# 1AC

## 1AC Kentucky

### 1AC Terrorism

**Contention one is terrorism –**

#### Scenario 1 is Yemen –

#### Obama has shifted most drone strikes to Yemen

**Hudson et al 13**

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An extensive CT drone campaign requires coordination with the central government of the territories in question. Evidently, Ali Abdallah Saleh's Yemeni government knew of the program and participated in it. Wikileaks revealed the particulars of a 2010 meeting with General David Petraeus, in which former President Saleh said (speaking of air strikes in general), "We'll continue saying the bombs are ours, not yours." Moreover, Saleh lamented mistakes due to the inaccuracy of cruise-missile strikes and preferred that the United States use fixed-wing aircraft (i.e., drones) in the future. Since then, the administration has increased its drone strikes and expanded the targeting parameters within Yemen and the Horn of Africa. Among the many ironies of drone strikes, Saleh's candor showed that old-style authoritarians are not above happily claiming credit for borrowed military power to enhance their "legitimacy."¶ Over the last decade, FATA has been subject to the largest drone campaign to date. The program started off slowly in 2004 under the Bush administration and has been expanded greatly. During Bush's tenure, there were approximately 50 strikes in FATA from 2004 to 2009. In Obama's first two years in office, from 2009 to 2010, the number of strikes in FATA tripled in half as much time. After 2010, the busiest year, drone strikes in FATA have decreased from 70 in 2011 to less than 25 in the first half of 2012. Notwithstanding the decrease in drone usage in FATA, this new and largely preferred program for "disrupting" or "decapitating" U.S. foes is not in decline; it has simply shifted location.¶ In our previous article, we posited that the increasing number of drone strikes in FATA and the decreasing ratio of deaths of so-called "high-value targets" (HVTs) to total deaths was a result of the larger payloads on UAVs and increasingly lax targeting requirements. And, as with the case of Pakistan, new technologies and the recent White House authorization that gave the Central Intelligence Agency (CIA) and the Joint Special Operations Command (JSOC) more options to conduct strikes in Yemen, will likely produce a similar outcome.1 New technology with larger payload capacity and wider targeting parameters through the use of "signature strikes," designed to eliminate groups of people who appear (conveniently and posthumously) to be militants, will likely produce an increase in the lethality and frequency of drone strikes in Yemen.

**Yemen drone strikes will cause wide spread blowback and strengthen the capacity of AQAP – that undermines Yemen stability**

**Hudson et al 13**

Dr. Leila Hudson, Colin Owens, and Matt Callen, is associate director of the School of Middle Eastern & North African Studies at the University of Arizona and director of SISMEC, graduate of the School of Middle Eastern & North African Studies and the School of Government and Public Policy, and PhD candidate at the School of Middle Eastern & North African Studies. “Drone Warfare in Yemen: Fostering Emirates through Counterterrorism?,” Middle East Policy Council, 2013. http://mepc.org/journal/middle-east-policy-archives/drone-warfare-yemen-fostering-emirates-through-counterterrorism

Just as likely, as the case of FATA has clearly shown, increased strikes in Yemen will produce distinct forms of blowback. This will manifest itself in terms of increased recruitment for al-Qaeda or affiliated groups and a reduction of the Yemeni leadership's ability to govern, increasing competition from alternative groups.¶ In the case of drone use in FATA, we identified five distinct forms of blowback, all of which are directly applicable to the use of drones in Yemen. The first, purposeful retaliation is typified by the events of the 2009 Khost bombing of CIA Camp Chapman and, more recently, an al-Qaeda attack earlier in 2012 on a liquid-natural-gas pipeline running through Yemen's Shabwa province.2 The motivation behind both of these attacks has been cited as the unremitting presence of, and specific attacks from, U.S.-operated drones. The second form of blowback deals with the increased ability of AQAP to recruit new members, especially those who have had friends or family killed in the attacks. Third, an overreliance on drones creates strategic confusion. While the United States is not waging a counterinsurgency (COIN) campaign next to Yemen — as it is in Afghanistan, Pakistan's western neighbor — the control of the drone program has oscillated between the CIA and JSOC, reducing U.S. accountability and blurring the lines between military and intelligence operations. Taken together, these three factors foster two additional forms of blowback: the continued destabilization of Yemen and an increasingly precarious alliance between the American and Yemeni governments. All told, these distinct forms of blowback combine to heighten Yemen's ungovernability.

#### Strengthened AQAP undermines the Saudi regime

**Abosaq 12** (Colonel Hassan Abosaq 12, US Army War College, master of strategic studies degree candidate, 2012, "The Implications of Unstable on Saudi Arabia," Strategy Research Project, www.dtic.mil/cgi-bin/GetTRDoc?Location=U2&doc=GetTRDoc.pdf&AD=ADA560581

AQAP has been vociferous in its opposition to the Saudi regime, and is likely to continue targeting the Kingdom, particularly its oil installations and members of the royal family. In August 2009, an AQAP member attempted to assassinate Prince Mohammed bin Naif, the Saudi Assistant Interior Minister for security affairs. The prince’s attacker was trained in and launched his attack from Yemen, confirming to the Saudis that instability in Yemen poses a security threat to Saudi Arabia. A strengthened AQAP in Yemen is certain to try to put pressure on Saudi Arabia and to strike Saudi targets. AQAP’s military chief, Qasin al-Raymi, warned the Saudi Leadership in July 2011 that they are still regarded as apostates. And he specifically placed King Abdullah, the late Crown Prince Sultan, Interior Minister Prince Naif, and his son Mohammed Bin Naif on the target list.21 In March 2010, Saudi Arabia foiled several planned attacks on oil installation with the arrest of more than 100 suspected al-Qaeda militants. The arrests included 47 Saudis, 51 Yemenis, a Somali, a Bangladeshi, and an Eritrean.22 The wider domestic strife in Yemen has provided AQAP with some breathing space. More worrisome for Saudi Arabia is the increased lawlessness within Yemen. Not only does this provide the space that al-Qaeda needs to regroup, train, recruit, but it also deflects the state resources away from counterterrorism operations. Saudi Arabia has for years been working to infiltrate al-Qaeda in its unstable neighbor to south, Yemen. Saudi Arabia has also been giving Yemen a great deal of assistance to counterterrorism and it is worrying to the Saudis to see all of that assistance diverted from the purposes for which it was intended. In June 2011, AQAP leaped into the security vacuum created by Yemen’s political volatility, and 63 al-Qaeda in the Arabian Peninsula fighters escaped from a Yemeni prison.23 This exemplifies how Yemeni instability emboldens this lethal al-Qaeda affiliate. As the Yemeni military consolidates its strength in an attempt to maintain state control and fight two insurgencies and oppress the protesters, AQAP has further expanded its safe haven in the country’s interior, further increasing their operational capacity. This organization has not only attacked police, foreigners, and diplomatic missions within the country, but also served as a logistic base for acts of terrorism abroad. Yemen also has become the haven for jihad militants not just from Yemen and Saudi Arabia, but from all over the world which includes some Arabs, Americans, Europeans, Africans and others. Al-Qaeda camps, where terrorists from all over the world train are also situated in Yemen. The growing anarchy and al-Qaeda presence could spill over into Saudi Arabia.

#### That destabilizes the Middle East

**Cordesman 11** (Anthony Cordesman 11, Arleigh A. Burke Chair in Strategy at CSIS, former director of intelligence assessment in the Office of the Secretary of Defense, former adjunct prof of national security studies at Georgetown, PhD from London University, Feb 26 2011, “Understanding Saudi Stability and Instability: A Very Different Nation,” http://csis.org/publication/understanding-saudi-stability-and-instability-very-different-nation

History scarcely means we can take Saudi stability for granted. Saudi Arabia is simply too critical to US strategic interests and the world. Saudi petroleum exports play a critical role in the stability and growth of a steadily more global economy, and the latest projections by the Department of Energy do not project any major reductions in the direct level of US dependence on oil imports through 2025.¶ Saudi Arabia is as important to the region’s security and stability as it is to the world’s economy. It is the key to the efforts of the Gulf Cooperation Council to create local defenses, and for US strategic cooperation with the Southern Gulf states. It plays a critical role as a counterbalance to a radical and more aggressive Iran, it is the source of the Arab League plan for a peace with Israel, and it has become a key partner in the war on terrorism. The US strategic posture in the Middle East depends on Saudi Arabia having a friendly and moderate regime.

#### That results in global nuclear war

**Russell 9** James, Senior Lecturer Department of National Security Affairs, Spring, “Strategic Stability Reconsidered: Prospects for Escalation and Nuclear War in the Middle East” Security Studies Center Proliferation Papers, http://www.analyst-network.com/articles/141/StrategicStabilityReconsideredProspectsforEscalationandNuclearWarintheMiddleEast.pdf

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

#### Scenario 2 is Blowback –

**Squo expansion of drone warfare undermines U.S. moral standing, breeds Anti-Americanism, and undermines our credibility**

**Brooks 13** (Rosa Brooks, Prof of Law @ Georgetown University Law Center and Bernard Schwartz Senior Fellow at the New America Foundation, Statement for the Record Submitted the Senate Committee on Armed Services, May 16, 2013.)

Former vice-chair of the Joint Chiefs of Staff General James Cartwright recently ¶ expressed concern that as a result of U.S. drone strikes, the U.S. may have “ceded some of our ¶ moral high ground.”35 Retired General Stanley McChrystal has expressed similar concerns:¶ “The resentment created by American use of unmanned strikes… is much greater than the ¶ average American appreciates. They are hated on a visceral level, even by people who’ve never ¶ seen one or seen the effects of one,” and fuel “a perception of American arrogance.” 36 Former ¶ Director of National Intelligence Dennis Blair agrees: the U.S. needs to “pull back on unilateral ¶ actions… except in extraordinary circumstances,” Blair told CBS news in January. U.S. drone ¶ strikes are “alienating the countries concerned [and] …threatening the prospects for long-term ¶ reform raised by the Arab Spring…. [U.S. drone strategy has us] walking out on a thinner and ¶ thinner ledge and if even we get to the far extent of it, we are not going to lower the fundamental ¶ threat to the U.S. any lower than we have it now.”37¶ Mr. Chairman, Senator Inhofe, I believe it is past time for a serious overhaul of U.S.¶ counterterrorism strategy. This needs to include a rigorous cost-benefit analysis of U.S. drone ¶ strikes, one that takes into account issues both of domestic legality and international legitimacy, ¶ and evaluates the impact of targeted killings on regional stability, terrorist recruiting, extremist ¶ sentiment, and the future behavior or powerful states such as Russia and China. If we undertake ¶ such a rigorous cost-benefit analysis, I suspect we may come to see scaling back on kinetic ¶ counterterrorism activities less as an inconvenience than as a strategic necessity—and we may¶ come to a new appreciation of counterterrorism measures that don’t involve missiles raining ¶ from the sky.¶ This doesn’t mean we should never use military force against terrorists. In some ¶ circumstances, military force will be justifiable and useful. But it does mean we should ¶ rediscover a long-standing American tradition: reserving the use of exceptional legal authorities ¶ for rare and exceptional circumstances. ¶ Thank you for the opportunity to testify today.

#### Ending drones key to host country cooperation

**Streeter ’13** (Devin C. Streeter, Helms School Of Government, Liberty University “Boko Haram, Drone Policy, And Port Security: Issues For Congress”, [http://www.academia.edu/3523639/U.S.\_Drone\_Policy\_Tactical\_Success\_and\_Strategic\_Failure](http://www.academia.edu/3523639/U.S._Drone_Policy_Tactical_Success_and_Strategic_Failure)shaw), April 19, 2013)

A new set of drone operating procedures would help to repair international relations and decrease civilian casualties. Furthermore, nations like Yemen, Somalia, and others, will not feel threatened and will readily accept U.S. assistance in counterterrorism efforts.¶ 78¶ Cooperation with affected nations will ensure that their sovereignty is not violated¶ 79¶ and the use of human intelligence programs will reduce civilian casualties, thus resulting in a sanitary, more effective drone operation.¶ 80¶ While the U.S. drone program has many noteworthy tactical successes, it simultaneously has suffered various strategic failures. Collateral damage has directly strained our relations with Pakistan, and indirectly stressed our relations with Europe, Asia, and South America. However, by increasing joint cooperation and decreasing civilian casualties, the harms inflicted on international relations can be reconciled. If this new system is implemented, not only will United States policy makers see the radical decrease of innocent deaths, but they will also see a decrease in terrorism and the terrorist recruiting pool.¶ 81¶ Confronting this issue and establishing a new set of standard operating procedures should be on the forefront of every elected official’s agenda, for the purpose of improving foreign policy and repairing international relations.

#### Host country cooperation key

**Cordesman ’13** (Anthony Cordesman, Arleigh A. Burke Chair in Strategy at CSIS, “The Common Lessons of Benghazi, Algeria, Mali, Tunisia, Egypt, Syria, Iraq, Yemen, Afghanistan, Pakistan, and the Arab Spring”, <http://csis.org/publication/common-lessons-benghazi-algeria-mali-tunisia-egypt-syria-iraq-yemen-afghanistan-pakistan>, January 28, 2013)

Working with Regional and Host Country Partners The third lesson is that in most cases the United States will find that the key partner will not be a European ally but either a regional partner or the host country itself. The internal dynamics of the host country that will determine what real world opportunities exist at what mix of costs and benefits. If the host country lacks the willingness and absorption capability to use U.S. and allied aid, the default setting should be containment not intervention. It is a grim reality that regardless of the humanitarian cost, there is little point in trying to help countries that cannot help themselves and creating a culture of dependence that shifts that responsibility to the United States or some outside power. More broadly, the United States should learn that it needs to work through local governments on their terms and rely on local allies that share a common religion and value system with the host or target country. This is particularly true because much of the reason for the rebirth of religious values throughout the Islamic world has come from the failure of secular governance. U.S. strengths consist of helping nations and nonstate actors deal with secular problems and needs, but the United States will always face major obstacles when it comes to dealing with Islam and different cultural values. This is why allies like the southern Gulf states, Arab states, Turkey and other states with largely Islamic populations will be key partners at both the regional and national level. They can act in ways the United States and other outside powers cannot. They do not bring the burden of western secularism, ties to Israel, or the history of European colonialism to a given problem. They also do not bring the baggage of intervention in Iraq and Afghanistan or the war on terrorism. Moreover, such partnerships are necessary because the United States must also work with its regional allies to help them to maintain or achieve their own internal stability and to limit the risk of the political upheavals that are underway in so many states. Patient diplomatic and advisory efforts to help allied and friendly countries make their own reforms in areas like economics and governance will be key sources of stability and evolutionary change. So will assistance in creating effective counterterrorism forces and internal security efforts, as will support to regional security structures like the Gulf Cooperation Council.

#### Drones only spread terrorist organizations out and creates affiliates associated with former al-Qaeda members

**Boyle, 13** (Michael J. Boyle, Assistant Professor of Political Science at La Salle University in Philadelphia. He was previously a Lecturer in International Relations and Research Fellow at the Centre for the Study of Terrorism and Political Violence (CSTPV) at the University of St. Andrews. He is also an alumnus of the Political Science Department at La Salle. “The costs and consequences of drone warfare” International Affairs 89: 1 (2013) 1–29)

Yet the evidence that drones inhibit the operational latitude of terrorist groups and push them towards collapse is more ambiguous than these accounts suggest.57 In Pakistan, the ranks of Al-Qaeda have been weakened significantly by drone strikes, but its members have hardly given up the fight. Hundreds of Al-Qaeda members have fled to battlefields in Yemen, Somalia, Iraq, Syria and elsewhere.58 These operatives bring with them the skills, experience and weapons needed to turn these wars into fiercer, and perhaps longer-lasting, conflicts.59 In other words, pressure from drone strikes may have scattered Al-Qaeda militants, but it does not neutralize them. Many Al-Qaeda members have joined forces with local insurgent groups in Syria, Mali and elsewhere, thus deepening the conflicts in these states.60 In other cases, drones have fuelled militant movements and reordered the alliances and positions of local combatants. Following the escalation of drone strikes in Yemen, the desire for revenge drove hundreds, if not thousands, of Yemeni tribesmen to join Al-Qaeda in the Arabian Peninsula (AQAP), as well as smaller, indigenous militant networks.61 Even in Pakistan, where the drone strikes have weakened Al-Qaeda and some of its affiliated movements, they have not cleared the battlefield. In Pakistan, other Islamist groups have moved into the vacuum left by the absence of Al-Qaeda, and some of these groups, particularly the cluster of groups arrayed under the name Tehrik-i-Taliban Pakistan (TTP), now pose a greater threat to the Pakistani government than Al-Qaeda ever did.62 Drone strikes have distinct political effects on the ecology of militant networks in these countries, leaving some armed groups in a better position while crippling others. It is this dynamic that has accounted for the US decision gradually to expand the list of groups targeted by drone strikes, often at the behest of Pakistan. Far from concentrating exclusively on Al-Qaeda, the US has begun to use drone strikes against Pakistan’s enemies, including the TTP, the Mullah Nazir group, the Haqqani network and other smaller Islamist groups.63 The result is that the US has weakened its principal enemy, Al-Qaeda, but only at the cost of earning a new set of enemies, some of whom may find a way to strike back.64 The cost of this expansion of targets came into view when the TTP inspired and trained Faisal Shahzad to launch his attack on Times Square.65 Similarly, the TTP claimed to be involved, possibly with Al-Qaeda, in attacking a CIA outpost at Camp Chapman in the Khost region of Afghanistan on 30 December 2009.66

**That has re-energized al-qaeda now – makes a risk of attack more likelier than ever**

**Riedel 9/7** ([Bruce Riedel](http://www.brookings.edu/experts/riedelb), Director, [The Intelligence Project](http://www.brookings.edu/about/projects/intelligence) Senior Fellow, [Foreign Policy](http://www.brookings.edu/about/programs/foreign-policy), [Saban Center for Middle East Policy](http://www.brookings.edu/about/centers/saban), [Center for 21st Century Security and Intelligence](http://www.brookings.edu/about/centers/security-and-intelligence), “The Coming of Al Qaeda 3.0,” August 7, 2013, <http://www.brookings.edu/research/opinions/2013/08/06-new-terror-generation-al-qaeda-version-3-riedel>)

In case anyone needed reminding, the [recent global terror alert](http://www.thedailybeast.com/cheat-sheets/2013/08/06/cheat-sheet.html#2) illustrates that, 15 years after its first attacks on America, Al Qaeda is thriving. The coup in Egypt and the chaotic aftermath of the Arab awakening is only going to add more militants to this army of radicals. Failed revolutions and failing states are like incubators for the jihadists, a sort of Pandora’s Box of hostility and alienation. The news that al Qaeda leader Ayman al-Zawahiri and his man in Yemen, Nasr al Wuhayshi, were [communicating](http://www.washingtonpost.com/world/national-security/al-qaeda-leader-zawahiri-is-said-to-have-ordered-terrorist-attack/2013/08/05/9eb4799e-fe1b-11e2-bd97-676ec24f1f3f_story.html) and hatching plots to attack Western targets in the region is no surprise. Like any CEO of a multinational company, Zawahiri is in regular communication with al Qaeda’s half dozen regional franchises—just as Osama bin Laden was before he was killed. What is new is the rapid growth of these franchises—associated cells and sympathetic movements from Algeria to Aden. The uprisings that swept the Middle East two years ago initially threatened al Qaeda by suggesting a better alternative to terror and jihad in the form of democracy and peaceful change. Now the revolutions have all but failed, creating more chaos than constitutions, and Twitter is not mobilizing reform. The [pandemonium](http://www.nytimes.com/2013/08/06/world/middleeast/rebels-gain-control-of-government-air-base-in-syria.html) in Syria, Libya, and Egypt, are like a hothouse for al Qaeda, which is thriving just as it has in Somalia and Afghanistan. **But Egypt is the most critical piece**. Zawahiri was taken by surprise in 2011 when the revolution swept President Hosni Mubarak from power. Indeed, his first statements on the revolution bordered on the incoherent. But his message has since then become clear. Last week, al Qaeda issued a statement from his hideout in Pakistan that urged Egyptians to fight the army coup. Zawahiri said the Egyptian Army is an American tool and that the coup was fueled by Saudi and Gulf money. In an I-told-you-so moment, Zawahiri reminded the Muslim Brotherhood—and the now-ousted President Mohamed Morsi—that al Qaeda had always maintained that nothing was to be gained through the ballot box and that jihad was the only viable path to power. Zawahiri seems to have calculated that the army coup will radicalize millions of Muslim Brotherhood members, driving them into the embrace of al Qaeda, and that Egypt will revert to the terror and violence that wracked it in the early 1990s. He may be right. In Syria, Iraq, and [Lebanon](http://www.thedailybeast.com/articles/2013/07/29/al-qaeda-s-play-for-lebanon.html), al Qaeda has made unprecedented gains recently due to growing Sunni anger. This growth in these al Qaeda franchises has been encouraged by Zawahiri in covert and overt messages for two years. Jihadists from Chechnya to Copenhagen have followed his advice and flocked to Syria to join the jihad. Hundreds have “martyred” themselves fighting Syrian despot Bashar al Assad. [Jail breaks](http://www.thedailybeast.com/articles/2013/07/29/al-qaeda-in-iraq-abu-ghraib-jailbreak-a-counterterrorism-nightmare.html) in Iraq, Libya, and Pakistan have freed more than a thousand Qaeda prisoners in the last month alone, a move Zawahiri has also lauded. In Yemen the American-backed government in Sana has made some gains this year and has had a better record on reform than many other postrevolutionary regimes. Yet al Qaeda in the Arabian Peninsula is still attracting Yemenis and Saudis angered by drones, poverty, and desperation. Most of al Qaeda's energy and Zawahiri's effort is focused on the crisis inside the Arab and Islamic worlds for now. The new generation of al Qaeda—AQ 3.0, if you like—is more focused on the nearby enemy close to home than the faraway enemy in America and Europe. For now at least. But easy targets like the natural-gas plant in Algeria attacked last winter by an Qaeda cell based in Libya and Mali allow local groups to kill dozens of foreign "crusaders." And embassies are always favorite targets. After all, that is how al Qaeda started 15 years ago this month when it blew up our missions in Kenya and Tanzania. The Obama administration is right to alert the public to this threat. When it can, it should share more intelligence about how al Qaeda works, protecting collection sources, of course, but revealing how the enemy thinks and what its goals are. For example, two years after bin Laden's safe house in Pakistan was found, there must be more documents that can be shared with the public to heighten awareness and understanding about the inner workings and global connections of our still deadly enemy. When the CIA revealed Zawahiri’s communication with the Jordanian terrorist Abu Musssb al-Zarqawi in 2005, it highlighted a high level of disagreement within al Qaeda that hurt the movement. According to the Qaeda narrative, America is an enemy of Islam that supports oppressive military dictators and greedy royal princes who, in turn, rule by repression and secretly partner with Israel. How Obama handles events in Cairo this summer will impact that narrative for years to come. Unfortunately, the ill-starred Arab Awakening is fueling more anger and frustration in the Islamic world, converting more people to jihad. After 15 years, there is no end in sight to al Qaeda. And the new generation—AQ 3.0—may be with us for years to come.

