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### 1AC Allied Coop Adv

#### Adv 1- Allied terror cooperation:

#### Domestic and international support for the US drone program is collapsing, threatening to shut it down entirely. Reform is key.

Zenko, CFR Fellow, 13 (Micah, is the Douglas Dillon fellow in the Center for Preventive Action (CPA) at the Council on Foreign Relations (CFR)., “Reforming U.S. Drone Strike Policies,” http://www.cfr.org/wars-and-warfare/reforming-us-drone-strike-policies/p29736)

In his Nobel Peace Prize acceptance speech, President Obama declared: “Where force is necessary, we have a moral and strategic interest in binding ourselves to certain rules of conduct. Even as we confront a vicious adversary that abides by no rules, I believe the United States of America must remain a standard bearer in the conduct of war.”63 Under President Obama drone strikes have expanded and intensified, and they will remain a central component of U.S. counterterrorism operations for at least another decade, according to U.S. officials.64 But much as the Bush administration was compelled to reform its controversial counterterrorism practices, it is likely that the United States will ultimately be forced by domestic and international pressure to scale back its drone strike policies. The Obama administration can preempt this pressure by clearly articulating that the rules that govern its drone strikes, like all uses of military force, are based in the laws of armed conflict and international humanitarian law; by engaging with emerging drone powers; and, most important, by matching practice with its stated policy by limiting drone strikes to those individuals it claims are being targeted (which would reduce the likelihood of civilian casualties since the total number of strikes would significantly decrease). The choice the United States faces is not between unfettered drone use and sacrificing freedom of action, but between drone policy reforms by design or drone policy reforms by default. Recent history demonstrates that domestic political pressure could severely limit drone strikes in ways that the CIA or JSOC have not anticipated. In support of its counterterrorism strategy, the Bush administration engaged in the extraordinary rendition of terrorist suspects to third countries, the use of enhanced interrogation techniques, and warrantless wiretapping. Although the Bush administration defended its policies as critical to protecting the U.S. homeland against terrorist attacks, unprecedented domestic political pressure led to significant reforms or termination. Compared to Bush-era counterterrorism policies, drone strikes are vulnerable to similar—albeit still largely untapped—moral outrage, and they are even more susceptible to political constraints because they occur in plain sight. Indeed, a negative trend in U.S. public opinion on drones is already apparent. Between February and June 2012, U.S. support for drone strikes against suspected terrorists fell from 83 percent to 62 percent—which represents less U.S. support than enhanced interrogation techniques maintained in the mid-2000s.65 Finally, U.S. drone strikes are also widely opposed by the citizens of important allies, emerging powers, and the local populations in states where strikes occur.66 States polled reveal overwhelming opposition to U.S. drone strikes: Greece (90 percent), Egypt (89 percent), Turkey (81 percent), Spain (76 percent), Brazil (76 percent), Japan (75 percent), and Pakistan (83 percent).67 This is significant because the United States cannot conduct drone strikes in the most critical corners of the world by itself. Drone strikes require the tacit or overt support of host states or neighbors. If such states decided not to cooperate—or to actively resist—U.S. drone strikes, their effectiveness would be immediately and sharply reduced, and the likelihood of civilian casualties would increase. This danger is not hypothetical. In 2007, the Ethiopian government terminated its U.S. military presence after public revelations that U.S. AC-130 gunships were launching attacks from Ethiopia into Somalia. Similarly, in late 2011, Pakistan evicted all U.S. military and intelligence drones, forcing the United States to completely rely on Afghanistan to serve as a staging ground for drone strikes in Pakistan. The United States could attempt to lessen the need for tacit host-state support by making significant investments in armed drones that can be flown off U.S. Navy ships, conducting electronic warfare or missile attacks on air defenses, allowing downed drones to not be recovered and potentially transferred to China or Russia, and losing access to the human intelligence networks on the ground that are critical for identifying targets. According to U.S. diplomats and military officials, active resistance— such as the Pakistani army shooting down U.S. armed drones— is a legitimate concern. In this case, the United States would need to either end drone sorties or escalate U.S. military involvement by attacking Pakistani radar and antiaircraft sites, thus increasing the likelihood of civilian casualties.68 Beyond where drone strikes currently take place, political pressure could severely limit options for new U.S. drone bases. For example, the Obama administration is debating deploying armed drones to attack al-Qaeda in the Islamic Maghreb (AQIM) in North Africa, which would likely require access to a new airbase in the region. To some extent, anger at U.S. sovereignty violations is an inevitable and necessary trade-off when conducting drone strikes. Nevertheless, in each of these cases, domestic anger would partially or fully abate if the United States modified its drone policy in the ways suggested below.

#### Lack of legal oversight on targeted killing collapses allied cooperation on terrorism, which is critical to intelligence sharing.

Human Rights First 13 (How to Ensure that the U.S. Drone Program does not Undermine Human Rights BLUEPRINT FOR THE NEXT ADMINISTRATION, Updated April 13, http://www.humanrightsfirst.org/wp-content/uploads/pdf/blueprints2012/HRF\_Targeted\_Killing\_blueprint.pdf)

The Obama Administration has dramatically escalated targeted killing by drones as a central feature of its counterterrorism response. Over the past two years, the administration has begun to reveal more about the targeted killing program, including in a leaked Department of Justice White paper on targeted killing1 and in public remarks by several senior officials.2 While this information is welcome, it does not fully address our concerns. Experts and other governments have continued to raise serious concerns about: The precedent that the U.S. targeted killing policy is setting for the rest of the world, including countries that have acquired or are in the process of acquiring drones, yet have long failed to adhere to the rule of law and protect human rights; The impact of the drone program on other U.S. counterterrorism efforts, including whether U.S. allies and other security partners have reduced intelligence-sharing and other forms of counterterrorism cooperation because of the operational and legal concerns expressed by these countries; The impact of drone operations on other aspects of U.S. counterterrorism strategy, especially diplomatic and foreign assistance efforts designed to counter extremism, promote stability and provide economic aid; The number of civilian casualties, including a lack of clarity on who the United States considers a civilian in these situations; and Whether the legal framework for the program that has been publicly asserted so far by the administration comports with international legal requirements. The totality of these concerns, heightened by the lack of public information surrounding the program, require the administration to better explain the program and its legal basis, and to carefully review the policy in light of the global precedent it is setting and serious questions about the effectiveness of the program on the full range of U.S. counterterrorism efforts. While it is expected that elements of the U.S. government’s strategy for targeted killing will be classified, it is in the national interest that the government be more transparent about policy considerations governing its use as well as its legal justification, and that the program be subject to regular oversight. Furthermore, it is in U.S. national security interests to ensure that the rules of engagement are clear and that the program minimizes any unintended negative consequences. How the U.S. operates and publicly explains its targeted killing program will have far-reaching consequences. The manufacture and sale of unmanned aerial vehicles (UAVs) is an increasingly global industry and drone technology is not prohibitively complicated. Some 70 countries already possess UAVs3 —including Russia, Syria and Libya4 —and others are in the process of acquiring them. As White House counterterrorism chief John Brennan stated: the United States is "establishing precedents that other nations may follow, and not all of them will be nations that share our interests or the premium we put on protecting human life, including innocent civilians."5 By declaring that it is in an armed conflict with al Qaeda’s “associated forces” (a term it has not defined) without articulating limits to that armed conflict, the United States is inviting other countries to similarly declare armed conflicts against groups they consider to be security threats for purposes of assuming lethal targeting authority. Moreover, by announcing that all “members” of such groups are legally targetable, the United States is establishing exceedingly broad precedent for who can be targeted, even if it is not utilizing the full scope of this claimed authority.6 As an alternative to armed conflict-based targeting, U.S. officials have claimed targeted killings are justified as self-defense responding to an imminent threat, but have referred to a “flexible” or “elongated” concept of imminence,7 without adequately explaining what that means or how that complies with the requirements of international law. In a white paper leaked to NBC news in February 2013, for example, the Department of Justice adopts what it calls a “broader concept of imminence” that has no basis in law. According to the white paper, an imminent threat need be neither immediate nor specific. This is a dangerous, unprecedented and unwarranted expansion of widely-accepted understandings of international law.8 It is also not clear that the current broad targeted killing policy serves U.S. long-term strategic interests in combating international terrorism. Although it has been reported that some high-level operational leaders of al Qaeda have been killed in drone attacks, studies show that the vast majority of victims are not high-level terrorist leaders.9 National security analysts and former U.S. military officials increasingly argue that such tactical gains are outweighed by the substantial costs of the targeted killing program, including growing antiAmerican sentiment and recruiting support for al Qaeda. 10 General Stanley McChrystal has said: “What scares me about drone strikes is how they are perceived around the world. The resentment created by American use of unmanned strikes ... is much greater than the average American appreciates.”11 The broad targeted killing program has already strained U.S. relations with its allies and thereby impeded the flow of critical intelligence about terrorist operations.12

#### Drone policy is more important than the spying and data scandal to European partners-threatens allied intelligence cooperation.

Dworkin 7/17/13 (Anthony, Senior Policy Fellow at the European Council on Foreign Relations, “Actually, drones worry Europe more than spying” <http://globalpublicsquare.blogs.cnn.com/2013/07/17/actually-drones-worry-europe-more-than-spying/>)

Relations between the United States and Europe hit a low point following revelations that Washington was spying on European Union buildings and harvesting foreign email messages. Behind the scenes, though, it is not data protection and surveillance that produces the most complications for the transatlantic intelligence relationship, but rather America's use of armed drones to kill terrorist suspects away from the battlefield. Incidents such as the recent killing of at least 17 people in Pakistan are therefore only likely to heighten European unease. In public, European governments have displayed a curiously passive approach to American drone strikes, even as their number has escalated under Barack Obama’s presidency. Many Europeans believe that the majority of these strikes are unlawful, but their governments have maintained an uneasy silence on the issue. This is partly because of the uncomfortable fact that information provided by European intelligence services may have been used to identify some targets. It is also because of a reluctance to accuse a close ally of having violated international law. And it is partly because European countries have not worked out exactly what they think about the use of drones and how far they agree within the European Union on the question. Now, however, Europe’s muted stance on drone strikes looks likely to change. Why? For one thing, many European countries are now trying to acquire armed drones themselves, and this gives them an incentive to spell out clearer rules for their use. More importantly, perhaps, Europeans have noticed that drones are proliferating rapidly, and that countries like China, Russia and Saudi Arabia are soon likely to possess them. There is a clear European interest in trying to establish some restrictive standards on drone use before it is too late. For all these reasons, many European countries are now conducting internal reviews of their policy on drones, and discussions are also likely to start at a pan-European level. But as Europeans begin to articulate their policy on the use of drones, a bigger question looms. Can Europe and the United States come together to agree on when drone strikes are permissible? Until now, that would have seemed impossible. Since the September 11 attacks, the United States has based its counterterrorism operations on the claim that it is engaged in a worldwide armed conflict with al Qaeda and associated forces — an idea that President Obama inherited from President George W. Bush and has been kept as the basis for an expanded drone strike campaign. European countries have generally rejected this claim. However, the changes to American policy that President Obama announced in May could open the way to at least the possibility of a dialogue. Obama suggested that he anticipated a time in the not-too-distant future when the armed conflict against al Qaeda might come to an end. More substantially, he made clear that his administration was in the process of switching its policy so that, outside zones of hostilities, it would only use drone strikes against individuals who posed a continuing and imminent threat to the U.S. That is a more restrictive standard than the claim that any member of al Qaeda or an associated force could lawfully be killed with a drone strike at any time. European countries might be more willing to accept an approach based on this kind of “self-defense” idea. However, there remain some big stumbling blocks. First, a good deal about Obama’s new standards is still unclear. How does he define a “zone of hostilities,” where the new rules will not apply? And what is his understanding of an “imminent” threat? European countries are likely to interpret these key terms in a much narrower way than the United States. Second, Obama’s new approach only applies as a policy choice. His more expansive legal claims remain in the background so that he is free to return to them if he wishes. But if the United States is serious about working toward international standards on drone strikes, as Obama and his officials have sometimes suggested, then Europe is the obvious place to start. And there are a number of steps the administration could take to make an agreement with European countries more likely. For a start, it should cut back the number of drone strikes and be much more open about the reasons for the attacks it conducts and the process for reviewing them after the fact. It should also elaborate its criteria for determining who poses an imminent threat in a way that keeps attacks within tight limits. And, as U.S. forces prepare to withdraw from Afghanistan in 2014, it should keep in mind the possibility of declaring the war against al Qaeda to be over. All this said, Europe also has some tough decisions to make, and it is unclear whether European countries are ready to take a hard look at their views about drone strikes, addressing any weaknesses or inconsistencies in their own position. If they are, the next few years could offer a breakthrough in developing international standards for the use of this new kind of weapon, before the regular use of drones spreads across the globe.

#### Allied cooperation on intelligence is critical to effective counterterrorism

McGill and Gray 12 (Anna-Katherine Staser McGill, David H. Gray, “Challenges to International Counterterrorism Intelligence Sharing,” Global Security Studies, Summer 2012, Volume 3, Issue 3, http://globalsecuritystudies.com/McGill%20Intel%20Share.pdf)

In his article “Old Allies and New Friends: Intelligence-Sharing in the War on Terror”, Derek Reveron states “the war on terror requires high levels of intelligence to identify a threat relative to the amount of force required to neutralize it” as opposed to the Cold War where the opposite was true (455). As a result, intelligence is the cornerstone of effective counterterrorism operations in the post 9/11 world. Though the United States has the most robust intelligence community in the world with immense capability, skills, and technology, its efficiency in counterterrorism issues depends on coalitions of both traditional allies and new allies. Traditional allies offer a certain degree of dependability through a tried and tested relationship based on similar values; however, newly cultivated allies in the war on terrorism offer invaluable insight into groups operating in their own back yard. The US can not act unilaterally in the global fight against terrorism. It doesn’t have the resources to monitor every potential terrorist hide-out nor does it have the time or capability to cultivate the cultural, linguistic, and CT knowledge that its new allies have readily available. The Department of Defense’s 2005 Quadrennial Review clearly states that the United States "cannot meet today's complex challenges alone. Success requires unified statecraft: the ability of the U.S. government to bring to, bear all elements of national power at home and to work in close cooperation with allies and partners abroad" (qtd in Reveron, 467). The importance of coalition building for the war on terrorism is not lost on US decision-makers as seen by efforts made in the post 9/11 climate to strengthen old relationships and build new ones; however, as seen in the following sections, the possible hindrances to effective, long term CT alliances must also be addressed in order to sustain current operations.

#### Terrorists have means and motive for nuclear attacks, now-expertise and materials are widespread and multiple attempts prove.

