 2nc ov long

Reject their discourse—this is a prior question.

Memmi 2K

(Albert, Professor Emeritus of Sociology @ U of Paris, Naiteire, Racism, Translated by Steve Martinot, p. 163-165)

The struggle against racism will be long, difficult, without intermission, without remission, probably never achieved. Yet, for this very reason, it is a struggle to be undertaken **without** surcease and without **concessions**. One cannot be indulgent toward racism; one must not even let the monster in the house, especially not in a mask. To give it merely a foothold means to augment the bestial part in us and in other people, which is to diminish what is human. To accept the racist universe to the slightest degree is to endorse fear, injustice, and violence. It is to accept the persistence of the dark history in which we still largely live. it is to agree that the outsider will always be a possible victim (and which man is not himself an outsider relative to someone else?. Racism illustrates, in sum, the inevitable negativity of the condition of the dominated that is, it illuminates in a certain sense the entire human condition. The anti-racist struggle, difficult though it is, and always in question, is nevertheless one of the prologues to the ultimate passage from animosity to humanity. In that sense, we cannot fail to rise to the racist challenge. However, it remains true that one’s moral conduit only emerges from a choice: one has to want it. It is a choice among other choices, and always debatable in its foundations and its consequences. Let us say, broadly speaking, that the choice to conduct oneself morally is the condition for the establishment of a human order, for which racism is the very negation. This is almost a redundancy. One cannot found a moral order, let alone a legislative order, on racism, because racism signifies the exclusion of the other, and his or her subjection to violence and domination. From an ethical point of view, if one can deploy a little religious language, racism is ‘the truly capital sin. It is not an accident that almost all of humanity’s spiritual traditions counsels respect for the weak, for orphans, widows, or strangers. It is not just a question of theoretical morality and disinterested commandments. Such unanimity in the safeguarding of the other suggests the real utility of such sentiments. All things considered, we have an interest in banishing injustice, because injustice engenders violence and death. Of course, this is debatable. There are those who think that if one is strong enough, the assault on and oppression of others is permissible. Bur no one is ever sure of remaining the strongest. One day, perhaps, the roles will be reversed. All unjust society contains within itself the seeds of its own death. It is probably smarter to treat others with respect so that they treat you with respect. “Recall.” says the Bible, “that you were once a stranger in Egypt,” which means both that you ought to respect the stranger because you were a stranger yourself and that you risk becoming one again someday. It is an ethical and a practical appeal—indeed, it is a contract, however implicit it might be. In short, the refusal of racism is the condition for all theoretical and practical morality because, in the end, the ethical choice commands the political choice, a just society must be a society accepted by all. If this contractual principle is not accepted, then only conflict, violence, and destruction will be our lot. If it is accepted, we can hope someday to live in peace. True, it is a wager, but the stakes are irresistible.

And, this form of liberalism is unsustainable and results in unending war and violence against the other—hold every 1AC impact suspect

Dillon and Reid ‘9

(Michael, professor of Politics at the University of Lancaster, and Julian, Lecturer in International Relations at Kings College and Professor of International Relations at the University of Lapland, “The Liberal Way of War: Killing to Make Life Live, pg 30-33, AM)

One way of expressing the core problematic that we pursue in this book is, therefore, in the form of a question posed back to Paine on account of that definitive claim. What happens to the liberal way of rule and its allied way of war when liberalism goes global in pursuit of the task of emancipating the species from war, by taking the biohuman as its referent object of both rule and war? What happens to war, we ask, when a new form of governmental regime emerges which attempts to make war in defence and promotion of the entire species as opposed to using war in service of the supposedly limited interests of sovereigns? For the liberal project of the removal of species life from the domain of human enmity never in practice **entailed an end to war**, **or to the persistence of threats requiring war.** Paine makes this clear in his original formulation. Under liberal regimes, Paine observes, war will still be defined by relations between the human and its enemies. The enemies of the human will simply no longer be ‘**its species’** (Paine 1995: 595). What that meant, in practice, was that the liberal way of rule had to decide what elements and what expressions of human life best served the promotion of the species. Those that did not were precisely those that most threatened it; those upon which it was called to wage war. Deciding on what elements and expression of the human both serve and threaten is the definitive operation by which liberalism constitutes its referent object of war and rule: that of the biohuman. Whatever resists the constitution of the biohuman is hostile and dangerous to it, **even if it arises within the species itself.** Indeed, as we shall show, since life is now widely defined in terms of continuous emergence and becoming, it is a continuous becoming-dangerous to itself. The locus of threat and danger under the liberal way of rule and war progressively moves into the very morphogenic composition and re-composability of living systems and of living material. **The greatest source of threat to life becomes life.** It is very important to emphasize that this discourse of danger is precisely not that which commonly arises in the political anthropologies of human cupidity of early modern political theory going back classically, for example, to Hobbes and Locke, which was nonetheless still formulated in a context still circumscribed by the infinity of divine providence, however obscure this was becoming, and however much this obscurity helped fuel the crisis of their times. The analytics of finitude, rather than the analytics of redemption, circumscribe late modern discourses of governance and danger now, instead. Biology, one might therefore also say, itself arose as a science of finitude; of the play of species life and death outwith the play of human life and redemption. The same might very well be said for modern ‘political science.’ Biology does not, of course, recognize cupidity. Cupidity arises in a different, anthro-political, order of things. These days, especially, biology recognizes only the dynamics of complex adaptive evolutionary emergence and change of living systems, whose very laws of formation it increasingly understands in informational terms. These, additionally, empower it to re-compose living material according to design rather than nature in order to rectify the infelicities of nature, or, indeed, pre-empt its expression by positively creating new nature, rather than merely negating existing nature. Pre-emption here is not negative, it is positive. It is not precaution, so much as creative production. The discourse of danger being elaborated through the liberal way of rule and war, in the age of life as information, is therefore related to the possibility that complex adaptive emergence and change can go acerbic. The possibility of catastrophe lies, immanently, in the very dynamics of the life process itself. Neither is this a discourse of danger which revolves around traditional othering practices alone, however pervasive and persistent these politically toxic devises remain. This is a discourse of danger which hyperbolicizes fear in relation to the radically contingent outcomes upon which the very liveliness of life itself is now said to depend. Biohumanity—itself an expression of the attempt to give concrete form to finitude politically—is therefore both threat and promise. The corollary is therefore also clear: enemies of the species **must be cast out from the species** as such. ‘Just war’ in the cause of humanity here—a constant liberal trope (Douzinas 2003)—takes a novel turn when the humanity at issue is biohumanity. For just war has constantly to be waged for biohumanity against the continuous becoming-dangerous of life itself; and less in the form of the Machiavellian or Hobbesian Homo lupus than in the form of continuously emergent being, something which also prompts the thought that Foucault’s analytics of finitude might itself have to be revised to take account of the infinity of becoming which now also characterizes the contemporary ontology of the life sciences. Since the object is to preserve and promote the biohuman, **any such war to end war becomes war without end;** thus turning Walzer’s arguments concerning the justification of liberal war inside out (Walzer 2000: 329-335). The project of removing war from the life of the species becomes a lethal and, in principle, continuous and **unending process**. In a way, as a matter of its biopolitical logic, there is little particularly startling about this claim. Immanent in the biopoliticization of liberal rule, **it is only a matter of where, when and how it finds expression.** As the very composition and dynamics of species life become the locus of the threat to species life, so the properties of species life offer themselves in the form of a new king of promise: war may be removed from the species should those properties be attended to differently. Consider, for example, Kant’s ‘Idea for a Universal History’: if he lives among others of his own species, man is an animal who needs a master… he requires a master to break his self-will and force him to obey a universally valid will under which everyone can be free. But where is he to find such a master? Nowhere else but in the human species. (Kant 2005; emphasis added) ‘Nowhere else but in the human species.’ Here Kant, too, discloses the circumscription of his reflections by the analytics of finitude. Put simply, liberalism’s strategic calculus of necessary killing has, then, to be furnished by the laws and dynamics, the exigencies and contingencies, derived from the properties of the biohuman itself. **Making life live becomes the criterion against which the liberal way of rule and war must seek to say how much killing is enough**. In a massive, quite literally **terrifying, paradox**, however, since the biohuman **is the threat**, it cannot, itself, adjudicate how much self-immolation would be enough to secure itself against itself without destroying itself. However much the terror of the liberal way of rule and war currently revolves around the ‘figure’ of Al-Qaeda, the very dispositive of terror which increasingly circumscribes the life of the biohuman at the beginning of the twenty-first century is the fear induced by its very own account of life. No specific manner or form is proper, then, to the biohuman other than this: its being continuously at work instrumentally reassigning itself in order, it is said, to survive, but in fact to secure itself against its own vital processes. Within the compass of this biopolitical imaginary of species existence, the biohuman becomes the living being to whom all manner of self-securing work must be assigned. The task thus posed through the liberal way of rule and war by its referent object of rule and war—the biohuman—is no longer that, classically, of assigning the human its proper nature with a view to respecting it. The proper nature of the biohuman has become the infinite re-assignability of the very pluripotency itself. This is the strategic goal of the liberal way of war because it has become the strategic goal of the liberal way of rule. From the analytics of finitude, politically, has thus arisen an infinity of securitization and fear.