#### Turning that tide is critical – al-Qaeda affiliates pose a high risk of nuclear and biological terrorism

**Allison**, IR Director @ Harvard, **12** [Graham, Director, Belfer Center for Science and International Affairs; Douglas Dillon Professor of Government, Harvard Kennedy School, "Living in the Era of Megaterror", Sept 7, <http://belfercenter.ksg.harvard.edu/publication/22302/living_in_the_era_of_megaterror.html>. BJM]

Forty years ago this week at the Munich Olympics of 1972, Palestinian terrorists conducted one of the most dramatic terrorist attacks of the 20th century. The kidnapping and massacre of 11 Israeli athletes attracted days of around-the-clock global news coverage of Black September’s anti-Israel message. Three decades later, on 9/11, Al Qaeda killed nearly 3,000 individuals at the World Trade Center and the Pentagon, announcing a new era of megaterror. In an act that killed more people than Japan’s attack on Pearl Harbor, a band of terrorists headquartered in ungoverned Afghanistan demonstrated that individuals and small groups can kill on a scale previously the exclusive preserve of states. Today, how many people can a small group of terrorists kill in a single blow? Had Bruce Ivins, the U.S. government microbiologist responsible for the 2001 anthrax attacks, distributed his deadly agent with sprayers he could have purchased off the shelf, tens of thousands of Americans would have died. Had the 2001 “Dragonfire” report that Al Qaeda had a small nuclear weapon (from the former Soviet arsenal) in New York City proved correct, and not a false alarm, detonation of that bomb in Times Square could have incinerated a half million Americans. In this electoral season, President Obama is claiming credit, rightly, for actions he and U.S. Special Forces took in killing Osama bin Laden. Similarly, at last week’s Republican convention in Tampa, Jeb Bush praised his brother for making the United States safer after 9/11. There can be no doubt that the thousands of actions taken at federal, state and local levels have made people safer from terrorist attacks. Many are therefore attracted to the chorus of officials and experts claiming that the “strategic defeat” of Al Qaeda means the end of this chapter of history. But we should remember a deeper and more profound truth. While applauding actions that have made us safer from future terrorist attacks, we must recognize that they **have not reversed an inescapable reality**: The relentless advance of science and technology is making it possible for smaller and **smaller groups to kill** **larger** and larger **numbers of people**. If a Qaeda affiliate, or some terrorist group in Pakistan whose name readers have never heard, acquires highly enriched uranium or plutonium made by a state, they can construct an elementary nuclear bomb capable of killing hundreds of thousands of people. At biotech labs across the United States and around the world, research scientists making medicines that advance human well-being are also capable of making pathogens, like anthrax, that can produce massive casualties. What to do? Sherlock Holmes examined crime scenes using a method he called M.M.O.: motive, means and opportunity. In a society where citizens gather in unprotected movie theaters, churches, shopping centers and stadiums, opportunities for attack abound. Free societies are inherently “target rich.” Motive to commit such atrocities poses a more difficult challenge. In all societies, a percentage of the population will be homicidal. No one can examine the mounting number of cases of mass murder in schools, movie theaters and elsewhere without worrying about a society’s mental health. Additionally, actions we take abroad unquestionably impact others’ motivation to attack us. As Faisal Shahzad, the 2010 would-be “Times Square bomber,” testified at his trial: “Until the hour the U.S. ... stops the occupation of Muslim lands, and stops killing the Muslims ... we will be attacking U.S., and I plead guilty to that.” Fortunately, it is more difficult for a terrorist to acquire the “means” to cause mass casualties. Producing highly enriched uranium or plutonium requires expensive industrial-scale investments that only states will make. If all fissile material can be secured to a gold standard beyond the reach of thieves or terrorists, aspirations to become the world’s first nuclear terrorist can be thwarted. Capabilities for producing bioterrorist agents are not so easily secured or policed. While more has been done, and much more could be done to further raise the technological barrier, as knowledge advances and technological capabilities to make pathogens become more accessible, the means for bioterrorism will come within the reach of terrorists. One of the hardest truths about modern life is that the same advances in science and technology that enrich our lives also empower potential killers to achieve their deadliest ambitions. To imagine that we can escape this reality and return to a world in which we are invulnerable to future 9/11s or worse is an illusion. For as far as the eye can see, we will live in an era of megaterror.

#### Nuclear terrorism cause a nuclear war

**Ayson 10**

(Robert Ayson, Professor of Strategic Studies and Director of the Centre for Strategic Studies: New Zealand at the Victoria University of Wellington, 2010 (“After a Terrorist Nuclear Attack: Envisaging Catalytic Effects,” Studies in Conflict & Terrorism, Volume 33, Issue 7, July, Available Online to Subscribing Institutions via InformaWorld)

A terrorist nuclear attack, and even the use of nuclear weapons in response by the country attacked in the first place, would not necessarily represent the worst of the nuclear worlds imaginable. Indeed, there are reasons to wonder whether nuclear terrorism should ever be regarded as belonging in the category of truly existential threats. A contrast can be drawn here with the global catastrophe that would come from a massive nuclear exchange between two or more of the sovereign states that possess these weapons in significant numbers. Even the worst terrorism that the twenty-first century might bring would fade into insignificance alongside considerations of what a general nuclear war would have wrought in the Cold War period. And it must be admitted that as long as the major nuclear weapons states have hundreds and even thousands of nuclear weapons at their disposal, there is always the possibility of a truly awful nuclear exchange taking place precipitated entirely by state possessors themselves. But these two nuclear worlds—a non-state actor nuclear attack and a catastrophic interstate nuclear exchange—are not necessarily separable. It is just possible that some sort of terrorist attack, and especially an act of nuclear terrorism, could precipitate a chain of events leading to a massive exchange of nuclear weapons between two or more of the states that possess them. In this context, today’s and tomorrow’s terrorist groups might assume the place allotted during the early Cold War years to new state possessors of small nuclear arsenals who were seen as raising the risks of a catalytic nuclear war between the superpowers started by third parties. These risks were considered in the late 1950s and early 1960s as concerns grew about nuclear proliferation, the so-called n+1 problem. t may require a considerable amount of imagination to depict an especially plausible situation where an act of nuclear terrorism could lead to such a massive inter-state nuclear war. For example, in the event of a terrorist nuclear attack on the United States, it might well be wondered just how Russia and/or China could plausibly be brought into the picture, not least because they seem unlikely to be fingered as the most obvious state sponsors or encouragers of terrorist groups. They would seem far too responsible to be involved in supporting that sort of terrorist behavior that could just as easily threaten them as well. Some possibilities, however remote, do suggest themselves. For example, how might the United States react if it was thought or discovered that the fissile material used in the act of nuclear terrorism had come from Russian stocks,40 and if for some reason Moscow denied any responsibility for nuclear laxity? The correct attribution of that nuclear material to a particular country might not be a case of science fiction given the observation by Michael May et al. that while the debris resulting from a nuclear explosion would be “spread over a wide area in tiny fragments, its radioactivity makes it detectable, identifiable and collectable, and a wealth of information can be obtained from its analysis: the efficiency of the explosion, the materials used and, most important … some indication of where the nuclear material came from.”41 Alternatively, if the act of nuclear terrorism came as a complete surprise, and American officials refused to believe that a terrorist group was fully responsible (or responsible at all) suspicion would shift immediately to state possessors. Ruling out Western ally countries like the United Kingdom and France, and probably Israel and India as well, authorities in Washington would be left with a very short list consisting of North Korea, perhaps Iran if its program continues, and possibly Pakistan. But at what stage would Russia and China be definitely ruled out in this high stakes game of nuclear Cluedo? In particular, if the act of nuclear terrorism occurred against a backdrop of existing tension in Washington’s relations with Russia and/or China, and at a time when threats had already been traded between these major powers, would officials and political leaders not be tempted to assume the worst? Of course, the chances of this occurring would only seem to increase if the United States was already involved in some sort of limited armed conflict with Russia and/or China, or if they were confronting each other from a distance in a proxy war, as unlikely as these developments may seem at the present time. The reverse might well apply too: should a nuclear terrorist attack occur in Russia or China during a period of heightened tension or even limited conflict with the United States, could Moscow and Beijing resist the pressures that might rise domestically to consider the United States as a possible perpetrator or encourager of the attack? Washington’s early response to a terrorist nuclear attack on its own soil might also raise the possibility of an unwanted (and nuclear aided) confrontation with Russia and/or China. For example, in the noise and confusion during the immediate aftermath of the terrorist nuclear attack, the U.S. president might be expected to place the country’s armed forces, including its nuclear arsenal, on a higher stage of alert. In such a tense environment, when careful planning runs up against the friction of reality, it is just possible that Moscow and/or China might mistakenly read this as a sign of U.S. intentions to use force (and possibly nuclear force) against them. In that situation, the temptations to preempt such actions might grow, although it must be admitted that any preemption would probably still meet with a devastating response.

#### **Bioweapons are imminent and cause extinction**

**Myhrvold, July 2013** [Nathan, formerly Chief Technology Officer at Microsoft, is co-founder of Intellectual Ventures—one of the largest patent holding companies in the world, “Strategic Terrorism: A Call to Action”, The Lawfare Research Paper Series Research paper NO . 2, <http://www.lawfareblog.com/wp-content/uploads/2013/07/Strategic-Terrorism-Myhrvold-7-3-2013.pdf>, BJM]

Biotechnology is advancing so rapidly that it is hard to keep track of all the new potential threats. Nor is it clear that anyone is even trying. In addition to lethality and drug resistance, many other parameters can be played with, given that the infectious power of an epidemic depends on many properties, including the length of the latency period during which a person is contagious but asymptomatic. Delaying the onset of serious symptoms allows each new case to spread to more people and thus makes the virus harder to stop. This dynamic is perhaps best illustrated by HIV , which is very difficult to transmit compared with smallpox and many other viruses. Intimate contact is needed, and even then, the infection rate is low. The balancing factor is that HIV can take years to progress to AIDS , which can then take many more years to kill the victim. What makes HIV so dangerous is that infected people have lots of opportunities to infect others. This property has allowed HIV to claim more than 30 million lives so far, and approximately 34 million people are now living with this virus and facing a highly uncertain future.15 A virus genetically engineered to infect its host quickly, to generate symptoms slowly—say, only after weeks or months—and to spread easily through the air or by casual contact would be vastly more devastating than HIV . It could silently penetrate the population to unleash its deadly effects suddenly. This type of epidemic would be almost impossible to combat because most of the infections would occur before the epidemic became obvious. A technologically sophisticated terrorist group could develop such a virus and **kill a large part of humanity with it**. Indeed, terrorists may not have to develop it themselves: some scientist may do so first and publish the details. Given the rate at which biologists are making discoveries about viruses and the immune system, at some point in the near future, someone may create artificial pathogens that could drive the human race to extinction. Indeed, a detailed species-elimination plan of this nature was openly proposed in a scientific journal. The ostensible purpose of that particular research was to suggest a way to extirpate the malaria mosquito, but similar techniques could be directed toward humans.16 When I’ve talked to molecular biologists about this method, they are quick to point out that it is slow and easily detectable and could be fought with biotech remedies. If you challenge them to come up with improvements to the suggested attack plan, however, they have plenty of ideas. Modern biotechnology will soon be capable, if it is not already, of bringing about the demise of the human race— or at least of killing a sufficient number of people to end high-tech civilization and set humanity back 1,000 years or more. That terrorist groups could achieve this level of technological sophistication may seem far-fetched, but keep in mind that it takes **only a handful of individuals** to accomplish these tasks. Never has lethal power of this potency been accessible to so few, so easily. Even more dramatically than nuclear proliferation, modern biological **science has frighteningly undermined the correlation between the lethality of a weapon and its cost**, a fundamentally stabilizing mechanism throughout history. Access to extremely lethal agents—lethal enough to exterminate Homo sapiens—will be available to anybody with a solid background in biology, terrorists included. The 9/11 attacks involved at least four pilots, each of whom had sufficient education to enroll in flight schools and complete several years of training. Bin Laden had a degree in civil engineering. Mohammed Atta attended a German university, where he earned a master’s degree in urban planning—not a field he likely chose for its relevance to terrorism. A future set of terrorists could just as easily be students of molecular biology who enter their studies innocently enough but later put their skills to homicidal use. Hundreds of universities in Europe and Asia have curricula sufficient to train people in the skills necessary to make a sophisticated biological weapon, and hundreds more in the United States accept students from all over the world. Thus it seems **likely** that sometime in the near future a small band of terrorists, or even a single misanthropic individual, will **overcome our best defenses** and do something truly terrible, such as fashion a bioweapon that **could kill millions or even billions** **of people**. Indeed, **the creation of such weapons within the next 20 years seems to be a virtual certainty**. The repercussions of their use are hard to estimate. One approach is to look at how the scale of destruction they may cause compares with that of other calamities that the human race has faced.

**Scenario 3 is Pakistan stability**

#### drones undermine Pakistani government stability

**Boyle, 13** (Michael J. Boyle, Assistant Professor of Political Science at La Salle University in Philadelphia. He was previously a Lecturer in International Relations and Research Fellow at the Centre for the Study of Terrorism and Political Violence (CSTPV) at the University of St. Andrews. He is also an alumnus of the Political Science Department at La Salle. “The costs and consequences of drone warfare” International Affairs 89: 1 (2013) 1–29)

The escalation of drone strikes in Pakistan to its current tempo—one every few days—directly contradicts the long-term American strategic goal of boosting the capacity and legitimacy of the government in Islamabad. Drone attacks are more than just temporary incidents that erase all traces of an enemy. They have lasting political effects that can weaken existing governments, undermine their legitimacy and add to the ranks of their enemies. These political effects come about because drones provide a powerful signal to the population of a targeted state that the perpetrator considers the sovereignty of their government to be negligible. The popular perception that a government is powerless to stop drone attacks on its territory can be crippling to the incumbent regime, and can embolden its domestic rivals to challenge it through violence. Such continual violations of the territorial integrity of a state also have direct consequences for the legitimacy of its government. Following a meeting with General David Petraeus, Pakistani President Asif Ali Zardari described the political costs of drones succinctly, saying that ‘continuing drone attacks on our country, which result in loss of precious lives or property, are counterproductive and difficult to explain by a democratically elected government. It is creating a credibility gap.’75 Similarly, the Pakistani High Commissioner to London Wajid Shamsul Hasan said in August 2012 that what has been the whole outcome of these drone attacks is that you have directly or indirectly contributed to destabilizing or undermining the democratic government. Because people really make fun of the democratic government—when you pass a resolution against drone attacks in the parliament and nothing happens. The Americans don’t listen to you, and they continue to violate your territory.76 The appearance of powerlessness in the face of drones is corrosive to the appearance of competence and legitimacy of the Pakistani government. The growing perception that the Pakistani civilian government is unable to stop drone attacks is particularly dangerous in a context where 87 per cent of all Pakistanis are dissatisfied with the direction of the country and where the military, which has launched coups before, remains a popular force.77 The political effects of this signal are powerful and lasting even when the reality of the relationship between the perpetrator and the targeted state is more complex. For example, the government of Pakistan has been ambivalent about drone strikes, condemning them in some cases but applauding their results in others.78 Much has been made of the extent to which the Pakistani government has offered its ‘tacit consent’ for the US drone strikes on its territory.79 The US has been willing to provide details on drone strikes after the fact, but has refrained from providing advance warning of an attack to the Pakistani government for fear that the information might leak. Pakistan has been operationally compliant with drone strikes and has not ordered its air force to shoot down drones in Pakistani airspace. Despite official denials, it has been revealed that the Pakistani government has permitted the US to launch drones from at least one of its own airbases.80 Whatever the complexity of its position and the source of its ambivalence over drone strikes, the political effects of allowing them to escalate to current levels are increasingly clear. The vast expansion of drone warfare under the Obama administration has placed enormous pressure on Pakistan for its complicity with the US, multiplied the enemies that its government faces and undermined parts of the social fabric of the country. By most measures, Pakistan is more divided and unstable after the Obama administration’s decision to ramp up the tempo and scale of drone attacks than it was during the Bush administration.81

#### Pakistan instability leads to extinction

**Pitt ‘9**- a New York Times and internationally bestselling author of two books: "War on Iraq: What Team Bush Doesn't Want You to Know" and "The Greatest Sedition Is Silence." (5/8/09, William, “Unstable Pakistan Threatens the World,” http://www.arabamericannews.com/news/index.php?mod=article&cat=commentary&article=2183)

But a suicide bomber in Pakistan rammed a car packed with explosives into a jeep filled with troops today, killing five and wounding as many as 21, including several children who were waiting for a ride to school. Residents of the region where the attack took place are fleeing in terror as gunfire rings out around them, and government forces have been unable to quell the violence. Two regional government officials were beheaded by militants in retaliation for the killing of other militants by government forces. As familiar as this sounds, it did not take place where we have come to expect such terrible events. This, unfortunately, is a whole new ballgame. It is part of another conflict that is brewing, one which puts what is happening in Iraq and Afghanistan in deep shade, and which represents a grave and growing threat to us all.Pakistan is now trembling on the edge of violent chaos, and is doing so with nuclear weaponsin its hip pocket,right in the middle ofone ofthe most dangerous neighborhoods in the world.The situation in brief: Pakistan for years has been a nation in turmoil, run by a shaky government supported by a corrupted system, dominated by a blatantly criminal security service, and threatened by a large fundamentalist Islamic population with deep ties to the Taliban in Afghanistan. All this is piled atop an ongoing standoff with neighboring India that has been the center of political gravity in the region for more than half a century. The fact thatPakistan, andIndia, and Russia, and China all possess nuclear weaponsand share the same space means any ongoing or escalating violence over there hasthe realpotential to crack open the very gates of Hellitself. Recently, the Taliban made a military push into the northwest Pakistani region around the Swat Valley. According to a recent Reuters report: The (Pakistani) army deployed troops in Swat in October 2007 and used artillery and gunship helicopters to reassert control. But insecurity mounted after a civilian government came to power last year and tried to reach a negotiated settlement. A peace accord fell apart in May 2008. After that, hundreds — including soldiers, militants and civilians — died in battles. Militants unleashed a reign of terror, killing and beheading politicians, singers, soldiers and opponents. They banned female education and destroyed nearly 200 girls' schools.About 1,200 people were killed since late 2007 and 250,000 to 500,000 fled, leaving the militants in virtual control. Pakistan offered on February 16 to introduce Islamic law in the Swat valley and neighboring areas in a bid to take the steam out of the insurgency. The militants announced an indefinite cease-fire after the army said it was halting operations in the region. President Asif Ali Zardari signed a regulation imposing sharia in the area last month. But the Taliban refused to give up their guns and pushed into Buner and another district adjacent to Swat, intent on spreading their rule. The United States, already embroiled in a war against Taliban forces in Afghanistan, must now face the possibility that Pakistan could collapse under the mounting threat of Taliban forces there. Military and diplomatic advisers to President Obama, uncertain how best to proceed, now face one of the great nightmare scenarios of our time. "Recent militant gains in Pakistan," reported The New York Times on Monday, "have so alarmed the White House that the national security adviser, Gen. James L. Jones, described the situation as 'one of the very most serious problems we face.'" "Security was deteriorating rapidly," reported The Washington Post on Monday, "particularly in the mountains along the Afghan border that harbor al-Qaeda and the Taliban, intelligence chiefs reported, and there were signs that those groups were working with indigenous extremists in Pakistan's populous Punjabi heartland. The Pakistani government was mired in political bickering. The army, still fixated on its historical adversary India, remained ill-equipped and unwilling to throw its full weight into the counterinsurgency fight. But despite the threat the intelligence conveyed, Obama has only limited options for dealing with it. Anti-American feeling in Pakistan is high, and a U.S. combat presence is prohibited. The United States is fighting Pakistan-based extremists by proxy, through an army over which it has little control, in alliance with a government in which it has little confidence." It is believedPakistan is currently in possession of between 60 and 100 nuclear weapons. Because Pakistan's stability is threatened by the wide swath of its population that shares ethnic, cultural and religious connections to the fundamentalist Islamic populace of Afghanistan, fears over what could happen to those nuclear weapons if the Pakistani government collapses are very real. "As the insurgency of the Taliban and Al Qaeda spreads in Pakistan," reported the Times last week, "senior American officials say they are increasingly concerned about new vulnerabilities for Pakistan's nuclear arsenal, including the potential for militants to snatch a weapon in transport or to insert sympathizers into laboratories or fuel-production facilities. In public, the administration has only hinted at those concerns, repeating the formulation that the Bush administration used: that it has faith in the Pakistani Army. But that cooperation, according to officials who would not speak for attribution because of the sensitivity surrounding the exchanges between Washington and Islamabad, has been sharply limited when the subject has turned to the vulnerabilities in the Pakistani nuclear infrastructure." "The prospect of turmoil in Pakistan sends shivers up the spinesof those U.S. officials charged with keeping tabs on foreign nuclear weapons," reported Time Magazine last month. "Pakistan is thought to possess about 100 — the U.S. isn't sure of the total, and may not know where all of them are. Still, if Pakistan collapses, the U.S. military is primed to enter the country and secure as many of those weapons as it can, according to U.S. officials. Pakistani officials insist their personnel safeguards are stringent, but a sleeper cell could cause big trouble, U.S. officials say." In other words, a shaky Pakistan spells trouble for everyone, especially if America loses the footrace to secure those weapons in the event of the worst-case scenario. If Pakistani militants ever succeed in toppling the government, several very dangerous events could happen at once. Nuclear-armedIndia couldbe galvanized into military actionof some kind,as couldnuclear-armedChina ornuclear-armedRussia. If the Pakistani government does fall, and all those Pakistani nukes are not immediately accounted for and secured,the specter (or reality) ofloose nukes falling into the hands of terrorist organizations could place the entire world on a collision course with unimaginable disaster.We have all been paying a great deal of attention to Iraq and Afghanistan, and rightly so. The developing situation in Pakistan, however, needs to be placed immediately on the front burner. The Obama administration appears to be gravely serious about addressing the situation. So should we all.

#### Effective drones key- need to change our strats to avoid blowback

**Masood 13** (Hassan, Monmouth College, “Death from the Heavens: The Politics of the United States’ Drone Campaign in Pakistan’s Tribal Areas,” 2013) /wyo-mm

Those who support the use of drones as an important counter-insurgency tactic nonetheless point out that the current campaign is not always conducted in the most effective manner. The authors of “Sudden Justice” for example, argue that the campaign should be focused on ‘high value targets’ and not be used frequently to take down the lower level operatives. The more you can destroy and disrupt the activities of personnel in the Taliban and al-Qaeda from the top-down instead of the bottom-up, the more of an impact it will have. The leadership qualities, organizational skills, and strategic awareness of various high-level commanders in both the Taliban and al-Qaeda cannot be easily replaced after their deaths at the hands of U.S. drones. Fricker and Plaw use the example of Baitullah Mehsud, a Tehrik-i-Taliban (TTP) leader who was killed by a drone strike on the roof of his uncle’s house on August 5, 2009. His death provoked an internal struggle in his organization that ultimately led to enough confusion and tension within the TTP that the Pakistan Army was able to launch the South Waziristan Offensive, putting the TTP on the defensive. But the lower level Taliban and al-Qaeda members have skills and abilities that are more common and more easily replaced. The amount of time and energy, the article asserts, that the U.S. is spending killing lower-level members (and increasing civilian casualties in the process, as the majority of the time these strikes happen during funeral processions or wedding parties) could instead be used to seriously disrupt the activities of the entire organization by targeting its leaders, much like the death of Osama bin Laden did to al-Qaeda in South/Central Asia in 2011. David Rohde agrees that the drones should be used, as they are an effective and efficient way of disrupting and destroying the extremist power base there, but their usage should be both selective and surgical. There is no consensus among scholars when it comes to evaluating the effectiveness of the use of drones as a counter-insurgency tactic. As Hassan Abbas points out “the truth is we don’t know whether U.S. drone strikes have killed more terrorists or produced more terrorists.”