**Jaspal, Quaid-i-Azam University IR professor, 2012**

(Zafar, “Nuclear/Radiological Terrorism: Myth or Reality?”, Journal of Political Studies, <http://pu.edu.pk/images/journal/pols/pdf-files/Nuclear%20Radiological%20terrorism%20Jaspa_Vol_19_Issue_1_2012.pdf>, ldg)

The misperception, miscalculation and above all ignorance of the ruling elite about security puzzles are perilous for the national security of a state. Indeed, in an age of transnational terrorism and unprecedented dissemination of dual-use nuclear technology, ignoring nuclear terrorism threat is an imprudent policy choice. The incapability of terrorist organizations to engineer fissile material does not eliminate completely the possibility of nuclear terrorism. At the same time, the absence of an example or precedent of a nuclear/ radiological terrorism does not qualify the assertion that the nuclear/radiological terrorism ought to be remained a myth.x Farsighted rationality obligates that one should not miscalculate transnational terrorist groups — whose behavior suggests that they have a death wish — of acquiring nuclear, radiological, chemical and biological material producing capabilities. In addition, one could be sensible about the published information that huge amount of nuclear material is spread around the globe. According to estimate it is enough to build more than 120,000 Hiroshima-sized nuclear bombs (Fissile Material Working Group, 2010, April 1). The alarming fact is that a few storage sites of nuclear/radiological materials are inadequately secured and continue to be accumulated in unstable regions (Sambaiew, 2010, February). Attempts at stealing fissile material had already been discovered (Din & Zhiwei, 2003: 18). Numerous evidences confirm that terrorist groups had aspired to acquire fissile material for their terrorist acts. Late Osama bin Laden, the founder of al Qaeda stated that acquiring nuclear weapons was a“religious duty” (Yusufzai, 1999, January 11). The IAEA also reported that “al-Qaeda was actively seeking an atomic bomb.” Jamal Ahmad al-Fadl, a dissenter of Al Qaeda, in his trial testimony had “revealed his extensive but unsuccessful efforts to acquire enriched uranium for al-Qaeda” (Allison, 2010, January: 11). On November 9, 2001, Osama bin Laden claimed that “we have chemical and nuclear weapons as a deterrent and if America used them against us we reserve the right to use them (Mir, 2001, November 10).” On May 28, 2010, Sultan Bashiruddin Mahmood, a Pakistani nuclear scientist confessed that he met Osama bin Laden. He claimed that “I met Osama bin Laden before 9/11 not to give him nuclear know-how, but to seek funds for establishing a technical college in Kabul (Syed, 2010, May 29).” He was arrested in 2003 and after extensive interrogation by American and Pakistani intelligence agencies he was released (Syed, 2010, May 29). Agreed, Mr. Mahmood did not share nuclear know-how with Al Qaeda, but his meeting with Osama establishes the fact that the terrorist organization was in contact with nuclear scientists. Second, the terrorist group has sympathizers in the nuclear scientific bureaucracies. It also authenticates bin Laden’s Deputy Ayman Zawahiri’s claim which he made in December 2001: “If you have $30 million, go to the black market in the central Asia, contact any disgruntled Soviet scientist and a lot of dozens of smart briefcase bombs are available (Allison, 2010, January: 2).” The covert meetings between nuclear scientists and al Qaeda members could not be interpreted as idle threats and thereby the threat of nuclear/radiological terrorism is real. The 33Defense Secretary Robert Gates admitted in 2008 that “what keeps every senior government leader awake at night is the thought of a terrorist ending up with a weapon of mass destruction, especially nuclear (Mueller, 2011, August 2).” Indeed, the nuclear deterrence strategy cannot deter the transnational terrorist syndicate from nuclear/radiological terrorist attacks. Daniel Whiteneck pointed out: “Evidence suggests, for example, that al Qaeda might not only use WMD simply to demonstrate the magnitude of its capability but that it might actually welcome the escalation of a strong U.S. response, especially if it included catalytic effects on governments and societies in the Muslim world. An adversary that prefers escalation regardless of the consequences cannot be deterred” (Whiteneck, 2005, Summer: 187)

#### And, Nuclear terrorism attacks escalate and cause extinction.

**Morgan, Hankuk University of Foreign Studies, 2009**

(Dennis, World on fire: two scenarios of the destruction of human civilization and possible extinction of the human race Futures, Volume 41, Issue 10, December, ldg)

In a remarkable website on nuclear war, Carol Moore asks the question “Is Nuclear War Inevitable??” In Section , Moore points out what most terrorists obviously already know about the nuclear tensions between powerful countries. No doubt, they’ve figured out that the best way to escalate these tensions into nuclear war is to set off a nuclear exchange. As Moore points out, all that militant terrorists would have to do is get their hands on one small nuclear bomb and explode it on either Moscow or Israel. Because of the Russian “dead hand” system, “where regional nuclear commanders would be given full powers should Moscow be destroyed,” it is likely that any attack would be blamed on the United States” Israeli leaders and Zionist supporters have, likewise, stated for years that if Israel were to suffer a nuclear attack, whether from terrorists or a nation state, it would retaliate with the suicidal “Samson option” against all major Muslim cities in the Middle East. Furthermore, the Israeli Samson option would also include attacks on Russia and even “anti-Semitic” European cities In that case, of course, Russia would retaliate, and the U.S. would then retaliate against Russia. China would probably be involved as well, as thousands, if not tens of thousands, of nuclear warheads, many of them much more powerful than those used at Hiroshima and Nagasaki, would rain upon most of the major cities in the Northern Hemisphere. Afterwards, for years to come, massive radioactive clouds would drift throughout the Earth in the nuclear fallout, bringing death or else radiation disease that would be genetically transmitted to future generations in a nuclear winter that could last as long as a 100 years, taking a savage toll upon the environment and fragile ecosphere as well. And what many people fail to realize is what a precarious, hair-trigger basis the nuclear web rests on. Any accident, mistaken communication, false signal or “lone wolf’ act of sabotage or treason could, in a matter of a few minutes, unleash the use of nuclear weapons, and once a weapon is used, then the likelihood of a rapid escalation of nuclear attacks is quite high while the likelihood of a limited nuclear war is actually less probable since each country would act under the “use them or lose them” strategy and psychology; restraint by one power would be interpreted as a weakness by the other, which could be exploited as a window of opportunity to “win” the war. In other words, once Pandora's Box is opened, it will spread quickly, as it will be the signal for permission for anyone to use them. Moore compares swift nuclear escalation to a room full of people embarrassed to cough. Once one does, however, “everyone else feels free to do so. The bottom line is that as long as large nation states use internal and external war to keep their disparate factions glued together and to satisfy elites’ needs for power and plunder, these nations will attempt to obtain, keep, and inevitably use nuclear weapons. And as long as large nations oppress groups who seek self-determination, some of those groups will look for any means to fight their oppressors” In other words, as long as war and aggression are backed up by the implicit threat of nuclear arms, it is only a matter of time before the escalation of violent conflict leads to the actual use of nuclear weapons, and once even just one is used, it is very likely that many, if not all, will be used, leading to horrific scenarios of global death and the destruction of much of human civilization while condemning a mutant human remnant, if there is such a remnant, to a life of unimaginable misery and suffering in a nuclear winter. In “Scenarios,” Moore summarizes the various ways a nuclear war could begin: Such a war could start through a reaction to terrorist attacks, or through the need to protect against overwhelming military opposition, or through the use of small battle field tactical nuclear weapons meant to destroy hardened targets. It might quickly move on to the use of strategic nuclear weapons delivered by short-range or inter-continental missiles or long-range bombers. These could deliver high altitude bursts whose electromagnetic pulse knocks out electrical circuits for hundreds of square miles. Or they could deliver nuclear bombs to destroy nuclear and/or non-nuclear military facilities, nuclear power plants, important industrial sites and cities. Or it could skip all those steps and start through the accidental or reckless use of strategic weapons

#### Only judicial ex post review provides the accountability necessary to solve confidence in targeting—key to viability of the program

Corey, Army Colonel, 12 (Colonel Ian G. Corey, “Citizens in the Crosshairs: Ready, Aim, Hold Your Fire?,” http://www.dtic.mil/cgi-bin/GetTRDoc?AD=ADA561582)

Alternatively, targeted killing decisions could be subjected to judicial review. 103 Attorney General Holder rejected ex ante judicial review out of hand, citing the Constitution’s allocation of national security operations to the executive branch and the need for timely action.104 Courts are indeed reluctant to stray into the realm of political questions, as evidenced by the district court’s dismissal of the ACLU and CCR lawsuit. On the other hand, a model for a special court that operates in secret already exists: the Foreign Intelligence Surveillance Court (FISC) that oversees requests for surveillance warrants for suspected foreign agents. While ex ante judicial review would provide the most robust form of oversight, ex post review by a court like the FISC would nonetheless serve as a significant check on executive power.105 Regardless of the type of oversight implemented, some form of independent review is necessary to demonstrate accountability and bolster confidence in the targeted killing process. Conclusion The United States has increasingly relied on targeted killing as an important tactic in its war on terror and will continue to do so for the foreseeable future.106 This is entirely reasonable given current budgetary constraints and the appeal of targeted killing, especially UAS strikes, as an alternative to the use of conventional forces. Moreover, the United States will likely again seek to employ the tactic against U.S. citizens assessed to be operational leaders of AQAM. As demonstrated above, one can make a good faith argument that doing so is entirely permissible under both international and domestic law as the Obama Administration claims, the opinions of some prominent legal scholars notwithstanding. The viability of future lethal targeting of U.S. citizens is questionable, however, if the government fails to address legitimate issues of transparency and accountability. While the administration has recently made progress on the transparency front, much more remains to be done, including the release in some form of the legal analysis contained in OLC’s 2010 opinion. Moreover, the administration must be able to articulate to the American people how it selects U.S. citizens for targeted killing and the safeguards in place to mitigate the risk of error and abuse. Finally, these targeting decisions must be subject to some form of independent review that will both satisfy due process and boost public confidence.

#### Accountability is impossible from executive internal measures- no one trusts Obama on drones—Court action is key.

Goldsmith 13 (Jack Goldsmith teaches at Harvard Law School and is a member of the Hoover Institution Task Force on National Security and Law, “How Obama Undermined the War on Terror,” http://www.newrepublic.com/article/112964/obamas-secrecy-destroying-american-support-counterterrorism)

For official secrecy abroad to work, the secrets must be kept at home as well. In speeches, interviews, and leaks, Obama's team has tried to explain why its operations abroad are lawful and prudent. But to comply with rules of classified information and covert action, the explanations are conveyed in limited, abstract, and often awkward terms. They usually raise more questions than they answer—and secrecy rules often preclude the administration from responding to follow-up questions, criticisms, and charges. ¶ As a result, much of what the administration says about its secret war—about civilian casualties, or the validity of its legal analysis, or the quality of its internal deliberations—seems incomplete, self-serving, and ultimately non-credible. These trust-destroying tendencies are exacerbated by its persistent resistance to transparency demands from Congress, from the press, and from organizations such as the aclu that have sought to know more about the way of the knife through Freedom of Information Act requests.¶ A related sin is the Obama administration's surprising failure to secure formal congressional support. Nearly every element of Obama's secret war rests on laws—especially the congressional authorization of force (2001) and the covert action statute (1991)—designed for different tasks. The administration could have worked with Congress to update these laws, thereby forcing members of Congress to accept responsibility and take a stand, and putting the secret war on a firmer political and legal foundation. But doing so would have required extended political efforts, public argument, and the possibility that Congress might not give the president precisely what he wants.¶ The administration that embraced the way of the knife in order to lower the political costs of counterterrorism abroad found it easier to avoid political costs at home as well. But this choice deprived it of the many benefits of public argumentation and congressional support. What Donald Rumsfeld said self-critically of Bush-era unilateralism applies to Obama's unilateralism as well: it fails to "take fully into account the broader picture—the complete set of strategic considerations of a president fighting a protracted, unprecedented and unfamiliar war for which he would need sustained domestic and international support." ¶ Instead of seeking contemporary congressional support, the administration has relied mostly on government lawyers' secret interpretive extensions of the old laws to authorize new operations against new enemies in more and more countries. The administration has great self-confidence in the quality of its stealth legal judgments. But as the Bush administration learned, secret legal interpretations are invariably more persuasive within the dark circle of executive branch secrecy than when exposed to public sunlight. On issues ranging from proper targeting standards, to the legality of killing American citizens, to what counts as an "imminent" attack warranting self-defensive measures, these secret legal interpretations—so reminiscent of the Bushian sin of unilateral legalism—have been less convincing in public, further contributing to presidential mistrust.¶ Feeling the heat from these developments, President Obama promised in his recent State of the Union address "to engage with Congress to ensure not only that our targeting, detention, and prosecution of terrorists remains consistent with our laws and system of checks and balances, but that our efforts are even more transparent to the American people and to the world." So far, this promise, like similar previous ones, remains unfulfilled. ¶ The administration has floated the idea of "[shifting] the CIA's lethal targeting program to the Defense Department," as The Daily Beast reported last month. Among other potential virtues, this move might allow greater public transparency about the way of the knife to the extent that it would eliminate the covert action bar to public discussion. But JSOC's non-covert targeted killing program is no less secretive than the CIA's, and its congressional oversight is, if anything, less robust. ¶ A bigger problem with this proposed fix is that it contemplates executive branch reorganization followed, in a best-case scenario, by more executive branch speeches and testimony about what it is doing in its stealth war. The proposal fails to grapple altogether with the growing mistrust of the administration's oblique representations about secret war. The president cannot establish trust in the way of the knife through internal moves and more words. Rather, he must take advantage of the separation of powers. Military detention, military commissions, and warrantless surveillance became more legitimate and less controversial during the Bush era because adversarial branches of government assessed the president's policies before altering and then approving them. President Obama should ask Congress to do the same with the way of the knife, even if it means that secret war abroad is harder to conduct.

### 1AC CMR

#### Executive overreliance on the military is counterproductive and sparks military backlash

Brooks 11/1/13 (Rosa Brooks, a law professor at Georgetown University, served as an Obama appointee at the Defense Department from 2009 to 2011, “Obama vs. the Generals,” http://www.politico.com/magazine/story/2013/11/obama-vs-the-generals-99379\_Page3.html

The military and the White House are not supposed to be on different “sides,” but there’s a long history of mutual recriminations; it’s practically an American tradition. Recall President Harry Truman’s theatrical firing of Gen. Douglas MacArthur amid the dispute over whether to escalate the Korean War; Dwight Eisenhower’s condemnation of the “military-industrial complex,” John F. Kennedy’s struggles with military leaders during the Cuban Missile Crisis; and Bill Clinton’s failed effort to end the ban on gay people serving openly in the military. And that’s just in the post-World War II era. Dubik argues that critics of Obama’s relationship with the military have short memories. “This administration seems more inclusive and willing to listen than the last few,” he says dryly. And, he adds, if anyone imagines that military leaders are more comfortable with Republican administrations, “that’s baloney.” Charles J. Dunlap, an Air Force major general who retired in 2010, agrees: “The longer you’re in the military, the more you realize that there’s not all that much difference between administrations.” Disputes between military leaders and the White House can be healthy for a democratic society. After all, senior commanders have a legal and ethical obligation to provide the president and Congress with honest military advice, and although Dempsey’s openly expressed concerns about Syria may not have sat well with White House officials, says retired Lt. Gen. David Barno, “the chairman does have to say, ‘Here are the risks in that course of action.’” In any case, warns another retired general, the only thing worse than an overtly dissenting military is a covertly dissenting military. “Beware the silence of the generals,” he quips. “Public silence doesn’t mean private inaction.” It is far better, he argues, to have top brass be “out in the open and accountable for what they’re thinking” than for them to be “speaking through proxies and doing back-channel manipulations.” Meanwhile, the president is “right to ask his generals tough questions,” says Dunlap. Every administration prefers to present a united front with the military, but, as another retired senior military leader told me, the president needs to be comfortable if that proves impossible: “There’s nothing wrong with the president saying, ‘The military wanted something, but as president, I decided different, and here’s why.’ The president shouldn’t be afraid of that.” That’s easier said than done. For this White House, the military is the proverbial 800-pound gorilla—more so than ever. After the Sept. 11, attacks, resources and authorities flowed lavishly to the Pentagon, which saw its budget almost double in the following decade. President George W. Bush’s administration “always wanted military guys between themselves and whatever the problem was,” recalls a retired general who served in senior positions during that period. And Bush was more than willing to spend the money needed to make that happen. Meanwhile, budgets for civilian agencies and programs remained largely stagnant. “Ten to 15 years ago, the military was much smaller and less holistic,” notes another retired officer. Today’s military is doing more with more: It sponsors radio and television shows in Afghanistan, operates health clinics in Africa, provides technical assistance to courts and parliaments, engages in cyberdefense, carries out drone strikes in far-flung places, and collects data from our telephone calls and emails. “It’s just the easiest way out of any problem,” says Eaton. “Give money to the military and let them deal with it.” The relentlessly expanding U.S. military, Barno says, is becoming “like a super-Walmart with everything under one roof.” Like Walmart, the military can marshal vast resources and exploit economies of scale in ways impossible for mom-and-pop operations. And like Walmart, the tempting one-stop-shopping convenience the military offers has a devastating effect on smaller, more traditional enterprises—in this case, the outnumbered diplomats of Foggy Bottom. Or the boutique national security shop at the White House, where power lives but resources don’t. And yet no one—least of all Obama—seems to know how to cope with the military’s relentless Walmartization. However committed the president is, in theory, to rebalancing civilian and military roles, Obama has found himself repeatedly turning to the Pentagon in times of crisis, whether in Libya, Syria or Yemen. That, in the end, may be the real story of Obama and his uneasy relationship with a military he came to office determined to rein in. “When the shit hits the fan,” says a former White House official, he’s “racing for that super-Walmart every single bloody time.”