Alternative solves the aff—the alt’s political reactionism is steady and can’t be avoided—the law can easily be manipulated to the President’s ends which causes circumvention OR blame deflection means they can’t solve any 1AC impact

Eric A. Posner and Adrian Vermeule 11, law profs at the University of Chicago and Harvard, Demystifying Schmitt, January, <http://www.law.uchicago.edu/files/file/333-eap-Schmitt.pdf>

If Congress cannot regulate in advance of emergencies, might it not be able to regulate once the emergency begins? The problem is that in the early stages of the emergency, the legislature is hampered by its many-headed structure. Large bodies of people deliberate and **act slowly** (unless they act as mobs). The best that the legislature can do is ratify the executive’s actions by blessing it with a retroactive authorization, or call a halt to the executive’s response by defunding it. As the emergency matures, the legislature continues to be hampered. Crises unfold in an unpredictable fashion; secrecy will be at a premium. Public deliberation compromises secrecy; the unpredictability of the threat eliminates the value of lawmaking. The legislature’s role in the emergency is marginal. It can grant or withhold political support; and it can legislate along the margins. The legislature may be able to undermine the executive response by defunding it, but it will rarely do so because some response is always better than none. The problem for the legislature is that it cannot make policy in a fine-grained way; its choice—broad support or none at all—is no choice at all. Anticipating a body of literature in positive political theory, Schmitt noted that “the extraordinary lawmaker [i.e. the President of the Reich] can create accomplished facts in opposition to the ordinary legislature. Indeed, especially consequential measures, for example, armed interventions and executions, can, in fact, no longer be set aside.”31 The President’s first-mover role – the “presidential power of unilateral action”32 – implies that he can create a new status quo that constrains Congress’ subsequent response, both in practical terms and because the President can use his veto powers to block legislative attempts to restore the status quo ante. Courts face similar problems. Detailed statutes enacted before the emergency will seem antiquated and inapt. Courts will feel pressure to interpret them loosely or use procedural obstacles to avoid their application. For this reason, violations of FISA and the Anti-Torture Act never led to prosecutions. Vague statutes enacted before and after the emergency provide no rule of decision, and courts are reluctant to substitute their views about policy for those of the executive, which has far more expertise and resources. Commentators have urged courts to use constitutional norms or even international law to control the executive, but these norms also prove to be ambiguous standards rather than clear-cut rules. To apply such standards, courts would have to engage in judicial policymaking. But judges do not believe that they have the information or expertise to make policy during emergencies and so they have seldom taken this approach.

## AT: Perm---Do Both

The permutation is coopted and the alternative is a pre-requisite—legalism crowds out our method—that’s Marguilies—the alt is a pre-requisite

Knox ‘12

Robert, PhD Candidate, London School of Economics and Political Science. !is paper was presented at the Fourth Annual Conference of the Toronto Group for the Study of International, Transnational and Comparative Law and the Towards a Radical International Law workshop, “Strategy and Tactics,”

this warning is of great relevance to the type of ‘strategic’ interventions advocated by the authors. there are serious perils involved in making any intervention in liberal-legalist terms for critical scholars. the first is that – as per their own analysis – liberal legalism is not a neutral ground, but one which is likely to favour certain claims and positions. Consequently, it will be incredibly difficult to win the argument. Moreover, **even if** the argument is won, the victory is likely to be a very particular one – inasmuch as **it will foreclose any wider consideration of the structural or systemic causes** of any particular ‘violation’ of the law. All of these issues are to some degree considered by the authors.44 However, given the way in which ‘strategy’ is understood, the effects of these issues are generally confined to the immediate, conjunctural context. As such, the emphasis was placed upon the way that the language of liberal legalism blocked effective action and criticism of the war.45 Much less consideration is placed on the way in which advancing such argument impacts upon the long term effectiveness of achieving the strategic goals outlined above. Here, the problems become even more widespread. Choosing to couch the intervention in liberal legal terms ultimately reinforces the structure of liberal legalism, rendering it more difficult to transcend these arguments.46 In the best case scenario that such an intervention is victorious, this victory would precisely seem to underscore the liberal position on international law. Given that international law is in fact bound up with processes of exploitation and domination on a global scale, such a victory contributes to the legitimation of this system, **making it very difficult to argue against its logic.** this process takes place in three ways. Firstly, by intervening in the debate on its own terms, critical scholars reinforce those very terms, as their political goals are incorporated into it.47 It can then be argued the law is in fact neutral, because it is able to encompass such a wide variety of viewpoints. Secondly, in discarding their critical tools in order to make a public intervention, these scholars abandon their structural critique **at the very moment when they should hold to it most strongly**. that is to say, that at the point where there is actually a space to publicise their position, they choose instead to cleave to liberal legalism. thus, even if, in the ‘purely academic’ context, they continue to adhere to a ‘critical’ position, in public political terms, they advocate liberal legalism. Finally, from a purely ‘personal’ standpoint, in advocating such a position, they undercut their ability to articulate a critique in the future, precisely because they will be contradicting a position that they have already taken. the second point becomes increasingly problematic absent a guide for when it is that liberal legalism should be used and when it should not. Although the ‘embrace’ of liberal legalism is always described as ‘temporary’ or ‘strategic’**,** there is actually very little discussion about the specific conditions in which it is prudent to adopt the language of liberal legalism. It is simply noted at various points that this will be determined by the ‘context’.48 As is often the case, the term ‘context’ is invoked49 without specifying precisely which contexts are those that would necessitate intervening in liberal legal terms. Traditionally, such a context would be provided by a strategic understanding. that is to say, that the specific tactics to be undertaken in a given conjunctural engagement would be understood by reference to the larger structural aim. But here, there are simply no considerations of this. It seems likely therefore, that again context is understood in purely **tactical terms.** Martti Koskenniemi can be seen as representative in this respect, when he argued: What works as a professional argument depends on the circumstances. I like to think of the choice lawyers are faced with as being not one of method (in the sense of external, determinate guidelines about legal certainty) but of language or, perhaps better, of style. the various styles – including the styles of ‘academic theory’ and ‘professional practice’ – are neither derived from nor stand in determinate hierarchical relationships to each other. the final arbiter of what works is nothing other than the context (academic or professional) in which one argues.50 On this reading, the ‘context’ in which prudence operates seems to the immediate circumstances in which an intervention takes place. this would be consistent with the idea, expressed by the authors, that the ‘strategic’ context for adopting liberal legalism was that the debate was conducted in these terms. But the problem with this understanding is surely evident. As critical scholars have shown time and time again, the contemporary world is one that is deeply saturated with, and partly constituted by, **juridical relations**.51 Accordingly, there are really very few contexts (indeed perhaps none) in which political debate is not conducted in juridical terms. A brief perusal of world events would bear this out.52 the logical conclusion of this would seem to be that in terms of abstract, immediate effectiveness, the ‘context’ of public debate will almost always call for an intervention that is couched in liberal legalist terms. This raises a final vital question about what exactly distinguishes critical scholars from liberal scholars. If the above analysis holds true, then the ‘strategic’ interventions of critical scholars in legal and political debates will almost always take the form of arguing these debates in their own terms, and simply picking the ‘left’ side. thus, whilst their academic and theoretical writings and interventions may (or may not) retain the basic critical tools, the public political interventions will basically be ‘liberal’. The question then becomes, in what sense can we really characterise such interventions (and indeed such scholars) as ‘critical’? The practical consequence of understanding ‘strategy’ in essentially tactical terms seems to mean always struggling within the coordinates of the existing order. Given the exclusion of strategic concerns as they have been traditionally understood, **there is no practical account for how these coordinates will ever be transcended** (or how the debate will be reconfigured). As such, **we have a group of people struggling within liberalism, on liberal terms,** who may or may not also have some ‘critical’ understandings which are never actualised in public interventions. We might ask then, apart from ‘good intentions’ (although liberals presumably have these as well) what differentiates these scholars from liberals? Because of course liberals too can sincerely believe in political causes that are ‘of the left’. It seems therefore, that just as – in practical terms – strategic essentialism collapses into essentialism, so too does ‘strategic’ liberal legalism collapse into plain old liberal legalism.53