### 1AC Norms

#### Drones are proliferating now- only the United States setting a precedent can limit use – the impact is global war

**Dowd, 13** [Drone Wars: Risks and Warnings Alan W. Dowd, Alan W. Dowd writes on national defense, foreign policy, and international security. His writing has appeared in multiple publications including Parameters, Policy Review, The Journal of Diplomacy and International Relations, World Politics Review, American Outlook, The Baltimore Sun, The Washington Times, The National Post, The Wall Street Journal Europe, The Jerusalem Post, and The Financial Times Deutschland, Parameters 42(4)/43(1) Winter-Spring 2013]

In short, it seems Washington has been seduced by the Jupiter Complex. Being seen in such a light—as detached and remote in every sense of the word, especially in waging war—should give Americans pause. “Reliance on drone strikes allows our opponents to cast our country as a distant, high-tech, amoral purveyor of death,” argues Kurt Volker, former US ambassador to NATO. “It builds resentment, facilitates terrorist recruitment and alienates those we should seek to inspire.”40 Indeed, what appears a successful counterterrorism campaign to Americans may look very different to international observers. “In 17 of 20 countries,” a recent Pew survey found, “more than half disapprove of U.S. drone attacks targeting extremist leaders and groups in nations such as Pakistan, Yemen and Somalia.”41 Moreover, a UN official recently announced plans to create “an investigation unit” within the Human Rights Council to “inquire into individual drone attacks . . . in which it has been alleged that civilian casualties have been inflicted.”42 This is not to suggest that either side of the drone debate has a monopoly on the moral high ground; both have honorable motives. UCAV advocates want to employ drone technologies to limit US casualties, while UCAV opponents are concerned that these same technologies could make war too easy to wage. This underscores there exists no simple solution to the drone dilemma. Converting to a fully unmanned air force would be dangerous. Putting the UCAV genie back in the bottle, on the other hand, would be difficult, perhaps impossible. There are those who argue that it is a false dichotomy to say that policymakers must choose between UCAVs and manned aircraft. To be sure, UCAVs could serve as a complement to manned aircraft rather than a replacement, with pilots in the battlespace wielding UCAVs to augment their capabilities. That does not, however, appear to be where we are headed. Consider Admiral Mullen’s comments about the sunset of manned combat aircraft, the manned-versus-unmanned acquisition trajectories, the remote-control wars in Pakistan and Yemen and Somalia, and President Obama’s reliance on UCAVs. Earlier this year, for instance, when France asked for help in its counterassault against jihadists in Mali, Washington initially offered drones.43 The next president will likely follow and build upon the UCAV precedents set during the Obama administration, just as the Obama administration has with the UCAV precedents set during the Bush administration. Recall that the first shot in the drone war was fired approximately 11 years ago, in Yemen, when a CIA Predator drone retrofitted with Hellfire missiles targeted and killed one of the planners of the USS Cole attack. Given their record and growing capabilities, it seems unlikely that UCAVs will ever be renounced entirely; however, perhaps the use of drones for lethal purposes can be curtailed or at least contained. It is important to recall that the United States has circumscribed its own military power in the past by drawing the line at certain technologies. The United States halted development of the neutron bomb in the 1970s and dismantled its neutron arsenal in the 2000s; agreed to forswear chemical weapons; and renounced biological warfare “for the sake of all mankind.”44 That brings us back to The New York Times’ portrait of the drone war. Washington must be mindful that the world is watching. This is not an argument in defense of international watchdogs tying America down. The UN secretariat may refuse to recognize America’s special role, but by turning to Washington whenever civil war breaks out, or nuclear weapons sprout up, or sea lanes are threatened, or natural disasters wreak havoc, or genocide is let loose, it is tacitly conceding that the United States is, well, special. Washington has every right to kill those who are trying to kill Americans. However, the brewing international backlash against the drone war reminds us that means and methods matter as much as ends. Error War If these geo-political consequences of remote-control war do not get our attention, then the looming geo-strategic consequences should. If we make the argument that UCAV pilots are in the battlespace, then we are effectively saying that the battlespace is the entire earth. If that is the case, the unintended consequences could be dramatic. First, if the battlespace is the entire earth, the enemy would seem to have the right to wage war on those places where UCAV operators are based. That’s a sobering thought, one few policymakers have contemplated. Second, power-projecting nations are following America’s lead and developing their own drones to target their distant enemies by remote. An estimated 75 countries have drone programs underway.45 Many of these nations are less discriminating in employing military force than the United States—and less skillful. Indeed, drones may usher in a new age of accidental wars. If the best drones deployed by the best military crash more than any other aircraft in America’s fleet, imagine the accident rate for mediocre drones deployed by mediocre militaries. And then imagine the international incidents this could trigger between, say, India and Pakistan; North and South Korea; Russia and the Baltics or Poland or Georgia; China and any number of its wary neighbors. China has at least one dozen drones on the drawing board or in production, and has announced plans to dot its coastline with 11 drone bases in the next two years.46 The Pentagon’s recent reports on Chinese military power detail “acquisition and development of longer-range UAVs and UCAVs . . . for long-range reconnaissance and strike”; development of UCAVs to enable “a greater capacity for military preemption”; and interest in “converting retired fighter aircraft into unmanned combat aerial vehicles.”47 At a 2011 air show, Beijing showcased one of its newest drones by playing a video demonstrating a pilotless plane tracking a US aircraft carrier near Taiwan and relaying targeting information.48 Equally worrisome, the proliferation of drones could enable nonpower-projecting nations—and nonnations, for that matter—to join the ranks of power-projecting nations. Drones are a cheap alternative to long-range, long-endurance warplanes. Yet despite their low cost, drones can pack a punch. And owing to their size and range, they can conceal their home address far more effectively than the typical, nonstealthy manned warplane. Recall that the possibility of surprise attack by drones was cited to justify the war against Saddam Hussein’s Iraq.49 Of course, cutting-edge UCAVs have not fallen into undeterrable hands. But if history is any guide, they will. Such is the nature of proliferation. Even if the spread of UCAV technology does not harm the United States in a direct way, it is unlikely that opposing swarms of semiautonomous, pilotless warplanes roaming about the earth, striking at will, veering off course, crashing here and there, and sometimes simply failing to respond to their remote-control pilots will do much to promote a liberal global order. It would be ironic if the promise of risk-free war presented by drones spawned a new era of danger for the United States and its allies.

**These conflicts go nuclear.**

Jürgen **Altmann 10,** Researcher and lecturer at the University of Dortmund, is one of the founding members of the International Committee for Robot Arms Control, http://www.irf.ac.at/index.php?option=com\_content&task=view&id=314&Itemid=1

**Where do you see the main challenges for the international community regarding the use of armed un~~man~~ned systems by the military**. What are the specific challenges of autonomous systems as compared to current telerobotic systems? **The main challenge is in deciding whether the present trend should continue and expand to many more countries and to many more types of armed uninhabited vehicles** (in the air, on and under water, on the ground, also in outer space**), or whether efforts should be taken to constrain this arms race and limit the dangers connected to it**. Here not only governments, but non-governmental organisations and the general public should become active. **Autonomous systems obviously would open many new possibilities for war by accident** (possibly **escalating up to nuclear war) and for violations of the international laws of warfare**. A human decision in each single weapon use should be the minimum requirement.

#### Aggressive Chinese drone deployment creates multiple scenarios for Asian war – draws in the US

Gertz, **13** (Bill senior editor of the Washington Free Beacon, national security reporter, 3-26-2013, “Game of Drones,” Washington Free Beacon, http://freebeacon.com/game-of-drones/)

China’s military is expanding its unmanned aerial vehicle forces with a new Predator-like armed drone and a new unmanned combat aircraft amid growing tensions with neighbors in Asia, according to U.S. intelligence officials. New unarmed drone deployments include the recent stationing of reconnaissance and ocean surveillance drones in Northeast Asia near Japan and the Senkaku islands and along China’s southern coast. Drones also are planned for the South China Sea where China has been encroaching on international waters and bullying nations of that region in asserting control over international waters, said officials familiar with intelligence reports. “Unmanned aerial vehicles are emerging as critical enablers for PLA long range precision strike operations,” said Mark Stokes, a former military intelligence official now with the Project 2049 Institute. “A general operational PLA requirement appears to be persistent surveillance of fixed and moving targets out to 3,000 kilometers of Chinese shores.” Japan, meanwhile, is developing and purchasing military drone capabilities to counter what it regards as Chinese aggression and Beijing’s growing military capabilities as Tokyo’s dispute with China over the Senkaku islands intensifies, the officials said. After Chinese aircraft intruded into Japanese airspace over the Senkakus undetected late last year, Tokyo stepped up efforts to seek drone capabilities. The efforts include building an indigenous missile-tracking drone and high-altitude U.S. drones. So far, unlike Beijing, Tokyo asserts its drone will be unarmed, the officials said. “China has started deploying UAVs for reconnaissance and oceanic surveillance purposes in the vicinity of disputed maritime territories, such as the Senkaku Islands,” said one military source. Of particular concern to U.S. intelligence agencies are two new missile-equipped drones known as the CH-4 and Yi Long. The aircraft were shown off along with six other military drones at a major Chinese arms show last November in Zhuhai. Photos of the drones reveal the designs appear to be copied from the U.S. Predator armed drone that has been leading the Obama administration’s war on al Qaeda in Pakistan and elsewhere. Photos of the CH-4 show it armed with Blue Arrow-7 anti-tank missiles that appear similar in size to the U.S. Hellfire fired from Predators. Even more of a concern, according to the officials, are intelligence reports from Asia indicating that China is well along in building a large stealth unmanned combat aerial vehicle (UCAV)—an upiloted jet—that was revealed recently in an online Chinese military video. The drone combat jet is nearly identical in shape to the experimental batwing-shaped U.S. Air Force X-47B currently under development. The X-47B was tested on an aircraft carrier in December. The Chinese UCAV is expected to have enough range to reach the U.S. island of Guam, some 1,800 miles from the Chinese coast and the hub of the Pentagon’s shift to Asia, officials said. Video and photos of the Chinese UCAV were posted on Chinese military enthusiast Internet sites recently. Also, a model of the drone combat jet was on display at Zhuhai. The aircraft is being built by the China Shenyang Aerospace Institute and could be deployed on China’s new aircraft carrier, officials said. Richard Fisher, a China military analyst with the International Assessment and Strategy Center, said the first prototype flying wing UCAV was completed at China’s Hongdu Aircraft Corp in mid-December. The drone weighs 10 to 14 tons and could be carrier based. “This means that the U.S. attempt to ‘outrange’ an emergent PLA anti-access systems, like the DF-21D anti-ship ballistic missile, could soon be outflanked by a new PLA carrier-based UCAV,” Fisher said. Japan, alarmed at fierce Chinese reaction to its efforts to solve the Senkakus dispute by nationalizing several of the uninhabited but oil-rich islands last year, is bolstering its military forces with both missile-detecting and maritime surveillance with drones. Japanese Defense Ministry officials, quoted in press reports, have called the purchase of several long-range U.S. Global Hawk surveillance drones an urgent priority. Tokyo is seeking up to three Global Hawks by 2015 but could speed up purchases in response to what it regards as growing Chinese aggressiveness toward Japan over the Senkakus. The U.S. military currently has Global Hawks deployed at Guam. The Japanese do not plan to develop armed drones and plan to limit initial purchases to the Global Hawk, which fly nearly 60,000 feet for extended missions. It is able to track vessels using sensors and radar. Japan also is developing an unmanned drone aircraft that will be used to detect North Korean nuclear missile attacks and to counter the Chinese military buildup, the officials said. The anti-missile drone program is being developed over the next four years with the first drone deployed by 2020. It will use infrared sensors designed to detect missiles shortly after launch. China’s drone program is believed to have benefitted from its aggressive economic and cyber espionage operations against the United States. Those efforts have included breaking into both government and defense industry networks and stealing valuable drone technology. Officials also said China’s drone program is receiving a boost from an unlikely source: Taiwan. The largest Chinese drone production center is being built at Wuhan in Hubei province, site of a joint construction project by China’s Wuhan Visiontek Inc. and Taiwan’s Carbon-Based Technology, Inc. Officials said China launched a crash program to develop military drones beginning around 2007. Beijing is planning a range of unmanned aircraft capabilities, including high-altitude, long-endurance drones, integrated air and sea warfare drones, sea-based drones and UCAVs. More than 60 drones were on display in Beijing last June, including a drone helicopter, and a drone with simulated birds’ wings. Additionally, officials have said drone bases are being set up in the South China Sea to monitor Scarborough reef, which is claimed by Philippines and China; Macclesfield Bank; the Paracel Islands; and the Spratly Islands. China also is using drone to monitor the Socotra Reef claimed by South Korea. A report made public March 11 by the Project 2049 Institute on Chinese drones estimated that China has more than 280 military drones. “The PLA has developed one of the largest and most organizationally complex UAV programs in the world,” the report stated. For the immediate future, the Chinese drones are monitoring disputed maritime and land boundaries that are likely to “increase tensions” since other states in the region lack the same capabilities. “Like any new capability, UAVs may encourage the inexperienced to overreach and engage in risk taking,” the report said. “There could be a sense that because human pilot lives are not at stake, operators can push farther than they otherwise might.” An isolated UAV attack during a crisis also could lead to a major conflict. “In the future, PRC decision-makers might feel compelled to order ‘plausibly deniable’ UAV attacks as a means of sending a political signal only to inadvertently wind up escalating tensions,” the report said. Over the long term, Chinese drones will support the expansion of Chinese military operational areas by pushing the ability to hit targets further into the western Pacific. The report said China likely will use its UAV force for targeting and guidance of the DF-21D anti-ship ballistic missile designed to strike U.S. aircraft carriers more than a thousand miles from China’s coast. “While the potential for a large scale conflict in the region currently appears low, the lack of adequate preparation for worst case scenarios could encourage and invite adventurous adversary behavior, ultimately increasing risks to peace and stability,” the report stated. U.S. intelligence agencies reported earlier this month that China plans to build 11 drone bases along its coastline by 2015, with each base deploying at least one unmanned aircraft. The People’s Liberation Army currently has two drone bases in northeast Liaoning province. A third base was disclosed further south at Lianyungang, Jiangsu Province, also on the Bohai Sea. The bases were announced in August by the State Oceanic Administration, which has been used as a proxy by the Chinese military to lay claim to international waters and islands as part of a strategy of pushing Chinese maritime control hundreds and eventually thousands of miles from the coast through what Beijing calls its two Asian island chain strategy. The island chains stretch from Northeast Asia through Southeast Asia. The two bases in the Bohai Sea are located at Yingkou and Dalian to provide surveillance of the Bohai and Yellow Seas. China called U.S. aircraft carrier exercises held in the Yellow Sea three years ago “a threat to China” even though the carrier maneuvers were carried out in international waters. The maritime surveillance drones provide high-definition remote imagery and will be used by China to respond to emergencies in the region and also to identify what China claims are illegal resource extraction from undersea gas and oil deposits. U.S. officials regard recent highlighting of attack drones as a sign that Beijing remains intent on taking control of the Senkakus. The increased use of drones by both China and Japan is expected to increase tensions over the Senkakus, the officials said. According to Fisher, China is also exporting two of its armed drones, the Yi Long and CH-3, to the United Arab Emirates and Pakistan. The UAE government purchased the Yi Long, and a smaller CH-3 was sold to Pakistan and repackaged by Islamabad as the Shahpar. Fisher said he is concerned China will sell the new and larger CH-4 to Iran. “Because it is not connected to the Aviation Industries Corporation (AVIC) which wants to do business in the United States, the CH-4 stands a better chance of being sold to Iran,” he told the Free Beacon. “China’s willingness to sell UCAV technology to terrorist-linked states means that terrorists may soon have another deadly tool with which to attack the United States.”

#### High risk

Richard Parker, a journalist, 5-12-2013, “Pilotless Planes, Pacific Tensions,” NYT, http://www.nytimes.com/2013/05/13/opinion/drones-and-the-rivalry-between-the-us-and-china.html

THIS week the Navy will launch an entirely autonomous combat drone — without a pilot on a joystick anywhere — off the deck of an aircraft carrier, the George H. W. Bush. The drone will then try to land aboard the same ship, a feat only a relatively few human pilots in the world can accomplish. This exercise is the beginning of a new chapter in military history: autonomous drone warfare. But it is also an ominous turn in a potentially dangerous military rivalry now building between the United States and China. The X-47B, a stealth plane nicknamed “the Robot” by Navy crews, is a big bird — 38 feet long, with a 62-foot wingspan — that flies at high subsonic speeds with a range of over 2,000 miles. But it is the technology inside the Robot that makes it a game-changer in East Asia. Its entirely computerized takeoff, flight and landing raise the possibility of dozens or hundreds of its successors engaged in combat at once. It is also capable of withstanding radiation levels that would kill a human pilot and destroy a regular jet’s electronics: in addition to conventional bombs, successors to this test plane could be equipped to carry a high-power microwave, a device that emits a burst of radiation that would fry a tech-savvy enemy’s power grids, knocking out everything connected to it, including computer networks that connect satellites, ships and precision-guided missiles. And these, of course, are among the key things China has invested in during its crash-course military modernization. While the United States Navy is launching an autonomous drone, the Chinese Navy is playing catch-up with piloted carrier flight. Last November the Chinese Navy landed a J-15 jet fighter on the deck of the Liaoning aircraft carrier, the country’s first carrier landing. Though China still has miles to go in developing a carrier fleet to rival America’s, the landing demonstrates its ambitions. With nearly half a million sailors and fast approaching 1,000 vessels, its navy is by some measures already the second largest in the world. With that new navy, Beijing seeks to project its power over a series of island chains far into the Pacific: the first extends southward from the Korean Peninsula, down the eastern shore of Taiwan, encircling the South China Sea, while the second runs southeast from Japan to the Bonin and Marshall Islands, encompassing both the Northern Mariana Islands, a United States territory, and Guam — the key American base in the western Pacific. Some unofficial Chinese military literature even refers to a third chain: the Hawaiian Islands. To project this kind of power, China must rely not only on the quantity of its ships but also on the quality of its technology. Keeping the Americans half an ocean away requires the capability for long-range precision strikes — which, in turn, require the satellite reconnaissance, cyber warfare, encrypted communications and computer networks in which China has invested nearly $100 billion over the last decade. Ideally for both countries, China’s efforts would create a new balance of power in the region. But to offset China’s numerical advantage and technological advances, the United States Navy is betting heavily on drones — not just the X-47B and its successors, but anti-submarine reconnaissance drones, long-range communications drones, even underwater drones. A single hunter-killer pairing of a Triton reconnaissance drone and a P-8A Poseidon piloted anti-submarine plane can sweep 2.7 million square miles of ocean in a single mission. The arms race between the world’s largest navies undermines the likelihood of attaining a new balance of power, and raise the possibility of unintended collisions as the United States deploys hundreds, even thousands of drones and China scrambles for ways to counter the new challenge. And drones, because they are cheap and don’t need a human pilot, lower the bar for aggressive behavior on the part of America’s military leaders — as they will for China’s navy, as soon as it makes its own inevitable foray into drone capabilities (indeed, there were reports last week that China was preparing its own stealth drone for flight tests). By themselves, naval rivalries do not start wars. During peacetime, in fact, naval operations are a form of diplomacy, which provide rivals with healthy displays of force that serve as deterrents to war. But they have to be enveloped in larger political relationships, too. At present, the United States-China relationship is really just about economics. As long as that relationship remains vibrant, confrontation is in neither country’s interest. But should that slender reed snap, there is little in the way of a larger political relationship, let alone alliance, to take its place. The only thing between crisis and conflict, then, would be two ever larger, more dangerous navies, prepared to fight a breed of drone-centric war we don’t yet fully understand, and so are all the more likely to fall into.

#### Causes US-China nuclear war

**Fisher 11** (Max Fisher 11, foreign affairs writer and editor for the Atlantic, MA in security studies from Johns Hopkins, Oct 31 2011, “5 Most Likely Ways the U.S. and China Could Spark Accidental Nuclear War,” http://www.theatlantic.com/international/archive/2011/10/5-most-likely-ways-the-us-and-china-could-spark-accidental-nuclear-war/247616

Neither the U.S. nor China has any interest in any kind of war with one other, nuclear or non-nuclear. The greater risk is an accident. Here's how it would happen. First, an unforeseen event that sparks a small conflict or threat of conflict. Second, a rapid escalation that moves too fast for either side to defuse. And, third, a mutual misunderstanding of one another's intentions.¶ This three-part process can move so quickly that the best way to avert a nuclear war is for both sides to have absolute confidence that they understand when the other will and will not use a nuclear weapon. Without this, U.S. and Chinese policy-makers would have to guess -- perhaps with only a few minutes -- if and when the other side would go nuclear. This is especially scary because both sides have good reason to err on the side of assuming nuclear war. If you think there's a 50-50 chance that someone is about to lob a nuclear bomb at you, your incentive is to launch a preventative strike, just to be safe. This is especially true because you know the other side is thinking the exact same thing. In fact, even if you think the other side probably won't launch an ICBM your way, they actually might if they fear that you're misreading their intentions or if they fear that you might over-react; this means they have a greater incentive to launch a preemptive strike, which means that you have a greater incentive to launch a preemptive strike, in turn raising their incentives, and on and on until one tiny kernel of doubt can lead to a full-fledged war that nobody wants.¶ The U.S. and the Soviet Union faced similar problems, with one important difference: speed. During the first decades of the Cold War, nuclear bombs had to be delivered by sluggish bombers that could take hours to reach their targets and be recalled at any time. Escalation was much slower and the risks of it spiraling out of control were much lower. By the time that both countries developed the ICBMs that made global annihilation something that could happen within a matter of minutes, they'd also had a generation to sort out an extremely clear understanding of one another's nuclear policies. But the U.S. and China have no such luxury -- we inherited a world where total mutual destruction can happen as quickly as the time it takes to turn a key and push a button.¶ The U.S. has the world's second-largest nuclear arsenal with around 5,000 warheads (first-ranked Russia has more warheads but less capability for flinging them around the globe); China has only about 200, so the danger of accidental war would seem to disproportionately threaten China. But the greatest risk is probably to the states on China's periphery. The borders of East Asia are still not entirely settled; there are a number of small, disputed territories, many of them bordering China. But the biggest potential conflict points are on water: disputed naval borders, disputed islands, disputed shipping lanes, and disputed underwater energy reserves. These regional disputes have already led to a handful of small-scale naval skirmishes and diplomatic stand-offs. It's not difficult to foresee one of them spiraling out of control. But what if the country squaring off with China happens to have a defense treaty with the U.S.?¶ There's a near-infinite number of small-scale conflicts that could come up between the U.S. and China, and though none of them should escalate any higher than a few tough words between diplomats, it's the unpredictable events that are the most dangerous. In 1983 alone, the U.S. and Soviet Union almost went to war twice over bizarre and unforeseeable events. In September, the Soviet Union shot down a Korean airliner it mistook for a spy plane; first Soviet officials feared the U.S. had manufactured the incident as an excuse to start a war, then they refused to admit their error, nearly pushing the U.S. to actually start war. Two months later, Soviet spies misread an elaborate U.S. wargame (which the U.S. had unwisely kept secret) as preparations for an unannounced nuclear hit on Moscow, nearly leading them to launch a preemptive strike. In both cases, one of the things that ultimately diverted disaster was the fact that both sides clearly understood the others' red lines -- as long as they didn't cross them, they could remain confident there would be no nuclear war.¶ But the U.S. and China have not yet clarified their red lines for nuclear strikes. The kinds of bizarre, freak accidents that the U.S. and Soviet Union barely survived in 1983 might well bring today's two Pacific powers into conflict -- unless, of course, they can clarify their rules. Of the many ways that the U.S. and China could stumble into the nightmare scenario that neither wants, here are five of the most likely. Any one of these appears to be extremely unlikely in today's world. But that -- like the Soviet mishaps of the 1980s -- is exactly what makes them so dangerous.