Deference collapses CMR; the court is an essential piece to the triangle, solves a culture of isolation

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The legislative, executive, and judicial branches of the federal government comprise and form a triangle surrounding the military, each branch occupying one side of the civil-military triangle. Commentators have written countless pages discussing, analyzing, and describing the civil-military relationship that the Congress and the President have with the armed forces they respectively regulate and command. Most commentators, however, have neglected to consider the crucial position and role of the federal judiciary. This article examines the relationship between the judiciary and the military in the interest of identifying the role that the judiciary, specifically the United States Supreme Court, plays in civil-military relations. Without an actual, meaningful presence of the judiciary as a leg of the civil-military triangle, the triangle is incomplete and collapses. In its current structure, the judiciary has adopted a non-role by deferring its responsibility to oversee the lawfulness of the other two branches to those branches themselves. This dereliction, which arguably is created by the malfeasance of the United States Supreme Court, has resulted in inherent inequities to the nation, in general, and to service members, in particular, as the federal courts are reluctant to protect even basic civil rights of military members. Judicial oversight is one form of civilian control over the military; abrogating this responsibility is to return power to the military hierarchy that is not meant to be theirs. [\*198] Under the United States Constitution, Congress has plenary authority over the maintenance and regulation of the armed forces, and the President is expressly made the Commander-in-Chief of the armed forces. The unwillingness of the Court to provide a check and balance on these two equal branches of the federal government creates an area virtually unchallengeable by the public. As a result, a large group of people, members of the military services, lack recourse to address wrongs perpetrated against them by their military and civilian superiors. Ironically, the very men and women dedicating their lives to protect the U.S. Constitution lack many of the basic protections the Constitution affords everyone else in this nation. The weakness in the present system is that the Supreme Court has taken a detour from the Constitution with regard to reviewing military issues under the normally recognized requirements of the Constitution. The federal judiciary, following the lead of the Supreme Court, has created de facto immunity from judicial interference by those who seek to challenge policy or procedure established by the other two branches and the military itself. When the "Thou Shalt Nots" of the Amendments to the Constitution compete with the necessities of the military, the conflict is resolved in favor of the military because it is seen as a separate society based upon the constitutionally granted authority of Congress to maintain and regulate the armed forces. 1 Essentially, the Court permits a separate world to be created for the military because of this regulation, distinguishing and separating the military from society. 2 The Court needs to reexamine their almost complete deference on military matters, which is tantamount to an exception to the Bill of Rights for matters concerning members of the military. Unless the Court begins to provide the oversight that is normally dedicated to many other areas of law fraught with complexity and national importance, judicial review of the military will continue to be relegated to a footnote in the annals of law. Combined with the downsizing and further consequent decline of interaction between the military and general society, 3 this exile from the protection of the Constitution could breed great injustices within the military. Perhaps even more importantly, the military might actually begin to believe that they are indeed second-class citizens, separate from the general [\*199] population, which could create dire problems with civil-military relations that are already the subject of concern by many observers. 4

CMR erosion collapses hegemony

Barnes, Retired Colonel, 11 (Rudy Barnes, Jr., BA in PoliSci from the Citadel, Military Awards: Legion of Merit, Meritorious Service Medal, Army Commendation Medal, Army Achievement Medal with Oak Leaf Cluster, Army Reserve Component Achievement Medal, National Defense Service Medal, “An Isolated Military as a Threat to Military Legitimacy,” http://militarylegitimacyreview.com/?page\_id=159)

The legitimacy of the US military depends upon civil-military relations. In Iraq and Afghanistan conflicting religions and cultures have presented daunting challenges for the US military since mission success in counterinsurgency (COIN) operations depends upon public support in those hostile cultural environments; and even in the US, civil-military relations are fragile since the military is an authoritarian regime within a democratic society. This cultural dichotomy within our society creates the continuing potential for conflict between authoritarian military values and more libertarian civilian values that can undermine military legitimacy, especially when there are fewer bridges between the military and the civilian population it serves. The US military is a shield that protects our national security, but it can also be a sword that threatens our national security. After all, the US military controls the world’s most destructive weaponry. Our Founding Fathers understood this danger and provided for a separation of powers to prevent a concentration of power in the military. Still, if the US military were ever to become isolated from the civilian population it serves, then civil-military relations would deteriorate and US security would be at risk. Richard Cohen has opined that we are slowly but inexorably moving toward an isolated military: The military of today is removed from society in general. It is a majority white and, according to a Heritage Foundation study, disproportionately Southern. New England is underrepresented, and so are big cities, but the poor are no longer cannon fodder – if they ever were – and neither are blacks. We all fight and die just about in proportion to our numbers in the population. The all-volunteer military has enabled America to fight two wars while many of its citizens do not know of a single fatality or even of anyone who has fought overseas. This is a military conscripted by culture and class – induced, not coerced, indoctrinated in all the proper cliches about serving one’s country, honored and romanticized by those of us who would not, for a moment, think of doing the same. You get the picture. Talking about the picture, what exactly is wrong with it? A couple of things. First, this distant Army enables us to fight wars about which the general public is largely indifferent. Had there been a draft, the war in Iraq might never have been fought – or would have produced the civil protests of the Vietnam War era. The Iraq debacle was made possible by a professional military and by going into debt. George W. Bush didn’t need your body or, in the short run, your money. Southerners would fight, and foreigners would buy the bonds. For understandable reasons, no great songs have come out of the war in Iraq. The other problem is that the military has become something of a priesthood. It is virtually worshipped for its admirable qualities while its less admirable ones are hardly mentioned or known. It has such standing that it is awfully hard for mere civilians – including the commander in chief – to question it. Dwight Eisenhower could because he had stars on his shoulders, and when he warned of the military-industrial complex, people paid some attention. Harry Truman had fought in one World War and John Kennedy and Gerald Ford in another, but now the political cupboard of combat vets is bare and there are few civilian leaders who have the experience, the standing, to question the military. This is yet another reason to mourn the death of Richard Holbrooke. He learned in Vietnam that stars don’t make for infallibility, sometimes just for arrogance. (Cohen, How Little the US Knows of War, Washington Post, January 4, 2011) The 2010 elections generated the usual volume of political debate, but conspicuously absent were the two wars in which US military forces have been engaged for ten years. It seems that dissatisfaction with the wars in Iraq and Afghanistan has caused the American public to forget them and those military forces left to fight them. A forgotten military can become an isolated military with the expected erosion of civil-military relations. But the forgotten US military has not gone unnoticed: Tom Brokaw noted that there have been almost 5,000 Americans killed and 30,000 wounded, with over $1 trillion spent on the wars in Afghanistan and Iraq, with no end in sight. Yet most Americans have little connection with the all-volunteer military that is fighting these wars. It represents only one percent of Americans and is drawn mostly from the working class and middle class. The result is that military families are often isolated “…in their own war zone.” (See Brokaw, The Wars that America Forgot About, New York Times, October 17, 2010) Bob Herbert echoed Brokaw’s sentiments and advocated reinstating the draft to end the cultural isolation of the military. (Herbert, The Way We Treat Our Troops, New York Times, October 22, 2010) In another commentary on the forgotten military, Michael Gerson cited Secretary of Defense Robert Gates who warned of a widening cultural gap between military and civilian cultures: “There is a risk over time of developing a cadre of military leaders that politically, culturally and geographically have less and less in common with the people they have sworn to defend.” Secretary Gates promoted ROTC programs as a hedge against such a cultural divide. Gerson concluded that the military was a professional class by virtue of its unique skills and experience: “They are not like the rest of America—thank God. They bear a disproportionate burden, and they seem proud to do so. And they don’t need the rest of society to join them, just to support them.” (Gerson, The Wars We Left Behind, Washington Post, October 28, 2010) The Chairman of the Joint Chiefs of Staff, Admiral Mike Mullen, has seconded the observations of Secretary Gates and warned of an increasingly isolated military and “…a potentially dangerous gulf between the civilian world and men and women in uniform.” Mullen explained, “To the degree that we are out of touch I believe is a very dangerous force.” And he went on to observe that “Our audience, our underpinnings, our authority, everything we are, everything we do, comes from the American people…and we cannot afford to be out of touch with them.” (Charley Keyes, Joint Chiefs Chair Warns of Disconnect Between Military and Civilians, CNN.com, January 10, 2011) Gerson’s observation that the military are not like the rest of Americans goes to the heart of the matter. An isolated military that exacerbates conflicting military and civilian values could undermine civil-military relations and threaten military legitimacy. The potential for conflicting values is evident in the article by Kevin Govern on Higher Standards of Honorable Conduct Reinforced: Lessons (Re) Learned from the Captain Honors Incident (see article posted under this section) which highlights the “exemplary conduct” standard for military personnel and the need to enforce the unique standards of exemplary conduct to maintain good order and discipline in the military. The communal and authoritarian military values inherent in the standards of exemplary conduct often clash with more libertarian civilian values; but in the past that clash has been moderated by bridges between the military and civilian cultures, most notably provided by the draft, the National Guard and reserve components. The draft is gone and the National Guard and reserve components are losing ground in an all-volunteer military that is withdrawing from Iraq and Afghanistan. The Reserve Officer Training Program (ROTC) has provided most civilian-soldier leaders for the US military in the past, but it is doubtful that will continue in the future. If Coleman McCarthy speaks for our best colleges and universities, then ROTC is in trouble and so are civil-military relations: These days, the academic senates of the Ivies and other schools are no doubt pondering the return of military recruiters to their campuses. Meanwhile, the Pentagon, which oversees ROTC programs on more than 300 campuses, has to be asking if it wants to expand to the elite campuses, where old antipathies are remembered on both sides. It should not be forgotten that schools have legitimate and moral reasons for keeping the military at bay, regardless of the repeal of “don’t ask, don’t tell.” They can stand with those who for reasons of conscience reject military solutions to conflicts. ROTC and its warrior ethic taint the intellectual purity of a school, if by purity we mean trying to rise above the foul idea that nations can kill and destroy their way to peace. If a school such as Harvard does sell out to the military, let it at least be honest and add a sign at its Cambridge front portal: Harvard, a Pentagon Annex. (Coleman McCarthy, Don’t ask, don’t tell has been repealed. ROTC still shouldn’t be on campus, Washington Post, December 30, 2010) McCarthy’s attitude toward ROTC reflects a dangerous intellectual elitism that threatens civil-military relations and military legitimacy. But there are also conservative voices that recognize the limitations of ROTC and offer alternatives. John Lehman, a former Secretary of the Navy, and Richard Kohn, a professor of military history at the University of North Carolina at Chapel Hill, don’t take issue with McCarthy. They suggest that ROTC be abandoned in favor of a combination of military scholarships and officer training during summers and after graduation: Rather than expanding ROTC into elite institutions, it would be better to replace ROTC over time with a more efficient, more effective and less costly program to attract the best of America’s youth to the services and perhaps to military careers. Except from an economic perspective, ROTC isn’t efficient for students. They take courses from faculty almost invariably less prepared and experienced to teach college courses, many of which do not count for credit and cover material more akin to military training than undergraduate education. Weekly drills and other activities dilute the focus on academic education. ROTC was begun before World War I to create an officer corps for a large force of reservists to be mobilized in a national emergency. It has outgrown this purpose and evolved into just another source of officers for a military establishment that has integrated regulars and reservists into a “total force” in which the difference is between part-time and full-time soldiering. The armed services should consider a program modeled in part on the Marine Platoon Leaders Corps to attract the nation’s most promising young people. In a national competition similar to ROTC scholarships, students should be recruited for four years of active duty and four years of reserve service by means of all-expenses-paid scholarships to the college or university of their choice. Many would no doubt take these lucrative grants to the nation’s most distinguished schools, where they would get top-flight educations and could devote full attention on campus to their studies. Youths would gain their military training and education by serving in the reserve or National Guard during college (thus fulfilling their reserve obligation). Being enlisted would teach them basic military skills and give them experience in being led before becoming leaders themselves. As reservists during college, they would be obligated to deploy only once, which would not unduly delay their education or commissioned service. They could receive their officer education at Officer Candidate School summer camps or after graduation from college. This program could also be available to those who do not win scholarships but are qualified and wish to serve. Such a system would cost less while attracting more, and more outstanding, youth to military service, spare uniformed officers for a maxed-out military establishment, and reconnect the nation’s leadership to military service – a concern since the beginning of the all-volunteer armed force. (Lehman and Kohn, Don’t expand ROTC. Replace it. Washington Post, January 28, 2011) The system proposed by Lehman and Kohn would preserve good civil-military relations only if it could attract as many reserve component (civilian-soldier) military officers as has ROTC over the years. Otherwise the demise of ROTC will only hasten the isolation of the US military. As noted by Richard Cohen, Tom Brokaw, Bob Herbert, Michael Gerson, Secretary of Defense Bill Gates and Chairman of the Joint Chiefs Admiral Mike Mullen, the increasing isolation of the US military is a real danger to civil-military relations and military legitimacy. The trends are ominous: US military forces are drawing down as they withdraw from Iraq and Afghanistan and budget cuts are certain to reduce both active and reserve components, with fewer bridges to link a shrinking and forgotten all-volunteer military to the civilian society it serves. The US has been blessed with good civil-military relations over the years, primarily due to the many civilian-soldiers who have served in the military. But with fewer civilian-soldiers to moderate cultural differences between an authoritarian military and a democratic society, the isolation of the US military becomes more likely. Secretary Gates and Admiral Mullen were right to emphasize the danger of an isolated military, but that has not always been the prevailing view. In his classic 1957 work on civil-military relations, The Soldier and the State, Samuel Huntington advocated the isolation of the professional military to prevent its corruption by civilian politics. It is ironic that in his later years Huntington saw the geopolitical threat environment as a clash of civilizations which required military leaders to work closely with civilians to achieve strategic political objectives in hostile cultural environments such as Iraq and Afghanistan. (see discussion in Barnes, Military Legitimacy: Might and Right in the New Millennium, Frank Cass, 1996, at pp 111-115) Today, the specter of an isolated military haunts the future of civil-military relations and military legitimacy. With fewer civilian-soldiers from the National Guard and Reserve components to bridge the gap between our military and civilian cultures, an all-volunteer professional military could revive Huntington’s model of an isolated military to preserve its integrity from what it perceives to be a morally corrupt civilian society. It is an idea that has been argued before. (see Robert L. Maginnis, A Chasm of Values, Military Review (February 1993), cited in Barnes, Military Legitimacy: Might and Right in the New Millennium, Frank Cass, 1996, at p 55, n 6, and p 113, n 20) The military is a small part of our population—only 1 percent—but the Department of Defense is our largest bureaucracy and notorious for its resistance to change. Thomas Jefferson once observed the need for such institutions to change with the times: “Laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths disclosed, and manners and opinions change with the change of circumstance, institutions must advance also, and keep pace with the times.” Michael Gerson noted that the military remains a unique culture of warriors within a civilian culture, and that “it is not like the rest of America.” For that reason a forgotten and isolated military with values that do not keep pace with changing times and circumstances and conflict with civilian values would not only be a threat to military legitimacy but also be a threat to our individual freedom and democracy. In summary, the US military is in danger of becoming isolated from the civilian society it must serve. Military legitimacy and good civil-military relations depend upon the military maintaining close bonds with civilian society. In contemporary military operations military leaders must be both diplomats as well as warriors. They must be effective working with civilians in domestic and foreign emergencies and in civil-military operations such as counterinsurgency and stability operations, and they must be combat leaders who can destroy enemy forces with overwhelming force. Diplomat-warriors can perform these diverse leadership roles and maintain the close bonds needed between the military and civilian society. Such military leaders can help avoid an isolated military and insure healthy civil-military relations.

Loss of mission effectiveness risks multiple nuclear wars

Kagan and O’Hanlon 7 Frederick, resident scholar at AEI and Michael, senior fellow in foreign policy at Brookings, “The Case for Larger Ground Forces”, April 2007, http://www.aei.org/files/2007/04/24/20070424\_Kagan20070424.pdf

We live at a time when wars not only rage in nearly every region but threaten to erupt in many places where the current relative calm is tenuous. To view this as a strategic military challenge for the United States is not to espouse a specific theory of America’s role in the world or a certain political philosophy. Such an assessment flows directly from the basic bipartisan view of American foreign policy makers since World War II that overseas threats must be countered before they can directly threaten this country’s shores, that the basic stability of the international system is essential to American peace and prosperity, and that no country besides the United States is in a position to lead the way in countering major challenges to the global order. Let us highlight the threats and their consequences with a few concrete examples, emphasizing those that involve key strategic regions of the world such as the Persian Gulf and East Asia, or key potential threats to American security, such as the spread of nuclear weapons and the strengthening of the global Al Qaeda/jihadist movement. The Iranian government has rejected a series of international demands to halt its efforts at enriching uranium and submit to international inspections. What will happen if the US—or Israeli—government becomes convinced that Tehran is on the verge of fielding a nuclear weapon? North Korea, of course, has already done so, and the ripple effects are beginning to spread. Japan’s recent election to supreme power of a leader who has promised to rewrite that country’s constitution to support increased armed forces—and, possibly, even nuclear weapons— may well alter the delicate balance of fear in Northeast Asia fundamentally and rapidly. Also, in the background, at least for now, Sino Taiwanese tensions continue to flare, as do tensions between India and Pakistan, Pakistan and Afghanistan, Venezuela and the United States, and so on. Meanwhile, the world’s nonintervention in Darfur troubles consciences from Europe to America’s Bible Belt to its bastions of liberalism, yet with no serious international forces on offer, the bloodletting will probably, tragically, continue unabated. And as bad as things are in Iraq today, they could get worse. What would happen if the key Shiite figure, Ali al Sistani, were to die? If another major attack on the scale of the Golden Mosque bombing hit either side (or, perhaps, both sides at the same time)? Such deterioration might convince many Americans that the war there truly was lost—but the costs of reaching such a conclusion would be enormous. Afghanistan is somewhat more stable for the moment, although a major Taliban offensive appears to be in the offing. Sound US grand strategy must proceed from the recognition that, over the next few years and decades, the world is going to be a very unsettled and quite dangerous place, with Al Qaeda and its associated groups as a subset of a much larger set of worries. The only serious response to this international environment is to develop armed forces capable of protecting America’s vital interests throughout this dangerous time. Doing so requires a military capable of a wide range of missions—including not only deterrence of great power conflict in dealing with potential hotspots in Korea, the Taiwan Strait, and the Persian Gulf but also associated with a variety of Special Forces activities and stabilization operations. For today’s US military, which already excels at high technology and is increasingly focused on re-learning the lost art of counterinsurgency, this is first and foremost a question of finding the resources to field a large-enough standing Army and Marine Corps to handle personnel intensive missions such as the ones now under way in Iraq and Afghanistan. Let us hope there will be no such large-scale missions for a while. But preparing for the possibility, while doing whatever we can at this late hour to relieve the pressure on our soldiers and Marines in ongoing operations, is prudent. At worst, the only potential downside to a major program to strengthen the military is the possibility of spending a bit too much money. Recent history shows no link between having a larger military and its overuse; indeed, Ronald Reagan’s time in office was characterized by higher defense budgets and yet much less use of the military, an outcome for which we can hope in the coming years, but hardly guarantee. While the authors disagree between ourselves about proper increases in the size and cost of the military (with O’Hanlon preferring to hold defense to roughly 4 percent of GDP and seeing ground forces increase by a total of perhaps 100,000, and Kagan willing to devote at least 5 percent of GDP to defense as in the Reagan years and increase the Army by at least 250,000), we agree on the need to start expanding ground force capabilities by at least 25,000 a year immediately. Such a measure is not only prudent, it is also badly overdue.