Overcoming structural factors via the alt is a pre-requisite

Knox ‘12

Robert, PhD Candidate, London School of Economics and Political Science. !is paper was presented at the Fourth Annual Conference of the Toronto Group for the Study of International, Transnational and Comparative Law and the Towards a Radical International Law workshop, “Strategy and Tactics,”

‘Lawfare’ is a very specific term which refers to the idea that international law is a part of modern warfare, and can be used as a weapon by both sides.21 But in this instance the particular usage implies a more general idea about the relationship between international law and the political process. Essentially, critical scholars argue that rather than international law being outside of relations of power, exploitation and domination it is already ‘part of the problem’, that is to say that international law has played and continues to play a role in constituting and legitimating these relations.22 this is because it at least partially creates the conditions in which political and economic power is exercised – by granting certain types of property, allowing certain types of violence, locating certain agents within certain social positions and granting them certain powers etc.23 In this view, law is not simply a negative relationship that constrains action, but also one that sets the conditions in which action takes place, enabling relations of domination and exploitation. the final element is that of ‘structural bias’. the following comment from Martti Koskenniemi gives a glimpse into how it has been understood by critical scholars. Koskenniemi argues that irrespective of the formal openness entailed by indeterminacy ‘the system still de facto prefers some outcomes or distributive choices to other outcomes or choices ... even if it is possible to justify many kinds of practices through the use of impeccable professional argument, there is a structural bias in the relevant legal institutions that makes them serve typical, deeply embedded preferences, and that something we feel that is politically wrong in the world is produced or supported by that bias.’.24 Whilst there are problems with this specific formulation, it does the final core insight of critical international lawyers, namely that law is not a neutral framework through which all interests can be equally expressed, but one which will systematically favour some interests over others.25 Provisionally then, these positions point to a theory about law and legal argument which argues that it occupies a central role in international politics. In this vision, international law helps to constitute and enable those relations that critical scholars want to fight and is not a ‘neutral’ instrument through which any actors can pursue their interests. Crucially, this is a theory about the structure of law and legal argument, which is not concerned with specific legal rules should be deployed or the outcomes of specific legal decisions, but is rather about the broader the relationship between law and social phenomena. these positions stand in contrast to the mainstream, liberal understanding of international law. the liberal position is the precise inverse of the critical one outlined above. In this understanding, international law is seen as a determinate body of rules, through which various interests could be expressed. Here international law is not said to be constitutive of relations of exploitation of domination, but rather to have played a crucial role in ending such relations historically (particularly in the case of colonialism) and in the present conjuncture to be systematically violated and abused by various superpowers.26 In this account international law is at worst a ‘neutral’ vessel, and at best the rule of law (as distinct from particular laws) is a force for good. This liberal understanding is one not simply held by lawyers or academic commentators, but is also the ‘common sense’ understanding of international law that structures public debate.27 Much of this debate proceeds on the understanding that various imperial actions are illegal, **must be shown to be so**, and contested in these terms.28 the applicability of the strategy and tactics distinction should be obvious here. On the one hand we have a group of scholars advancing a structural critique of international law that is, in the limited sense outlined above, ‘revolutionary’. On the other hand, they operate in a context in which the majority of individual struggles – over wars, detention of ‘terrorists’, debt etc. – are conducted in such a way as directly militates against this critique. thus we have the example of the ‘revolutionary’ critique (of organic moments) in a non-revolutionary period. What, in this context, would a strategic objective look like? Despite the previously mentioned theoretical and political diversity in critical international legal scholarship, the common ‘organic’ analysis of international law provides a basic idea of the form such a strategic goal might assume. there are two obvious variants of strategy here. First, there is what we might call the ‘idealist’ variant. In this account the primary problem to be dealt with is that the ideas of liberal legalism have a hold over policy makers and the public. Consequently, strategic aim would be to reconfigure the debate in such a way that the structural critique of the mainstream would be strengthened, with the eventual aim of constituting it as a hegemonic understanding of international law.29 Second, there is a materialist approach, which would stress that the material basis of the problems outlined above. On this account, one cannot understand the structuring features of the law and legal argument on their own terms, or simply as ‘ideas’. Rather, they need to be understood on the basis of ‘the material conditions of existence’ that is to say those ‘definite and necessary relations of production that human beings enter into independently of their will’.30 As such, it is social and economic forces and relationships which generate indeterminacy, lawfare and structural bias. this means that a strategic goal would necessarily involve overcoming the social relationships that give rise to the problems outlined above, involving action to transform the material conditions of our existence.31 In practical terms, of course, these are hardly mutually exclusive positions since any materialist critique relies on convincing people of its validity.32 the point is that both of these objectives are strategic and so are not directly concerned with winning arguments on the terms of liberal legalism (that is to say, whether given actions would be legal or illegal) **but rather aim at overturning those very terms**.33

Individuation DA—destroys collective movements necessary for solvency

Dossa ‘99

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

LEGALISM AND THE LIBERAL ORDER

In liberal theory and practice, law lies at the core of politics: legislation, policy, projects are fashioned and implemented as a set of sovereign rules. Rule of law is the pride of liberal conduct, **the dominion which protects liberty, resolves disputes, defends rights, punishes crimes, and hears the supplications of the politically weak for justice.** Liberal theory is deeply infused with juridical metaphors, legalist analytic styles and juridical notions of rights and citizenship. In its substantive concerns, in fact, liberal political theory is often indistinguishable from legal theory or jurisprudence. The formal split between law and morals, the primacy of individual liberty and autonomy and of right over the good, the focus on the visibly factual (distinguished from values), constitute sacral tenets of liberal legality and politics. Law occupies much of the private and social terrain in liberal societies. For most liberals, this synonymity, the fusion of politics with the ideology of legalism, is not troubling: they see in law the steely foundation of fairness and justice, process and procedure, capsulated in the doctrine of the rule of law. No other department of civilized life offers, in this view, comparable resources and the possibilities for justice. That this ideal is rarely realized, has not dissuaded liberals from supposing that law-based politics is the only politics worth defending. To liberals, law is **distilled, honed reason**: fidelity to its rules yields rational and impartial judgments. Law in this rendering is the nucleus of civilized life, of rights against the state, against social engineers with grand moral visions. Law's aficionados acclaim it as disinterested, intrinsically unbiased, non-ideological, fair and just. Lawful politics **in the real world** is a far cry from this idolized depiction. For one critic, espousing a view shared by the Critical Legal and Critical Race theory movement, the law is "profoundly political", neither innocent nor neutral, and "the Rule of Law is a sham" despite its facade of cool rationality.7 Not all liberal political theorists are sanguine about the juridical usurpation of politics. Judith Shklar for one has radically questioned this legalistic trend in political argument. In her critical text, Legalism, she has argued that this formalist legal ethos is manifestly ideological and complacently oblivious to the intimacy between law and violence, law and politics, law and moral prejudice. Legalism, among other claims, denies "both the political provenance and the [political] impact of judicial decisions": it asserts the "belief that law is not only separate from political life but that it is a mode of social action superior to mere politics".8 This astonishing displacement of the ancient classical Greek ideal of just regime (good society), balancing and harmonising claims for the sake of the common good, has yielded a crass, impoverished, instrumental definition of justice. Justice is now "the most legal of virtues" (Hart), defined as "the commitment to obeying the rules"9 : justice is not the uniquely political virtue as Plato and Aristotle had thought. Liberal legalism scants the ideals of communal harmony and collective good, it only recognises individual interest, desire, possessiveness, within the bounds of the rules: this is the crux and bane of legalistic politics. In the US and in Canada, this legalistic ethic has legitimated an analytical approach to cultural and political issues that has privileged formalism, procedure, process, as emblems of rationality, efficiency, modernity: the good society or the common good is inadmissible in this methodologically rational and individualist legal outlook.10