#### Congress is key to setting an international signal to comply with norms

**Ellison ’13** (Keith Ellison, “Time for Congress to build a better drone policy”, <http://articles.washingtonpost.com/2013-01-13/opinions/36311903_1_drone-strikes-drone-program-drone-policy>, January 13, 2013)

An unmanned U.S. aerial vehicle — or drone — reportedly killed eight people in rural Pakistan last week, bringing the estimated death toll from drone strikes in Pakistan this year to 35. As the frequency of drone strikes spikes again, some questions must be asked: How many of those targeted were terrorists? Were any children harmed? And what is the standard of evidence to carry out these attacks? The United States has to provide answers, and Congress has a critical role to play. The heart of the problem is that our technological capability has far surpassed our policy. As things stand, the executive branch exercises unilateral authority over drone strikes against terrorists abroad. In some cases, President Obama approves each strike himself through “kill lists.” While the president should be commended for creating explicit rules for the use of drones, unilateral kill lists are unseemly and fraught with hazards. When asked about the drone program in October during an interview on the “The Daily Show,” the president said, “One of the things we’ve got to do is put a legal architecture in place, and we need congressional help in order to do that, to make sure that not only am I reined in, but any president’s reined in terms of some of the decisions that we’re making.” It’s time to put words into action. Weaponized drones have produced results. They have eliminated 22 of al-Qaeda’s top 30 leaders and just last week took out a Taliban leader. Critically, they lessen the need to send our troops into harm’s way, reducing the number of U.S. casualties. Yet the costs of drone strikes have been ignored or inadequately acknowledged. The number of innocent civilian casualties may be greater than people realize. A recent study by human rights experts at Stanford Law School and the New York University School of Law found that the number of innocent civilians killed by U.S. drone strikes is much higher than what the U.S. government has reported: approximately 700 since 2004, including almost 200 children. This is unacceptable. Another cost is how drone strikes are shaping views of the United States around the world. You might develop a negative attitude toward the United States if your only perception of it is a foreign aircraft buzzing over your house that occasionally fires missiles into your neighborhood. In Pakistan, where 95 percent of U.S. drone strikes have occurred, people familiar with them overwhelmingly express disapproval (97 percent, according to Pew polling from June) and believe they kill too many innocent people (94 percent). Drone strikes may well contribute to the extremism and terrorism the United States seeks to deter. U.S. drone use has also lowered the threshold for the use of lethal force in foreign countries. Would we fire so many missiles into Pakistan, Yemen and Somalia if doing so required sending U.S. troops into harm’s way? Our drone policy must be guided by more than capability. It must be guided by respect for noncombatants, necessity and urgency. It is Congress’s responsibility to exercise oversight and craft policies that govern the use of lethal force. But lawmakers have yet to hold a single hearing examining U.S. drone policy. Any rules must provide adequate transparency, respect the rule of law, conform with international standards and prudently advance U.S. national security over the long term. In codifying a legal framework to guide executive action on drone strikes, Congress should consider these steps: First, we must do more to avoid innocent civilian casualties. The Geneva Conventions, which have governed the rules of war since World War II, distinguish between combatants and noncombatants in the conduct of hostilities and state that civilian casualties are not acceptable except in cases of demonstrated military necessity. This is the standard we must follow. Second, Congress must require an independent judicial review of any executive-branch “kill list.” The U.S. legal system is based on the principle that one branch of government should not have absolute authority. Congress should object to that concentration of power, especially when it may be used against U.S. citizens. A process of judicial review would diffuse executive power and provide a mechanism for greater oversight. Third, the United States must collaborate with the international community to develop a widely accepted set of legal standards. No country — not even our allies — accepts the U.S. legal justification for targeted killings. Our justification must rest on the concept of self-defense, which would allow the United States to protect itself against any imminent threat. Any broader criteria would create the opportunity for abuse and set a dangerous standard for other countries to follow, which could harm long-term U.S. security interests. The United States will not always enjoy a monopoly on sophisticated drone technology. The Iranian-made drone that Hezbollah recently flew over Israel should compel us to think about the far-reaching implications of current policy. A just, internationally accepted protocol on the use of drones in warfare is needed. By creating and abiding by our own set of reasonable standards, the United States will demonstrate to the world that we believe in the rule of law.

### 1AC Plan

**Plan: The congress of the United States federal government should substantially increase statutory restrictions on the war powers authority of the President of the United States by establishing a federal court with jurisdiction over targeted killing orders.**

### 1AC Solvency

#### Drone courts limit the President’s ability to strike

**Rushforth 12** (Elinor June Rushforth, J.D. candidate, University of Arizona, 2012, Fall, 2012 Arizona Journal of International and Comparative Law 29 Ariz. J. Int'l & Comp. Law 623, Note: There's An App For That: Implications Of Armed Drone Attacks And Personality Strikes By The United States Against Non-Citizens, 2004-2012)

Because of staunch political and military support for the drone program, it is unlikely that these attacks will diminish in the near future. If that is indeed the case, it is more important than ever that the Executive, in conjunction with Congress and the judiciary, set out clear standards for these lethal operations. The nation has faced these difficult questions before and “[i]n keeping with the purpose and the pragmatism of Mathews v. Eldridge, this investigation should be as thorough, independent, and public as possible without damage to national security.”189 Specifically, a heightened and public standard of review is needed for the CIA drone program as the military operates within its own chain of command. There should be an open standard of selection that clearly delineates why an individual becomes a target, how long they may be targeted, and who reviews the information about the target. Though these standards are likely to remain classified based on national security concerns, there has been success in integrating national security cases into the judicial process; for example, in the Guantanamo detainee cases.190 A federal court or panel should also be created, similar to Foreign Intelligence Surveillance Courts that will aid in the targeting process and issue a warrant for a strike.191Because of the U.S. commitment to the rule of law, any lethal program not operated by a military branch should be subject to a more public and judicially overseen review. The CIA needs to define exactly who they are searching for; whether it is the “anyone who aids and abets” terrorism level of involvement or a mere scintilla of suspicion. By defining whom they are targeting, a level of credence will be lent to the program. Further, the United States should take a page out of Israel’s playbook and declare that there must be actionable intelligence against the proposed target that identifies “the target as a person actively involved in acts of terrorism.”192 There must be an actual plan of attack (time, place, means) in place by that individual that is known through the intelligence;193 this will lessen the likelihood of opportunistic targeting that risks error and miscalculation. Further, an assessment of the distinction and proportionality of the attack should be tied into the decision to attack,194 as well as a reflection on potential domestic political consequences195 and foreign political blowback from an attack.196 Then, supervisors should review a package of information about the proposed target and decide if the intelligence is good enough to continue up the chain of command. Due to the Executive’s reassurances, a review process similar to this is already in place, however, without sacrificing national security interests this standard of selection should be made more public. Though the decision to attack terrorist organizations, and those providing material support, has already been made,197 public support for the tactics used in the Overseas Contingency Operations should help guide the executive and legislative game plan. The next level of review should be a statutorily created court that is the last stop on the targeted killing process. Though there may be some grumbling among judges and politicians about overextended courts and full dockets, national security concerns and the risk of lethal mistakes should outweigh reluctance to introduce an important check on targeted killing. The President, and perhaps Congress, could also be reluctant to allow courts into what they deem a core executive function.198 Attorney General Eric Holder gave the public another piece of the Obama administration’s targeted killing model when he claimed that the Constitution “guarantees due process, not judicial process” and that “due process takes into account the realities of combat.”199 This signals to the public that the Obama administration will remain wary of any encroachment and that the imposition of judicial process on targeted killing would be fought. However, these reviewing courts could develop in several ways. As suggested by Murphy and Radsan, a court mirroring the Foreign Intelligence Surveillance Court (FISC) is not outside the realm of possibility.200 Another option is the expansion of the jurisdiction of the current FISCs. The judges and staff already have the necessary security mechanisms in place to handle sensitive matters, and there would be less financial and political blowback from expanding an existing framework. Perhaps the most complex suggestion is the creation of a new national security court to deal exclusively with cases having national security implications. Such a court could address not only drone strikes, but the whole plethora of emerging national security and terrorism related concerns. For example, Guantanamo detainee cases could be tried in the national security court rather than in a military commission, cases of trafficking, and materially supporting terrorist groups could be tried there instead of in Article III courts. A new national security court, though logistically far off, could be the judicial response to the legislative expansion of the homeland security field (e.g. the creation of the Department of Homeland Security). One of the most looming challenges to creating this kind of court, especially in the case of targeted killings and drone strikes, is the lack of judicial precedent on such matters.201 Arguably, some of the preceding suggestions face logistical, political, and practical difficulties, but judicial action in such critical matters to U.S. national security is paramount. Regardless of the type of judicial mechanism used to ensure the lawfulness of a targeted killing, the Chief Justice of the U.S. Supreme Court should designate district court judges from every region where CIA drone operators are stationed, with several in the District of Columbia. These judges will preside over courts with jurisdiction to "hear applications and grant orders," whose job would be approving or rejecting targeted killing warrants. n202 The hearings will be held expeditiously and records will be kept according to security measures "established by the Chief Justice in consultation with the Attorney General and the Director of National Intelligence." n203 The application for an order approving a targeted killing will be submitted by a designated CIA official, or DOJ official in conjunction with the CIA investigative team, "in writing upon oath or affirmation" after review and [\*654] approval by the supervisor of the drone program at a given outpost. n204 This application will include all necessary and pertinent information needed for the judge's decision. n205 This information shall include who the target is (if known), what action or information led to this targeting, any informant information, imminent threat analysis, known links to terrorists or terrorist organization, and a distinction and proportionality analysis (if available). These warrants could be made before locating a target. Once a suitable application has been assembled, the designated official may submit the application and receive a warrant that would be good for a specific period. If the target is not found within that period, a renewal request may be made by adding an addendum to the above described application with any new and pertinent information. n206 An expedited process would also apply to newly acquired targets by which the CIA official could make an emergency application. Further, an authorization made by the President, through the Attorney General, could bypass this application process in appropriate exigent circumstances. There would also be a semi-annual report to Congress from CIA officials on targeted killing application procedures. An act creating this court would also address sanctions and liabilities, likely monetary fines or professional sanctions, of CIA and DOJ officials who do not comply with the procedures. Although any judicial action that encroaches on the Executive's autonomy in the national security realm will likely face pushback, judicial review is an important check on the Executive's power. To assuage the separation of powers issues that could arise in the creation of this court on targeted killing and drone strike operations, the legislative and judicial branches will have to ensure they are not unconstitutionally restricting the President's authority. V. CONCLUSION Simply put, this paper has created more questions than it has answered given the subject's cloaked and secret nature. However, it has also demonstrated that for the targeted killing and drone program to continue unchecked without a more public standard of target selection and judicial involvement is not prudent. While perhaps not in violation of international law or the AUMF, given that "nothing in the language of Article 51 restricts the right to engage in self-defense actions to circumstances of armed attacks by a 'state,'" n207 the amorphous nature of terrorist networks will remain a problem for those who continue to rely on traditional war-fighting paradigms. Furthermore, a workable definition of "terrorism" is a necessity given the inter-state and inter-agency nature of this program and the United States' prohibition on the use of assassination. By [\*655] determining that terrorist leaders and their affiliates are not technically within E.O. 12,333's definition, the Administration is ignoring the possibility that eventually the United States may face the reality, however clichéd, that "one man's terrorist is another man's freedom fighter." n208 Again, asymmetric warfare requires thinking outside the box of traditional wartime and law enforcement paradigms. Most importantly, this paper sought to find ways in which the United States could identify legitimate targets and a role for the judicial system in that process. A standard of selection should include at the very least: (1) a workable definition of terrorist/terrorism and a determination that the target fits that definition; (2) a determination that the target is engaged in terrorist acts; (3) that the target has an actual plan of attack in place determined through known intelligence; (4) an analysis of the distinction and proportionality of the attack; (5) the inability to capture the target; and (6) and a blowback analysis. After this information has been compiled, it should be reviewed and sent up the chain of command. Without ignoring the realities of real-time, actionable intelligence, the information should then be reviewed by a statutorily created court. Though an undoubtedly complex solution, the creation of a court designed to deal with national security issues is the answer to pressing legal issues surrounding targeted killing. President Obama's confirmation that drones are used in the Federally Administered Tribal Areas to go "after al-Qaeda suspects who are up in very tough terrain along the border between Afghanistan and Pakistan" and that "for us to be able to get them in another way would involve probably a lot more intrusive military action than the one we are already engaging in" ignites foreign sovereignty questions that remain unanswered. n209 Does the United States require permission from a sovereign government before targeting a person in its territory? What if the United States fails to get that permission? What if the region in question does not have a functioning government? The United States faces an increasing number of threats worldwide and these international questions must be answered. An expert in the field, Peter Singer, analyzes the impact on the drone pilot, the autonomous weapons systems and their capacity, and the danger of going to war when it is too easy." n210 He discusses the morality of "good" wars and the fear that "without public debate and support and without risking troops, the decision to go to war becomes the act of a nation that doesn't give a damn." n211 With so much unknown about the consequences of robotic warfare, is it responsible to expand its use? And finally, determining the real risk and cost to the foreign civilian population should be a top priority whenever lives may be lost. The risks that civilian populations may turn against the counter-insurgency efforts of the United States are too great to ignore the human concerns of technological advancement. Despite the importance of reflection on the meaning of those [\*656] advances, we remain woefully unprepared to answer moral and legal questions surrounding our advancements. 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#### Judicial control increases accuracy of target selection and reduces mistaken destruction

**Murphy and Radsan, 9** (Richard Murphy is the AT&T Professor of Law, Texas Tech University School of Law. Afsheen John Radsan is a Professor, William Mitchell College of Law. He was assistant general counsel at the Central Intelligence Agency from 2002-2004. “Due Process and Targeted Killing of Terrorists” Cardozo Law Review, Vol. 31, p. 405, 2009 William Mitchell Legal Studies Research Paper No. 126 Texas Tech Law School Research Paper No. 2010-06. March 1, 2009, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=1349357)

Where the paradigm of war applies, the executive dominates in deciding who lives or dies. Justice O‘Connor nonetheless claimed in Hamdi that the war on terror does not give the executive a ―blank check‖ to do as it pleases in the name of security.189 If one accepts this premise, then the question becomes how to control the executive‘s war power without unduly hampering it. Under a Mathews-style approach, to determine whether due process demands a particular procedural control over targeted killing, one should: (a) identify the range of legitimate interests that the procedure might protect; (b) assess the degree to which adoption of the procedure actually would protect these interests; and (c) weigh these marginal benefits against the damage the procedure may cause other legitimate interests.190 Judicial control of targeted killing could increase the accuracy of target selection, reducing the danger of mistaken or illegal destruction of lives, limbs, and property. Independent judges who double-check targeting decisions could catch errors and cause executive officials to avoid making them in the first place. More broadly, judicial control of targeted killing could serve the interests of all people—targets and non-targets—in blocking the executive from exercising an unaccountable, secret power to kill.191 If possible, we should avoid a world in which the CIA or other executive officials have unreviewable power to decide who gets to live and who dies in the name of a shadow war that might never end. Everyone has a cognizable interest in stopping a slide into tyranny.

#### Statority restrictions are the best way to constrain the president

**Huq 12** (Aziz Z. Huq 12, Assistant Professor of Law, University of Chicago Law School, "Binding the Executive (by Law or by Politics)", May 25, www.law.uchicago.edu/files/file/400-ah-binding.pdf)

There is some merit to this story. But in my view it again understates the observed effect of positive legal constraints on executive discretion. Recent scholarship, for example, has documented congressional influence on the shape of military policy via framework statutes . This work suggests Congress influences executive actions during military engagements through hearings and legislative proposals. 75 Consistent with this account, two legal scholars have recently offered a revisionist history of constitutional war powers in which “ Congress has been an active participant in setting the terms of battle, ” in part because “ congressional willingness to enact [ ] laws has only increased ” over time. 76 In the last decade, Congress has often taken the initiative on national security, such as enacting new statutes on military commissions in 2006 and 2009. 77 Other recent landmark security reforms, such as a 2004 statute restr ucturing the intelligence community, 78 also had only lukewarm Oval Office support. 79 Measured against a baseline of threshold executive preferences then , Congress has achieved nontrivial successes in shaping national security policy and institutions through both legislated and nonlegislated actions even in the teeth of White House opposition. 80¶ The same point emerges more forcefully from a review of our “ fiscal constitution. ” 81 Article I, § 8 of the Constitution vests Congress with power to “ lay and collect Tax es ” and to “ borrow Money on the credit of the United States, ” while Article I, § 9 bars federal funds from being spent except “ in Consequence of Appropriations made by Law. ” 82 Congress has enacted several framework statutes to effectuate the “ powerful limitations ” implicit in these clauses. 83 The resulting law prevents the President from repudiating past policy commitments (as Skowronek suggests) as well as imposing barriers to novel executive initiatives that want for statutory authorization . 84¶ Three statutes merit attention here. First, the Miscellaneous Receipts Act of 1849 85 requires that all funds “ received from customs, from the sales of public lands, and from all miscellaneous sources, for the use of the United States, shall be paid . . . into the treasur y of the United States. ” 86 It ensures that the executive cannot establish off - balance - sheet revenue streams as a basis for independent policy making. Second, the Anti - Deficiency Act, 87 which was first enacted in 1870 and then amended in 190 6 , 88 had the effect of cementing the principle of congressional appropriations control. 89 With civil and criminal sanctions, it prohibits “ unfunded monetary liabilities beyond the amounts Congress has appropriated, ” and bars “ the borrowing of funds by federal a gencies . . . in anticipation of future appropriations. ” 90 Finally, the Congressional Budget and Impoundment Control Act of 1974 91 (Impoundment Act) channels presidential authority to decline to expend appropriated funds. 92 It responded to President Nixon ’ s e xpansive use of impoundment. 93 Congress had no trouble rejecting Nixon ’ s claims despite a long history of such impoundments. 94 While the Miscellaneous Receipts Act and the Anti - Deficiency Act appear to have succeeded, the Impoundment Act has a more mixed rec ord. While the Supreme Court endorsed legislative constraints on presidential impoundment, 95 President Gerald Ford increased impoundments through creative interpretations of the law. 96 But two decades later, Congress concluded the executive had too little di scretionary spending authority and expanded it by statute. 97 ¶ Moreover, statutory regulation of the purse furnishes a tool for judicial influence over the executive. Judicial action in turn magnifies congressional influence. A recent study of taxation litiga tion finds evidence that the federal courts interpret fiscal laws in a more pro - government fashion during military engagements supported by both Congress and the White House than in the course of unilateral executive military entanglements. 98 Although the r esulting effect is hard to quantify, the basic finding of the study suggests that fiscal statutes trench on executive discretion not only directly, but also indirectly via judicially created incentives to act only with legislative endorsement. 99¶ To be sure, a persistent difficulty in debates about congressional efficacy, and with some of the claims advanced in The Executive Unbound , is that it is unclear what baseline should be used to evaluate the outcomes of executive - congressional struggles. What counts, that is, as a “win” and for whom? What, for example, is an appropriate level of legislative control over expenditures? In the examples developed in this Part , I have underscored instances in which a law has been passed that a President disagrees with in substantial part, and where there are divergent legislative preferences reflected in the ultimate enactment. I do not mean to suggest, however, that there are not alternative ways of delineating a baseline for analysis. 100¶ In sum, there is strong evidence that law and lawmaking institutions have played a more robust role in delimiting the bounds of executive discretion over the federal sword and the federal purse than The Executive Unbound intimates. Congress in fact impedes presidential agendas. The White House in practice cannot use presidential administration as a perfect substitute. Legislation implementing congressional control of the purse is also a significant, if imperfect, tool of legislative influence on the ground. This is true even when Presidents influence the budgetary agenda 101 and agencies jawbone their legislative masters into new funding. 102 If Congress and statutory frameworks seem to have such nontrivial effects on the executive ’ s choice set , this at minimum i mplies that the conditions in which law matters are more extensive than The Executive Unbound suggests and that an account of executive discretion that omits law and legal institutions will be incomplete .

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### XO CP

#### CP is a rubber stamp

Ilya Somin 13, Professor of Law at George Mason University, “Hearing on ‘Drone Wars: The Constitutional and Counterterrorism Implications of Targeted Killing’: Testimony before the United States Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights”, April 23, http://www.law.gmu.edu/assets/files/faculty/Somin\_DroneWarfare\_April2013.pdf

But any internal executive process has the flaw that it could always be overriden by the president, and possibly other high-ranking executive branch officials. Moreover, lower- level executive officials might be reluctant to veto drone strikes supported by their superiors, either out of careerist concerns, or because administration officials ar e naturally likely to share the ideological and policy priorities of the president. An external check on targeting reduces such risks. External review might also enhance the credibility of the target-selection process with informed opinion both in the United States and abroad.

#### Counter plan doesn’t solve and links to politics- the president will overreach his power

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With discretion comes distrust. n2 Voters and legislators grant the executive discretion, through action or inaction, and increase executive discretion during emergencies, because they believe that the benefits of doing so outweigh the risks of executive abuse. n3 By the same token, political actors will attempt to constrain the executive, or will simply fail to grant powers they otherwise would have preferred to grant, where they believe that the risks and harms of abuses outweigh any benefits in security or other goods. The fear of executive abuse arises from many sources, but the basic problem is uncertainty about the executive's motivations. The executive may, for example, be a power maximizer, intent on using legal or factual discretion to harm political opponents and cement his political position, or that of his political party; or he may be an empire builder, interested in expanding his turf at the expense of other institutions.