#### Balanced CMR is essential to democratic modeling

Barnes, Retired Colonel, 11 (Rudy Barnes, Jr., BA in PoliSci from the Citadel, Military Awards: Legion of Merit, Meritorious Service Medal, Army Commendation Medal, Army Achievement Medal with Oak Leaf Cluster, Army Reserve Component Achievement Medal, National Defense Service Medal, “Military Legitimacy: Might and Right in the New Millennium”, originally published in 1996, revised Feb 8, 2011, document accessed from: http://militarylegitimacyreview.com/?page\_id=206)

Continuing nation assistance operations have confirmed the importance of human rights and civil-military relations to military legitimacy. Military forces in undemocratic regimes have historically been associated with human rights violations and political oppression. The U.S. has provided security and humanitarian assistance to encourage democratization in many such regimes: first to Latin America in the 1970s and 1980s, and more recently to Eastern Europe and Russia. In most developing countries the military is not separated from domestic politics as in the U.S., and is expected to provide internal as well as external security to the civilian population. This makes it especially important that the requirements of internal security be balanced with the restraint needed to protect human rights. In Latin America the exercise of political power by military forces has had a corrosive influence on military professionalism and civil-military relations. The use of the military to protect or install corrupt regimes has eroded their legitimacy. To build the public support required for military legitimacy, Latin American militaries must limit their political role, constrain the use of force, and focus on improving civil-military relations.21 A joint project between US Army military lawyers and their Peruvian counterparts to promote human rights is discussed in chapter 7. It illustrates how institutionalizing respect for human rights in the military can improve civil-military relations and legitimacy. According to the 1993 UN Truth Commission Report on the civil war in El Salvador the Salvadoran military has a long way to go to achieve legitimacy. The Report indicates gross human rights violations were committed by death squads associated with U.S.-trained military forces. The conviction of two officers for the murder of six Jesuit priests in 1989 was a positive step, but the failure to purge those officers identified with human rights violations indicates military legitimacy remains an elusive goal. In Eastern Europe there have been similar problems with military legitimacy. Promoting the values of democracy, human rights, and the rule of law in former communist countries can contribute to peace, security and military legitimacy in two ways: first, democratic regimes are less likely to misuse their military power than authoritarian regimes; and second, the democratic values of individual liberty and civilian control contribute to better civil-military relations and military professionalism, and professionalism (internal control) is the best defense against the misuse of military power.22 The failure of civil-military relations and military professionalism in the "masterless" armies of the former Yugoslavia has contributed to the unspeakable atrocities in the Bosnian civil war. Better civil-military relations and military professionalism could help protect human rights and prevent the spread of similar violence throughout the region. "Civil-military relations take on a deeper significance and must be viewed as a critical element in the struggle to maintain legitimacy of existing democratic governments as they attempt to deal with the internal and external manifestations of this crisis."23 The future of democracy, human rights, and the rule of law in emerging democracies depends upon better civil-military relations, which will require effective separation of military and political power (ideally civilian control of the military), but this should not preclude domestic military missions with political implications. For U.S. military advisors to help their indigenous counterparts improve civil-military relations, they must understand the requirements and principles of military legitimacy, especially the role of human rights and the rule of law. Civil-military relations in the U.S. There have been important lessons learned in civil-military relations in the U.S. as well as overseas. While they have not involved serious violations of human rights (with the exception of the Indian wars and the Kent State incident) they do provide important lessons in military legitimacy and useful precedents for the future.

#### Democratic backsliding causes great power war

Azar Gat 11, the Ezer Weizman Professor of National Security at Tel Aviv University, 2011, “The Changing Character of War,” in The Changing Character of War, ed. Hew Strachan and Sibylle Scheipers, p. 30-32

Since 1945, the decline of major great power war has deepened further. Nuclear weapons have concentrated the minds of all concerned wonderfully, but no less important have been the institutionalization of free trade and the closely related process of rapid and sustained economic growth throughout the capitalist world. The communist bloc did not participate in the system of free trade, but at least initially it too experienced substantial growth, and, unlike Germany and Japan, it was always sufﬁciently large and rich in natural resources to maintain an autarky of sorts. With the Soviet collapse and with the integration of the former communist powers into the global capitalist economy, the prospect of a major war within the developed world seems to have become very remote indeed. This is one of the main sources for the feeling that war has been transformed: its geopolitical centre of gravity has shifted radically. The modernized, economically developed parts of the world constitute a ‘zone of peace’. War now seems to be conﬁned to the less-developed parts of the globe, the world’s ‘zone of war’, where countries that have so far failed to embrace modernization and its pacifying spin-off effects continue to be engaged in wars among themselves, as well as with developed countries.¶ While the trend is very real, one wonders if the near disappearance of armed conﬂict within the developed world is likely to remain as stark as it has been since the collapse of communism. The post-Cold War moment may turn out to be a ﬂeeting one. The probability of major wars within the developed world remains low—because of the factors already mentioned: increasing wealth, economic openness and interdependence, and nuclear deterrence. But the deep sense of change prevailing since 1989 has been based on the far more radical notion that the triumph of capitalism also spelled the irresistible ultimate victory of democracy; and that in an afﬂuent and democratic world, major conﬂict no longer needs to be feared or seriously prepared for. This notion, however, is fast eroding with the return of capitalist non-democratic great powers that have been absent from the international system since 1945. Above all, there is the formerly communist and fast industrializing authoritarian-capitalist China, whose massive growth represents the greatest change in the global balance of power. Russia, too, is retreating from its postcommunist liberalism and assuming an increasingly authoritarian character.¶ Authoritarian capitalism may be more viable than people tend to assume. 8 The communist great powers failed even though they were potentially larger than the democracies, because their economic systems failed them. By contrast, the capitalist authoritarian/totalitarian powers during the ﬁrst half of the twentieth century, Germany and Japan, particularly the former, were as efﬁcient economically as, and if anything more successful militarily than, their democratic counterparts. They were defeated in war mainly because they were too small and ultimately succumbed to the exceptional continental size of the United States (in alliance with the communist Soviet Union during the Second World War). However, the new non-democratic powers are both large and capitalist. China in particular is the largest player in the international system in terms of population and is showing spectacular economic growth that within a generation or two is likely to make it a true non-democratic superpower.¶ Although the return of capitalist non-democratic great powers does not necessarily imply open conﬂict or war, it might indicate that the democratic hegemony since the Soviet Union’s collapse could be short-lived and that a universal ‘democratic peace’ may still be far off. The new capitalist authoritarian powers are deeply integrated into the world economy. They partake of the development-open-trade-capitalist cause of peace, but not of the liberal democratic cause. Thus, it is crucially important that any protectionist turn in the system is avoided so as to prevent a grab for markets and raw materials such as that which followed the disastrous slide into imperial protectionism and conﬂict during the ﬁrst part of the twentieth century. Of course, the openness of the world economy does not depend exclusively on the democracies. In time, China itself might become more protectionist, as it grows wealthier, its labour costs rise, and its current competitive edge diminishes.¶ With the possible exception of the sore Taiwan problem, China is likely to be less restless and revisionist than the territorially conﬁned Germany and Japan were. Russia, which is still reeling from having lost an empire, may be more problematic. However, as China grows in power, it is likely to become more assertive, ﬂex its muscles, and behave like a superpower, even if it does not become particularly aggressive. The democratic and non-democratic powers may coexist more or less peacefully, albeit warily, side by side, armed because of mutual fear and suspicion, as a result of the so-called ‘security dilemma’, and against worst-case scenarios. But there is also the prospect of more antagonistic relations, accentuated ideological rivalry, potential and actual conﬂict, intensiﬁed arms races, and even new cold wars, with spheres of inﬂuence and opposing coalitions. Although great power relations will probably vary from those that prevailed during any of the great twentieth-century conﬂicts, as conditions are never quite the same, they may vary less than seemed likely only a short while ago.

#### Balanced CMR is key to democratic consolidation-the relationship is statistically significant

**Tusalem, Arkansas State political science professor, 2013**

(Rollin, “Bringing the military back in: The politicisation of the military and its effect on democratic consolidation”, International Political Science Review, August, SAGE, ldg)

Panel regression results presented in Table 2 confirm the hypothesis that a politicised military infrastructure affects democratic politics. For instance, the military index of politicisation (provided by PRS) is negatively correlated with democratic accountability at (p < .05). Thus, states that have politically active military institutions are more likely to face lower levels of political accountability. We can also infer from Table 2 that the Siaroff index of military activism is positively correlated with higher levels of democratic accountability (p < .01), suggesting that states that have restrictions on “reserved domains” are more likely to be responsive to political rights and civil liberties, and have checks and balances in their political system. The role of institutionalised military intervention, reflected by the occurrence of coup events in the historical past (prior to transition), also has a negative effect on democratic accountability (achieving statistical significance at p < .10), largely confirming how the historical legacy of institutional structures may affect the nature of transitional politics (Pop-Eleches, 2007). Interestingly, none of the military-related variables concerning the size of the national army and spending on the military as an institution are correlated with democratic accountability. We now move to examine the effect of a politicised military on a more substantive and maximalist measure of democracy, the EIU measure. Table 3 conveys how all the relevant measures—the PRS measure (significant at p < .05), the Siaroff index (significant at p < .05), and the coup index prior to transition (significant at p < .01)—have coefficient signs in the expected direction and are statistically significant across the board. Out of all the three variables capturing the politicisation of the military, the variable that has the most salient effect on promoting the politics of inclusion, equality, pluralism, and fairness in governance is the dummy variable of whether or not a state had a coup in its pre-transition history. Hence, states whose militaries were engaged in coups prior to transition are less likely to strengthen the nature of democratic politics, an indication that activist militaries in the pre-transition period are more likely to remain restive and destabilising in the post-transition period, largely affecting and eroding democratic gains. Hence, this comports with Stepan’s (1988) argument that historical legacies of military adventurism matter in shaping how far states move forward in their transitional trajectory toward consolidation. Finally, what effect does an activist military have on the prospects for democratic consolidation? The results presented in Table 4 show that the PRS measure is negatively correlated with democratic consolidation (significant at p < .01) and, based on the predicted estimates shown in Figure 1, we see that the BTI measure of consolidation is at its highest when the PRS measure is 1 (states with apolitical military institutions), while the BTI score is at its lowest when the PRS measure is 6 (states with politicised military institutions), even when holding all control variables constant at their means and modes. These results are mimicked when we look at the effect of the Siaroff index of military activism on democratic consolidation. Table 4 shows a positive relationship between the Siaroff index and democratic consolidation (significant at p < .01), and the predicted estimates illustrated in Figure 2 show that as the restrictions on reserved domains increase, so do the prospects for democratic consolidation. To substantiate further, the BTI transformation index reaches its maximum value when the Siaroff index is 10 (connoting lower levels of reserved domains), while the BTI transformation index reaches its minimum level when the Siaroff index is 2 (connoting higher levels of reserved domains). This shows that states which have militaries that control security, defence, and social policies, particularly those whose post-transitional constitutions gave the military responsibilities and positions in government, are less likely to consolidate or strengthen their democratic institutions. What about the effect of the military’s historical prerogative in ending civilian rule in the past? Does this activism persist even in the post-transition period, producing problems as it relates to democratic consolidation? The results in Table 4 confirm the deleterious effect of prior coup events on the prospects of democratic consolidation, although this time the prior coup variable attains only marginal significance (at p < .10), results which attained a higher level of statistical significance when the EIU measure of democracy was used. It should also be noted here that the reduced models that drop the number of countries from 44 to 39 states also yield results that corroborate the main models in all the regression analyses. Thus, even if we restrict the sampling to states that strictly transitioned to democracy, the pernicious effect of a politicised military on democratic accountability and democratic consolidation remains statistically significant. The empirical findings of this study convey that transitional states where reserved domains granted to the military are high, specifically states where the military apparatus has a large role in shaping national policies, are more likely to have lower levels of democratic accountability and are more likely to reverse democratic gains. Furthermore, politicised military institutions and the institutional legacy of overthrowing civilian regimes in the pre-transitional past have an enduring effect in eroding prospects for democratic consolidation. Scholars provide the normative prescription that reserved domains given to the military should not be provided by the state. In fact, such domains must be immediately dismissed at the onset of roundtable negotiations during “pacted” transitional processes (Diamond, 1999). Civilian governments should not grant the military a “golden parachute” to escape prosecution for human rights violations committed in the authoritarian past. For instance, there is consensus that one reason behind the relative success of Chilean, Brazilian, and Argentinean democratisation is attributed to amendments in their constitution that openly targeted the reserved domains granted to the military. These actions drastically lessened the military’s activism post-transition (Hagopian, 2005). The high-publicity trials of military generals involved in a coup or past human rights violations should be encouraged, to deter the military from pursuing a political role in the affairs of the state. Immunity deals granted to military generals who have denigrated the rule of law should be avoided so as to have a deterrent effect on the military’s potential activism (Siaroff, 2009). In light of democracy-building initiatives of international organisations, Fitch (1998) recommends that new democracies should discourage military generals from participating in constituent assemblies/constitutional conventions. It is also recommended that generals or retired generals not be invited to take positions in the civil service or bureaucracy. Many also recommend that a civil–military equilibrium must be reached in which civilian governments retain control of the economy, especially in determining budgets that affect the military, their pay scales, and issues concerning the promotion and demotion of highly ranked officers. Lastly, the military’s role in influencing public policy and the consultative role it grants to the executive should be restrained or severed altogether as these reserved domains may threaten democratic values and institutions (Alagappa, 2001; Kohn, 1997; Trinkunas, 2001). The results of this study also find that other military-related variables, like the size of the army and the percentage of GDP spent on the military, have no effect on democratic quality and consolidation. This corroborates the empirical findings of McKinlay and Cohan (1975) and Zuk and Thompson (1982), which allude to how the corporate model of greed and grievance coming from the military is not a salient factor in shaping its political agenda and motivations. Thus, the effect of the military on democratic outcomes is largely not a structural issue per se; rather, it is more a function of how the military’s activism in the pre-transitional process leads them to demand reserved domains at the cusp of constructing post-authoritarian constitutions. As these domains accrue over time, it provides the impetus for the military to further erode democratic gains, thus paving the way for the return of creeping authoritarianism.

### Fullerton Plan

#### The United States Federal Judiciary should subject United States’ targeted killing operations to judicial ex post review by allowing a cause of action against the government for damages arising directly out of the constitutional provision allegedly offended.

### 1AC Solvency

#### Ex post review makes our drone operations better—incentivizes better intel gathering and it doesn’t chill battlefield ops

Taylor, Senior Fellow-Center for Policy & Research, 13 (Paul, Senior Fellow at the Center for Policy & Research and an alumnus of Seton Hall Law School and the Whitehead School of Diplomacy and International Relations, and is veteran of the Army’s 82nd Airborne Division, with deployments to both Afghanistan and to Iraq, “Former DOD Lawyer Frowns on Drone Court,” March, http://transparentpolicy.org/2013/03/former-dod-lawyer-frowns-on-drone-court/)

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

#### Courts don’t leak intel methods or classified information—this fear has been repeatedly dispelled by hundreds of successfully tried terrorism cases

Jaffer-director ACLU’s National Security Project-12/9/08 <http://www.salon.com/2008/12/09/guantanamo_3/> Don’t replace the old Guantánamo with a new one

The contention that the federal courts are incapable of protecting classified information — “intelligence sources and methods,” in the jargon of national security experts — is another canard. When classified information is at issue in federal criminal prosecutions, a federal statute — the Classified Information Procedures Act (CIPA) — generally permits the government to substitute classified information at trial with an unclassified summary of that information. It is true that CIPA empowers the court to impose sanctions on the government if the substitution of the unclassified summary for the classified information is found to prejudice the defendant, and in theory such sanctions can include the dismissal of the indictment. In practice, however, sanctions are exceedingly rare, and of the hundreds of terrorism cases that have been prosecuted over the last decade, none has been dismissed for reasons relating to classified information. Proponents of new detention authority, including Waxman and Wittes, invoke the threat of exposing “intelligence sources and methods” as a danger inherent to terrorism prosecutions in U.S. courts, but the record of successful prosecutions provides the most effective rebuttal.