## 2nc fw

We control uniqueness---the question of justification is intrinsically tied to the law---the question is whether we accept violent structures or make it a point of stasis

Dossa ‘99

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

Law's imperial reach, it massive authority, in liberal politics is a **brute**, recurring **fact**. In Law's Empire, Dworkin attests to its scope and power with candour: "We live in and by the law. It makes us what we are" (vii). But he fails to appreciate that law equally traduces others, it systematically unmakes them. For Dworkin, a militant liberal legalist, law is the insiders' domain: legal argument has to be understood internally from the "judge's point of view"; sociological or historical readings are irrelevant and "perverse".2 Praising the decencies of liberal law is necessary in this world: rule of law, judicial integrity, fairness, justice are integral facets of tolerable human life. Lawfulness is and ought to be part of any decent regime of politics. But **law's rhetoric on its own behalf** systematically scants law's violent, dark underside, it skillfully masks law's commerce with **destruction and death.** None of this is visible from the internalist standpoint, and Dworkin's liberal apologia serves to mystify the gross reality of law's empire. In liberal political science, law's presumed, Olympian impartiality, is thus not a contested notion. Liberals still presuppose as a matter of course the juristic community's impartiality and neutrality, **despite empirical evidence to the contrary**.3 One consequence of the assumed sanctity of the judicial torso within the body politic, has been that law's genealogy, law's chronological disposition towards political and cultural questions, have simply not been of interest or concern to most liberal scholars. A further result of this attitude is the political science community's nearly total ignorance of liberal law's complicity in western imperialism, and in shaping western attitudes to the lands and cultures of the conquered natives. Liberal jurisprudence's subterranean life, its invidious consciousness is, however, not an archaic, intermittent annoyance as sensitive liberals are inclined to think: **indeed law is as potent now as it has been in last two centuries in articulating a dismissive image of the native Other**.

Technocrats DA—the aff’s skillset turns us into technocrats with no way of altering status quo legal structures—our method is key

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

This question must be central to any serious effort to foster widespread political participation of the kind envisioned by republican theory. While general discussion of this complex but crucial topic is beyond the scope of this paper, it is significant to note that the arena of military policy is one in which the general population is particularly silenced. Indeed, if we consider the process of "nuclear numbing" described earlier, or the sense of disempowerment most individuals feel in connection with complex decisions about national security and defense policy, we can see an intriguing parallel between the types of knowing described in Women's Ways of Knowing and people's feelings about the possibility of playing a more participatory role. Many will feel limited to the stances of "silence" ("voiceless and subject to the whims of external authority") or, at best, "received knowledge" ("capable of receiving, even reproducing, knowledge from the all-knowing external authorities but not capable of creating knowledge on their own"). Some, operating from the orientation of "subjective knowledge" ("truth and knowledge are conceived of as personal, private, and subjectively known or intuited") may feel opposed to official policy, but believe they have no sufficient basis on which to justify their position and no way to express their opposition except through private complaining and cynical withdrawal. Only those who are first able to develop "procedural knowledge" (learning "objective procedures for obtaining and communicating knowledge") and then to integrate this knowledge with their own values and concerns to shape a personal form of "constructed knowledge" (experiencing themselves as "creators of knowledge") will be able to envision playing a meaningful role as citizens in the shaping of public policy about the military. Carol Cohn, a feminist psychologist, has written about the particular difficulties involved in developing a voice with which citizens can engage in critical thinking about that core of our military policy known as "strategic doctrine" — the theory of nuclear weaponry. Driven by a compelling desire to learn how those who develop this theory could "think this way," Cohn spent a year at a special institute studying strategic theory. In her article "Sex and Death in the Rational World of Defense Intellectuals,"171 she describes her discovery that the very language used by strategic theorists prevents both certain questions from being raised and also excludes the uninitiated from participation. In the world of "technostrategic language," which is a pseudo-scientific jargon composed of abstractions, acronyms, and euphemisms, speakers of ordinary English — no matter how well-informed — are treated as "ignorant, simpleminded, or both."172 At the same time, if one speaks in the technostrategic language in order to demonstrate legitimacy and gain respect, it becomes impossible to express certain ideas. Cohn uses the example of the concept "peace," explaining that it is not a part of this discourse. As close as one can come is "strategic stability," a term that refers to a balance of numbers and types of weapon systems — not the political, social, economic, and psychological conditions implied by the word "peace." Not only is there no word signifying peace in this discourse, but the word "peace" itself cannot be used. To speak it is immediately to brand oneself as a soft-headed activist instead of an expert\_\_\_\_173 When such ingrown and exclusionary forms of discourse come to dominate policy making, this is fertile ground for a dangerous divorce between the concerns of experts and the concerns of ordinary citizens.174 Originally, the ferninist commitment to the importance of fostering voice was a response to the traditional silencing of female voices, but it has been extended to recognize the need to increase our capacity to hear from others who have been excluded.175 In the arena of military policy, women's voices historically have been almost entirely shut out, but this is in a process of transition.176 However, even if women and others now excluded from the domains of technostrategic policy formation were admitted, so that those domains became more fully representative of the population, this would not heal the split between expert and citizen. The political scientist Jean Bethke Elshtain points out that while more equal representation of women in the "nuclear priesthood"177 of strategic theorists means that "[w]omen, too, would speak in the voice of the knowing insiders" the language would remain "dissociated: that is, its linguistic use of euphemisms.. . removes it from what it claims to be talking about."178 Most important for present purposes, the language would also remain exclusionary, "not available to most citizens, whether male or female, for the ordinary tasks of everyday civic life."179 Some opponents of this kind of technostrategic talk have sought to counter it with a psychological or apocalyptic language for talking about modern warfare and military strategy, an approach which centers on acknowledging despair and doom.180 But while this approach may be valuable as a way of breaking through "nuclear numbing" or other forms of apathy and disempowerment, Elshtain urges that there be a search for another way which "promotes civic identity and connection."181 She warns, however, that talk of enhanced citizen voice and participation must go beyond the level of abstract platitude.182 It is here that a renewed decentralism — understood not as a panacea, nor as a substitute for either private action or national politics, but as another locus for meaningful citizen involvement — has its place. Dean Paul Brest, in a friendly critique of neo-republican theorists,183 shares Elshtain's view that the commitment to enhanced citizenship must go beyond the level of abstraction. He chides neo-republican legal scholars for their obsession with the courts, their unfortunate willingness to treat "the judiciary as the 'trace of the People's absent selfgovernment.\* "I84 Rejecting this court-centered approach, he urges **instead** a search for "programs of genuine **participatory democracy** in the multifold spheres of human activity.'"85 While his emphasis in that article is on workplace democracy, the underlying thesis applies equally well to local action.186 Following Brest's advice, the final section of this Article will sketch out an argument for "genuine participatory democracy" at the grassroots level in the national security sphere. This argument has a foundation in ideas of federalism, but it is a federalism which must be carefully distinguished both from the old "states' rights" version, and also from the "new federalism" which is rooted in the federal government's attempt to cast off responsibility for the welfare of the citizenry.187 It is what I will call a "participatory federalism" — a federalism that has the goal of creating more opportunities for citizen empowerment and meaningful participation in national political life.