Where the executive is indeed ill motivated in any of these ways, constraining his discretion (more than the voters would otherwise choose) may be sensible. But the executive may not be ill motivated at all. Where the executive is in fact a faithful agent, using his increased discretion to promote the public good according to whatever conception of the public good voters hold, then constraints on executive discretion are all cost and no benefit. Voters, legislators, and judges know that different executive officials have different motivations. Not all presidents are power maximizers or empire builders. n4 Of course, the executive need not be pure of heart; his devotion to the public interest may in turn be based on concern for the judgment of history. But so long as that motivation makes him a faithful agent of the principal(s), he counts as well motivated.¶ The problem, however, is that the public has no simple way to know which type of executive it is dealing with. An ill-motivated executive will just mimic the statements of a well-motivated one, saying [\*867] the right things and offering plausible rationales for policies that outsiders, lacking crucial information, find difficult to evaluate -- policies that turn out not to be in the public interest. The ability of the ill-motivated executive to mimic the public-spirited executive's statements gives rise to the executive's dilemma of credibility: the well-motivated executive has no simple way to identify himself as such. Distrust causes voters (and the legislators they elect) to withhold discretion that they would like to grant and that the well-motivated executive would like to receive. Of course, the ill-motivated executive might also want discretion. The problem is that voters who would want to give discretion (only) to the well-motivated executive may choose not to do so, because they are not sure what type he actually is. The risk that the public and legislators will fail to trust a well-motivated president is just as serious as the risk that they will trust an ill-motivated president, yet legal scholars have felled forests on the second topic while largely neglecting the first. n5¶ Our aim in this Article is to identify this dilemma of credibility that afflicts the well-motivated executive and to propose mechanisms for ameliorating it. We focus on emergencies and national security but cast the analysis within a broader framework. Our basic claim is that the credibility dilemma can be addressed by executive signaling. Without any new constitutional amendments, statutes, or legislative action, law and executive practice already contain resources to allow a well-motivated executive to send a credible signal of his motivations, committing to use increased discretion in public-spirited ways. By tying [\*868] policies to institutional mechanisms that impose heavier costs on ill-motivated actors than on well-motivated ones, the well-motivated executive can credibly signal his good intentions and thus persuade voters that his policies are those that voters would want if fully informed. We focus particularly on mechanisms of executive self-binding that send a signal of credibility by committing presidents to actions or policies that only a well-motivated president would adopt.¶ The discussion is structured as follows. Part I lays out examples of the credibility dilemma, both historical and recent. Part II analyzes the credibility dilemma through the lens of principal-agent theory. Part III examines the attempted Madisonian solution to the credibility dilemma and explains why it is a failure, for the most part. Part IV suggests a series of mechanisms for credibly demonstrating the executive's good intentions. These mechanisms include independent commissions within the executive branch; bipartisanship in appointments to the executive branch, or more broadly the creation of domestic coalitions of the willing; the related tactic of counterpartisanship, or choosing policies that run against the preferences of the president's own party; commitments to multilateral action in foreign policy; increasing the transparency of the executive's decisionmaking processes; and a regime of strict liability for executive abuses. Not all of these mechanisms succeed, and some of them succeed under some conditions but fail under others.¶ Credibility is but one good that trades off against other goods, even from the standpoint of the well-motivated executive. The main cost of credibility is that it diminishes the president's control over policymaking. In Part IV, we attempt to identify the conditions under which one or the other mechanism can produce credibility benefits greater than the resulting costs.¶ I. Examples¶ Presidents always have some credibility, at least at the start of their term. People do not vote for candidates whom they do not believe, and so the winning candidate brings to the office some amount of credibility, which he may further enhance over time by keeping his promises or making predictions that are proven correct by events. Having built up capital, some presidents find it useful to engage in deception, and some have gotten away with it, at least in the short term. Prominent examples include FDR's claim during the 1940 election that he was determined to keep the United States out of war; n6 Eisenhower's [\*869] denial that U-2 spy planes overflew the Soviet Union; n7 (probably) Johnson's description of the Gulf of Tonkin incident; n8 Nixon's statements about military action relating to Cambodia; n9 (probably) Reagan's claim that he was unaware of the arms-for-hostages scheme; n10 and Clinton's denial that he had had a sexual relationship with Monica Lewinsky. n11 But deception is potentially a costly strategy, because revelation of the deception damages the president's credibility, making it more difficult for him to achieve his next set of goals.¶ For this reason, we focus on historical cases where the president avoids deception, where in fact he makes a true or roughly true statement about circumstances that the public cannot directly evaluate, but has trouble persuading the public to believe him. In these cases, the president needs to use mechanisms that enhance his credibility or, if he cannot, finds himself unable to act. We offer examples to illustrate the credibility dilemma, to illustrate a range of solutions to the dilemma -- some successful, some otherwise -- and to show that the mechanisms we will propose in Part IV have historical analogues or precedents.¶ A. FDR: The Nazi Threat¶ Franklin Delano Roosevelt understood the threat posed by Nazi Germany to the United States' long-term interests long before the U.S. public did. The public was preoccupied with the Great Depression and had powerful isolationist representatives in Congress. Because of popular sentiment, FDR could not commit U.S. military assistance to Britain and France, even after Germany invaded France and began [\*870] bombing London. n12 Marginal economic and military assistance could take place only through complicated subterfuges and was in any event of minimal value.¶ Even after Japan bombed Pearl Harbor and Nazi Germany declared war on the U.S., FDR had to move cautiously. The public supported war, but sought war primarily with Japan, while FDR correctly believed that Germany posed a greater threat to the United States than Japan did. In FDR's view, Japan could be, and should be, dealt with after the Atlantic alliance against Germany was solidified. Thus, although FDR had popular support on one level, he needed to devise ways to ensure support for his particular war aims and strategies, whose particular justifications would always remain at least partially obscure to the public. One of FDR's tactics for generating support was to invite prominent Republicans into his cabinet. For example, Henry Stimson was given the post of Secretary of War, and Frank Knox was made the Secretary of the Navy. n13 Provided with inside information, they would be able to blow the whistle if U.S. war strategy departed too much from what they believed was the public interest. But, as internationalists, they would also support the war.¶ B. Truman: Scaring Hell out of the Country¶ The Soviet Union had been the United States' ally during World War II, and many people, including FDR, expected or hoped that it would cooperate with the United States after the war as well. That the Soviet Union would have aggressive rather than pacific designs only gradually dawned on U.S. elites. By 1946, skepticism about Soviet motives was widespread in the U.S. government, but the U.S. public still labored under more genial impressions fostered by wartime propaganda. To counter the growing Soviet threat, President Harry S. Truman resolved to expend U.S. treasure to rebuild the economies of France, West Germany, Britain, and other potential allies, and to bind them together in a military defense pact. The former would require a lot of money; the latter would require the stationing of U.S. troops abroad. The U.S. public, however, was traditionally isolationist, and wished to enjoy the victory and the peace. n14 How could Truman persuade [\*871] the public that further sacrifice and foreign entanglements would be necessary to defend U.S. interests against a former ally?¶ Truman apparently could not simply explain to the public that the Soviet threat justified the Marshall Plan and North Atlantic Treaty Organization, the United States' first permanent foreign military alliance. The problem was that the public had no way to evaluate the Soviet threat. The U.S.S.R. had not actually used military force against U.S. troops, as the Japanese had five years earlier at Pearl Harbor. The Soviet Union was instead supporting communist insurgencies in Greece and Turkey, interfering in politics in Italy, violating its promise to respect democratic processes in Poland, engaging in espionage, and so forth. Experienced and perceptive observers saw a threat, but, generally speaking, the public was in no position to do so.¶ To enhance the credibility of his claims about the Soviet threat, Truman did two things. First, he recast the threat as an ideological challenge. Truman gave the threat an ideological dimension, deliberately "scaring hell out of the country." n15 Second, he made an alliance with a powerful Republican senator, Arthur Vandenberg, who could assure Truman that the Republicans would not object to his policies as long as he consulted them and allowed them some influence. As a former isolationist, Vandenberg's endorsement of Truman's policy of engagement must have enhanced the credibility of Truman's claims about the Soviet threat. n16¶ Both of these strategies succeeded, but neither was costless. Truman's characterization of the Soviet threat as an ideological challenge may have led to the McCarthy era and suppressed public debate about foreign policy. Truman's alliance with the Republicans meant, of course, that he would have less freedom of action. n17 [\*872] ¶ C. Bush I versus Bush II: The Iraqi Threat¶ George H.W. Bush and George W. Bush both went to war with Iraq, but they faced different threats and chose different responses. George H.W. Bush sought to drive Iraqi military forces out of Kuwait. His problem was persuading the U.S. public that a U.S. military response was justified. In retrospect, it might seem that he was clearly right, but at the time most experts believed that that a great number of U.S. troops would be killed. n18 This was the expected cost of a military response. On the benefit side, Bush could appeal to the sanctity of sovereign borders, but public sympathy for the rich Kuwaitis was limited. The United States' real concern was that Iraq would, with Kuwait's oil fields, become wealthy and powerful enough to expand its control over the region, threaten Saudi Arabia, dominate the Persian Gulf's oil reserves, and pose a long-term threat to the Western economies and the United States' influence in the Middle East. But all of these concerns are rather abstract, and it was never obvious that the public would accept this case. Indeed, the congressional authorization to use military force was far from unanimous in the House of Representatives. n19¶ The credibility of Bush's claims, however, was greatly aided by international support. The public support of nations with divergent interests showed that Bush's claim about the internationally destabilizing effects of Saddam Hussein's invasion was real and not imagined. Thus any claim that a U.S. military invasion was solely in Bush's partisan political interests, or in the interests mainly of oil companies, was seriously weakened. Formal United Nations approval and the military assistance of foreign states -- which was of mainly political, not military significance -- further solidified Bush's credibility. n20¶ Surface similarities aside, George W. Bush faced a different kind of threat. He feared that Saddam Hussein had weapons of mass destruction (WMDs), which he would give or sell to terrorist groups like al Qaeda. It was more difficult for George W. Bush to prove that Saddam had WMDs than for his father to prove that Saddam was a threat to the region, because any WMDs were hidden on Saddam's territory [\*873] while the invasion of Kuwait could be observed by all. George W. Bush followed the same strategy that his father did, albeit somewhat less enthusiastically: to enlist international support in order to bolster the credibility of his claim that Saddam continued to pose a major threat to U.S. and Western interests. But George W. Bush failed to persuade foreign countries that Saddam posed a great enough threat to justify a military invasion (although they largely agreed that he either had or probably had WMDs), and he did not obtain significant international support. n21 Ironically, George W. Bush, unlike his father, had strong congressional support, in part because opposition to the first war turned out to be a political liability, and the costs of the first war (unlike the second war) turned out to be minimal.¶ D. Clinton: Wag the Dog¶ Long before the attacks of September 11, 2001, the U.S. government understood that al Qaeda posed a threat to U.S. interests. The CIA had established a bin Laden office in 1996, and the Clinton administration was trying to develop an effective counterterrorism strategy. n22 In 1998, al Qaeda blew up U.S. embassies in Kenya and Tanzania, whereupon Clinton ordered cruise missile strikes on targets in Afghanistan and Sudan. Just three days earlier, however, Clinton had announced on national television that he had had an affair with Monica Lewinsky. Opponents charged that he ordered the strikes in order to distract the public from his domestic problems. n23 This came to be known as the Wag the Dog strategy after a movie that featured a similar subterfuge. n24 [\*874] ¶ Clinton's credibility problem was more acute than that of earlier presidents. FDR, Truman, and George H.W. Bush (as well as, later, George W. Bush) might embark on foreign adventures in order to enhance their prestige or to pay off interest groups or to distract the public from domestic problems. George W. Bush, for example, has been repeatedly accused of manipulating terrorism warnings in order to improve poll results or electoral outcomes. n25 But only in Clinton's case was it necessary for him to make an important and visible decision about foreign policy in the midst of a personal scandal in which he admitted that he engaged in deceit, with the result that his ability to conduct an effective terrorism defense was hampered by doubts about his credibility. n26 A more aggressive response to al Qaeda would have to wait until after September 11, 2001.¶ II. Theory¶ A. The Problem¶ The examples we discussed have a common structure: a nation or group, like Nazi Germany, the Soviet Union, Iraq, or al Qaeda, poses a threat to U.S. interests. The threat is widely understood at a general level but the public does not understand important details: why the threat exists, its magnitude, what programs will best address it. The president believes that a particular program -- NSA surveillance, unlimited detention, military preparation -- is necessary and desirable for countering the threat, and let us assume that he is correct. At the same time, the program could be misused in various ways. It could be used to enhance the power of the president at the expense of legitimate political opponents; to pay off the president's supporters at the expense of the general public; or to spark an emotional but short-lived surge of patriotism that benefits the president during an important election but does not enhance security. The president can announce the [\*875] program and justify it in general terms, but he cannot design the program in such a way that its dangers to legitimate political opposition can be eliminated. n27 As a result, his claim that the program will be used only for national security, and not to enhance his power at the expense of political opponents, or to benefit allies, may not be believed.¶ Consider, for example, the policy of detaining suspected members of al Qaeda without charging them and without providing them with a trial. The public understands that al Qaeda poses a threat to national security but lacks the information necessary to evaluate the detention policy. The public does not know the magnitude of the continuing threat from al Qaeda: it might be the case that the group has focused its attention on foreign targets, that it no longer has the capacity to launch attacks on U.S. soil, that greater international cooperation and intelligence sharing has significantly reduced the threat, and so forth. The public also does not know whether the detainees are important members of al Qaeda, foot soldiers, or unconnected to al Qaeda; whether the dangerous detainees could be adequately incapacitated or deterred through regular criminal processes; whether the Bush administration obtains valuable intelligence from the detainees, as it claims, or not; whether the detainees are treated well or harshly; and numerous other relevant factors. Some of the relevant variables are public, but most are not; those that are public are nonetheless extremely difficult to evaluate. Consider the ambiguity over whether the suicides at Guantanamo Bay in June 2006 were driven by despair and harsh treatment, or were the result of a calculated effort by martyr-seeking Jihadists to score a propaganda coup. n28 As a general matter, the public does not even know whether the absence of major terrorist attacks on U.S. soil since September 11, 2001 resulted from the Bush administration's detention policy, at least partly resulted from this policy, occurred for reasons entirely independent of this policy such as (say) the military attack on Afghanistan, or occurred despite the detention policy, which, by alienating potential allies, perversely made a further attack more likely than it would otherwise have been.¶ Described in this manner, the president's credibility problem is the result of an agency relationship, where the president is the agent and the public is the principal. In agency models, the agent has the power to engage in an action that benefits or harms a principal. In a [\*876] typical version of these models, the principal first hires the agent and instructs the agent to engage in high effort rather than shirk. The agent then chooses whether to engage in high effort or shirk. High effort by the agent increases the probability that the principal will receive a high payoff, but some randomness is involved, so that the link between the agent's effort and the principal's payoff is stochastic rather than certain. If the agent's behavior can be observed and proven before a court, then the simple solution is for the two parties to enter a contract requiring the agent to engage in high effort. If the agent's behavior cannot be observed, then a contract requiring high effort is unenforceable, and instead the principal and agent might enter a contract that makes the agent's compensation a function of the principal's payoff. This gives the agent an incentive to use high effort, though depending on various conditions, this incentive might be weak. n29¶ Less important than the details of the agency model, and its various solutions, is the way that it clarifies the basic problem. The president is the agent and the public is the principal (sometimes we will think of the legislature as the principal, bracketing questions of agency slack between voters and legislators). The public cares about national security but also cares about civil liberties and the well-being of potential targets of the war on terror; its optimal policy trades off these factors. However, the public cannot directly choose the policy; instead, it delegates that power to the government and, in particular, the president. The president knows the range of options available, their likely effects, their expected costs and benefits -- thanks to the resources and expertise of the executive branch -- and so, if he is well motivated, he will choose the best measures available.¶ Thus a well-motivated executive, in our sense, is an executive who chooses the policies that voters would choose if they knew what the executive knows. n30 This definition does not require that the president's deeper motives be pure. For our purposes, a well-motivated president may be concerned with his historical reputation in the long run, as many presidents are. Because presidents know that in the long run most or all of their currently private information will be revealed, n31 a [\*877] concern with the judgment of history pushes presidents to make the decisions that future generations, knowing what the president knows now, will approve. To be sure, the concern with historical reputation is not perfectly congruent with doing what the current generation would approve of (with full information), because different generations have different values, as in the case of civil rights. The convergence is substantial, however, compared to far more harmful motivations a president might have, such as short-term empire-building or partisan advantage. Presidents with a concern for their long-run reputation may not be disinterested leaders, but they approach the ideal of faithful agency more closely than do presidents with no such concern.¶ We also assume that the voters' ultimate preferences are fixed, so we put aside the possibility of presidential leadership that changes bedrock public values. However, voters' derived preferences may change as their information changes, and this further blurs the significance of changing public values over time. On this view, there is still scope for leadership, in the sense that a well-motivated president might choose a policy inconsistent with voters' current ill-informed preferences, but consistent with the new preferences voters will form as their information changes, perhaps as a result of the policy itself. FDR's behavior just before World War II is the model for presidential leadership in this sense. n32¶ As this discussion suggests, the well-motivated executive may or may not keep campaign promises, or adopt popular policies. All depends on circumstances -- on what the public would approve, if it knew what the president knows. A public that would condemn the president's policy P might, if it knew more, approve of P. The well-motivated president will want to adopt P in such circumstances, and will then face the problem of credibly signaling to the public that he favors the policy for good reasons that he cannot directly convey. Furthermore, we assume that the well-motivated executive will collect an optimal amount of information -- up to the point where the marginal benefits of further information gathering equal the marginal costs. n33 This does not mean [\*878] that the well-motivated executive always gets the facts right; he may turn out to be wrong. But it does mean that greater accuracy would not have been cost justified.¶ Against this benchmark of faithful agency, the problem is that a given president's motivations may or may not be faithful, and the public knows this. The public fears that, for various reasons, the president might choose policies that diverge from the public's optimal policies. These include:¶ 1. The president cares more about national security (or more about civil liberties, but we will, for simplicity, assume the former) than the public does. His "preferences" are different from those of the public.¶ 2. The president cares very little about national security and civil liberties; he mainly cares about maximizing his political power and, more broadly, political success -- success for himself, his party, or his chosen successor. With a view to political power and success, the president might maximize the probability of electoral success by favoring particular interest groups, voting blocs, or institutions at the expense of the public, or by adopting policies that are popular in the short term, as far as the next election cycle, but that are harmful in the long term, along with rhetoric that confuses and misleads.¶ The public knows that the president might have these or other harmful motivations, so when the president claims, for example, that a detention policy is essential to the war on terror but at the same time is not excessively harsh given its benefits, the public simply does not know whether to believe him.¶ Crucially, the risk that the public will fail to trust a well-motivated president is just as serious as the risk that it will trust an ill-motivated one. Imagine that a well-motivated president chooses the optimal policies. No terrorist attack occurs before the next election, but the public does not know whether this is because the president chose the optimal policies, the president chose bad policies and was merely lucky (as the terrorists for internal reasons chose to focus on foreign targets), or the president chose effective but excessively harsh policies. In the election, the public therefore has no particular reason to vote for this president and could easily vote him out of office and replace him with a worse president. A president who cares about electoral [\*879] success might therefore not choose the optimal policies, and even a well-motivated president might be reluctant to choose the optimal policies because of the risk that the public will misinterpret them and replace him with an ill-motivated president. Presidents need public support even when they do not face reelection; they need the public to prod Congress to provide the president with funds for his programs and statutory authorization when necessary. A well-motivated president will abandon optimal policies if he cannot persuade the public that they are warranted.¶ As we noted earlier, legal scholars rarely note the problem of executive credibility, preferring to dwell on the problem of aggrandizement by ill-motivated presidents. Ironically, this assumption that presidents seek to maximize power has obscured one of the greatest constraints on aggrandizement, namely, the president's own interest in maintaining his credibility. Neither a well-motivated nor an ill-motivated president can accomplish his goals if the public does not trust him. n34 This concern with reputation may put a far greater check on the president's actions than do the reactions of the other branches of the government.¶ B. Solutions¶ The literature on agency models and optimal contracting provides clues for solving the problem of executive credibility. This literature gives two basic pieces of advice. n35 The first piece of advice is to align preferences. An employer will do better if her employees obtain utility from doing whatever actions benefit the employer. Suppose, for example, an employer seeks to hire someone to build furniture in a factory. The pay is good enough to attract job candidates who do not enjoy building furniture, but clearly the employer does better by hiring people who like working with their hands, and take pleasure in constructing a high-quality product, than by hiring people who do not like working with their hands. We say that the first type of person has a preference for building high-quality furniture; this person is less likely to shirk than the other type of person.¶ In order to align preferences, employers can use various types of screening mechanisms or selection mechanisms that separate the good [\*880] types and the bad types. n36 An old idea is that job candidates who completed a training program -- here, in carpentry -- are more likely good types than job candidates who did not complete such a program. The reason is not that the training program improves skills, though it might, but that a person who enjoys carpentry is more likely to enter and complete such a program than a person who does not -- the program, in terms of time and effort, is less burdensome for the former type of person. The employer could use other mechanisms as well, of course. She could ask for evidence that the job candidate pursues woodworking as a hobby in his free time, or, simply, that he has held other jobs in similar factories, or jobs that involve carpentry or furniture construction. Another important screening mechanism is to compensate employees partly through in-kind components or earmarked funds that are worth more to good types than to bad types. In university settings, academic compensation is partly composed of research budgets that cannot be spent on personal consumption and that are worth more to good types (researchers) than to bad types (shirkers). n37¶ The second piece of advice is to reward and sanction. This is not as simple as giving the employee a bonus if she constructs good furniture and firing her if she does not; recall that we assume that the employer does not directly observe the quality of the agent's action. Consider the following version of our example. The employees both design and construct furniture; "high-quality" furniture is both made well and pleasing to the public, so that it sells well. The employer cannot tell by looking at a piece of furniture whether it is high quality, because she does not know the tastes of the public. An employee who uses a high level of effort is more likely to produce furniture that sells well, but an employee can in good faith misjudge public taste and produce furniture that sells poorly. Similarly, an employee who uses a low level of effort is less likely to produce furniture that sells well but nonetheless may succeed at times. Since the employer cannot observe the quality of the furniture, she cannot make the wage a function of its quality; if she pays a flat wage, then the employee does not have an incentive to engage in a high level of effort, because that involves more personal cost without producing any reward.¶ The main solution is to make the employee's compensation a function, in part, of the quantity of the sales of the goods that the employee [\*881] produces. The quantity of sales, unlike the quality of the furniture, is observable. If the pay is properly determined, then the employee will engage in a high level of effort because the expected gains from high sales exceed the cost of high effort. How closely pay should be correlated with sales depends on how risk averse the employee is, and it may be necessary, for ordinary people who are generally risk averse, to pay them at least a little even if sales are low, and somewhat more if sales are high.¶ An enormous literature develops and qualifies these results, and we will refer to relevant parts of it later as necessary rather than try to summarize it here. n38 For now, we want to briefly point out the relevance of these solutions to our problem of executive credibility.¶ The preference-alignment solution has clear applicability to the problem of executive credibility. To be sure, elections and other democratic institutions help ensure that the president's preferences are not too distant from those of the public, but they are clearly not sufficient to solve the executive credibility problem. Elections will never create perfect preference alignment, for well-known reasons, and in any event the well-motivated executive will do what the public would want were it fully informed, not what maximizes the chances of electoral success in the short run. Furthermore, we do not consider credibility-generating mechanisms that would require new constitutional or statutory provisions; of course, the president has little or no power to redesign electoral rules in order to enhance his credibility. We will instead focus, in Part IV, on how the president might use the existing electoral system to enhance his credibility in indirect ways -- by appointing subordinates, advisors, and commission members, and by supporting certain types of candidacies for electoral office.¶ The reward-and-sanction solution also is applicable to the problem of executive credibility, but we think it is of less importance and we will not address it in any detail. The problem that most concerns us -- threats to national security -- typically does not produce a clear outcome while the president is still in office. As noted above, Bush's war-on-terror policies might be optimal, insufficient, or excessive; we will not know for many years. And the public cannot enter a contract with the president that provides that he will receive a bonus if national security is enhanced and will be sanctioned if it is not enhanced. Consequently, Bush cannot enter a contract with the public that rewards him if his policies are good and punishes him if they are bad. [\*882] ¶ However, some signaling mechanisms have a reward-or-sanction component. A good job applicant can distinguish herself from a bad job applicant by agreeing to a compensation scheme that good types value and bad types disvalue. For example, if a good type of employee discounts future payoffs less than bad types, then good types will accept deferred compensation (such as pension contributions) that bad types reject. n39 Similarly, a well-motivated president can distinguish himself from an ill-motivated president by binding himself to a policy position that an ill-motivated president would reject -- for example, deficit reduction programs or Social Security reform that would mainly benefit future generations, long after the president leaves office. However, a president, unlike an ordinary employee, cannot bind himself by a judicially enforceable contract; therefore, this mechanism can work only if the president can engage in self-binding through informal means, as we will discuss below. n40¶ Note that either a well-motivated actor or an ill-motivated actor might use strategic devices to enhance her credibility. A bad actor might, for example, take actions to enhance the credibility of his threats. In a standard illustration, the "chicken" game occurs when two drivers race toward each other and the loser is the one who swerves to avoid death. In that game, each driver is threatening to drive straight, and the winner will be the one who can make his threat credible, because the other driver will then know that the only choice is to swerve or die. Credibility is a valuable adjunct to many different motivations, not just to socially beneficial ones.¶ But this is a different type of credibility problem than the one we are interested in. In the class of problems we address, the problem that faces the well-motivated actor is that others cannot distinguish or sort him at a glance from ill-motivated actors. "Bad types" can mimic "good types" through low-cost imitation and by saying all the right things. The good type needs some device whereby he can credibly signal that he is a good type. The only effective device, in general, is for the good type to undertake an action that imposes greater costs on bad types than on good types. If third parties understand the cost structure of the action, then this separates the two types, because the bad type's strategy of costlessly imitating the good type no longer works. In employment screening, for example, both the lazy worker and the hard worker will claim to be a hard worker. The employer might prefer candidates with good references, or an advanced degree, [\*883] on the theory that obtaining those things will be easier for the good type than the bad type.¶ Let us provide a little more structure to our analysis before describing our preferred mechanisms. Suppose that the president must choose a policy that will affect national security and civil liberties; this might include asking Congress to authorize him to engage in conduct like wiretapping or the use of military force. He makes this choice at the start of his first term, and the actual effect of his choice -- on national security and civil liberties -- will not be revealed to the public until after the next election. Terrorist attacks during the first term do not necessarily prove that he chose the wrong policies; nor does the absence of terrorist attacks during the first term prove that he chose the right policies. Only later will it become clear whether the president chose the optimal policies, perhaps many decades later. Thus, the public must vote for or against the president on the basis of the policy choice itself, not on the basis of its effect on their well-being. For expository convenience, we will assume that the president actually does make the optimal policy choice and that his problem is one of convincing the public that he has done so. Presidents who, for whatever reason, knowingly choose policies that the public would reject (if fully informed) obviously do not want to convince the public that this is what they are doing.¶ Our focus, then, is how the president who chooses the optimal policy, given the information available to him and the relevant institutional constraints, might use some additional mechanism to enhance the credibility of his claim that he chose the best policy. In the next Part, we will address why our current Madisonian system does not already solve the problem of executive credibility. In Part IV, we will analyze some mechanisms by which presidents can bootstrap themselves into credibility.¶ III. Madisonian Monitoring¶ In the standard separation of powers theory attributed to Madison, the executive's credibility dilemma is ameliorated by the separation of powers and institutional competition, which produce monitoring or oversight of executive discretion. Although the Madisonian system is not usually justified as a means of enhancing the executive's credibility, that is a byproduct of the system: if checks and balances discourage ill-motivated persons from running for office, or force them to adopt public-spirited policies once in office, then the executive's claims about his policies will be credible. Congressional and judicial oversight of executive action, on this account, will ensure that the executive exercises discretion only as directed by voter-principals, [\*884] acting through legislators who are simultaneously agents (of the voters) and principals (of the executive).¶ This account is no longer adequate, if it ever was. Legislators and judges are, for the most part, unable to effectively oversee or monitor the executive, especially in the domains of foreign policy and national security. As a result, they are forced to make the difficult choice of granting discretion that an ill-motivated executive would abuse, or withholding discretion that a well-motivated executive would use for good.¶ We do not suggest that the Madisonian system has entirely failed, only that it has partly failed, and that to the extent it has failed the executive's credibility dilemma becomes more acute. We will examine some of the principal institutional problems, beginning with legislative oversight and then turning to the courts.¶ A. Congress¶ In the Madisonian vision, legislators are simultaneously principals of the president, who is supposed to execute the statutes that legislators enact, and are also institutional competitors of the president, who has freestanding constitutional powers beyond the execution of statutes. Voters elect legislators, who either transmit voters' exogenously determined policy preferences to the executive through statutes or (in a deliberative conception of Madisonianism) refine public preferences through reasoned discussion and then instruct the executive accordingly. n41 We are agnostic on the question of whether the preference-based or deliberative version of the Madisonian vision is more persuasive, or exegetically more faithful to the Madison of the Federalist Papers. In either case, what matters here is that the combination of principal-agent relationships with institutional rivalry is supposed to produce valuable byproducts for the polity as a whole. Legislators have an interest in monitoring the president, not only to ensure that he faithfully executes the statutes they enact, but also to ensure that executive power does not swell beyond its constitutionally prescribed bounds and destroy the separation of legislative and executive powers.¶ Whether or not this picture was ever realistic, it is no longer so today. Many institutional factors hamper effective legislative monitoring of executive discretion. Consider the following problems. [\*885] ¶ 1. Information asymmetries.¶ Monitoring the executive requires expertise in the area being monitored. In many cases, Congress lacks the information necessary to monitor discretionary policy choices by the executive. Although the committee system has the effect, among others, of generating legislative information and expertise, n42 and although Congress has a large internal staff, there are domains in which no amount of legislative expertise suffices for effective oversight. Prime among these are areas of foreign policy and national security. Here legislative expertise is beside the point, because the legislature lacks the raw information that experts need to make assessments.¶ The problem would disappear if legislators could cheaply acquire information from the president, but they cannot. One obstacle is a suite of legal doctrines protecting executive secrecy and creating deliberative privileges n43 -- doctrines which may or may not be justified from some higher-order systemic point of view as means for producing optimal deliberation within the executive branch. Although such privileges are waivable, the executive often fears to set a bad institutional precedent. Another obstacle is the standard executive claim that Congress leaks like a sieve, so that sharing secret information with legislators will result in public disclosure. The credibility dilemma becomes most acute when, as in the recent controversy over surveillance by the National Security Agency, the executive claims that the very scope or rationale of a program cannot be discussed with Congress, because to do so would vitiate the very secrecy that makes the program possible and beneficial. In any particular case the claim might be right or wrong; legislators have no real way to judge, and they know that the claim might be made either by a well-motivated executive or an ill-motivated executive, albeit for very different reasons.¶ 2. Collective action problems.¶ Executive officials worry that, with many legislators on select intelligence committees, someone is bound to leak and it will be difficult to pinpoint the source. Aware of the relative safety that the numbers give them, leakers are all the more bold. This is an example of a larger problem, arising from the fact that there are many more legislators than top-level executive officials. Compared to the executive branch, [\*886] Congress finds it more costly to coordinate and to undertake collective action (such as the detection and punishment of leakers). To be sure, the executive too is a "they," not an "it." Much of what presidents do is to arbitrate internal conflicts among executive departments and to try to aggregate competing views into coherent policy over time. As a comparative matter, however, the contrast is striking: the executive can act with much greater unity, force, and dispatch than can Congress, which is chronically hampered by the need for debate and consensus among large numbers. This comparative advantage is a principal reason why Congress enacts broad delegating statutes in the first place, especially in domains touching on foreign policy and national security. In these domains, and elsewhere, the very conditions that make delegation attractive also hamper congressional monitoring of executive discretion under the delegation.¶ There may or may not be offsetting advantages to Congress's large numbers; perhaps the very size and heterogeneity of Congress make it a superior deliberator, whereas the executive branch is prone to suffer from various forms of groupthink. n44 But there are clear disadvantages to large numbers, insofar as monitoring executive discretion is at issue. From the standpoint of individual legislators, monitoring is a collective good. If rational and self-interested, each legislator will attempt to free-ride on the production of this good, and monitoring will be inefficiently underproduced. n45 More broadly, the institutional prerogatives of Congress are also a collective good. n46 Individual legislators may or may not be interested in protecting the institution of Congress or the separation of legislative from executive power; much depends on legislators' time horizons or discount rate, the expected longevity of a legislative career, and so forth. But it is clear that protection of legislative prerogatives will be much less in an institution composed of hundreds of legislators coming and going than if Congress were a single person. [\*887] ¶ 3. "Separation of parties, not powers." n47¶ Congress is, among other things, a partisan institution. Political scientists debate whether it is principally a partisan institution, or even exclusively so. n48 But Madison arguably did not envision partisanship in anything like its modern sense. n49 Partisanship undermines the separation of powers during periods of unified government. n50 Where the same party controls both the executive branch and Congress, real monitoring of executive discretion rarely occurs, at any rate far less than in an ideal Madisonian system. Partisanship may enhance monitoring during periods of divided government, as one house of Congress, say, investigates a president of the other party. However, monitoring is arguably most necessary during periods of unified government, because Congress is most likely to enact broad delegations when the President holds similar views; n51 and in such periods monitoring is least likely to occur. n52 The Congress of one period may partially compensate by creating institutions to ensure bipartisan oversight in future periods -- consider the statute that gives a partisan minority of certain congressional committees power to subpoena documents from the executive, albeit only nonprivileged documents n53 -- but these are palliatives. Under unified government, congressional leaders of the [\*888] same party as the president have tremendous power to frustrate effective oversight by the minority party.¶ 4. The limits of congressional organization.¶ Congress as a collective body has attempted, in part, to overcome these problems through internal institutional arrangements. Committees and subcommittees specialize in a portion of the policy space, such as the armed forces or homeland security, thereby relieving members of the costs of acquiring and processing information (at least if the committee itself maintains a reputation for credibility). n54 Intelligence committees hold closed sessions and police their members to deter leaks (although the sanctions that members of Congress can apply to one another are not as strong as the sanctions a president can apply to a leaker in the executive branch). Large staffs, both for committees and members, add expertise and monitoring capacity. And interest groups can sometimes be counted upon to sound an alarm when the executive harms their interests. n55¶ Overall, however, these arrangements are not fully adequate, especially in domains of foreign policy and national security, where the scale of executive operations is orders of magnitude larger than the scale of congressional operations. Congress's whole staff, which must (with the help of interest groups) monitor all issues, runs to some 30,000 persons. n56 As of 2005, the executive branch had some 2.6 million civilian employees, n57 in addition to almost 1.4 million in the active armed forces. n58 The sheer mismatch between the scale of executive operations and the congressional capacity for oversight, even aided by interest groups or by leakers within the bureaucracy, is daunting. Probably Congress is already at or near the limits of its monitoring capacity at its current size and budget. [\*889] ¶ 5. Congressional motivation and credibility.¶ Like the executive, Congress has a credibility problem. Members of Congress may be well motivated or ill motivated; the public does not know. Thus, when Congress passes a resolution criticizing presidential action or refuses to delegate power that he seeks, observers do not know whether Congress or the president is right. Ill-motivated members of Congress will constrain public-spirited presidents; thus the Madisonian cure for the problem of executive credibility could be worse than the disease.¶ Even if members of Congress are generally well motivated, Congress has a problem of institutional credibility that the president lacks. Although a voter might trust the member of Congress for whom she voted because she knows about his efforts on his district's behalf, she will usually know nothing about other members of Congress, so when her representative is outvoted, she might well believe that the other members are ill motivated. And, with respect to her own representative, he will often lack credibility compared to the president because he has much less information. Further, the reputation of congressional leaders is only very loosely tied to the reputation of the institution, while there is a closer tie between the president's reputation and the presidency. As a result, Congress is likely to act less consistently than the president, further reducing its relative credibility. Congressional lack of credibility undermines its ability to constrain the president: Congress can monitor the president and tell the public that the president has acted properly or improperly, but if the public does not believe Congress, then Congress's power to check the president is limited.¶ We neither make, nor need to make, any general empirical claim that Congress has no control over executive discretion. That is surely not the case; there is a large debate, or set of related debates, about the extent of congressional dominance. n59 We have reviewed the institutional problems piecemeal; perhaps some of them are mutually offsetting, although we do not see any concrete examples. Our assertion is just that there is at least a real gap, and during emergencies and wars [\*890] an even larger gap, between the extent of executive discretion and legislative capacity for monitoring. It is hard to say how great that gap is, but we know of no one who thinks it is nonexistent. Within that gap, the dilemma of executive credibility arises. To the extent that legislators cannot monitor the executive's exercise of discretion, they must either withhold discretion from an executive who might be well motivated, or grant discretion to an executive who might be ill motivated.¶ B. Courts¶ Similar problems afflict judicial oversight of the executive.¶ 1. Information asymmetries.¶ The gap between the executive and the judiciary, in information and expertise, is even wider than between the executive and Congress. Whereas many legislators have a narrowly defined field of policy expertise, particularly in the House, federal judges are mostly generalists, barring a few specialized courts. Furthermore, the partial insulation from current politics that federal judges enjoy, by virtue of life tenure and salary protection, brings with it a kind of informational impoverishment. n60 Legislators, who must please other people at least some of the time, interact with the outside world far more systematically than generalist judges, whose main source of information is the briefs and arguments of litigants. The credibility dilemma thus appears quite acutely in judicial proceedings. When the executive says that resolving a plaintiff's claim would require disclosure of "state secrets," n61 with dangerous consequences for national security, judges know that either an ill-motivated or a well-motivated executive might be making the claim and that they have no easy means to assess whether the claim is credible.¶ 2. Collective action problems and decentralization.¶ If congressional monitoring of executive discretion is hampered by collective action problems, judicial monitoring is hampered by a [\*891] similar condition, the decentralized character of the federal judiciary. The judiciary really is a "they," not an "it," and is decentralized along mainly geographic lines. Different judges on different courts will have different prior estimates of the executive's credibility, and hence different views of the costs and benefits of oversight and of the appropriate level of monitoring. The Supreme Court is incapable of fully resolving these structural conflicts. Because the Court presides over a large institutional system and lacks the capacity to review more than a fraction of cases submitted to it, its role is restricted by necessity to the declaration of general principles of law and episodic, ad hoc intervention in the system. n62¶ 3. The legitimacy deficit.¶ In the federal system, appointed judges are not overtly partisan, though they are sometimes covertly so. n63 The very condition that enables this relative lack of overt politicization -- that federal judges are, at least in one familiar conception, legal technocrats appointed for their expertise rather than elected on a partisan basis -- also creates a serious legitimacy deficit for the judiciary, understanding legitimacy in a strictly sociological sense. n64 Aroused publics concerned about issues such as national security sometimes have little tolerance for robust judicial oversight of executive discretion, which can always be condemned as "activism" by "unelected judges." This charge sometimes succeeds and sometimes fails, but for the judges it is always a concern that acts as a drag on attempts to monitor executive behavior.¶ 4. Judicial credibility.¶ Judges rely on executive officials to carry out their orders and Congress to fund them, and thus ultimately rely on the public to impose sanctions on the political branches when the political branches do not obey a court order. But the public will support the judiciary [\*892] only if the public believes that the judiciary is well motivated rather than ill motivated. Such is often the case, but the credibility of judges is not infinite. n65 Lingering public suspicion of elite decisionmaking places a cap on judicial credibility, and indeed the evidence suggests that judges are often motivated by ideology, at least when it comes to opinion assignment. n66 Thus, in extreme cases, as between a presidential determination that an emergency requires a course of action and a judge's claim to the contrary, the public might well believe the president. n67¶ Here too, we do not claim that judicial oversight is a total failure. Doctrinal lawyers focus, sometimes to excess, on a handful of great cases in which judges have checked or constrained discretionary executive action, even in domains involving foreign policy or national security. Cases such as Youngstown, n68 the Pentagon Papers case, n69 and recently Hamdan n70 head this list. Undoubtedly, however, there is a [\*893] large gap between executive discretion and judicial capacities, or even between executive discretion and the sum of congressional and judicial capacities working in tandem. In times of emergency, especially, both Congress and the judiciary defer to the executive. n71 Legislators and judges understand that the executive's comparative institutional advantages in secrecy, force, and unitariness are all the more useful during emergencies, so that it is worthwhile transferring more discretion to the executive even if it results in an increased risk of executive abuse. The result is that cases such as the ones we have listed are the exception, not the rule, at least during the heat of the emergency.¶ C. The Madisonian System and the Well-Motivated Executive¶ The Madisonian system of oversight has not totally failed. Sometimes legislators overcome the temptation to free ride; sometimes they invest in protecting the separation of powers or legislative prerogatives. Sometimes judges review exercises of executive discretion, even during emergencies. But often enough, legislators and judges have no real alternative to letting executive officials exercise discretion unchecked. The Madisonian system is a partial failure; compensating mechanisms must be adopted to fill the area of slack, the institutional gap between executive discretion and the oversight capacities of other institutions. Again, the magnitude of this gap is unclear, but plausibly it is quite large; we will assume that it is.¶ It is often assumed that this partial failure of the Madisonian system unshackles and therefore benefits ill-motivated executives. This is grievously incomplete. The failure of the Madisonian system harms the well-motivated executive as much as it benefits the ill-motivated one. Where Madisonian oversight fails, the well-motivated executive is a victim of his own power. Voters, legislators, and judges will be wary of granting further discretion to an executive whose motivations are uncertain and possibly nefarious. The partial failure of Madisonian oversight thus threatens a form of inefficiency, a kind of contracting failure that makes potentially everyone, including the voters, worse off.¶ Our central question, then, is what the well-motivated executive can do to solve or at least ameliorate the problem. The solution is for the executive to complement his (well-motivated) first-order policy goals with second-order mechanisms for demonstrating credibility to other actors. We thus do not address the different question of what voters, legislators, judges, and other actors should do about an execu [\*894] tive who is ill motivated and known to be so. That project involves shoring up or replacing the Madisonian system to block executive dictatorship. Our project is the converse of this, and involves finding new mechanisms to help the well-motivated executive credibly distinguish himself as such.¶ IV. Executive Signaling: Law and Mechanisms¶ We suggest that the executive's credibility problem can be solved by second-order mechanisms of executive signaling. In the general case, well-motivated executives send credible signals by taking actions that are more costly for ill-motivated actors than for well-motivated ones, thus distinguishing themselves from their ill-motivated mimics. Among the specific mechanisms we discuss, an important subset involves executive self-binding, whereby executives commit themselves to a course of action that would impose higher costs on ill-motivated actors. Commitments themselves have value as signals of benign motivations.¶ This departs from the usual approach in legal scholarship. Legal theory has often discussed self-binding by "government" or government officials. In constitutional theory, it is often suggested that constitutions represent an attempt by "the people" to bind "themselves" against their own future decisionmaking pathologies, or relatedly, that constitutional prohibitions represent mechanisms by which governments commit themselves not to expropriate investments or to exploit their populations. n72 Whether or not this picture is coherent, n73 it is not the question we examine here, although some of the relevant considerations are similar. n74 We are not concerned with binding the president so that he cannot abuse his powers, but with how he might bind himself or take other actions that enhance his credibility, so that he can generate support from the public and other members of the government. [\*895] ¶ Furthermore, our question is subconstitutional: it is whether a well-motivated executive, acting within an established set of constitutional and statutory rules, can use signaling mechanisms to generate public trust. Accordingly, we proceed by assuming that no constitutional amendments or new statutes will be enacted. Within these constraints, what can a well-motivated executive do to bootstrap himself to credibility? The problem for the well-motivated executive is to credibly signal his benign motivations. In general, the solution is to engage in actions that are less costly for good types than for bad types.¶ We begin with some relevant law, then examine a set of possible mechanisms -- emphasizing both the conditions under which they might succeed and the conditions under which they might not -- and conclude by examining the costs of credibility.¶ A. A Preliminary Note on Law and Self-Binding¶ Many of our mechanisms are unproblematic from a legal perspective, as they involve presidential actions that are clearly lawful. But a few raise legal questions; in particular, those that involve self-binding. n75 Can a president bind himself to respect particular first-order policies? With qualifications, the answer is yes, at least to the same extent that a legislature can. Formally, a duly promulgated executive rule or order binds even the executive unless and until it is validly abrogated, thereby establishing a new legal status quo. n76 The legal authority to establish a new status quo allows a president to create inertia or political constraints that will affect his own future choices. In a practical sense, presidents, like legislatures, have great de facto power to adopt policies that shape the legal landscape for the future. A [\*896] president might commit himself to a long-term project of defense procurement or infrastructure or foreign policy, narrowing his own future choices and generating new political coalitions that will act to defend the new rules or policies.¶ More schematically, we may speak of formal and informal means of self-binding:¶ 1. The president might use formal means to bind himself. This is possible in the sense that an executive order, if otherwise valid, legally binds the president while it is in effect and may be enforced by the courts. It is not possible in the sense that the president can always repeal the executive order if he can bear the political and reputational costs of doing so.¶ 2. The president might use informal means to bind himself. This is not only possible but frequent and important. Issuing an executive rule providing for the appointment of special prosecutors, as Nixon did, is not a formal self-binding. n77 However, there may be large political costs to repealing the order. This effect does not depend on the courts' willingness to enforce the order, even against Nixon himself. Court enforcement makes the order legally binding while it is in place, but only political and reputational enforcement can protect it from repeal. Just as a dessert addict might announce to his friends that he is going on a no-dessert diet in order to raise the reputational costs of backsliding and thus commit himself, so, too, the executive's issuance of a self-binding order can trigger reputational costs. In such cases, repeal of an executive order may be seen as a breach of faith even if no other institution ever enforces it.¶ In what follows, we will invoke both formal and informal mechanisms. For our purposes, the distinction between the authority to engage in de jure self-binding (legally limited and well-defined) and the power to engage in de facto self-binding (broad and amorphous) is secondary. So long as policies are deliberately chosen with a view to generating credibility, and do so by constraining the president's own future choices in ways that impose greater costs on ill-motivated [\*897] presidents than on well-motivated ones, it does not matter whether the constraint is formal or informal.¶ B. Mechanisms¶ What signaling mechanisms might a well-motivated executive adopt to credibly assure voters, legislators, and judges that his policies rest on judgments about the public interest, rather than on power maximization, partisanship, or other nefarious motives?¶ 1. Intrabranch separation of powers.¶ In an interesting treatment of related problems, Neal Katyal suggests that the failure of the Madisonian system counsels "internal separation of powers" within the executive branch. n78 Abdication by Congress means that there are few effective checks on executive power; second-best substitutes are necessary. Katyal proposes some mechanisms that would be adopted by Congress, such as oversight hearings by the minority party, but his most creative proposals are for arrangements internal to the executive branch, such as redundancy and competition among agencies, stronger employment protections for civil servants, and internal adjudication of executive controversies by insulated "executive" decisionmakers who resemble judges in many ways. n79¶ Katyal's argument is relevant because the mechanisms he discusses might be understood as signaling devices, but his overall approach is conceptually flawed on two grounds. First, the assumption that second-best constraints on the executive should reproduce the Madisonian separation of powers within the executive branch is never defended. The idea seems to be that this is as close as we can get to the first-best, while holding constant everything else in our constitutional order. But the general theory of second-best states that approaching as closely as possible to the first-best will not necessarily be the preferred strategy; n80 the best approach may be to adjust matters on other margins as well, in potentially unpredictable ways. If the Madisonian system has failed in the ways Katyal suggests, the best compensating [\*898] adjustment might be, for all we know, to switch to a parliamentary system. (We assume that no large scale changes of this sort are possible, whereas Katyal seemingly assumes that they are, or at least does not make clear his assumptions in this regard.) Overall, Katyal's view has a kind of fractal quality; each branch should reproduce within itself the very same separation of powers structure that also describes the whole system, but it is not explained why the constitutional order should be fractal.¶ Second, Katyal's proposals for internal separation of powers are self-defeating: the motivations that Katyal ascribes to the executive are inconsistent with the executive adopting or respecting the prescriptions Katyal recommends. n81 Katyal never quite says so explicitly, but he clearly envisions the executive as a power-maximizing actor, in the sense that the president seeks to remove all constraints on his current choices. n82 Such an executive would not adopt or enforce the internal separation of powers to check himself. Executive signaling is not, even in principle, a solution to the lack of constraints on a power-maximizing executive in the sense Katyal implicitly intends. Although an ill-motivated executive might bind himself to enhance his strategic credibility, as explained above, he would not do so in order to restore the balance of powers. Nor is it possible, given Katyal's premise of legislative passivity or abdication, that Congress would force the internal separation of powers on the executive. In what follows, we limit ourselves to proposals that are consistent with the motivations, beliefs, and political opportunities that we ascribe to the well-motivated executive, to whom the proposals are addressed. This limitation ensures that the proposals are not self-defeating, whatever their other drawbacks.¶ The contrast here must not be drawn too simply. A well-motivated executive, in our sense, would attempt to increase his power if fully informed voters would want him to do so. The very point of demonstrating credibility is to allow voters and legislators to increase the discretionary authority of the executive, where all will be made better off by doing so. Scholars such as Katyal, who implicitly distrust the executive, however, do not subscribe to this picture of executive motivations. Rather, they see the executive as an unfaithful agent of the voters; the executive attempts to maximize his power even where fully informed [\*899] voters would prefer otherwise. An actor of that sort will have no incentive to adopt proposals intended to constrain that sort of actor.¶ 2. Independent commissions.¶ We now turn to some conceptually coherent mechanisms of executive signaling. Somewhat analogously to Katyal's idea of the internal separation of powers, a well-motivated executive might establish independent commissions to review policy decisions, either before or after the fact. Presidents do this routinely, especially after a policy has had disastrous outcomes, but sometimes beforehand as well. Independent commissions are typically blue-ribbon and bipartisan. n83¶ We add to this familiar process the idea that the President might gain credibility by publicly committing or binding himself to give the commission authority on some dimension. For example, the president might publicly promise to follow the recommendations of such a commission, or to allow the commission to exercise de facto veto power over a policy decision before it is made, or might promise before the policy is chosen that the commission will be given power to review its success after the fact. To be sure, there will always be some wiggle room in the terms of the promise, but that is true of almost all commitments, which raise the costs of wiggling out even if they do not completely prevent it.¶ Consider whether George W. Bush's credibility would have been enhanced had he appointed a blue-ribbon commission to examine the evidence for weapons of mass destruction in Iraq before the 2003 invasion, and publicly promised not to invade unless the commission found substantial evidence of their existence. Bush would have retained his preexisting legal authority to order the invasion even if the commission found the evidence inadequate, but the political costs of doing so would have been large. Knowing this, and knowing that Bush [\*900] shared that knowledge, the public could have inferred that Bush's professed motive -- elimination of weapons of mass destruction -- was also his real motive. Public promises that inflict reputational costs on badly motivated behavior help the well-motivated executive to credibly distinguish himself from the ill-motivated one.¶ The more common version of this tactic is to appoint commissions after the relevant event, as George W. Bush did to investigate the faulty reports by intelligence agencies that Iraq possessed weapons of mass destruction. n84 If the president appoints after-the-fact commissions, the commissions can enhance his credibility for the next event -- by showing that he will be willing, after that event, to subject his statements to scrutiny by public experts. Here, however, the demonstration of credibility is weaker, because there is no commitment to appoint any after-the-fact commissions in the future, but merely a plausible inference that the president's future behavior will track his past behavior.¶ 3. Bipartisan appointments.¶ In examples of the sort just mentioned, the signaling arises from public position-taking. The well-motivated executive might produce similar effects through appointments to office. n85 A number of statutes require partisan balance on multimember commissions; presidents might approve them because they allow the president to commit to a policy that legislators favor, thus encouraging legislators to increase the scope of the delegation in the first place. n86 For similar reasons, presidents may consent to restrictions on the removal of agency officials, [\*901] because the restriction enables the president to commit to giving the agency some autonomy from the president's preferences. n87¶ Similar mechanisms can work even where no statutes are in the picture. As previously mentioned, during World War II, FDR appointed Republicans to important cabinet positions, making Stimson his Secretary of War. n88 Clinton appointed William Cohen, a moderate Republican, as Secretary of Defense in order to shore up his credibility on security issues. Bipartisanship of this sort might improve the deliberation that precedes decisions, by impeding various forms of herding, cascades, and groupthink; n89 however, we focus on its credibility-generating effects. By (1) expanding the circle of those who share the president's privileged access to information, (2) ensuring that policy is partly controlled by officials whose preferences differ from the president's, and (3) inviting a potential whistleblower into the tent, bipartisanship helps to dispel the suspicion that policy decisions rest on partisan motives or extreme preferences, which in turn encourages broader delegations of discretion from the public and Congress.¶ A commitment to bipartisanship is only one way in which appointments can generate credibility. Presidents might simply appoint a person with a reputation for integrity, as when President Nixon appointed Archibald Cox as special prosecutor (although plausibly Nixon did so because he was forced to do so by political constraints, rather than as a tactic for generating credibility). A person with well-known preferences on a particular issue, even if not of the other party or widely respected for impartiality, can serve as a credible whistleblower on that issue. Thus presidents routinely award cabinet posts to leaders of subsets of the president's own party, leaders whose preferences are known to diverge from the president's on the subject. One point of this is to credibly assure the relevant interest groups that the president will not deviate (too far) from their preferences.¶ More generally, the decision by presidents to bring into their administrations members of other parties, or persons with a reputation for bipartisanship and integrity, illustrates the formation of domestic [\*902] coalitions of the willing. Presidents can informally bargain around the formal separation of powers n90 by employing subsets of Congress, or of the opposing party, to generate credibility while maintaining a measure of institutional control. FDR was willing to appoint Knox and Stimson, but not to give the Republicans in Congress a veto. Truman was willing to ally with Arthur Vandenberg but not with all the Republicans; Clinton was willing to appoint William Cohen but not Newt Gingrich. George W. Bush likewise made a gesture towards credibility by briefing members of the Senate Intelligence Committee -- including Democrats -- on the administration's secret surveillance program(s), which provided a useful talking point when the existence of the program(s) was revealed to the public.¶ 4. Counter-partisanship.¶ Related to bipartisanship is what might be called counter-partisanship: presidents have greater credibility when they choose policies that cut against the grain of their party's platform or their own presumed preferences. n91 Only Nixon could go to China, and only Clinton could engineer welfare reform. Voters and publics rationally employ a political heuristic: the relevant policy, which voters are incapable of directly assessing, must be highly beneficial if it is chosen by a president who is predisposed against it by convictions or partisan loyalty. n92 Accordingly, those who wish to move U.S. terrorism policy towards greater security and less liberty might do well to support the election of a Democrat. n93 By the same logic, George W. Bush is widely suspected [\*903] of nefarious motives when he rounds up alleged enemy combatants, but not when he creates a massive prescription drug benefit.¶ Counter-partisanship can powerfully enhance the president's credibility, but it depends heavily on a lucky alignment of political stars. A peace-loving president has credibility when he declares a military emergency but not when he appeases; a belligerent president has credibility when he offers peace but not when he advocates military solutions. A lucky nation has a well-motivated president with a belligerent reputation when international tensions diminish (Ronald Reagan) and a president with a pacific reputation when they grow (Abraham Lincoln, who opposed the Mexican War). But a nation is not always lucky.¶ 5. Transparency.¶ The well-motivated executive might commit to transparency as a way to reduce the costs to outsiders of monitoring his actions. n94 The FDR strategy of inviting potential whistleblowers from the opposite party into government is a special case of this; the implicit threat is that the whistleblower will make public any evidence of partisan motivations. The more ambitious case involves actually exposing the executive's decisionmaking processes to observation. To the extent that an ill-motivated executive cannot publicly acknowledge his motivations or publicly instruct subordinates to take them into account in decisionmaking, transparency will tend to exclude those motivations from the decisionmaking process. The public will know that only a well-motivated executive would promise transparency in the first place, and the public can therefore draw an inference to credibility.¶ Credibility is especially enhanced when transparency is effected through journalists with reputations for integrity or with political [\*904] preferences opposite to those of the president. Thus, George W. Bush gave Bob Woodward unprecedented access to White House decisionmaking and perhaps even to classified intelligence, n95 with the expectation that the material would be published. This sort of disclosure to journalists is not real-time transparency -- no one expects meetings of the National Security Council to appear on C-SPAN -- but the anticipation of future disclosure can have a disciplining effect in the present. By inviting this disciplining effect, the administration engages in signaling in the present through (the threat of) future transparency.¶ There are complex tradeoffs here, because transparency can have a range of harmful effects. As far as process is concerned, decisionmakers under public scrutiny may posture for the audience, may freeze their views or positions prematurely, and may hesitate to offer proposals or reasons for which they can later be blamed if things go wrong. n96 As for substance, transparency can frustrate the achievement of programmatic or policy goals themselves. Where security policy is at stake, secrecy is sometimes necessary to surprise enemies or to keep them guessing. Finally, one must take account of the incentives of the actors who expose the facts -- especially journalists who might reward sources who give them access by portraying their decisionmaking in a favorable light. n97¶ We will take up the costs of credibility shortly. n98 In general, however, the existence of costs does not mean that the credibility-generating mechanisms are useless. Quite the contrary: where the executive uses such mechanisms, voters and legislators can draw an inference that the executive is well motivated, precisely because the existence [\*905] of costs would have given an ill-motivated executive an excuse not to use those mechanisms.¶ 6. Multilateralism.¶ Another credibility-generating mechanism for the executive is to enter into alliances or international institutions that subject foreign policy decisions to multilateral oversight. Because the information gap between voters and legislators, on the one hand, and the executive on the other, is especially wide in foreign affairs, there is also wide scope for suspicion and conspiracy theories. If the president undertakes a unilateral foreign policy, some sectors of the domestic public will be suspicious of his motives. All recent presidents have faced this problem. In the case of George W. Bush, as we suggested, many have questioned whether the invasion of Iraq was undertaken to eliminate weapons of mass destruction, or to protect human rights, or instead to safeguard the oil supply, or because the president has (it is alleged) always wanted to invade Iraq because Saddam Hussein attempted to assassinate his father. n99 In the case of Bill Clinton, some said that the cruise missile attack on Osama bin Laden's training camp in Afghanistan was a "wag the dog" tactic intended to distract attention from Clinton's impeachment. n100¶ A public commitment to multilateralism can close or narrow the credibility gap. Suppose that a group of nations have common interests on one dimension -- say, security from terrorism or from proliferation of nuclear weapons -- but disparate interests on other dimensions -- say, conflicting commercial or political interests. Multilateralism can be understood as a policy that in effect requires a supermajority vote -- or even a unanimous vote -- of the group to license intervention. The supermajority requirement ensures that only interventions promoting the security interest common to the group will be approved, while interventions that promote some political agenda not shared by the requisite supermajority will be rejected. Knowing this, domestic audiences can infer that interventions that gain multilateral approval do not rest on disreputable motives.¶ It follows that multilateralism can be either formal or informal. Action by the United Nations Security Council can be taken only under formal voting rules that require unanimous agreement of the permanent members. n101 Informally, in the face of increasing tensions [\*906] with Iran, George W. Bush's policy has included extensive multilateral consultations and a quasicommitment not to intervene unilaterally. Knowing that his credibility is thin after Iraq, Bush has presumably adopted this course in part to reassure domestic audiences that there is no nefarious motive behind an intervention, should one occur.¶ It also follows that multilateralism and bipartisan congressional authorization may be substitutes, in terms of generating credibility. In both cases the public knows that the cooperators -- partisan opponents or other nations, as the case may be -- are unlikely to share any secret agenda the president may have. The substitution, however, is only partial; as we suggested in Part III, the Madisonian emphasis on bipartisan authorization has proven insufficient. The interests of parties within Congress diverge less than do the interests of different nations, which makes the credibility gain greater under multilateralism. In eras of unified government, the ability of the president's party to put a policy through Congress without the cooperation of the other party (ignoring the threat of a Senate filibuster, a weapon that the minority party often hesitates to wield) often undermines the policy's credibility even if members of the minority go along. After all, the minority members may be going along precisely because they anticipate that opposition is fruitless, in which case no inference about the policy's merits should be drawn from their approval. Moreover, even a well-motivated president may prefer, all else equal, to generate credibility through mechanisms that do not involve Congress, if concerned about delay, leaks, or obstruction by small legislative minorities. Thus Truman relied on a resolution of the United Nations Security Council n102 rather than congressional authorization to prosecute the Korean War.¶ The costs of multilateralism are straightforward. Multilateralism increases the costs of reaching decisions, because a larger group must coordinate its actions, and increases the risks of false negatives -- failure to undertake justified interventions. A president who declines to bind himself through multilateralism may thus be either ill motivated and desirous of pursuing an agenda not based on genuine security [\*907] goals, or well motivated and worried about the genuine costs of multilateralism. As usual, however, the credibility-generating inference holds asymmetrically: precisely because an ill-motivated president may use the costs of multilateralism as a plausible pretext, a president who does pursue multilateralism is more likely to be well motivated.¶ 7. Legal liability.¶ For completeness, we mention that the well-motivated executive might in principle subject himself to legal liability for actions or outcomes that only an ill-motivated executive would undertake. Consider the controversy surrounding George W. Bush's telecommunications surveillance program, which the president has claimed covers only communications in which one of the parties is overseas, not domestic-to-domestic calls. n103 There is widespread suspicion that this claim is false. n104 In a recent poll, 26 percent of respondents believed that the National Security Agency listens to their calls. n105 The credibility gap arises because it is difficult in the extreme to know what exactly the Agency is doing, and what the costs and benefits of the alternatives are.¶ Here the credibility gap might be narrowed by creating a cause of action, for damages, on behalf of anyone who can show that domestic-to-domestic calls were examined. n106 Liability would be strict, because a negligence rule -- whether the Agency exerted reasonable efforts to avoid examining the communication -- requires too much information for judges, jurors, and voters to evaluate, and would just reproduce the monitoring problems that gave rise to the credibility gap in the first place. Strict liability, by contrast, would require a much narrower factual inquiry. Crucially, a commitment to strict liability would only be made by an executive who intended to minimize the incidence of (even unintentional and nonnegligent) surveillance of purely domestic communications. [\*908] ¶ However, there are legal and practical problems here, perhaps insuperable ones. Legally, it is hardly clear that the president could, on his own authority, create a cause of action against himself or his agents to be brought in federal court. It is well within presidential authority to create executive commissions for hearing claims against the United States, for disbursing funds under benefit programs, and so on; but the problem here is that there might be no pot of money from which to fund damages. The so-called Judgment Fund, out of which damages against the executive are usually paid, is restricted to statutorily specified lawsuits. n107 Even so, statutory authorization for the president to create the strict liability cause of action would be necessary, n108 as we discuss shortly. n109 Practically, it is unclear whether government agents can be forced to "internalize costs" through money damages in the way that private parties can, at least if the treasury is paying those damages. n110 And if it is, voters may not perceive the connection between governmental action and subsequent payouts in any event.¶ 8. The news conference.¶ Presidents use news conferences to demonstrate their mastery of the details of policy. Many successful presidents, like FDR, conducted numerous such conferences. n111 Ill-motivated presidents will not care [\*909] about policy if their interest is just holding power for its own sake. Thus, they would regard news conferences as burdensome and risky chores. The problem is that a well-motivated president does not necessarily care about details of policy, as opposed to its broad direction, and journalists might benefit by tripping up a president in order to score points. Reagan, for example, did not care about policy details, but is generally regarded as a successful president. n112 To make Reagan look good, his handlers devoted considerable resources trying to prepare him for news conferences, resources that might have been better used in other ways. n113¶ 9. "Precommitment politics." n114¶ We have been surveying mechanisms that the well-motivated executive can employ once in office. However, in every case the analysis can be driven back one stage to the electoral campaign for executive office. During electoral campaigns, candidates for the presidency take public positions that partially commit them to subsequent policies, by raising the reputational costs of subsequent policy changes. Under current law, campaign promises are very difficult to enforce in the courts. n115 But even without legal enforcement, position-taking helps to separate the well-motivated from the ill-motivated candidate, because the costs to the former of making promises of this sort are higher. To be sure, many such promises are vacuous, meaning that voters will not sanction a president who violates them, but some turn out to have real [\*910] force, as George H.W. Bush discovered when he broke his clear pledge not to raise taxes. n116¶ 10. The possibility of statutory commitments.¶ So far, we have proceeded on the austere assumption that no constitutional or statutory changes are allowed. We have confined ourselves to credibility-generating mechanisms that arise by executive signaling -- commitments that the executive could initiate by legal order or by public position-taking, without the permission of other institutions.¶ However, this restriction may stack the deck too heavily against the solutions we suggest. A central example of the credibility problem, after all, arises when voters and legislators want to enact statutes transferring further discretion to a well-motivated executive, but are not sure that that is the sort of executive they are dealing with.