#### No over-deterrence of military operations- government liability is rooted in the FTCA and it avoids the chilling associated with individual liability.

Kent, Constitutional Law prof, 13 (Andrew, Faculty Advisor-Center on National Security at

Fordham Law School, prof @ Fordham University School of Law- constitutional law, foreign relations law, national security law, federal courts and procedure, “ARE DAMAGES DIFFERENT?: BIVENS AND NATIONAL SECURITY,” October 8, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2330476>) \*\* Evidence is gender paraphrased

Because of sovereign immunity, federal officials are sued under Bivens in their so-called personal rather than official capacities.43 In theory, persons injured by actions of a federal official could also seek compensation by suing the agent’s employer, the United States Government for damages, but the sovereign immunity of the federal government blocks this route.44 The Federal Tort Claims Act (FTCA), originally enacted in 1946 and frequently amended since,45 effects a partial waiver of sovereign immunity by allowing suits directly against the federal government instead of officers (who might be judgment proof) and making the United States liable for injuries caused by the negligent or wrongful act or omission of any federal employee acting within the scope of ~~his~~ employment, in accordance with the law of the state where the act or omission occurred.46 Under the Westfall Act of 1988, the FTCA is the exclusive remedy for torts committed by federal officials within the scope of their employment, except for suits brought for violations of the Constitution.47 In other words, state law tort claims against individual official defendants are now generally barred. The Supreme Court takes the prospect of individual liability in damages for officials very seriously and has crafted immunity doctrines to soften the blow. The Court’s rulings provide the President of the United States and certain classes of officials defined functionally—prosecutors doing prosecutorial work, legislators legislating, judges doing judicial work and certain persons performing “quasijudicial” functions—with absolute immunity from money damages suits, generally for the reason that such suits would be likely to be frequent, frequently meritless, and uniquely capable of disrupting job performance.48 All other government officials are entitled to only “qualified immunity” from money damages suits. Under the qualified immunity doctrine, officials are liable only when they violate “clearly established” federal rights, that is, when “[t]he contours of [a] right [are] sufficiently clear that every reasonable official would have understood that what ~~he is~~ [they are] doing violates that right.”49 Because qualified immunity is not just a defense to liability but also “a limited entitlement not to stand trial or face the other burdens of litigation,”50 the Court’s doctrine encourages speedy resolution of immunity questions by judges. The policy reasons for the Court’s active protection of federal officials through a robust immunity doctrine, including fear of dampening the zeal with which officials perform their jobs because of fear of personal liability, are discussed below in Section V.A.

#### empirical studies show judicial review has positive effect on executive policy expertise

Dragu 13 (Tiberiu Dragu, prof of politics at NYU, and Oliver Board, On Judicial Review in a Separation of Powers System, https://files.nyu.edu/tcd224/public/papers/judicial.pdf)

Whether judicial review should be limited for epistemic reasons has been particularly salient in recent years, as courts have been repeatedly called to determine the meaning of statutes and constitutional provisions on executive officials' powers to prevent terrorist attacks. Some scholars argue that terrorism prevention, just like other national security matters, is an area of questionable judicial competence where executive officials should be afforded considerable discretion to devise counterterrorism policies not only because the pres- ident is elected, but also because the president's agents have superior information about how best to address the terrorist threat (Sunstein 2005; Tushnet 2005; Posner 2006). Similar arguments for limiting judicial review because of asymmetric institutional competence are often voiced in the scholarship on administrative rulemaking (Sunstein 2006). Judicial in-tervention in rulemaking can he at odds, so the argument goes, with the very rationale of creating administrative agencies: to have an institutional repository of expertise in realms in which elected officials lack the necessary information required by complexity of the modern- day governance (Landis 1938). Such arguments approach the question of whether judicial review is desirable or not as a balancing exercise between the rule-of-law ideal of checking the legality of policies and the separat ion-of-powers principle of dispensing policy-making authority to those institutions with superior expertise. As such, the expertise rationale for limiting the scope of judicial review seems simple and intuitive: When questions of law are intertwined with matters of fact and policy choice and when the courts are unsure what consequences will follow from a particular decision, judicial second-guessing can throw governmental policies off course. And if the harm to public policy caused by potentially erroneous judicial decisions outweighs the rule-of-law benefits of assessing the legality of policies, it is allegedly desirable to limit judicial review on grounds of institutional competence, especially in technical and complex policy areas such as national security and administrative action. Notwithstanding the foregoing, restraining the exercise of judicial review for epistemic reasons, some argue, is bound to create a zone of legal unaccountability where governmental power can be deployed in an arbitrary and illegal manner, with potentially deleterious effects for the effectiveness of public law. Because even the most expert body can act unlawfully, foreclosing legal review in certain policy areas amounts to an abdication of the judicial duty to enforce relevant legal limits (Allan 2011). The pressing question then is this: Can we reconcile the review of expert policy decisions by non-expert courts in a manner that is consistent with both the rule-of-law ideal of checking the legality of policies and the separation-of-powers concern for policy expertise? To this end, we develop a game-theoretic analysis to illustrate how the exercise of judicial review can have a beneficial effect on expertise, even if the courts are relatively ill-equipped to evaluate the likely effects of various policies. That is, our analysis proposes a novel ratio-nale for the institution of judicial review. The conventional argument for such institutional arrangement is that it ensures consistency between the actions of governmental officials and preexisting legal provisions. Without disputing the importance of judicial review as a mech-anism of legal accountability, the analysis here underscores another, perhaps less intuitive virtue: judicial review by non-expert courts can foster policy expertise. Our analysis takes as its point of departure the fact that policymakers, those with for-mal power to make decisions, have to rely on expert agents for information regarding the likely consequences of various courses of action. Nothing about this argument is profound: that policymakers depend on experts for policy advice is an institutional fact of modern government. For example, the president relies on the White House staff, bureaucrats and non-governmental experts for policy advice; the House and the Senate depend on staff mem- bers, congressional committees, bureaucrats and lobbyists for valuable information when drafting legislation; the heads of administrative agencies depend on lower-level bureaucrats and the regulated industry, among others, for information regarding the consequences of various regulations; and so on. At the same time, this separation between policy-making and policy expertise implies that the amount of information available for decision-making is endogenous to the institutional structure under which policy-making takes place, observation which leads to, as we shall show, a novel assessment of judicial review expertise perspective. To illustrate the conditions under which judicial review fosters policy expertise, we com-pare a baseline model of an interaction between a policymaker and an expert in the absence of judicial review with an institutional setting in which a court can assess the legality of policies. This analysis shows that the judiciary can be better off without its review power if judicial checks dilute the amount of information available for policy-making, which implies that there are endogenous judicial incentives to limit the detrimental effect of judicial review on expertise. More importantly, the institutional analysis underscores that judicial review can enhance the amount of information available for policy-making, while, under those con- ditions, the judiciary prefers to exercise legal review, even though it lacks the knowledge to precisely assess the likely effects of various policies. In other words, not only that it can be desirable solely on expertise grounds to subject governmental policy to the muster of judi-cial review, but non-expert courts have endogenous incentives to employ judicial review in a manner consistent with both the principle of checking the legality of policies and institutional concern for policy expertise. These results have policy implications for public and scholarly debates regarding how to design the structure of liberal governments to fight terrorism (Cole 2003; Posner 2006). Whether counterterrorism policy should be subjected to the muster of judicial review has been a contentious matter, especially in the aftermath of 9/11 as various liberal democracies made terrorism prevention a pressing objective. The contending views on the appropriate- ness of judicial review of counterterrorism policy are sharply articulated in the recent debate on drone strikes. Some say that judicial review of targeted killings is necessary to put the policy on a better legal foundation, while others argue that it is inappropriate because judges lack the required expertise to review expert executive decisions.1 Our results suggest that non-expert judicial review has the potential to induce more informed policies, an observation that is missing from current discussions on judicial review of drone strikes and other coun- terterrorism policies. In section 7, we discuss in more detail the application of our theory and its policy implications, in the context of counterterrorism policy.

## 2AC

### 2AC – T

#### We meet-Due process rights are judicial restrictions on executive authority

Al-Aulaqi Motion to Dismiss Memo 2013 (PLAINTIFFS’ OPPOSITION TO DEFENDANTS’ MOTION TO DISMISS, files February 5, 2013)

Despite Defendants’ attempt to distinguish the habeas cases, Defs. Br. 12, claims alleging

unlawful deprivation of life under the Fifth Amendment’s Due Process Clause are as textually

committed to the courts as claims brought under the Suspension Clause. Both are fundamental

judicial checks on executive authority. Cf. Boumediene v. Bush, 476 F.3d 981, 993 (D.C. Cir.

1997) (rejecting distinction between the Suspension Clause and Bill of Rights amendments

because both are “restrictions on governmental power”), rev’d on other grounds by Boumediene,

553 U.S. 723.

#### --We meet Corpus Juris Secundum – it says to “prevent someone from passing a certain limit” – plan makes it illegal for him to pass the limit of TK without due process

#### --We meet Knoepfler – says a clear definition is necessary to determine what is forbidden – plan is a definition of due process and an external check on the executive’s internal process

#### C/I – Authority is what the president may do not what the president can do

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

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

#### C/I --- Restriction is limitation, NOT prohibition

CAC 12,COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT, COUNTY OF LOS ANGELES, Plaintiff and Respondent, v. ALTERNATIVE MEDICINAL CANNABIS COLLECTIVE et al., Defendants and Appellants, DIVISION ONE, 207 Cal. App. 4th 601; 143 Cal. Rptr. 3d 716; 2012 Cal. App. LEXIS 772

We disagree with County that in using the phrases “further restrict the location or establishment” and “regulate the location or establishment” in [\*615] section 11362.768, subdivisions (f) and (g), the Legislature intended to authorize local governments to ban all medical marijuana dispensaries that are otherwise “authorized by law to possess, cultivate, or distribute medical marijuana” (§ 11362.768, subd. (e) [stating scope of section's application]); the Legislature did not use the words “ban” or “prohibit.” Yet County cites dictionary definitions of “regulate” (to govern or direct according to rule or law); “regulation” (controlling by rule or restriction; a rule or order that has legal force); “restriction” (a limitation or qualification, including on the use of property); “establishment” (the act of establishing or state or condition of being established); “ban” (to prohibit); and “prohibit” (to forbid by law; to prevent or hinder) to attempt to support its interpretation. County then concludes that “the ordinary meaning [\*\*\*23] of the terms, ‘restriction,’ ‘regulate,’ and ‘regulation’ are consistent with a ban or prohibition against the opening or starting up or continued operation of [a medical marijuana dispensary] storefront business.” We disagree.¶CA(9)(9) The ordinary meanings of “restrict” and “regulate” suggest a degree of control or restriction falling short of “banning,” “prohibiting,” “forbidding,” or “preventing.” Had the Legislature intended to include an outright ban or prohibition among the local regulatory powers authorized in section 11362.768, subdivisions (f) and (g), it would have said so. Attributing the usual and ordinary meanings to the words used in section 11362.768, subdivisions (f) and (g), construing the words in context, attempting to harmonize subdivisions (f) and (g) with section 11362.775 and with the purpose of California's medical marijuana [\*\*727] statutory program, and bearing in mind the intent of the electorate and the Legislature in enacting the CUA and the MMP, we conclude that HN21Go to this Headnote in the case.the phrases “further restrict the location or establishment” and “regulate the location or establishment” in section 11362.768, subdivisions (f) and (g) do not authorize a per se ban at the local level. The Legislature [\*\*\*24] decided in section 11362.775 to insulate medical marijuana collectives and cooperatives from nuisance prosecution “solely on the basis” that they engage in a dispensary function. To interpret the phrases “further restrict the location or establishment” and “regulate the location or establishment” to mean that local governments may impose a blanket nuisance prohibition against dispensaries would frustrate both the Legislature's intent to “[e]nhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects” and “[p]romote uniform and consistent application of the [CUA] among the counties within the state” and the electorate's intent to “ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes” and “encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana.”

#### C/I – ex post is a restriction and better than ex ante

Brooks ‘13

Rosa, Professor of Law @ Georgetown University Law Center and Bernard L. Schwartz Senior Fellow @ the New American Foundation, “The Constitutional and Counterterrorism Implications of Targeted Killing: Testimony Before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights”, http://www.judiciary.senate.gov/pdf/04-23-13BrooksTestimony.pdf

A judicial mechanism designed to ensure that US targeted killing policy complies with US law and the law of armed conflict might take any of several forms. Most controversially, a court might be tasked with the ex ante determination of whether a particular individual could lawfully be targeted. This approach is likely to be strenuously resisted by the Administration on separation of powers grounds, and it also raises potential issues about whether the Constitution’s case and controversy requirement could be satisfied, insofar as proceedings before such a judicial body would, of necessity, be in camera and ex parte. 45 This is also true for the existing FISA court, however, and its procedures have generally been upheld on Fourth Amendment grounds. It would seem odd to permit ex parte proceedings in an effort to ensure judicial approval for surveillance, but reject such proceedings as insufficiently protective of individual rights when an individual has been selected for lethal targeting rather than mere search and seizure. I believe it would be possible to design an ex ante judicial mechanism that would pass constitutional and practical muster. It would be complex and controversial, however, and there is an alternative approach that might offer many of the same benefits with far fewer of the difficulties. This alternative approach would be to develop a judicial mechanism that conducts a post hoc review of targeted killings, perhaps through a statute creating a cause of action for damages for those claiming wrongful injury or death as a result of unlawful targeted killing operations. This would add additional incentives for executive branch officials to abide by the law, without placing the judiciary in the troubling role of authorizing or rejecting the use of military force in advance. While proceedings might need to be conducted at least partially in camera, judicial decisions in these cases could be released in redacted form.

#### Their interpretation is flawed

#### A. Over limits- core cases revolve around regulating executive behavior not banning specific policies. Their interpretation would eliminate topic literature.

#### B. Affirmative Ground-Ban specific policies are dead to any agent counterplan. You should err affirmative because the negative is strapped with an arsenal of generics.

#### ---Reasonability-competing interpretations causes substance crowd by encouraging debate over Topicality instead of war powers. Good is good enough when the topic is limited by areas and our affirmative is in the lit.

### Amendment Counterplan

#### Permutation do both

#### Permutation do the counterplan – it’s plan plus, the plan text says the federal judiciary should conduct ex post judicial review, the counterplan only adds an amendment process with the states and Congress

#### The counterplan is a voting issue for education and ground – it’s not predictable- no amendment has ever dealt with SOP, undermines affirmative research

Thomas O. Heuglin, Professor of Political Science at Wilfrid Laurier University, Waterloo, Canada and Alan Fenna, Professor of Politics and Government at Curtin University, Perth, Australia, 2006 (Comparative Federalism p )

More important than the actual numbers are the political change effected by constitutional amendments. In the American case, most have had to do with civil rights or functioning of the presidency, and only few with federalism and the division of powers. In contrast to Canada and Australia, the US Constitution has never been amended to alter the division of powers by transferring authority from one level of government to the other.

#### Only the plan solves operative legal effect, the counterplan is only symbolic

Strauss-prof law Chicago-01 114 Harv. L. Rev. 1457

One final implication is the most practical of all. If amendments are in fact a sidelight, then it will usually be a mistake for people concerned about an issue to try to address it by amending the Constitution. Their resources are generally better spent on legislation, litigation, or private-sector activities. It is true that the effort to obtain a constitutional amendment may serve very effectively as a rallying point for political activity. A constitutional amendment may be an especially powerful symbol, and it may be worthwhile for a group to seek an amendment for just that reason. But in this respect constitutional amendments are comparable to congressional resolutions, presidential proclamations, or declarations of national holidays. If they bring about change, they do so because of their symbolic value, not because of their operative legal effect. The claim that constitutional amendments under Article V are not a principal means of constitutional change is a claim about the relationship between supermajoritarian amendments and fundamental, constitutionayl change. It should not be confused with the very different claim that judicial decisions cannot make significant changes without help from Congress or the President; n25 and it certainly should not [\*1468] be confused with a global skepticism about the efficacy of political activity generally. The point is that changes of constitutional magnitude - changes in the small-"c" constitution - are not brought about by discrete, supermajoritarian political acts like Article V amendments. It may also be true that such fundamental change is always the product of an evolutionary process and cannot be brought about by any discrete political act - by a single statute, judicial decision, or executive action, or (at the state level) by a constitutional amendment, whether adopted by majoritarian referendum or by some other means. What is true of Article V amendments may be equally true of these other acts: either they will ratify (while possibly contributing to) changes that have already taken place, or they will be ineffective until society catches up with the aspirations of the statute or decision. Alternatively, it may be that majoritarian acts (or judicial decisions), precisely because they do not require that the ground be prepared so thoroughly, can force the pace of change in a way that supermajoritarian acts cannot. A coalition sufficient to enact legislation might be assembled - or a judicial decision rendered - at a point when a society for the most part has not changed, but the legislation, once enacted (or the decision, once made), might be an important factor in bringing about more comprehensive change. The difference between majoritarian legislation and a supermajoritarian constitutional amendment is that the latter is far more likely to occur only after the change has, for all practical purposes, already taken place.