## 2nc drone court fails

More ev—too slow, not oppositional, won’t get enough info

Roth, executive director – Human Rights Watch, April ‘13

(Kenneth, “What Rules Should Govern US Drone Attacks?” The New York Review of Books)

Whatever the rules governing drone attacks, many object to the covert, unilateral way the administration decides who should be killed. In the heat of battle, that is a necessity. But drone targets are typically selected over lengthy periods, with more than enough time for independent scrutiny. Under US law, the executive branch cannot even secure a wiretap without court oversight, so why should it be allowed to select drone targets unilaterally? Senator Dianne Feinstein has thus put forward the idea of a drone court similar to the courts that review wiretap applications under the Foreign Intelligence Surveillance Act (FISA). But replicating the FISA courts would provide little by way of effective control because, by their nature, they must be kept secret from the target, so they provide no opportunity for an independent attorney to challenge the government’s claims. At least for wiretaps the law is reasonably settled. But the administration, as we have seen, seems to accept in only vague terms the law governing drone attacks. In the absence of an adversarial process, a judge cannot be counted on to challenge the administration’s permissive interpretation of the law. Moreover, a drone court could at most approve placing someone on a kill list, not whether the circumstances of a prospective attack, including the risk to civilians in a changing situation, would be lawful. That would require a determination of the sort that a court can’t possibly undertake in advance. In any event, most proposals for drone courts envision them being used only for targeted US citizens—not much help to the great majority of targets from other nationalities. Though of no help to those killed, permitting after-the-fact lawsuits against the government would be a better way to allow the courts to define the limits of the law. But the administration has blocked such suits through various claims of secrecy.

Judges will fail to make determinations

Charlie Savage, NYTimes, 3/18/13, Former Pentagon Lawyer Offers Pros and Cons of Drone Court, atwar.blogs.nytimes.com/2013/03/18/former-pentagon-lawyer-offers-pros-and-cons-of-drone-court/

Mr. Johnson also questioned whether it would be appropriate to ask judges to provide “top cover” for “death warrants” based on secret evidence submitted only by the executive branch, especially when **it would be difficult for them to decide whether fast-changing criteria** – like whether a threat is imminent and whether capture instead of killing is feasible have been met. “These really are up-to-the-minute, real-time assessments,” he said, adding: “Indeed, I have seen feasibility of capture of a particular objective change several times in one night. Judges are accustomed to making legal determinations based on a defined, settled set of facts – a picture that has already been painted, not a moving target, which is what we are literally talking about here.”

Executive can easily circumvent

Fidell 13

Eugene R. Fidell, Visiting Lecturer in Law at Yale Law School. He is a co-founder and former president of the National Institute of Military Justice and of counsel at Feldesman Tucker Leifer Fidell LLP, Washington, D.C. He is a Life Member of the American Law Institute and a member of the Defense Legal Policy Board of the Department of Defense and the board of directors of the International Society for Military Law and the Law of War. He has also taught at Harvard Law School and the American University Washington College of Law, NY Times, February 27, 2013, "A Drone Panel Within the Executive Branch?", http://www.nytimes.com/2013/02/28/opinion/a-drone-panel-within-the-executive-branch.html

“Who Will Mind the Drones?,” by Neal K. Katyal (Op-Ed, Feb. 21), proposed an internal “drone court” staffed by expert lawyers representing both sides to review proposed attacks. The members “would switch sides every few years, to develop both expertise as repeat players and the ability to understand the other point of view.” The president would be able to overrule this “court” and “take whatever action he thought appropriate, but would have to explain himself afterward to Congress.” This is not a good idea. The new entity would be merely a board within the executive branch. To call it a court would incorrectly imply that its members are independent and have protected terms of office. Nor would its decisions have the finality that our legal system associates with exercises of judicial power. The decisions of this internal drone court could be thwarted simply because the president, owing it no deference, disagreed with them. This is not to say that such a panel might not serve a useful purpose. It would probably help develop some overall principles as particular proposed drone operations came before it. But that is a far cry from pretending to be a court of law. Finally, there is a serious ethical issue in the proposal. The lawyers who would constitute the “bar” of this “court” would switch sides by prearrangement. The rub is that attorneys have a duty to try to develop the law in a way that advances their clients’ long-term interests. This led the Office of Legal Counsel in 1977 to reject a plan for Justice Department lawyers and federal defenders to trade places for a while, correctly concluding that such an arrangement would put participating attorneys in an impossible ethical bind. The same is true of the in-house drone court idea.

## 2nc drones sustainable

Most qualified evidence

Masters, deputy editor – CFR, 10/3/’11

(Jonathan, “US acquires targeted killing as an essential tactic,” The Nation)

Since assuming office in 2009, Barack Obama's administration has escalated targeted killings, primarily through an increase in unmanned drone strikes on Al-Qaeda and Taliban leadership, but also through an expansion of US Special Operations kill/capture missions. The successful killing of Osama bin Laden in a US Navy SEAL raid in May 2011 and the drone strike on Al-Qaeda's number two, Atiyah Abd Rahman, in August 2011 are prime examples of this trend. The White House points to these outcomes as victories, but critics continue to condemn the lethal tactic on moral, legal, and political grounds. Despite the opposition, most experts expect the United States to boost targeted killings in the coming years as military technology improves and the public appetite for large-scale, conventional armed intervention erodes.

Won’t collapse the drone program

Masters, deputy editor – CFR, 10/3/’11

(Jonathan, “US acquires targeted killing as an essential tactic,” The Nation)

Blowback from civil liberties and human rights groups is likely to grow in direct proportion to any increase in targeted killings. Organisations such as the ACLU and Human Rights Watch have raised pointed questions regarding the perceived lack of accountability and transparency. Others question if the United States is setting a negative precedent that will be invoked by other nations (WashPost) acquiring similar technology, such as China and Russia. CFR's Bellinger expects targeted killings to become much more politically provocative given the Obama administration's current posture, and asks if drones will "become Obama's Guantanamo?" Nevertheless, analysts point to several factors indicating that an expansion of US targeted killings in the near term is likely. Drone strikes and special operations raids put fewer Americans in harm's way and provide a low-cost alternative to expensive and cumbersome conventional forces. This alternative is further enhanced given the probability of future cuts in the defence budget and a waning public appetite for long, expensive wars. The rise of the so-called "non-state actor," operating in loose transnational networks, as the principal threat to US national security also lends itself to an expansion of US targeted killings. Other experts say technological advances, including precision-guided munitions and enhanced surveillance, have given the United States a greater ability to target these particular individuals while reducing collateral damage. In July 2011, Obama's chief counterterrorism advisor, John Brennan, provided a portent of things to come: "Going forward, we will be mindful that if our nation is threatened, our best offence won't always be deploying large armies abroad but delivering targeted, surgical pressure to the groups that threaten us."

The public prefers the squo—regulation increases likelihood of backlash and turns the case

LaFranchi 6/3/13

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

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

e transparent. Americans are by and large comfortable with drone strikes being ordered by the president, the CIA, or by the military, according to the Monitor poll. Less popular is the idea of creating a separate “drone court” – a panel that would presumably increase the accountability of the program. Almost two-thirds of Americans (62 percent) say they approve of drone-strike authorization coming from the president, the Pentagon, or the CIA. About a quarter (26 percent) favor setting up a drone court to sign off on strikes.

## 2nc squo solves

US precedent is locked in and it’s too late

NYT, 5/29/’12

(“Secret ‘Kill List’ Proves a Test of Obama’s Principles and Will”)

Justly or not, drones have become a provocative symbol of American power, running roughshod over national sovereignty and killing innocents. With China and Russia watching, the United States has set an international precedent for sending drones over borders to kill enemies.

The entire precedent thesis is wrong

Washington Post, 11/1/’12

(“Pulling the U.S. drone war out of the shadows,” Editorial Board)

Similarly, Mr. Volker asks “what we would say if others used drones to take out their opponents” — such as Russia in Chechnya or China in Tibet. The answer is twofold: Other nations will inevitably acquire and use armed drones, just as they have adopted all previous advances in military technology, from the bayonet to the cruise missile. But the legal and moral standards of warfare will not change. It’s hard to imagine that Russian drones would cause more devastation in Grozny than did Russian tanks and artillery, but if used there they would surely attract international censure.

# 1NR

## DA

Nuclear deal key to an overall grand bargain—key to peace in Syria, Iraqi stability, avoiding Central Asian and ME war and stabilizing Afghanistan post-transition. Also, peace deal!