In such cases, there is no reason to exclude the possibility that the executive might ask Congress to provide him with statutory signaling mechanisms that he would otherwise lack. In the surveillance example, Congress is currently considering amendments to relevant statutes. n117 It is easy to imagine a well-motivated executive proposing that Congress explicitly ratify his authority to examine overseas communications, while also proposing -- as a demonstration of credibility -- that the ratification be bundled with oversight mechanisms, review by an independent agency or special court, or a statutory cause of action imposing strict liability for prohibited forms of surveillance.¶ C. The Costs of Credibility¶ The mechanisms we have discussed generate credibility, which is a benefit for voters and legislators who would like to increase the discretion of the well-motivated executive. What of the cost side? In each case, there are costs to generating credibility, although the character and magnitude of the costs differ across mechanisms.¶ Signaling is by definition costly. The presence of a cost is what distinguishes ill-motivated mimics, who are unwilling to incur the cost, from genuine good types. In this context, the inherent costliness of signaling means that the president must use time or resources to establish credibility with the public when, if voters were perfectly informed, that time and those resources could be expended directly on [\*911] determining and implementing policy. But costs can be reflected in more subtle ways as well. Many of these mechanisms rely on the participation of agents who themselves may be ill motivated. Whistleblowers can leak information in order to damage the administration or cry wolf when there is no partisanship, merely substantive disagreement. Journalists might produce images distorted by their own biases and strategic agendas. Miscellaneous costs arise in other ways as well. Multilateralism raises decision costs, transparency can harm deliberation, and so on. n118¶ Often the basic tradeoff facing presidents is that credibility is gained at the expense of control. Mechanisms such as creating independent commissions and pursuing multilateralism illustrate that to gain credibility, presidents must surrender part of their control over policy choices, partially constraining executive discretion in the present in return for more trust, which will then translate into more discretion in the future. The loss of control is a cost, even to the well-motivated executive. To be sure, the well-motivated executive may be more willing than the ill-motivated one to trade some loss of present control for increased future discretion, if the ill-motivated executive tends to be myopic or to discount the future more heavily. However, it is not clear that is so -- many terrifying dictators have been quite far-sighted -- and in any event everything depends upon the particulars of the case.