#### The CP doesn’t solve the judicial review internal links and kills an independent judiciary

Sullivan 96, Professor of Law

[January, 1996, Kathleen M. Sullivan, Professor of Law, Stanford University, “CONSTITUTIONAL CONSTANCY: WHY CONGRESS SHOULD CURE ITSELF OF AMENDMENT FEVER”, 17 Cardozo L. Rev. 691]

How have we managed to survive over two hundred years of social and technological change with only twenty-seven constitutional amendments? The answer is that we have granted broad interpretive latitude to the Supreme Court. Narrow construction would necessitate more frequent resort to formal constitutional amendments. Broad construction eliminates the need. Thus, the Court has determined that eighteenth century restrictions on searches of our "papers and effects" apply to our twentieth century telephone calls, and that the command of equal protection forbids racially segregated schools even though such segregation was known to the Fourteenth Amendment's framers. Neither of these decisions - Katz v. United States and Brown v. Board of Education - required a constitutional amendment. Nor did the Court's "switch in time that saved nine" during the New Deal. In the early twentieth century, the Court struck down much federal economic legislation as exceeding Congress's power and invading the province of the states. Under President Roosevelt's threat to expand and pack the Court, the Court desisted, and started to defer to all legislation bearing some plausible relationship to interstate commerce. Some scholars have called the Court's decision to defer to national economic legislation revolutionary enough to count as an informal constitutional amendment, but most view it as within the broad contours of reasonable interpretive practice. Increasing the frequency of constitutional amendment would undermine the respect and legitimacy the Court now enjoys in this interpretive role. This danger is especially acute in the case of proposed constitutional amendments that would literally overturn Supreme Court decisions, such as amendments that would declare a fetus a person with a right to life, permit punishment of flag-burning, or authorize school prayer. Such amendments suggest that if you don't like a Court decision, you mobilize to overturn it. Justice Jackson once quipped that the Court's word is not final because it is infallible, but is infallible because it is final. That finality, though, has many salutary social benefits. For example, it allows us to treat abortion clinic bombers as terrorists rather than protesters. If every controversial Supreme Court decision resulted in plebiscitary overruling in the form of a constitutional amend- [\*703] ment, surely the finality of its word would be undermined, and with it the social benefits of peaceful conflict resolution. The fact that we have amended the Constitution only four times in order to overrule the Supreme Court is worth remembering.

#### Strong judicial model prevents Russian loose nukes

Nagle, Independent Research Consultant Specializing in the Soviet Union, 1994 (Chad. “What America needs to do to help Russia avoid chaos” Washington Times, August 1, Lexis Nexis)

As things stand right now, there is indeed potential for danger and instability in Russia, as Mr. Criner notes. But this is not because America has failed to act as a "moral compass" in the marketplace. Rather, Russia's inherent instability at present stems from the fact that in all of its 1,000-year history, it never had a strong, independent judiciary to act as a check on political power. The overwhelming, monolithic power of the executive, whether czar or Communist Party, has always been the main guarantor of law and order. Now, as a fragile multiparty democracy, Russia has no more than an embryo of a judiciary. The useless Constitutional Court is gone, the Ministry of Justice is weak, and the court system is chaotic and ineffective. Hence, the executive determined the best safeguard against the recurrence of popular unrest, the kind that occurred in October 1993, to be the concentration of as much power as possible in its hands at the expense of a troublemaking parliament. Under a sane and benign president, Russia with a "super presidency" represents the best alternative for America and the West. The danger lies in something happening to cause Mr. Yeltsin's untimely removal from office. If Russia is ever to develop a respected legal system, it will need the protracted rule of a non-tyrannical head of state. In the meantime, the United States can provide a model to Russia of a system in which the judiciary functions magnificently. America, the world's only remaining superpower, can provide advice and technical expertise to the Russians as they try to develop a law-based society. We can also send clear signals to the new Russia instead of the mixed ones emanating from the Clinton administration. Now is the time for America to forge ahead with the "new world order," by promoting the alliance of the industrialized democracies of the Northern Hemisphere on American terms, not Russian. This constitutes the real "historical moment" to which Mr. Criner refers. Russia is not in a position to make threats to or demands of the United States any more so than when it ruled a totalitarian empire. It should learn to play by new rules as a first lesson in joining the family of nations. Coddling an aggressive Russia and giving it unconditional economic aid (as Alexander Rutskoi has called for) would be counterproductive, and might even encourage Russia to "manufacture" crises whenever it wanted another handout. Russia is indeed a dangerous and unstable place. The prospect of ordinary Third World political chaos in an economically marginal country with a huge stockpile of intercontinental ballistic missiles is a nightmare. However, Mr. Yeltsin is busily consolidating power, and the presidential apparatus is growing quickly. With his new team of gray, non-ideological figures intent on establishing order in the face of economic decline and opposition from demagogues (e.g. Vladimir Zhirinovsky and Mr. Rutskoi), Mr. Yeltsin is already showing signs of success. Under such circumstances, the best America can do is stand firm, extend the hand of friendship and pray for Mr. Yeltsin's continued good health.

Extinction

Helfand and Pastore 9 [Ira Helfand, M.D., and John O. Pastore, M.D., are past presidents of Physicians for Social Responsibility. March 31, 2009, “U.S.-Russia nuclear war still a threat”, http://www.projo.com/opinion/contributors/content/CT\_pastoreline\_03-31-09\_EODSCAO\_v15.bbdf23.html]

President Obama and Russian President Dimitri Medvedev are scheduled to Wednesday in London during the G-20 summit. They must not let the current economic crisis keep them from focusing on one of the greatest threats confronting humanity: the danger of nuclear war. Since the end of the Cold War, many have acted as though the danger of nuclear war has ended. It has not. There remain in the world more than 20,000 nuclear weapons. Alarmingly, more than 2,000 of these weapons in the U.S. and Russian arsenals remain on ready-alert status, commonly known as hair-trigger alert. They can be fired within five minutes and reach targets in the other country 30 minutes later.  Just one of these weapons can destroy a city. A war involving a substantial number would cause devastation on a scale unprecedented in human history. A study conducted by Physicians for Social Responsibility in 2002 showed that if only 500 of the Russian weapons on high alert exploded over our cities, 100 million Americans would die in the first 30 minutes.  An attack of this magnitude also would destroy the entire economic, communications and transportation infrastructure on which we all depend. Those who survived the initial attack would inhabit a nightmare landscape with huge swaths of the country blanketed with radioactive fallout and epidemic diseases rampant. They would have no food, no fuel, no electricity, no medicine, and certainly no organized health care. In the following months it is likely the vast majority of the U.S. population would die. Recent studies by the eminent climatologists Toon and Robock have shown that such a war would have a huge and immediate impact on climate world wide. If all of the warheads in the U.S. and Russian strategic arsenals were drawn into the conflict, the firestorms they caused would loft 180 million tons of soot and debris into the upper atmosphere — blotting out the sun. Temperatures across the globe would fall an average of 18 degrees Fahrenheit to levels not seen on earth since the depth of the last ice age, 18,000 years ago. Agriculture would stop, eco-systems would collapse, and many species, including perhaps our own, would become extinct.  It is common to discuss nuclear war as a low-probabillity event. But is this true? We know of five occcasions during the last 30 years when either the U.S. or Russia believed it was under attack and prepared a counter-attack. The most recent of these near misses occurred after the end of the Cold War on Jan. 25, 1995, when the Russians mistook a U.S. weather rocket launched from Norway for a possible attack.  Jan. 25, 1995, was an ordinary day with no major crisis involving the U.S. and Russia. But, unknown to almost every inhabitant on the planet, a misunderstanding led to the potential for a nuclear war. The ready alert status of nuclear weapons that existed in 1995 remains in place today.

### 2AC Special Forces PIC

#### Perm – do the counterplan – targeted killing does not include special forces

Bachmann 13 (Sascha-Dominik, Associate Professor at the University of Bournemouth (UK), research focus on international legal subjects, “Targeted Killings: Contemporary Challenges, Risks and Opportunities”, http://jcsl.oxfordjournals.org/content/early/2013/05/31/jcsl.krt007.full)

An early example of ‘targeted killing’ in the history of armed conflict can be found in the military tactics applied mainly by snipers. Prominent and well-documented examples of sniper warfare can be found in the annals of the Eastern Front during World War II: German and Soviet forces used snipers to annihilate systematically the enemy’s mid-level military leadership: German losses to Soviet snipers were so severe during the battle for Stalingrad in autumn of 1942 that officers as well as non-commissioned officers had to adapt means of camouflage to blend in with their (enlisted) men and in order to avoid being targeted by enemy snipers.21 Operation ‘Neptune Spear’ as well as the alleged Israeli Mossad Operation to kill the Hamas official Mahmud al-Mabhuh in Dubai in 201122 involved the use of Special Forces on the ground, or intelligence operatives/assets respectively, constitute commando operations as well targeting operations in the wider sense. Such tactical capture and kill operations executed by Special Forces assets are not the focus of this short contribution: its focus is solely on targeted killing, as a means of warfare which is executed by using remotely piloted aircraft, UAVs or drones respectively, as weapons platform. Falling outside the scope of targeted killings discussed in this article is the continuing use of Improvised Explosive Devices (IEDs) in Iraq and Afghanistan by the Taliban and other affiliated groups. Targeted terrorism, involving the use of IEDs, suicide bombings or suicide attack squads as impressively shown in the 2011 Mumbai attacks, seem to constitute a hybrid form of unconventional warfare which combines elements of both, assassination and targeted killings in the widest sense. The scope of this article is on targeted killing as a means of warfare and hence does not warrant a further discussion of this form of attacks as a potential example for targeted killings. Targeted killing as a means of killing enemies of a state has been employed most frequently by the USA as part of its overall military strategy against Al-Qaeda and the Taliban.23 While the USA did not ‘invent’ this form of warfare it has taken the lead in advancing its development and overall design in respect of targeting processes, command and control as well as the use of increasingly sophisticated technology.24 The use of drones for executing kinetic, lethal, strikes against hostile and enemy targets has its tangible military benefits in terms of operational capabilities, readiness and its overall availability as a defensive as well as offensive form of warfare. Targeted killing by UCAS can be executed at very short notice and does not require the deployment of and the presence of substantial own forces in the theatre of operations. This availability and flexibility of using drones as a platform for the execution of targeted killings makes this form of warfare (without own casualties) so formidable when responding to present threats at an ad hoc basis. Consequently, both proliferation and expansion of the use of UCAS are increasing.25 Examples hereof are the present discussions in the UK to increase the availability of UAV systems for reconnaissance and combat, the RAF’s decision to relocate its UAV assets from the US to RAF Waddington near Lincoln and to establish a new Unmanned Air Systems Capability Development Centre (UASCDC) there. The overall capabilities of such airborne weapon platform systems has also found supporters among nations who were initially opposed to this form of warfare, such as Germany which for historical as well as political reasons has been known to be more reluctant to the use of force and to participate in combat operations in a more active role.26

#### Obviously links to politics

#### No intel or allied methods will be leaked – only warrant in the Maher card – empirics prove – the court has never had leaks in hundreds of terror cases – that’s Jaffer

#### Qualified immunity solves chilling effect- officers know suits protect them

Pillard 99 (Cornelia, Associate Professor of Law, Georgetown University Law Center, former Deputy Assistant Attorney General- Office of Legal Counsel in the Department of Justice, “Taking Fiction Seriously: The Strange Results of Public Officials' Individual Liability Under Bivens,” <http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1719&context=facpub>)

These two parallel but distinct regimes-indemnification and qualified immunity-create different sets of incentives. Either of the two regimes, taken alone, would protect against chilling public employees' vigorous performance of their duties, as qualified immunity would allow for dismissal of most suits and indemnification would ensure that employees need not pay monetary judgments or settlements out of their own pockets.122 In terms of plaintiffs' incentives to sue, in contrast, the two regimes differ significantly. 123 [start footnote 122:] 122. One might argue that qualified immunity, by eliminating not just employees' obligations to pay but also forestalling liability findings flowing from their conduct, more effectively prevents overdeterrence. An employee who is fully reimbursed for monetary losses may still seek to avoid the risk to reputation that comes from being a defendant in a civil rights lawsuit. One response to that concern, however, is that if it were generally understood that under Bivens (as under Ex parte Young) individual defendants function as stand-ins for the government, reputational harm to the individual would be minimized. When a bureaucrat is personally sued for a failure to provide due process, for example, the observing public fairly assumes that such lawsuits come with the job, and that the individual is not a bad person for being formally held responsible. Another response to the concern about overdeterrence flowing from risks to reputation is that, to the extent reputational harm persists even when the government is known to be the real party in interest, a concern to shield defendants from such harm would seem to require qualified immunity even in cases of governmental liability-such as municipal liability under section 1983-because those cases are typically premised on the missteps of identified government employees. The Court in Owen v. City of Independence, 445 U.S. 622, 655-56 (1980), however, held that qualified immunity is unwarranted in those cases, and the Court does not seem poised to reconsider Owen. See, e.g., Board of County Comm'rs v. Brown, 520 U.S. 397, 405-06 (1997) (relying on Owen). Putting aside the reputational concerns, therefore, the two regimes both appear adequately to serve an interest in avoiding public employee overdeterrence.

[end footnote 122]

#### --Can’t solve allied coop -- Night raids increase blowback and collapse relations

OSF 11 (Open Society Foundations, with the Liaison Office, “The Cost of Kill/Capture: Impact of the Night Raid Surge on Afghan Civilians”, http://www.opensocietyfoundations.org/sites/default/files/Night-Raids-Report-FINAL-092011.pdf)

Increased night raids spark backlash The number of night raids has skyrocketed: publicly available statistics suggest a five - fold increase between February 2009 and December 2010. 3 International military conducted, on average, 19 night raids per night — a total of 1700 night raids — in the three-month period from roughly December 2010 to February 2011, according to the NATO-led International Security Assistance Force (ISAF). 4 ISAF has not released more up-to-date figures; however, interviews conducted for this report suggest a continuing trend of large numbers of night raids, possibly at even higher rates. In April 2011, a senior U.S. military advisor told the Open Society Foundations that as many as 40 raids might take place on a given night across Afghanistan. 5 International military officials argue that the increase in night raids has been their most successful strategy in the last year, although they have offered no evidence to support these claims. They argue that absent the ability to continue night raids, insurgent attacks would increase significantly. However, these touted gains have come at a high cost. The escalation in raids has taken the battlefield more directly into Afghan homes, sparking tremendous backlash among the Afghan population. The Afghan government calls the raids counter - productive to reconciliation efforts with insurgent groups, and a threat to Afghan sovereignty, given the limited Afghan control of night raids. Complaints over night raids have marred Afghan relations with international partners, particularly the United States, and have complicated long - term strategic partnership discussions.