Hirsh 11/6/13

Michael, chief correspondent, National Journal “Why the U.S. Should Go for a Grand Bargain With Iran,” http://www.nationaljournal.com/white-house/why-the-u-s-should-go-for-a-grand-bargain-with-iran-20131106

And yet as distant as it all looks, **the possibility of some kind of "grand bargain" exists.** A deal that would not only put Iran's nuclear program on hold (that's all you're going to get) but might also prompt moderates in Tehran to temporize the regime's **other destabilizing policies in the Mideast and Central Asia**—**its support for Hezbollah** in Syria, **its anti-Israel rhetoric and terrorism**, and its temporary alliance with the Taliban in neighboring Afghanistan, among other things. The fact is, little of note is going to get done on any major issue without Iranian cooperation of some kind, and that has not proved impossible in the past. As Ryan Crocker, one of America's most distinguished diplomats, wrote in The New York Times on Monday, "Although most Americans may be unaware of it, talks with Iran have succeeded before and they can succeed again." Especially because Rouhani and his worldly foreign minister, Mohammad Javad Zarif, have themselves been part of some of those quasi-successful talks. In 2001-02, for example, Iran provided invaluable assistance in stabilizing the new Karzai government in Afghanistan (Zarif led the talks for Tehran). Iran also became the largest non-OECD donor to post-Taliban Afghanistan, pledging $550 million worth of assistance (about the same as the U.S.) at the Tokyo conference. Only days after that conference, in another of the disastrous decisions that so marked his first term, George W. Bush declared Iran to be part of the "axis of evil," immediately overturning the progress being made by his own diplomats. According to Iranian moderates I spoke to during a 2007 visit to Iran and then later on, the Bush speech also discredited everyone in Tehran who favored rapprochement. "The hard-liners, when we talk with them, they say, 'Dear friend, you talked with the Americans in a very moderate way, and you didn't get any result at all,' " S.M.H. Adeli, Iran's urbane former ambassador to London, told me then. Even so, in the spring of 2003, Iranian officials, using their regular Swiss intermediary, faxed a two-page proposal for comprehensive talks to the State Department, including discussions of a "two-state solution" between Israel and the Palestinians. The Bush administration dismissed it at the time as dubious. Zarif, a career diplomat educated at the University of Denver who has conducted perhaps more direct negotiations with Americans than any other Iranian official, also had a hand in that maneuver. The usual response of skeptics is that the Iranian leadership is just bargaining for time, especially in building a bomb. Opposition to a relationship with the "Great Satan" and any recognition of its minion, Israel, runs deep in the marrow of the Islamic Republic. The basic ideology of the Iranian revolution, after all, was fostered by opposition to the U.S.-backed Shah and the CIA-orchestrated ouster of President Mohammed Mossadegh in 1953. Without America as an enemy, the mullahs don't have as much reason to justify their rule. But while it's not about to fade away, all evidence the Iranian revolution is in a state of turmoil, thanks in large part to harsh international sanctions that have finally, after many years, begun to set in motion a deeper macroeconomic malfunction, including a worrying amount of inflation. Hardliners and moderates are openly fighting. Conventional wisdom is that the chief hard-liner on nuclear and other issues is the supreme leader, Ayatollah Ali Khamenei, but he's given Rouhani far more flexibility than in the mid-2000s, when as Tehran's chief nuclear negotiator he was slapped down. More to the point, Khamenei is now 74, and it's very unclear whether there will be a supreme leader to follow him. What is **beyond dispute** is that on nearly every front from **Syria to Iraq to Afghanistan**, Iranian cooperation is a **necessary ingredient** for any measure of U.S. success. In Syria, Bashar al-Assad is gaining ground and refusing to talk to the rebels largely because of the help he's getting from Iran-backed Hezbollah troops. In increasingly violence-wracked Iraq, Shiite Prime Minister Nuri al-Maliki feels he has a freer hand to sideline Sunnis (thereby giving new life to al-Qaida in Iraq) because of support from Tehran, to which Maliki is also granting overflight rights for weapons supplies into Syria. If post-2014 Afghanistan is to gain **any stability,** Iran must be induced to resume its formerly hostile relationship with the Sunni Taliban in the West. And if Iran can be persuaded to further distance itself from Hamas (Tehran reportedly slashed funding in anger after Hamas moved its headquarters from Damascus to Qatar) and at least quiet its anti-Israel rhetoric, that would make a **Palestinian peace deal** more **possible**. Above all, of course, an Iran that opens itself to international nuclear inspection would **put control rods** **in the most dangerously destabilizing trend in the region**. Iranian officials have hinted for years that, under certain conditions, Tehran might be willing to stop short of building a bomb. "Iran would like to have the technology, and that is enough for deterrence," Adeli told me in 2007. But moderates who might go in that direction, like Zarif, must have ammunition with which to silence the hardliners. And that means a deal.

Afghan stability is key to prevent extinction

Carafano 10 (James Jay is a senior research fellow for national security at The Heritage Foundation and directs its Allison Center for Foreign Policy Studies, “Con: Obama must win fast in Afghanistan or risk new wars across the globe,” Jan 2 http://gazettextra.com/news/2010/jan/02/con-obama-must-win-fast-afghanistan-or-risk-new-wa/)

We can expect similar results if Obama’s Afghan strategy fails and he opts to cut and run. Most forget that throwing South Vietnam to the wolves made the world a far more dangerous place. The Soviets saw it as an unmistakable sign that America was in decline. They abetted military incursions in Africa, the Middle East, southern Asia and Latin America. They went on a conventional- and **nuclear-arms spending spree**. They stockpiled enough smallpox and anthrax to **kill the world several times over**. State-sponsorship of terrorism came into fashion. Osama bin Laden called America a “paper tiger.” If we live down to that moniker in Afghanistan, odds are the world will get a lot less safe. Al-Qaida would be back in the game. Regional terrorists would go after both Pakistan and India—potentially **triggering a nuclear war** between the two countries. Sensing a Washington in retreat, Iran and North Korea could shift their nuclear programs into overdrive, hoping to save their failing economies by selling their nuclear weapons and technologies to all comers. Their nervous neighbors would want nuclear arms of their own. The resulting nuclear arms race could be far more dangerous than the Cold War’s two-bloc standoff. With multiple, independent, nuclear powers cautiously eyeing one another, the world would look a lot more like Europe in 1914, when precarious shifting alliances **snowballed into a very big, tragic war**. The list goes on. There is no question that countries such as Russia, China and Venezuela would rethink their strategic calculus as well. That could produce all kinds of serious regional challenges for the United States. Our allies might rethink things as well. Australia has already hiked its defense spending because it can’t be sure the United States will remain a responsible security partner. NATO might well fall apart. Europe could be left with only a puny EU military force incapable of defending the interests of its nations.

Just reaching a deal prevents Israeli strikes

Freilich 11/14/13

Chuck, senior fellow at Harvard’s Kennedy School, was a deputy national-security adviser in Israel. He is the author of Zion’s Dilemmas: How Israel Makes National Security Policy, “Iran: Deal in the Making, or Persian Carpet Ride?,” National Interest

A diplomatic deal is clearly preferable **for all sides,** **none more than Israel**, which will be left with only two options should the negotiations fail; living with a nuclear Iran through a policy of deterrence, **or a military strike**, neither of which is a particularly attractive alternative. **It is far from clear** that Israel would be willing to accept the first option, even as part of a broader American strategy of deterrence and containment, and a military strike will likely achieve no more than a two to three year postponement of the Iranian program; Iran already has the technology and the various installations could be rebuilt within this period of time. Prime Minister Netanyahu has taken an all-or-nothing approach, that only a deal providing for a complete dismantlement of the Iranian nuclear program is acceptable. In principle, of course, he is right and this is actually the position embodied in the relevant Security Council resolutions and past American and European policy statements. The question, however, is whether this objective is achievable, or whether a less-than-perfect agreement might not provide a sufficient outcome, given the alternatives. Most analysts appear to believe today that a complete dismantlement of the Iranian nuclear program is not achievable, and that if we are to reach any agreement that caps and rolls it back, but does not completely eliminate it, Iran will have to be allowed to retain an enrichment capability at the civil level. For Israel the stakes are existential, but a perfect agreement may be the enemy of a problematic but acceptable one.