#### Future presidents prevent solvency

Harvard Law Review 12, "Developments in the Law: Presidential Authority," Vol. 125:2057, www.harvardlawreview.org/media/pdf/vol125\_devo.pdf

The recent history of signing statements demonstrates how public opinion can effectively check presidential expansions of power by inducing executive self-binding. It remains to be seen, however, if this more restrained view of signing statements can remain intact, for **it relies on the promises of one branch — indeed of one person — to enforce and maintain the separation of powers**. To be sure, President Obama’s guidelines for the use of signing statements contain all the hallmarks of good executive branch policy: transparency, accountability, and fidelity to constitutional limitations. Yet, in practice, this apparent constraint (however well intentioned) may amount to little more than voluntary self-restraint. 146 Without a formal institutional check, it is unclear what mechanism will prevent the next President (or President Obama himself) from reverting to the allegedly abusive Bush-era practices. 147 Only time, and perhaps public opinion, will tell.

#### CP links to politics more

Billy Hallowell 13, writer for The Blaze, B.A. in journalism and broadcasting from the College of Mount Saint Vincent in Riverdale, New York and an M.S. in social research from Hunter College in Manhattan, “HERE’S HOW OBAMA IS USING EXECUTIVE POWER TO BYPASS LEGISLATIVE PROCESS” Feb. 11, 2013, <http://www.theblaze.com/stories/2013/02/11/heres-how-obamas-using-executive-power-to-bylass-legislative-process-plus-a-brief-history-of-executive-orders/>

“In an era of polarized parties and a fragmented Congress, the opportunities to legislate are few and far between,” Howell said. “So presidents have powerful incentive to go it alone. And they do.”¶ And the political opposition howls.¶ Sen. Marco Rubio, R-Fla., a possible contender for the Republican presidential nomination in 2016, said that on the gun-control front in particular, Obama is “abusing his power by imposing his policies via executive fiat instead of allowing them to be debated in Congress.”¶ The Republican reaction is to be expected, said John Woolley, co-director of the American Presidency Project at the University of California in Santa Barbara.¶ “For years there has been a growing concern about unchecked executive power,” Woolley said. “It tends to have a partisan content, with contemporary complaints coming from the incumbent president’s opponents.”

#### Executive reform and review fails—not a neutral decision maker, secrecy and speed undermine effective decision making—counterplan undermines separation of powers

Chebab, 2012

[Ahmad, Georgetown University Law Center, Retrieving the Role of Accountability in the Targeted Killings Context: A Proposal for Judicial Review, 3-30-12, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2031572] /Wyo-MB

The argument put forth here, therefore, is that in light of the protections the Constitution¶ affords U.S. citizens, there must be a degree of inter-branch process when such individuals are targeted by the government to ensure that (1) these individuals truly pose a direct and imminent threat to the United States and (2) targeting is truly the last resort.¶ The preceding case law suggests that domestic legal protections for U.S. citizens necessitate a higher procedural threshold.102 Justice O’Connor acknowledged the danger inherent in exclusively intra-branch process in Hamdi when she asserted that the Executive is not a neutral decision-maker as the “even purportedly fair adjudicators are disqualified by their interest in the controversy.”103 In rejecting the government’s argument that a “separation of powers” analysis mandates a heavily circumscribed role for the courts in these circumstances, Justice O’Connor concluded that in times of conflict, the Constitution “most assuredly envisions a role¶ for all three branches when individual liberties are at stake.”104 Applying this reasoning to the entirely intra-executive process currently being afforded to American citizens like al-Awlaki would suggest that in the realm of targeted killing, where the deprivation is one’s life, the absence of any “neutral decision-maker” outside the executive branch is a clear violation of due process guaranteed by the Constitution. On a policy level, the danger of intra-executive process is similarly alarming. As Judge James Baker, in describing the nature of covert actions put it:¶ Because this process is internal to the executive branch, it is subject to executive-branch exception or amendment, with general or case-specific approval by the president. This is risky because in this area, as in other areas of national security practice, the twin necessities of secrecy and speed may pull as they do against the competing interests of deliberate review, dissent, and accountable decision-making.105

### 2ac politics

#### No debt ceiling deal – there is a stalemate in Congress

**WDTV 10/4** (“No Sign of a Deal as Debt Ceiling Draws Nearer,” October 04, 2013, <http://www.wdtv.com/wdtv.cfm?func=view&section=5-News&item=No-Sign-of-a-Deal-as-Debt-Ceiling-Draws-Nearer12141>

There was no progress Friday on a compromise to end the shutdown, and it doesn't look like that's going to change soon. Congress is still locked in a stalemate, but with each passing day the pressure mounts to end the shutdown and get back on track because we will hit the debt ceiling on October 17th. If congress can't come to a budget agreement by then, we're going to default on our loans, lose our credit rating, and hurt the global economy. Republicans say they will only agree to raise the debt limit if they see big cuts in government spending, but President Obama and other Democratic leaders aren't even willing to talk about budgets until after the government reopens. In the midst of this battle, two Republicans from Kentucky, Mitch McConnell and Rand Paul, were caught strategizing for their party in whispers on Wednesday. Paul approached McConnell to say they should reiterate that they are the ones ready to negotiate, implying that the Democrats are the ones keeping the government shut down. He also said they could "win this thing". The GOP said they would continue to vote for piece-meal funding during the shutdown, but Democrats are pushing to fund everything at once.

#### The GOP won’t blink – conservative media pressure, the base, and Obama hatred

**Tobin, 10/1/13** - Jonathan S. Tobin is Senior Online Editor of Commentary magazine with responsibility for managing the editorial content of the website as well as serving as chief politics blogger (“Must Republicans Blink on the Shutdown?” <http://www.commentarymagazine.com/2013/10/01/must-republicans-blink-on-the-shutdown/>)

There’s no question that Democrats are in a stronger position today, at least as far as public opinion is concerned. But the expectation that the GOP must give in and do so quickly may be mistaken. As I noted last night, after having gone this far in order to make a point about their unwillingness to go along with ObamaCare, for Boehner to cave in quickly would only worsen his party’s situation. Having taken a stand on points they believe are eminently defensible—applying ObamaCare to Congress and the staff of the White House and a demand to delay the penalties attached to the health-care bill’s personal mandate—and with the president declaring he won’t negotiate and with an even more important deadline looming in three weeks about raising the debt ceiling, the GOP may not have as much incentive to surrender as their opponents think. Let me specify that the decision to call the president’s bluff on the shutdown was unwise. There was never a chance the Democrats would agree to defund ObamaCare and no game plan that would give the Republicans a viable exit strategy from such a standoff, let alone a way to win it. But having gotten into this position, it must be conceded that the widespread belief that they will be forced to wave the white flag within days is based on a set of expectations that aren’t necessarily valid. As the Washington Examiner wisely noted this morning, the comparisons to the disastrous 1995 shutdown need to be re-examined. As much as Senator John McCain may be right when he said that he had seen this movie before, the circumstances are slightly different. Unlike in 1995, mainstream liberal media pressure on Republicans is now offset by not only Fox News but also conservative talk radio, a medium that is placing pressure on the GOP to stand firm, not to give in. The conservative base that helped goad the Republicans into this fix is equally unwilling to see them weasel their way out of it, at least not without a fight. Just as important is the nature of their antagonist. In 1995, Republicans were faced with a Democratic president who made a career out of successfully pretending to be a centrist. President Obama may have run in 2008 as a post-partisan candidate, but he dropped that act a long time ago and is a far more polarizing figure. When the president told NPR this morning that he “will not negotiate” with Republicans, that was what his liberal base wanted to hear. But it is not a stand that is likely to increase pressure on the GOP. To the contrary, the more Obama dares them to dig in their heels, the more likely it is that conservatives will do just that. All along, critics of the shutdown strategy have assumed that simply because there was no clear exit strategy the consequences of a shutdown would be enough to pressure Republicans to blink once the Democrats refused to budge. But the problem with that critique is that while Senator Ted Cruz and others were blowing smoke when they said Obama would cave, there may not be sufficient leverage on the other side that would cause Boehner to blink. Indeed, the longer this goes on, the more likely it may be that Republicans start to think time is on their side rather than against them. President Obama has been hoping for this shutdown for two years but only because he, like so many others, assumed it would not last long. As the days pass with Senate Democrats refusing to go into a conference with House Republicans and Obama drawing a line in the sand, pressure may start to build on him to give a little. The financial markets are not collapsing today because of the belief the shutdown will be brief. Once that changes, the economic impact will change with it.