#### Night raids require accountability – perception of impunity decreases effectiveness

OSF 11 (Open Society Foundations, with the Liaison Office, “The Cost of Kill/Capture: Impact of the Night Raid Surge on Afghan Civilians”, http://www.opensocietyfoundations.org/sites/default/files/Night-Raids-Report-FINAL-092011.pdf)

The increased number of night raids, with a potential to impact a greater number of non - combatants, should be matched by stronger transparency, accountability, and redress 20 mechanisms — issues that ISAF and U.S. forces have been weak on in the past, particularly with regard to Special Forces activities. ISAF has made efforts in the last year to try to address complaints about accountability for civilian casualty incidents more generally, including those resulting from night raids. ISAF has continued to su pport the development of a Civilian Casualty Tracking Cell since it was created in December 2008, as well as other reporting and investigation processes. Incidents that ISAF suspects of resulting in civilian casualties are investigated by the Joint Inciden t Assessment Teams (JIAT), with investigations supervised by a one - star general or equivalent. Particularly controversial or murky cases may involve a site investigation by the JIAT, often undertaken jointly with Afghan government counterparts. These prima rily involve an assessment of any evidence at the site, interviews with those troops involved, and with Afghan local officials. A Civilian Casualties Working Group was instituted in March 2011 to explore policy changes at an operational or tactical level that could better reduce civilian casualties and complaints. In the late spring and summer of 2011, ISAF demonstrated greater efforts to reach out to international and Afghan civil society by hosting or participating in conferences designed to allow civil society to engage with them on civilian casualty concerns , and taking more meetings with those raising independent concerns. 70 Though these are positive steps forward, other aspects of accountability have failed to improve, or even worsened. ISAF has app eared less responsive to independent monitors raising civilian casualty concerns than in the past. For example, ISAF has more often than not refused to discuss a number of suspected civilian casualty cases, provide evidence that those alleged to be civilia ns were in fact combatants, share video or other on - site evidence (which used to be forthcoming in the past), re - examine initial findings where contrary evidence surfaces, or to report the final results of investigations. 71 Public accountability also rema ins poor. Though press releases are often issued immediately following an incident, often noting if an investigation into civilian casualties is underway, the results of that investigation, or any subsequent information, is typically not made publicly avai lable later on. 72 When press releases announcing that insurgents are killed or detained have later been proven wrong, public corrections are rarely issued. Civilian casualty totals in the Civilian Casualty Tracking Cell do not always appear to be corrected to admit mistakes in initial reporting. 73 ISAF has not released public versions of the significant tactical directives since February 2010. 74 Accountability issues are particularly weak for night raids because the forces responsible for the vast majority o f night raids — the Special Forces Task Force Joint Special Operations Command (JSOC) (formerly under Admiral William McCraven ) — are the least transparent of international forces operating in Afghanistan. 75 As a rule, they do not accept interviews or meetings with independent monitors. Despite greater efforts to integrate them into ISAF - HQ, these forces report back to the Special Operations Command ( U.S. SOCOM) based in Tampa, Florida . Despite repeated inquiries, international military officials were not able to confirm that the ISAF tactical directives 21 applied to these forces, given their different command structure. ISAF officials noted that these forces follow all of the tactical directives in practice, including reporting incidents like suspected civilian cas ualties immediately . Some night raids are reportedly CIA operations . Though likely not constituting the majority of night raids, there is zero public accountability over CIA conduct during raids. In addition, it has been more difficult to raise concerns regarding night raids because of a strong presumption by ISAF and U.S. officials that these raids are accurate and effective. Because they are confident that night raid targeting has improved, ISAF and U.S. officials have shown a tendency to disbelieve allegations of civilian casualties. For example, after a night raid in May 2010 in Surkh Rod, Nangarhar, inquiries by the Afghan government, the UN, the Afghanistan Independent Human Rights Commission (AIHRC) , and Human Rights Watch all concluded that this had been a case of mistaken identity, which had led to the deaths of nine civilians. ISAF and U.S. officials steadfastly rejected these claims, and continued to view the raid as a success. It is troubling that in instances like this, separate and unanimou s inquiries by so many credible organizations are not sufficient to challenge ISAF’s internal assessments, which too often appear to rely upon their own officials rather than interviews with eyewitnesses. Because of the overall lack of transparency over t hese night raids, when those involved in civilian casualty incidents or other misconduct are disciplined, these responses rarely — if ever — are publicly acknowledged. The result is a perception of impunity for the entire practice, if not for international forces as a whole.

#### Special operation forces fail – they are under-resourced

Robinson 13 (Linda, adjunct senior fellow for U.S. national security and foreign policy at the Council on Foreign Relations (CFR) “The Future of U.S. Special Operations Forces” Council of Foreign Relations Report - Council Special Report No. 66)

OPERATIONAL SHORTFALLS The most glaring and critical operational deficit is the fact that, accord- ing to doctrine, the theater special operations commands are supposed to be the principal node for planning and conducting special operations in a given theater—yet they are the most severely under resourced commands. Rather than world-class integrators of direct and indirect capabilities, theater special operations commands are egregiously short of sufficient quantity and quality of staff and intelligence, analytical, and planning resources. They are also supposed to be the principal advisers on special operations to their respective geographic combatant com- manders, but they rarely have received the respect and support of the four-star command. The latter often redirects resources and staff that are supposed to go to the theater special operations commands, which routinely receive about 20 percent fewer personnel than they have been formally assigned.'2 Furthermore, career promotions from TSOC staff jobs are rare, which makes those assignments unattractive and results in a generally lower-quality workforce. Finally, a high proportion of the personnel are on short-term assignment or are reservists with inade- quate training. Because of this lack of resources, theater special operations commands have been unable to fulfill their role of planning and conducting special operations.

### Iran

#### Sanctions inevitable – veto-proof majority

**Henry, Fox News, 12-27-13** (Ed, “Top Dem presses Obama on Iran sanctions after centrifuge surprise”, <http://www.foxnews.com/politics/2013/12/27/top-dem-presses-obama-on-iran-sanctions-after-centrifuge-announcement/>, ldg)

President Obama faced mounting bipartisan pressure on Friday to drop his resistance to an Iran sanctions bill after Tehran announced a new generation of equipment to enrich uranium -- a move the Israelis claimed was further proof the regime seeks nuclear weapons. One of the president's top Democratic allies is leading the charge for Congress to pass sanctions legislation, despite the president's pleas to stand down. Senate Foreign Relations Committee Chairman Bob Menendez, D-N.J., told Fox News that the "Iranians are showing their true intentions" with their latest announcement. "If you're talking about producing more advanced centrifuges that are only used to enrich uranium at a quicker rate ... the only purposes of that and the only reason you won't give us access to [a military research facility] is because you're really not thinking about nuclear power for domestic energy -- you're thinking about nuclear power for nuclear weapons," he said. Menendez was reacting after Iran's nuclear chief Ali Akbar Salehi said late Thursday that the country is building a new generation of centrifuges for uranium enrichment. He said the system still needs further tests before the centrifuges can be mass produced. His comments appeared aimed at countering hard-liner criticism by showing the nuclear program is moving ahead and has not been halted by the accord. At the same time, the government was walking a fine line under the terms of the deal. Iran, as part of a six-month nuclear deal with the U.S. and other world powers, agreed not to bring new centrifuges into operation during that period. But the deal does not stop it from developing centrifuges that are still in the testing phase. On Friday, the Embassy of Israel in Washington released a statement reiterating their call for Iran to halt enrichment and remove the infrastructure behind it. "Installing additional advanced centrifuges would be further indication that Iran intends to develop a nuclear bomb -- and to speed up the process of achieving it," the statement said. Menendez said he, like the president, wants to test the opportunity for diplomacy. "The difference is that we want to be ready should that diplomacy not succeed," the senator said. "It's getting Congress showing a strong hand with Iranians at the same time that the administration is seeking negotiation with them. I think that that's the best of all worlds." Obama would not appear to agree. At his year-end news conference, the president tried to push back on those advocating new legislation by insisting the tentative deal with Iran has teeth. "Precisely because there are verification provisions in place, we will have more insight into Iran's nuclear program over the next six months than we have previously," Obama said. "We'll know if they are violating the terms of the agreement. They're not allowed to accelerate their stockpile of enriched uranium." Obama argues that Congress could step in at any time to approve new sanctions if Iran violates the terms of the agreement. Further, he argues that legislation at this stage could imperil the hard-fought Geneva deal. But sponsors of the legislation in the Senate, which would only trigger sanctions if Iran violates the interim deal or lets it expire without a long-term accord, say the legislation would do just the opposite -- put added pressure on Iran to rein in its nuclear program. When Congress returns to work next month, there could be new urgency for legislation. A total of 47 co-sponsors are now behind the legislation introduced by Menendez and Sen. Mark Kirk, R-Ill. Supporters are hoping to reach a 67-member, veto-proof majority.

#### Even the introduction of legislation tanks a deal

**Fox News 12-20-13**

(“Obama facing Hill rebellion on Iran sanctions”, http://www.foxnews.com/politics/2013/12/20/obama-facing-hill-rebellion-on-iran-sanctions/, ldg)

President Obama is facing a growing insurrection on Capitol Hill over Iran sanctions legislation, with one source telling Fox News the bill is attracting a "flood" of support and another lawmaker vowing to muscle through the legislation with a veto-proof majority if necessary. The momentum comes a day after 26 senators, half of them Democrats, introduced Iran legislation in defiance of the administration -- the bill threatens new sanctions if Tehran does not hold up its end of a newly struck nuclear deal. The president criticized those lawmakers in a year-end press conference on Friday, claiming they were just trying to "look tough." But the legislation could pose a serious challenge to the administration, which warns that even the introduction of such a bill could imperil ongoing nuclear talks. Though the White House has threatened to veto, Sen. Lindsey Graham, R-S.C., told Fox News he's looking to gather enough senators -- 67 -- to override. "If the president wants to veto [the bill], we'll override his veto," he said. "He's making a mistake for the ages, to not keep the pressure on the Iranians." One source told Fox News that, as of mid-day Friday, there were close to 50 senators signing up to co-sponsor. The Republican source said Senate Majority Leader Harry Reid has also taken a significant procedural step to fast-track the bill as early as next month. A Senate Democratic source confirmed that Reid did take a procedural step allowing the Iran sanctions bill to skip the committee process so that it is available for floor action -- but noted that the move doesn't automatically send the measure to the floor.

#### Obama veto solves

Todd, Murray, and Montanaro 1/6/13 (Chuck, Mark, Domenico, staffwriters for NBC News, “First Thoughts: Obama's big (and important) January” <http://firstread.nbcnews.com/_news/2014/01/06/22201032-first-thoughts-obamas-big-and-important-january>)

4. Iran deal: Last month, we wrote that the easy part was the United States and European powers striking an interim deal with Iran to curtail its nuclear weapons. The harder part is forging a long-term deal. And even harder is when members of Congress are trying to impose new sanctions on Iran, which the administration says could undermine the negotiations. “Bipartisan legislation was introduced in the U.S. Senate on Thursday [Dec. 19] that would authorize new economic sanctions on Iran if it breaches an interim agreement to limit its nuclear program or fails to strike a final accord terminating those ambitions,” CNN reported. “The proposal led by Foreign Relations Committee Chairman Robert Menendez, a New Jersey Democrat, and Mark Kirk, an Illinois Republican, emerged despite Obama administration appeals for Congress to defer pursuing new sanctions with diplomatic efforts ongoing. The White House said new sanctions would undermine those delicate efforts on the global stage and President Barack Obama would veto the legislation if Congress were to approve it now.”

#### Link N/U

#### A. NSA reforms kill capital

Page 12/30/13 (Susan, Washington Bureau chief of USA TODAY, “Ex-NSA chief calls for Obama to reject recommendations” http://www.usatoday.com/story/news/politics/2013/12/30/gen-michael-hayden-urges-obama-reject-nsa-commission-recommendations/4249983/)

WASHINGTON — Retired general Michael Hayden, former director of the National Security Agency and the Central Intelligence Agency, called on President Obama Monday to show "some political courage" and reject many of the recommendations of the commission he appointed to rein in NSA surveillance operations. "President Obama now has the burden of simply doing the right thing," Hayden told USA TODAY's Capital Download. "And I think some of the right things with regard to the commission's recommendations are not the popular things. They may not poll real well right now. They'll poll damn well after the next attack, all right?" Obama, who received the report from the five-member advisory committee just before he left to vacation in Hawaii, has promised to make "a pretty definitive statement" in January about its 46 recommendations. He appointed the panel in the wake of a firestorm over disclosures by former NSA contractor Edward Snowden about surveillance of all Americans' telephone calls and spying on German Chancellor Angela Merkel and other friendly foreign leaders. The commission, led by former acting CIA director Michael Morell, said the recommendations were designed to increase transparency, accountability and oversight at the NSA. Hayden, who headed the super-secret agency from 1999 to 2005, oversaw the launch of some of the controversial programs after the Sept. 11 attacks on New York and Washington in 2001. He defended them as effective and properly overseen by congressional intelligence committees and a special court. "Right now, since there have been no abuses and almost all the court decisions on this program have held that it's constitutional, I really don't know what problem we're trying to solve by changing how we do this," he said, saying the debate was sparked after "somebody stirred up the crowd." That's a reference to Snowden, who was granted asylum in Russia. Snowden's revelations have fueled objections by civil liberties advocates that the NSA goes too far in collecting information about Americans not suspected of any wrongdoing. This month, a federal judge in Washington called the program "almost Orwellian," although a few days later, another federal judge in New York said it was legal. Hayden's blunt warnings about the risks he sees in accepting the commission's recommendations underscore the difficult balancing act Obama faces between ensuring the nation's security and respecting citizens' privacy. No decision he makes is likely to avoid criticism. "Here I think it's going to require some political courage," said Hayden, 68, a retired Air Force general whose service in the nation's top intelligence posts gives him particular standing. "Frankly, the president is going to have to use some of his personal and political capital to keep doing these things."

#### B. Obama is fighting the NSA case – proves lower courts don’t link

Ackerman and Roberts 12/16/13 (Spencer and Dan, Washington reporters for the Guardian, “NSA phone surveillance program likely unconstitutional, federal judge rules”, http://www.theguardian.com/world/2013/dec/16/nsa-phone-surveillance-likely-unconstitutional-judge)

A federal judge in Washington ruled on Monday that the bulk collection of Americans’ telephone records by the National Security Agency is likely to violate the US constitution, in the most significant legal setback for the agency since the publication of the first surveillance disclosures by the whistleblower Edward Snowden. Judge Richard Leon declared that the mass collection of metadata probably violates the fourth amendment, which prohibits unreasonable searches and seizures, and was "almost Orwellian" in its scope. In a judgment replete with literary swipes against the NSA, he said James Madison, the architect of the US constitution, would be "aghast" at the scope of the agency’s collection of Americans' communications data. The ruling, by the US district court for the District of Columbia, is a blow to the Obama administration, and sets up a legal battle that will drag on for months, almost certainly destined to end up in the supreme court. It was welcomed by campaigners pressing to rein in the NSA, and by Snowden, who issued a rare public statement saying it had vindicated his disclosures. It is also likely to influence other legal challenges to the NSA, currently working their way through federal courts. The case was brought by Larry Klayman, a conservative lawyer, and Charles Strange, father of a cryptologist killed in Afghanistan when his helicopter was shot down in 2011. His son worked for the NSA and carried out support work for Navy Seal Team Six, the elite force that killed Osama bin Laden. In Monday’s ruling, the judge concluded that the pair's constitutional challenge was likely to be successful. In what was the only comfort to the NSA in a stinging judgment, Leon put the ruling on hold, pending an appeal by the government. Leon expressed doubt about the central rationale for the program cited by the NSA: that it is necessary for preventing terrorist attacks. “The government does not cite a single case in which analysis of the NSA’s bulk metadata collection actually stopped an imminent terrorist attack,” he wrote. “Given the limited record before me at this point in the litigation – most notably, the utter lack of evidence that a terrorist attack has ever been prevented because searching the NSA database was faster than other investigative tactics – I have serious doubts about the efficacy of the metadata collection program as a means of conducting time-sensitive investigations in cases involving imminent threats of terrorism.” Leon’s opinion contained stern and repeated warnings that he was inclined to rule that the metadata collection performed by the NSA – and defended vigorously by the NSA director Keith Alexander on CBS on Sunday night – was unconstitutional. “Plaintiffs have a substantial likelihood of showing that their privacy interests outweigh the government’s interest in collecting and analysing bulk telephony metadata and therefore the NSA’s bulk collection program is indeed an unreasonable search under the fourth amendment,” he wrote. Leon said that the mass collection of phone metadata, revealed by the Guardian in June, was "indiscriminate" and "arbitrary" in its scope. "The almost-Orwellian technology that enables the government to store and analyze the phone metadata of every telephone user in the United States is unlike anything that could have been conceived in 1979," he wrote, referring to the year in which the US supreme court ruled on a fourth amendment case upon which the NSA now relies to justify the bulk records program.