Strikes cause extinction

Masko, 2/9/12

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There’s always been the danger of something “going nuclear” in our fragile world where countries such as Iran and Israel seem to like rattling sabers at each other was once viewed as “same old, same old,” by political science experts when referring to these countries threats of war remaining the same. However, it’s not same old, same old, when President Obama told NBC News in a TV interview Feb. 5 that while he does not think Israel has decided whether to attack Iran, the United States is “going to be sure that we work in lockstep as we proceed to try to solve this… hopefully diplomatically.” Thus, if Israel does attack Iran’s nuclear facilities and war breaks out, “even a small-scale, regional nuclear war could produce as many direct fatalities as all of World War II and disrupt the global climate for a decade or more, with environmental effects that could be devastating for everyone on Earth, university researchers have found,” stated a report on the University of California Los Angeles website aasc.ucla.edu; while pointing to “a team of scientists” at Rutgers, the State University of New Jersey; the University of Colorado at Boulder and UCLA who’ve researched the implications of such an attack. What's at stake for the world? Overall, the stakes could not be any greater for a world that fears war after more than 20 years of sabre rattling by Israel over Iran’s nuclear ambitions. In turn, President Obama and other world leaders seem very concerned that it’s not if but when “an Israeli military attack on the Islamic Republic of Iran” will leave in its wake a new war in the Middle East, with more terrorism worldwide laced with even broader economic woes at a time when many countries are already at a breaking point. Moreover, the top U.S. intelligence official told Congress Jan. 31 – in an annual report about threats facing the nation – that “Iran’s leaders seem prepared to attack U.S. interests overseas, particularly if they feel threatened by possible U.S. action.” Jim Clapper, director of National Intelligence, also told the Senate Intelligence Committee Jan. 31 in an MSNBC TV report that America “now faces many interconnected enemies, including terrorists, criminals and foreign powers, who may try to strike via nuclear weapons or cyberspace, with the movement's Yemeni offshoot and ‘lone wolf’ terror attacks posing key threats.” Middle East nuclear confrontation feared “While a regional nuclear confrontation – such as the one feared between Iran and Israel – among emerging third-world nuclear powers might be geographically constrained,” report this noted team of U.S. scientists, “the environmental impacts could be worldwide.” Thus, even the great Atlantic Ocean – that sits between the U.S. and the Middle East – would not buffer the “fallout” that will be in the “global atmosphere” impacting an already fragile world climate situation. While these conclusions of dark days ahead for the world if the so-called “nuclear genie gets out of the bottle” -- by U.S. scientists during a meeting of the American Geophysical Union – was back in 2006, the UCLA website that presented these nuclear war fears, has updated such conclusions about a clear and present danger of possible nuclear confrontation if Israel attacks Iran, and as of Feb. 9, 2012, the news from Israel is not good at all, state experts.

Sealing the deal NOW is key—continued delay saps momentum on all sides, collapses negotiations

Einhorn 11/14/13

Robert, Senior Fellow, Foreign Policy, Center for 21st Century Security and Intelligence, Arms Control and Non-Proliferation Initiative, “Despite The Hiccup In Geneva, Iran Nuclear Talks Still On Track,” <http://www.brookings.edu/blogs/iran-at-saban/posts/2013/11/14-einhorn-iran-nuclear-talks-on-track>

Time is not on anyone’s side. As long as sanctions are in effect — and they will remain in effect until an acceptable final deal is implemented — Iran’s economy will continue to deteriorate. And unless an initial deal **is put in place soon** to halt further advances in Iran’s nuclear program, Iran could take steps that would bring it much closer to having a **rapid breakout capability**. No less than Iran, the United States should want an early and sound deal. But **the longer it takes to get such a deal, the harder it will be to bring it to closure**, as opponents of any negotiated solution mobilize and the necessary political support for a deal, **in Washington and Tehran**, erodes. Of course, neither the United States nor Iran will rush into a deal before it believes a deal is in hand that serves its interests. But neither should they believe that the opportunity for arriving at such a deal will stay open for long.

Iran deal coming now

**CFR** **11/12/13** (Interviewee: Barbara Slavin, Senior Fellow, Atlantic Council, Interviewer: Bernard Gwertzman, Consulting Editor, “Despite Hitch, Iran Nuclear Deal in Sight”, November 12, 2013, <http://www.cfr.org/iran/despite-hitch-iran-nuclear-deal-sight/p31838?cid=nlc-public-the_world_this_week-link12-20131115&sp_mid=44372815&sp_rid=emJkb3VnbGFzQGdtYWlsLmNvbQS2>

The prospects for an interim agreement between Tehran and world powers to limit Iran's nuclear enrichment program are "better than fifty-fifty" when diplomacy resumes in Geneva next week, says Barbara Slavin, an Iran expert for the Atlantic Council. Iranian president Hassan Rouhani faces growing political pressure at home to move negotiations forward, she explains. "He's about to cross the hundred-day line, and he was supposed to get an agreement with the West to lift some of the sanctions, and he hasn't achieved that yet." Meanwhile, she says that a separate deal Iran struck with the International Atomic Energy Agency this week, which allows the nuclear watchdog access to certain nuclear facilities, was a "very important step."

We've had a long weekend of nuclear diplomacy between Iran and the so-called P5+1 group [the United States, Britain, France, Russia, China, and Germany], which failed to reach an interim agreement. How close are we to an accord?

My impression is that we are close. Several individuals involved in the talks that I've spoken to over the weekend said that they are optimistic, that we're not far from an agreement, that there are still a couple of important questions that need to be settled, but that they're still expecting, as Secretary of State John Kerry has said, that this is a "doable deal" when talks resume November 20.

Do we know what held up the signing of an agreement this weekend?

It appears that the French were adamant on a couple of points—they wanted a specific commitment by the Iranians not to complete a heavy-water reactor at Arak that poses proliferation concerns; meanwhile, the Iranians wanted an explicit acknowledgement in the document of their "right" to enrich uranium. That was something that apparently the P5+1 would not accept at this stage. So there needed to be a return to capitals to figure out how to get over these obstacles.

And separately, Iran struck an agreement on Monday (November 11) with the International Atomic Energy Agency (IAEA). What is the significance there?

This is an overall joint statement on a framework for cooperation. It's the first such agreement in six years. It's quite detailed and says that the Iranians will give the IAEA early notification of any new nuclear facilities it is going to undertake. This is something that Iran is not obliged to do under the Nuclear Nonproliferation Treaty, but it is something that has been eagerly sought by the IAEA for some time—so it's a very important step.

If you look at the annex to the agreement, you see that there is access that will be given to a uranium mine [Gchine mine in Bandar Abbas]. Information will be provided on all new research reactors, as well as information on sixteen sites designated for the construction of nuclear power plants.

But in terms of the Arak facility, the Iranians have promised access to the heavy water production plant, but not the actual reactor under construction. So this may be a point of friction. Also, there's no mention of a site called Parchin, where the Iranians are alleged to have done some nuclear weapons research. The Iranians have essentially turned the site into a parking lot, so what, if anything, the IAEA would be able to discover if it actually went there is in question. Nevertheless it has been something that [IAEA Director-General] Yukiya Amano has called for in the past.

One other point: I saw Amano when he was in Washington about ten days ago, and I've never seen him so upbeat about cooperation with Iran. He said that after going around in circles for years with Iranians when Mahmoud Ahmadinejad was president, the Iranians really were seeking to make significant progress. So I think this is an important agreement. It doesn't give away the whole store, but it has some important provisions that the IAEA has been looking for.

Iran strategy is working—any Congressional rebukes trigger the link

Joel Rubin, Politico, 10/20/13, Iran’s diplomatic thaw with the West, dyn.politico.com/printstory.cfm?uuid=FBFABC3B-C9A8-47F8-A9AC-BC886BCE0552

Congratulations, Congress. Your Iran strategy is working. Now what?