#### No risk of a shutdown – and it’s about Boehner’s capital, not Obama’s

Robert Costa is Washington editor of National Review and a political analyst for CNBC. 10-4-2013 “Five myths about House Republicans” WaPo, Online

Instead, Boehner is struggling to balance his right flank’s appetite for brinkmanship with his desire to cut a deal that’s palatable to conservatives. To do that, he frequently shies away from publicly conceding any ground. But he and the Republican leadership aren’t eager to be blamed for economic chaos and risk their party’s House majority in next year’s midterms. So don’t read too much into the fight-till-the-death posturing of the House’s debt-limit warriors. They have influence but not total say. Look for smaller clues — Boehner’s closed-door meetings, the chatter about a larger fiscal package — as evidence of how the impasse will probably end: with an eleventh-hour, smaller compromise that Boehner has been slowly but surely shepherding.

#### Boehner will have to balance Tea Party interests with other Republicans – political considerations play a huge role in this fight

Robert Costa is Washington editor of National Review and a political analyst for CNBC. 10-4-2013 “Five myths about House Republicans” WaPo, Online

The House speaker has endured an arduous post-election period, going back to late December, when his strategy for solving the “fiscal cliff,” the infamous “Plan B,” failed to gain traction in the House Republican conference. In a memorable moment, Boehner, nearly in tears, conceded defeat and pulled Plan B from the floor. A few weeks later, there was an embarrassing coup attempt in which about a dozen Republicans broke ranks. Ever since, Boehner’s grip on his conference has been threatened by 30 to 40 House conservatives who don’t trust his instincts and ignore his direction. But Boehner isn’t powerless. That group of 30 to 40 conservatives, while a dominant bloc, represents only about 10 percent of the House. Boehner goes along with them on many issues, but not because he doesn’t have other options; it’s because he wants to keep the conference united. If he wanted to break with them in the current fiscal drama, he could, and that power shouldn’t be dismissed. Should he decide to bring a compromise to the House floor, there’s nothing, other than political considerations, that would stop him.

#### Tea party loves challenges to drones – draws in other Republicans who need a conservative win back home – Paul filibuster proves

RICHARD W. STEVENSON and ASHLEY PARKER March 7, 2013 “A Senator’s Stand on Drones Scrambles Partisan Lines” NYT online

Mr. Paul won particular support from two other Tea Party-backed Republicans, Senators Ted Cruz of Texas and Mike Lee of Utah. The three spelled one another during the filibuster on Wednesday afternoon and evening, drawing in part from a huge positive response on Twitter to their efforts. But with Tea Party supporters having demonstrated the ability to mount primary challenges to incumbents they consider insufficiently conservative, an array of other Republican senators showed up on the Senate floor late Wednesday night to support Mr. Paul’s filibuster. They included Mr. McConnell, who has been moving vigorously to shut down chatter about a potential primary challenge to his re-election campaign next year, and Senator Marco Rubio, who has drawn some Tea Party criticism for his openness to an immigration overhaul that would give illegal immigrants a chance at gaining citizenship.

#### Political capital isn’t key and Obama isn’t spending it

**Allen, 9/27/13** - politics reporter for Politico (Jonathan, “President Obama’s distance diplomacy” <http://www.politico.com/story/2013/09/government-shutdown-barack-obama-house-gop-97483.html?hp=t3_3>)

The White House’s distance diplomacy with Republicans is an approach that tacitly acknowledges three inescapable realities: There’s no one to negotiate with on the GOP side; Obama’s direct involvement in a pact would poison it for many rank and file Republicans; and Democrats don’t trust him not to cut a lousy deal. Indeed, Democrats are urging Obama to stay at arm’s length from Congress so there’s no confusion over his message that he won’t negotiate on an increase in the debt limit, which the nation is expected to breach as early as Oct. 17 without legislative action. “I believe the president has made it very clear, as we have tried to make it clear: There are no negotiations. We’re through,” Senate Majority Leader Harry Reid (D-Nev.) told POLITICO. In past installments of the fiscal-failure soap opera, overheated rhetoric about government shutdowns and a default on the national debt has been matched by sober and direct deal-making behind the scenes — usually in the form of a virtual handshake between Vice President Joe Biden and Senate Minority Leader Mitch McConnell. In the winter 2010 debate over tax cuts, Biden and McConnell agreed to extend all of the Bush-era tax cuts for two years, infuriating the left. In 2011, Boehner and Obama secretly discussed for weeks a possible grand-bargain deal — but when the details were leaked, Democrats were furious and the negotiations fell apart. And in 2012, Biden and McConnell averted the so-called fiscal cliff — but that greatly upset Reid, who believed the White House gave away too much to Republicans whose backs were against the wall. Indeed, many Democrats had buyer’s remorse on aspects of those agreements, particularly a budget sequestration plan that has squeezed domestic and military spending, and the locking in of much of the Bush tax rates. When Chief of Staff Denis McDonough and other senior White House aides quietly discussed budget issues with a group of Senate Republicans earlier this year, top Democrats believed it made little sense to continue negotiations that appeared to be going nowhere and didn’t seem likely to help their party. So they’ve asked Obama himself to steer clear of this round of the debt fight and try to force Republicans to come to him. The Senate, on a party line 54-44 vote on Friday, sent a bill that would keep the government operating but dropped a House provision defunding Obamacare. Now the House is expected to load up the measure with more provisions that aren’t acceptable to Democrats — though it has been hard for House GOP leaders to herd their troops on a budget bill and a separate plan to raise the debt ceiling. “You first need the Republicans to have a position to negotiate – they don’t yet,” Sen. Chuck Schumer (D-N.Y.), who often advises the White House on strategy, said Friday when asked about Obama’s posture. “Until the House Republican Caucus figures out what it wants to do, nobody can deal with them.” Other than a terse phone call to Speaker John Boehner last Friday to reiterate that he won’t negotiate on the debt limit, Obama hasn’t talked to House Republicans — the key constituency in the fight. The White House has let Reid take the lead in the latest fights, even scrapping a potential meeting at the White House with Obama and the three other congressional leaders to allow the process to play out on Capitol Hill. With Republicans fighting with each other over Obamacare, Democrats believe it makes far more sense to keep the focus on the GOP intraparty warfare, rather than risk putting Obama middle of a politically sensitive negotiation. Republicans sourly note that Obama has been quicker to talk with Russian President Vladimir Putin — and now Iranian President Hassan Rouhani — than with House Speaker John Boehner. “Grandstanding from the president, who refuses to even be a part of the process, won’t bring Congress any closer to a resolution,” said Brendan Buck, a spokesman for House Speaker John Boehner. When McDonough went to the Hill this week for closed-door talks, it was to reassure fellow Democrats that the president wouldn’t fold early, as he’s been accused of doing in past budget battles. Obama isn’t expected to meet with congressional leaders until after the Tuesday deadline to stop a government shutdown. Asked if he believed that Obama would eventually have to engage directly in the fiscal fights, Reid said: “Not on the debt ceiling and not on the CR. Maybe on something else – but not these two. We have to fund the government and pay our bills.” Whether Obama can sustain his no-negotiation position on the debt ceiling remains to be seen. Senate Republicans — even those who have balked at calls to use the threat of a government shutdown to defund Obamacare — say the president won’t get a clean debt ceiling increase. “It’s what’s wrong with the government right now,” said Sen. Roy Blunt (R-Mo.), who voted to break a GOP-led filibuster blocking the continuing resolution. “I suppose the Congress might say we don’t want a negotiation on the debt ceiling either.” If Obama can’t get 60 votes in the Senate for a clean debt ceiling increase, he will very likely to have to engage in direct talks with Republicans, even Democrats privately concede. But for now, Democratic leaders say the president is doing what he has to: Making speeches to attack Republicans, and letting his allies on the Hill deal with the nitty-gritty of legislating and horse-trading. Republican Rep. Mike Rogers (R-Mich.), who has worked with the White House on national security issues, says the president’s always had a “laissez-faire” approach to Congress.

#### Obama’s PC is low and decreasing

**Steinhauser, 9/26/13** – CNN Political Editor (Paul, “Obama's support slips; controversies, sluggish economy cited” <http://www.cnn.com/2013/09/26/politics/cnn-poll-of-polls-obama/?hpt=po_c2>)

As he battles with congressional Republicans over the budget and the debt ceiling, and as a key component of his health care law kicks in, new polling suggests that President Barack Obama's standing among Americans continues to deteriorate. The president's approval rating stands at 45%, according to a CNN average of four national polls conducted over the past week and a half. And a CNN Poll of Polls compiled and released Thursday also indicates that Obama's disapproval rating at 49%. In the afterglow of his re-election and second inauguration, the percentage of those approving of Obama's job performance hovered in the low 50s as the year began, according to CNN Poll of Poll averages. But his numbers slipped to the upper 40s by spring and now have edged down to the mid 40s. At the same time, his disapproval numbers have edged up from the low 40s to right around the 50% mark. Anxiety and skepticism over the Affordable Care Act, better known as Obamacare, continuing concerns over the sluggish economy, and a drop in the president's approval on foreign policy -- once his ace in the hole -- all appear to be contributing to the slide of Obama's general approval rating. "Not a precipitous drop, but more like a continued erosion in the president's numbers," says CNN Chief Political Correspondent Candy Crowley. "The Boston Marathon bombings, Edward Snowden's 'big brother' revelations, the 'non-coup' in Egypt, the 'now we bomb, now we don't' policy in Syria, an economic recovery that remains disappointing, the uncertainty of how/what will change under the new health care system, shall I go on?" "It all adds up to an awful lot of uncertainty and unfairly or not, uncertainty tends to breed lower poll numbers for the guy in charge," added Crowley, anchor of CNN's "State of the Union." Besides being the main indicator of a president's standing with the public, a presidential approval rating is a good gauge of his clout in dealing with Congress. The drop in his numbers comes as the president pushes back against attempts by congressional Republicans to use deadlines to keep the federal government funded and to extend the nation's debt ceiling to try and defund the health care law. A slew of national polls conducted this month indicate that a majority doesn't support shutting down the government in order to defund Obamacare. But if the fight shifts to the debt ceiling, public opinion appears to turn against the president, who reiterated on Thursday that he will not negotiate with the GOP in Congress over extending the debt ceiling.

#### Plan’s bipartisan---Congress looking for TK limitations

AP 13, "Congress looks to limit drone strikes", February 5, www.cbsnews.com/8301-250\_162-57567793/congress-looks-to-limit-drone-strikes/

Uncomfortable with the Obama administration's use of deadly drones, a growing number in Congress is looking to limit America's authority to kill suspected terrorists, even U.S. citizens. The Democratic-led outcry was emboldened by the revelation in a newly surfaced Justice Department memo that shows drones can strike against a wider range of threats, with less evidence, than previously believed.¶ The drone program, which has been used from Pakistan across the Middle East and into North Africa to find and kill an unknown number of suspected terrorists, is expected to be a top topic of debate when the Senate Intelligence Committee grills John Brennan, the White House's pick for CIA chief, at a hearing Thursday.¶ The White House on Tuesday defended its lethal drone program by citing the very laws that some in Congress once believed were appropriate in the years immediately after the Sept. 11 attacks but now think may be too broad.¶ It has to be in the agenda of this Congress to reconsider the scope of action of drones and use of deadly force by the United States around the world because the original authorization of use of force, I think, is being strained to its limits," Sen. Chris Coons, D-Del., said in a recent interview.¶ Rep. Steny Hoyer of Maryland, the No. 2 Democrat in the House, said Tuesday that "it deserves a serious look at how we make the decisions in government to take out, kill, eliminate, whatever word you want to use, not just American citizens but other citizens as well."¶ Hoyer added: "We ought to carefully review our policies as a country."¶ The Senate Foreign Relations Committee likely will hold hearings on U.S. drone policy, an aide said Tuesday, and Chairman Robert Menendez, D-N.J., and the panel's top Republican, Sen. Bob Corker of Tennessee, both have quietly expressed concerns about the deadly operations. And earlier this week, a group of 11 Democratic and Republican senators urged President Barack Obama to release a classified Justice Department legal opinion justifying when U.S. counterterror missions, including drone strikes, can be used to kill American citizens abroad.

#### Winner’s win

Hirsh 13 Michael, chief correspondent for National Journal; citing Ornstein, a political scientist and scholar at the American Enterprise Institute and Bensel, gov’t prof at Cornell, "There's No Such Thing as Political Capital", 2/7, [www.nationaljournal.com/magazine/there-s-no-such-thing-as-political-capital-20130207](http://www.nationaljournal.com/magazine/there-s-no-such-thing-as-political-capital-20130207)

But the abrupt emergence of the immigration and gun-control issues illustrates how suddenly shifts in mood can occur and how political interests can align in new ways just as suddenly. Indeed, the pseudo-concept of political capital masks a larger truth about Washington that is kindergarten simple: You just don’t know what you can do until you try. Or as Ornstein himself once wrote years ago, “Winning wins.” In theory, and in practice, depending on Obama’s handling of any particular issue, even in a polarized time, he could still deliver on a lot of his second-term goals, depending on his skill and the breaks. Unforeseen catalysts can appear, like Newtown. Epiphanies can dawn, such as when many Republican Party leaders suddenly woke up in panic to the huge disparity in the Hispanic vote.¶ Some political scientists who study the elusive calculus of how to pass legislation and run successful presidencies say that political capital is, at best, an empty concept, and that almost nothing in the academic literature successfully quantifies or even defines it. “It can refer to a very abstract thing, like a president’s popularity, but there’s no mechanism there. That makes it kind of useless,” says Richard Bensel, a government professor at Cornell University. Even Ornstein concedes that the calculus is far more complex than the term suggests. Winning on one issue often changes the calculation for the next issue; there is never any known amount of capital. “The idea here is, if an issue comes up where the conventional wisdom is that president is not going to get what he wants, and he gets it, then each time that happens, it changes the calculus of the other actors” Ornstein says. “If they think he’s going to win, they may change positions to get on the winning side. It’s a bandwagon effect.”

### Flex DA

#### Pres powers low now—Syria decision undermined Obama’s presidential powers

Nather and Palmer, 9-1-13

[David and Anna, Politico, Bushies fear Obama weakening presidency, http://www.politico.com/story/2013/09/bushies-fear-obama-weakening-presidency-96143.html]

President Barack Obama just turned decades of debate over presidential war powers on its head.¶ Until Saturday, when Obama went to Congress to ask for permission to strike Syria, the power to launch military action had been strongly in the hands of the commander in chief. Even the 1973 War Powers Resolution allows bombs to start falling before the president has to ask Congress for long-term approval.¶ For three decades after Watergate, conservatives like Dick Cheney and those of his ilk sought to increase executive branch power that they felt had been eroded by liberal congressional reformers. George W. Bush’s legal team crafted controversial opinions that emboldened the White House on a wide range of national security areas, from interrogation to surveillance.¶ That makes the move by Obama to hand a piece of the messy situation in Syria to Congress a clear step in the other direction — an abdication of power to Congress at a moment when he has no good solutions.¶ And even if Obama ultimately balks at Congress if they vote down his ask, prominent conservatives who fueled the expansion of presidential power — especially Bush administration alums — are beside themselves, arguing that Obama has weakened the presidency.

#### A multitude of other actors hamper presidential flexibility—thumps the disad

Rozell 12

(Mark Rozell, Professor of Public Policy, George Mason University, “From Idealism to Power: The Presidency in the Age of Obama” 2012, <http://www.libertylawsite.org/book-review/from-idealism-to-power-the-presidency-in-the-age-of-obama/>)

A substantial portion of Goldsmith’s book presents in detail his case that various forces outside of government, and some within, are responsible for hamstringing the president in unprecedented fashion: Aggressive, often intrusive, journalism, that at times endangers national security; human rights and other advocacy groups, some domestic and other cross-national, teamed with big resources and talented, aggressive lawyers, using every legal category and technicality possible to complicate executive action; courts thrust into the mix, having to decide critical national security law controversies, even when the judges themselves have little direct knowledge or expertise on the topics brought before them; attorneys within the executive branch itself advising against actions based on often narrow legal interpretations and with little understanding of the broader implications of tying down the president with legalisms.

### Heg Add-On

#### That prevents heg decline and allows the US to set global norms that avoid the worst consequences of use

Michael J Boyle 13, Assistant Professor of Political Science at La Salle University, former Lecturer in International Relations and Research Fellow at the Centre for the Study of Terrorism and Political Violence at the University of St Andrews, PhD from Cambridge University, January 2013, “The costs and consequences of drone warfare,” International Affairs 89: 1 (2013) 1–29, http://www.chathamhouse.org/sites/default/files/public/International%20Affairs/2013/89\_1/89\_1Boyle.pdf

In his second term, President Obama has an opportunity to reverse course and establish a new drones policy which mitigates these costs and avoids some of the long-term consequences that flow from them. A more sensible US approach would impose some limits on drone use in order to minimize the political costs and long-term strategic consequences. One step might be to limit the use of drones to HVTs, such as leading political and operational figures for terrorist networks, while reducing or eliminating the strikes against the ‘foot soldiers’ or other Islamist networks not related to Al-Qaeda. This approach would reduce the number of strikes and civilian deaths associated with drones while reserving their use for those targets that pose a direct or imminent threat to the security of the United States. Such a self-limiting approach to drones might also minimize the degree of political opposition that US drone strikes generate in states such as Pakistan and Yemen, as their leaders, and even the civilian population, often tolerate or even approve of strikes against HVTs. Another step might be to improve the levels of transparency of the drone programme. At present, there are no publicly articulated guidelines stipulating who can be killed by a drone and who cannot, and no data on drone strikes are released to the public.154 Even a Department of Justice memorandum which authorized the Obama administration to kill Anwar al-Awlaki, an American citizen, remains classified.155 Such non-transparency fuels suspicions that the US is indifferent to the civilian casualties caused by drone strikes, a perception which in turn magnifies the deleterious political consequences of the strikes. Letting some sunlight in on the drones programme would not eliminate all of the opposition to it, but it would go some way towards undercutting the worst conspiracy theories about drone use in these countries while also signalling that the US government holds itself legally and morally accountable for its behaviour.156¶ A final, and crucial, step towards mitigating the strategic consequences of drones would be to develop internationally recognized standards and norms for their use and sale. It is not realistic to suggest that the US stop using its drones altogether, or to assume that other countries will accept a moratorium on buying and using drones. The genie is out of the bottle: drones will be a fact of life for years to come. What remains to be done is to ensure that their use and sale are transparent, regulated and consistent with internationally recognized human rights standards. The Obama administration has already begun to show some awareness that drones are dangerous if placed in the wrong hands. A recent New York Times report revealed that the Obama administration began to develop a secret drones ‘rulebook’ to govern their use if Mitt Romney were to be elected president.157 The same logic operates on the international level. Lethal drones will eventually be in the hands of those who will use them with fewer scruples than President Obama has. Without a set of internationally recognized standards or norms governing their sale and use, drones will proliferate without control, be misused by governments and non-state actors, and become an instrument of repression for the strong. One remedy might be an international convention on the sale and use of drones which could establish guidelines and norms for their use, perhaps along the lines of the Convention on Certain Conventional Weapons (CCW) treaty, which attempted to spell out rules on the use of incendiary devices and fragment-based weapons.158 While enforcement of these guidelines and adherence to rules on their use will be imperfect and marked by derogations, exceptions and violations, the presence of a convention may reinforce norms against the flagrant misuse of drones and induce more restraint in their use than might otherwise be seen. Similarly, a UN investigatory body on drones would help to hold states accountable for their use of drones and begin to build a gradual consensus on the types of activities for which drones can, and cannot, be used.159 As the progenitor and leading user of drone technology, the US now has an opportunity to show leadership in developing an international legal architecture which might avert some of the worst consequences of their use.¶ If the US fails to take these steps, its unchecked pursuit of drone technology will have serious consequences for its image and global position. Much of American counterterrorism policy is premised on the notion that the narrative that sustains Al-Qaeda must be challenged and eventually broken if the terrorist threat is to subside over the long term. The use of drones does not break this narrative, but rather confirms it. It is ironic that Al-Qaeda’s image of the United States—as an all-seeing, irreconcilably hostile enemy who rains down bombs and death on innocent Muslims without a second thought—is inadvertently reinforced by a drones policy that does not bother to ask the names of its victims. Even the casual anti-Americanism common in many parts of Europe, the Middle East and Asia, much of which portrays the US as cruel, domineering and indifferent to the suffering of others, is reinforced by a drones policy which involves killing foreign citizens on an almost daily basis. A choice must be made: the US cannot rely on drones as it does now while attempting to convince others that these depictions are gross caricatures. Over time, an excessive reliance on drones will deepen the reservoirs of anti-US sentiment, embolden America’s enemies and provide other governments with a compelling public rationale to resist a US-led international order which is underwritten by sudden, blinding strikes from the sky. For the United States, preventing these outcomes is a matter of urgent importance in a world of rising powers and changing geopolitical alignments. No matter how it justifies its own use of drones as exceptional, the US is establishing precedents which others in the international system—friends and enemies, states and non-state actors—may choose to follow. Far from being a world where violence is used more carefully and discriminately, a drones-dominated world may be one where human life is cheapened because it can so easily, and so indifferently, be obliterated with the press of a button. Whether this is a world that the United States wants to create—or even live in—is an issue that demands attention from those who find it easy to shrug off the loss of life that drones inflict on others today.

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## Case

### a/t: courts slow

#### Courts are speedy

Opderbeck 2013 (David W. Opderbeck, Professor of Law, Seton Hall University Law School, and Director, Gibbons Institute of Law, Science & Technology, August 2, 2013, “Drone Courts,” http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2305315)

In addition to general separation of powers concerns, a number of practical objections have been lodged against the possibility of a drone court. One such objection is that the window of opportunity for a strike may open and close unpredictably. Current U.S. policy, however, requires that “[a]n informed, high- level official of the U.S. government has determined that the targeted individual poses an imminent threat of violent attack against the United States.”307 If such a showing can be made by the relevant military command to an “informed, high-level” civilian official before pulling the trigger (or joystick), it can also be made to a judge, particularly if there are judges at the ready to hear emergent applications of this type. Presumably such decisions are currently made well in advance of the actual strike. The same could be true for a court.

### a/t: econ

#### No impact to economic collapse – u.s. isn’t key

Robert **Jervis 11**, Professor in the Department of Political Science and School of International and Public Affairs at Columbia University, December 2011, “Force in Our Times,” Survival, Vol. 25, No. 4, p. 403-425

Even if war is still seen as evil, the security community could be dissolved if severe conflicts of interest were to arise. Could the more peaceful world generate new interests that would bring the members of the community into sharp disputes? 45 A zero-sum sense of status would be one example, perhaps linked to a steep rise in nationalism. More likely would be a worsening of the current economic difficulties, which could itself produce greater nationalism, undermine democracy and bring back old-fashioned beggar-my-neighbor economic policies. While these dangers are real, it is hard to believe that the conflicts could be great enough to lead the members of the community to contemplate fighting each other. It is not so much that economic interdependence has proceeded to the point where it could not be reversed – states that were more internally interdependent than anything seen internationally have fought bloody civil wars. Rather it is that even if the more extreme versions of free trade and economic liberalism become discredited, it is hard to see how without building on a preexisting high level of political conflict leaders and mass opinion would come to believe that their countries could prosper by impoverishing or even attacking others. Is it possible that problems will not only become severe, but that people will entertain the thought that they have to be solved by war? While a pessimist could note that this argument does not appear as outlandish as it did before the financial crisis, an optimist could reply (correctly, in my view) that the very fact that we have seen such a sharp economic down-turn without anyone suggesting that force of arms is the solution shows that even if bad times bring about greater economic conflict, it will not make war thinkable.