The diplomatic thaw between Iran and the West is advancing, and faster than most of us had imagined. This is the result of years of painstaking efforts by the Obama administration and lawmakers to pressure the Islamic Republic into deciding whether it’s in Iran’s interest to pursue diplomacy or to continue suffering under crushing economic sanctions and international isolation.

Now that Iran has made a clear decision to engage seriously in diplomatic negotiations with the West over its nuclear program, its intentions should be tested. Members of Congress should be open to seizing this opportunity by making strategic decisions on sanctions policy.

The economic sanctions against Iran that are in place have damaged the Iranian economy. A credible military threat — with more than 40,000 American troops in the Persian Gulf — stands on alert. International inspectors are closely monitoring Iran’s every nuclear move. Iran has not yet made a decision to build a bomb, does not have enough medium-enriched uranium to convert to weapons grade material for one bomb and has neither a workable nuclear warhead nor a means to deliver it at long ranges. If Iran were to make a dash for a bomb, the U.S. intelligence community estimates that it would take roughly one to two years to do so.

Congress, with its power to authorize sanctions relief, plays a crucial role in deciding whether a deal will be achieved. This gives Congress the opportunity to be a partner in what could potentially be a stunning success in advancing our country’s security interests without firing a shot.

Consider the alternative: If the administration negotiates a deal that Congress blocks, and Congress becomes a spoiler, Iran will most likely continue to accelerate its nuclear program. Then lawmakers would be left with a stark choice: either acquiesce to an unconstrained Iranian nuclear program and a potential Iranian bomb or endorse the use of force to attempt to stop it. Most military experts rate the odds of a successful bombing campaign low and worry that failed strikes would push Iran to get the bomb outright.

Iran and the United States need a political solution to this conflict. Now is the time to test the Iranians at the negotiating table, not push them away.

Congress is also being tested, but the conventional wisdom holds that lawmakers won’t show the flexibility required to make a deal. Such thinking misses the political volatility just beneath the surface: Americans simply don’t support another war in the Middle East, as the congressional debate over Syria made crystal clear. Would they back much riskier military action in Iran?

Fortunately for Congress, President Barack Obama was agile enough to seize the diplomatic route and begin to eliminate Syria’s chemical weapons. These results are advancing U.S. security interests. And members of Congress breathed a collective sigh of relief as well as they didn’t have to either vote to undercut the commander in chief on a security issue or stick a finger in the eye of their constituents.

The same can happen on Iran. By pursuing a deal, Obama can provide Congress with an escape hatch, where it won’t have to end up supporting unpopular military action or have to explain to its constituents why it failed to block an Iranian bomb. A verifiable deal with Iran that would prevent it from acquiring a nuclear weapon would require sanctions relief from Congress. But that’s an opportunity to claim victory, not a burden. And it would make Congress a partner with the president on a core security issue. Congress could then say, with legitimacy, that its tough sanctions on Iran worked — and did so without starting another unpopular American war in the Middle East.

Moderate middle strategy key to keep the Iranians negotiating--

Milani 11/14/13

Abbas, contributing editor at The New Republic, the director of Iranian Studies at Stanford University, and the author, most recently, of The Shah, “Two Reasons Why Iran Resumed Nuclear Negotiations,” http://www.newrepublic.com/article/115594/iran-nuclear-negotiations-us-resumed-two-reasons

But a far more important change has been overlooked: For years, Iran’s nuclear strategy **was** defined by the effort to buy time by obfuscation, wasting meetings by waxing rhetorical about the litany of the Big Satan’s past errors. They also used Chinese desire for oil, Turkey’s thirst for profits, Russia’s penchant for bellicosity towards the U.S., and occasionally even European companies’ need for oil and market shares to further their strategy. In the meantime, they used the time gained to create a nuclear reality on the ground. President Hassan Rouhani, once Iran's lead nuclear negotiator, was the first official to openly lay bare the nuances of this buy-time-create-reality strategy. **Today**, however, **Islamic Iran’s nuclear negotiators can’t wait to reach a deal.** Just this week they signed a new agreement with the International Atomic Energy Agency to allow inspection of Arak’s heavy-water reactor and a uranium mine. They are suddenly eager to fast-dial a new relationship with the U.S.—the same country they had demonized for almost three decades. Two conflicting realities have helped bring about this sudden change of strategy, and unless we understand both, then the ways to a potentially enduring solution to the now-snagged negotiations can’t be found. First and foremost, the nuclear reality the Iranian regime apparently hoped for was to have a break-out capacity: the ability to have not the bomb, but **the ability to build one in short order**. All evidence is that such a break-out capacity is now a virtual fait accompli. Iran now has some 19,000 centrifuges, ready to churn, an ample supply of both 5- and 20-percent-enriched uranium, even the technology to build new generation of centrifuges. Once and if they decide to build the bomb, they can have the requisite highly enriched uranium for at least one bomb **in** about **a month**. Enriched uranium is of course only one aspect of having a break-out capacity. Other components include weaponizing the uranium, miniaturizing the bomb, learning to detonate it, and finding a delivery mechanism. There are different estimates on how far they have developed along each of these components. When the Arak heavy-water reactor becomes operational, the regime might have an even shorter time to break-out. The fact that only this week the regime announced new developments in their missile technology—including testing a missile with solid fuels—has not helped quell anxieties about the regime’s break-out capacity. The second important fact to consider is the cost of this break-out capacity. With the increasing bite of sanctions, and with eight years of utter corruption and incompetence during President Mahmoud Ahmadinejad's tenure, the Islamic regime has suddenly faced the reality that their long-sought break-out capacity has been bought at an exorbitantly high price. With oil revenues drying up, and increasing competition among factions within the regime for a bigger share of the shrinking pie, Iran urgently needed an agreement to end the sanctions. Those who oppose any deal with the regime believe that not only making no deal at this time, but increasing sanctions, will either bring about the collapse of the regime or convince it to roll back its nuclear program. That argument, however, overlooks a critical point: The regime, particularly Supreme Leader Ali Khamenei and his allies, are surely **inept but not suicidal.** They have spent so much political and economic capital on achieving the break-out capacity that any agreement they could not sell to the Iranian people as a victory—or, in their new language, a "win-win"—**would be tantamount to political suicide** for them. It is thus as much folly to think that the regime will, in desperation, accept **any deal**—including one that requires a complete dismantlement of their enrichment program—as it is to think that any deal they offer is worth making. The many sides directly or indirectly involved in the nuclear negotiations have widely different endgames in mind: On the one hand the regime wants to give up as little of its break-out capacity as possible—a “hedge,” in the parlance of nuclear experts—in return for quick relief from sanctions. At the same time, caught in their own rhetorical prison-house, they cannot admit that the urgency they desire for an end of sanctions is because the sanctions are hurting. Countries like Israel, Saudi Arabia, and France believe that any concession, short of complete dismantlement of Iran’s program, is a dangerously bad deal. It will help the regime solve its current crisis, and embolden the radicals to further develop their break-out capacity. Ironically, the radicals in Iran have been increasingly vociferous in their attacks on the recent Geneva talks. The West, they claim, is desperate to make a deal with Iran, and they want a return to the yesteryear policies of no concessions. Some even demand an apology for the West’s temerity in suggesting there were any legitimate concerns about Iran’s nuclear program. Khamenei, who has publicly, albeit half-heartedly supported the negotiations, has allowed his minions to rip into anyone who expresses hope for a thaw with the West and a resolution of the nuclear crisis. **In between these extremes**—the regime wanting to be let off the hook, its foes insisting Iran face stricter sanctions, and radicals in Iran quixotically denying sanctions are hurting while insisting that continued intransigence is the only way through this impasse—**what is needed is a** **prudent negotiation strategy** with Iran that achieves several goals. First: Any deal should maximize the difference between the time a political decision to build a bomb is made and the time the device is made and deliverable. Second: Only sanctions that hurt the people of Iran, as opposed to those that hurt the regime, should be reduced before a final agreement is reached. Third: While Iran's regime must not be unnecessarily embarrassed for its gross mismanagements of nuclear negotiations in the past (for example, the outlines of the deal on the table now are apparently not different than what Iran could have had six years ago, thus sparing its people much agony) and even be allowed to declare that it has arrived at a win-win agreement, it must not be allowed to hide all the facts from the people of Iran.