#### C. Lowers courts are ruling against Obamacare as an overreach of executive authority

Book 13 (Doug, Editor, “Court Warns Obama that He is Abusing Executive Authority with Obamacare Contraception Mandates”, http://www.coachisright.com/court-warns-obama-abusing-executive-authority-obamacare-contraception-mandates/)

Two months ago, the DC Federal Appeals Court ruled that ObamaCare’s mandate to provide insurance coverage for contraceptives could not be imposed on the business organizations Freshway Foods and Freshway Logistics of Sidney, Ohio. The Court ruled that “…forcing those owners to provide the coverage would violate their individual First Amendment rights allowing for the protection of their religion.” (1) Then, on December 16th, Judge Brian Cogan made his U.S. District Court for the Eastern District of New York “…the first court to hold that participating in Obama’s scheme to provide free birth control is a substantial burden on the free practice of religion…” (2) Not only did Cogan strike down Obamacare’s contraception mandate as applied to religious non-profit organizations, he also “…sent a strong signal that federal courts were losing patience with President Obama’s many stitches of executive power.” (2) Prior to the December 16th ruling, administration attorneys argued that because Congress refused to institute a contraception mandate which satisfied White House demands, Obama was somehow “…authorized to enforce his contraception mandate in the manner he did.” In short, Barack should be allowed to ignore both the law and constitutional limits on Executive power if Congress doesn’t satisfactorily submit to his wishes. But Judge Cogan didn’t buy it. “It would set a dangerous precedent to hold that if the Executive Branch cannot act unilaterally, then there is no alternative solution,” said the judge. (2) In addition to its defeat in Judge Cogan’s court, ObamaCare suffered yet another blow just this weekend when a federal judge in Oklahoma City “…granted an injunction…that prevents the government from enforcing the ObamaCare mandate requiring religious groups across the country to provide insurance that includes access to the morning-after pill and other contraceptives.” (3) The injunction prevents the government assessing massive financial penalties against the nearly 200 plaintiffs in the class action suit. Three for-profit appeals cases are currently pending before the U.S. Supreme Court and the government appealed the Oklahoma City court’s decision to the SC immediately after the Friday decision. The American public will soon learn if the “separation of church and state” argument so freely and fraudulently applied to the Constitution will secure the right of religious conviction just as it has so often served to crush it.

#### Multiple factors constrain Iranian aggression or adventurism

**Kaye, RAND senior political scientist, 2010**

(Dalia, “Dangerous But Not Omnipotent”, <http://www.rand.org/content/dam/rand/pubs/monographs/2009/RAND_MG781.pdf>, ldg)

To accurately gauge the strategic challenges from Iran over a ten- to fifteen-year horizon, this study sought to assess the motivations of the Islamic Republic, not just its capabilities. This approach, although difficult given the complexities of the Iranian system, is critical in identifying potential sources of caution and pragmatism in Iran’s policy formulation. Our exploration of Iranian strategic thinking revealed that ideology and bravado frequently mask a preference for opportunism and realpolitik—the qualities that define “normal” state behavior. Similarly, when we canvassed Iran’s power projection options, we identified not only the extent of the threats posed by each but also their limitations and liabilities. In each case, we found significant barriers and buffers to Iran’s strategic reach rooted in both the regional geopolitics it is trying to influence and in its limited conventional military capacity, diplomatic isolation, and past strategic missteps. Similarly, tensions between the regime and Iranian society—segments of which have grown disenchanted with the Republic’s revolutionary ideals—can also act as a constraint on Iranian external behavior. ¶ This leads to our conclusion that analogies to the Cold War are mistaken: The Islamic Republic does not seek territorial aggrandizement or even, despite its rhetoric, the forcible imposition of its revolutionary ideology onto neighboring states. Instead, it feeds off existing grievances with the status quo, particularly in the Arab world. Traditional containment options may actually create further opportunities for Tehran to exploit, thereby amplifying the very influence the United States is trying to mitigate. A more useful strategy, therefore, is one that exploits existing checks on Iran’s power and influence. These include the gap between its aspiration for asymmetric warfare capabilities and the reality of its rather limited conventional forces, disagreements between Iran and its militant “proxies,” and the potential for sharp criticism from Arab public opinion, which it has long sought to exploit. In addition, we recommend a new U.S. approach to Iran that integrates elements of engagement and containment while de-escalating unilateral U.S. pressure on Tehran and applying increased multilateral pressure against its nuclear ambitions. The analyses that informed these conclusions also yielded the following insights for U.S. planners and strategists concerning Iran’s strategic culture, conventional military, ties to Islamist groups, and ability to influence Arab public opinion.

### PQD DA

#### The PQD is already dead in the realm for foreign policy

Skinner 8/23, Professor of Law at Willamette

(13, Gwynne, Misunderstood, Misconstrued, and Now Clearly Dead: The 'Political Question Doctrine' in Cases Arising in the Context of Foreign Affairs, papers.ssrn.com/sol3/papers.cfm?abstract\_id=2315237)

Lower federal courts often erroneously cite the “political question doctrine” to dismiss as nonjusticiable individual rights claims arising in foreign or military affairs contexts, a trend that has increased since the 1962 case of Baker v. Carr. Similarly, lower courts have begun citing “special factors counselling hesitation” when dismissing constitutional claims (“Bivens claims”) in similar contexts, inappropriately treating “special factors” as a nonjusticiability doctrine. Lower federal courts should not cite either doctrine as a reason to avoid adjudicating individual rights claims arising in the context of foreign or military affairs. Rather, lower federal courts should adjudicate these claims on their merits by deciding whether the political branch at issue had the power under the Constitution to act as it did. Doing so is consistent with the manner in which the Supreme Court has approached these types of cases for over 200 years. The Court affirmed this approach in the 2012 case of Zivotofsky v. Clinton, a case in which the Court once and for all rung the death knell for the application of the “political question doctrine” as a nonjusticiability doctrine in cases involving individual rights – even those arising in a foreign policy context. In fact, a historical review of Supreme Court cases demonstrates that the Supreme Court has never applied the so-called “political question doctrine” as a true nonjusticiable doctrine to dismiss individual rights claims (and arguably, not to any claims at all), even those arising in the context of foreign or military affairs. This includes the seminal “political question” case of Marbury v. Madison. Rather, the Supreme Court has almost always rejected the “political question doctrine” as a basis to preclude adjudication of individual rights claims, even in the context of foreign or military affairs. Moreover, the Supreme Court has consistently admonished lower courts regarding the importance of the judiciary branch’s adjudication of individual rights claims, even in such contexts.13 That is not to say that from time to time the Court has not cited a “political question doctrine” in certain of its cases. However, a close review of those cases demonstrates that rather than dismissing such claims in those cases as “nonjusticiable,” the Court in fact adjudicated the claims by finding that either the executive or Congress acted constitutionally within their power or discretion. Moreover, the post-9/11 Supreme Court cases of Hamdi v. Rumsfeld, Rasul v. Bush, and Bush v. Boumediene, in which the Supreme Court consistently found that the political branches overstepped their constitutional authority, clarified that the doctrine should not be used to dismiss individual rights claims as nonjusticiable, even those arising in a foreign or military affairs context. In case there remained any doubt, the Supreme Court in Zivotofsky rejected the “political question doctrine” as a nonjusticiability doctrine, at least in the area individual rights, if not altogether. The Court found the case, involving whether the parents of a boy born in Jerusalem had the right to list Israel as his place of birth pursuant to a Congressional statute, was justiciable.17 The Court addressed the real issue, which was whether Congress had the authority to trump the President over whether Israel could be listed as the country of birth on passports where a person was born in Jerusalem, notwithstanding the President’s sole authority to recognize other governments. 18 In ruling as it did, the Court stayed true to many of its earlier cases involving “political questions” by adjudicating the claim through deciding whether one of the political branches took action that was within its constitutional authority. In the case, the Court showed its willingness to limit the power of the President in the area of foreign affairs rather than finding the claim nonjusticiable.

#### This card goes line-by-line on your scenario – no way they’ll be an impact even if the PQD is broken

Isenberg 10 (David, Research Fellow – Independent Institute, "Contractor Legal Immunity and the ’Political Questions’ Doctrine," CATO Institute, 1-19, http://www.cato.org/publications/commentary/contractor-legal-immunity-political-questions-doctrine)

To this Carter writes: the consequences predicted by defense contractor advocates vastly overstate the actual impact these GWOT tort suits will have on Government contingency contracting. Several reasons exist for this contention. First, the Government currently pays far too much money to defense contractors overseas for them to now decline performance of contingency contracts. The alleged dramatic price increases in U.S. Government contracts due to the increased litigation risk are unlikely as well. Contract prices may rise to some degree, but the Government can ill afford to refuse to pay them. Second, the U.S. military does not own the internal means to provide the goods and perform the services contracted for in a contingency environment — such goods and services are necessary for mission accomplishment. Finally, as discussed earlier, apart from the political question doctrine, defense contractors who face allegations of tortious conduct in a contingency environment have several legal defenses and other alternatives to limit or avoid liability, including insurance. Viewed together, these points counter forecasts of the impending ruin of Government contingency contracting. With their recent activity involving the political question doctrine, courts have hardly thrust open the floodgates to litigation. Rather, they have properly focused their attention on protecting military decision-making and policy from judicial intrusion, and limited their rulings accordingly. For those suits that do not question military decisions or policy, they will move forward (at least without political question problems). This may or may not cause an increase in contractor costs due to higher insurance premiums related to tort damages, which could then be conveyed to the U.S. Government in the form of higher prices. However, the political question doctrine’s purpose is not to inhibit the principles of accountability inherent in the American tort law system. For those who wish to change this system, they should look instead toward the political branches or state governments for relief. These entities have in their arsenals statutes, regulations, and other mechanisms more appropriate for change. Such methods are much more apt for this purpose than reliance on a mutation of the political question doctrine into a form beyond its established limits. To argue that Government contingency contracting will break down unless the political question doctrine extends to all tort suits brought against combat zone defense contractors is disingenuous. Alarming predictions of compromised logistics and mission failure grossly exaggerate the effect of these GWOT tort suits on combat zone contractors and Government contingency contracting. Such hyperbole ignores the reality and degree of the U.S. Government’s financial commitment to and dependency on contingency contracting in Iraq and Afghanistan. Finally, even if the consequences to the DoD procurement system are as dire as defense contractor advocates have alleged, the political branches are in a much more appropriate position to remedy them and can do so much more immediately and effectively.

#### **No internal link – Morgan is about a complete Taliban coup of Afghanistan – the strongest line in your i/l ev says contractors “support operations”….**

#### **DOD contractor litigation isn’t protected by PQD in the status quo anyway – proves no impact or internal link**

Isenberg 10 (David, Research Fellow – Independent Institute, "Contractor Legal Immunity and the ’Political Questions’ Doctrine," CATO Institute, 1-19, http://www.cato.org/publications/commentary/contractor-legal-immunity-political-questions-doctrine)

Yet, notwithstanding the foregoing prohibitions on judicial conduct, the Supreme Court has cautioned, “it is error to suppose that every case or controversy which touches foreign relations lies beyond judicial cognizance.” As mentioned earlier, vast precedent exists for judicial involvement in foreign and military affairs. Case law establishes that military decisions are reviewable by federal courts. An assertion of military necessity, standing alone, is not a bar to judicial action. Merely because a dispute can be tied in some way to combat activities does not prevent a court from reviewing it. Although an action arises in a contingency environment, if a case is essentially “an ordinary tort suit” it is well within the competence of the courts to entertain. Courts have underscored the point: no litmus test exists that prohibits judicial action merely because an issue involves the military in some fashion. Where plaintiffs seek only damages and not injunctive relief, such cases are “particularly judicially manageable.” When such a damages-only lawsuit concerns only a defense contractor (as opposed to the Federal Government), courts have held that such actions do not involve “overseeing the conduct of foreign policy or the use and disposition of military power.” Thus, those actions are less likely to raise political questions than suits against the Government, suits seeking injunctive relief, or both.

## 1AR

### 2AC Solvency

#### Solves – they get a megaphone

Murphy and Radsan 13 (Richard W. Murphy Texas Tech University School of Law Afsheen John Radsan William Mitchell College of Law “Notice and an Opportunity to Be Heard Before the President Kills You,” http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2293686)

On many occasions, the federal courts have intoned that the core of due process is notice and an opportunity to be heard before the government deprives a person of life, liberty, or property.187 The central idea is to “ensure that the person threatened with loss has an opportunity to present his side of the story to a neutral decisionmaker at a time when the deprivation can still be prevented.”188 This promotes accuracy insofar as it enables a targeted person to provide pertinent information about adjudicative facts. It also appeals to the deep-seated intuition that fairness and justice require the government to let persons subject to its power “have their say” before that power is deployed against them.189 Promoting accuracy, fairness, and legitimacy, in addition to serving the private interests of the targets, also serves obvious public interests. The government should base its actions—especially those that will harm targeted individuals—on an accurate understanding of the adjudicative facts. Holding other factors equal, it is better to live under a government that is both fair and appears to be fair than to live under a government that either wields coercive power arbitrarily or appears to do so. Even so, process carries obvious costs. As Justice Thomas intimated in his Hamdi dissent,190 extending notice and an opportunity to be heard to a suspected terrorist poses problems. Notice might allow the target of a missile strike to “get away.” Notice might also endanger sensitive sources and methods of intelligence if the target is able to track down how the United States discovered his identity and his activities. Further, the “opportunity to be heard” could prove counterproductive if poorly designed to fit the issues and concerns of targeting. Importing hearsay limitations into the proceedings, for example, might put undue strain on the government’s ability to make its case and might lead to excessive false negatives.191 These sorts of problems highlight that many forms of formal process for targeted killing would be impracticable and unreasonable. Due process is nothing if not flexible, however. The requirement, for instance, of a pre-deprivation hearing is commonly characterized as a prime element of due process. The Court nonetheless sidesteps this element in a variety of emergency situations, approving procedures that lack pre-deprivation hearings for seizure of enemy property in wartime,192 seizure and destruction of food unfit for human consumption,193 and suspension from public school of students “whose presence poses a continuing danger to persons or property.”194 Where a pre-deprivation hearing poses too many problems, post-deprivation procedures may suffice. With this sort of flexibility, the question is not whether some forms of process for targeted killing would be unreasonable and thus “undue.” No, the real due-process question is whether any forms of notice and an opportunity to be heard might be practicable, reasonable, and beneficial. Consider the following possibility: The United States should maintain a public list of members of QTA whom the United States has concluded pose a severe enough threat to merit targeting. To the extent security concerns reasonably permit, the United States should also provide public justifications for placements on the list. Ayman al-Zawahiri, the leader of al Qaeda, would presumably be the first name. In our interconnected age, publication on the Internet would give notice to listed persons that they may be targeted as well as partial notice of the grounds supporting their selection. And a statement in the Federal Register might be added for good measure. One can think of this proposal as formalizing and generalizing the approach to notice that the United States government informally extended to al-Awlaki himself. Somebody in government leaked the highly classified information that al-Awlaki was on the kill list. One motive may have been to provide a form of notice consistent with his due process rights. If that was a reason for the government’s disclosure, it provides tacit support from the United States that the kill list could and should be published. Along with notice by publication would come at least an informal opportunity to be heard. As Judge Bates noted in his al Aulaqi opinion, al-Awlaki knew perfectly well that he had been targeted by the United States. If he had wished, he could have contested this targeting himself: either in court after turning himself in or via video-conferencing or some other means.195 Building on Judge Bates’ point, it bears repeating that the United States’ conflict with QTA is a highly public matter in many respects. The impact of a drone strike, unlike a brush pass between an intelligence officer and a human source, cannot be hidden from all eyes. Persons who appear on the proposed list would have a megaphone for responding to eager audiences among journalists and human rights workers. This opportunity to respond would not be a perfect substitute for formal proceedings before a neutral judge, but it would foster a form of public accountability that the United States could not ignore.

**Ex Post review of drone strikes would effectively constrain executive action**

Jaffer, Director-ACLU Center for Democracy, 13 (Jameel Jaffer, Director of the ACLU's Center for Democracy, “Judicial Review of Targeted Killings,” 126 Harv. L. Rev. F. 185 (2013), <http://www.harvardlawreview.org/issues/126/april13/forum_1002.php>)

Since 9/11, the CIA and Joint Special Operations Command (JSOC) have used armed drones to kill thousands of people in places far removed from conventional battlefields. Legislators, legal scholars, and human rights advocates have raised concerns about civilian casualties, the legal basis for the strikes, the process by which the executive selects its targets, and the actual or contemplated deployment of armed drones into additional countries. Some have proposed that Congress establish a court to approve (or disapprove) strikes before the government carries them out. While judicial engagement with the targeted killing program is long overdue, those aiming to bring the program in line with our legal traditions and moral intuitions should think carefully before embracing this proposal. Creating a new court to issue death warrants is more likely to normalize the targeted killing program than to restrain it. The argument for some form of judicial review is compelling, not least because such review would clarify the scope of the government’s authority to use lethal force. The targeted killing program is predicated on sweeping constructions of the 2001 Authorization for Use of Military Force (AUMF) and the President’s authority to use military force in national self-defense. The government contends, for example, that the AUMF authorizes it to use lethal force against groups that had nothing to do with the 9/11 attacks and that did not even exist when those attacks were carried out. It contends that the AUMF gives it authority to use lethal force against individuals located far from conventional battlefields. As the Justice Department’s recently leaked white paper makes clear, the government also contends that the President has authority to use lethal force against those deemed to present “continuing” rather than truly imminent threats.These claims are controversial. They have been rejected or questioned by human rights groups, legal scholars, federal judges, and U.N. special rapporteurs. Even enthusiasts of the drone program have become anxious about its legal soundness. (“People in Washington need to wake up and realize the legal foundations are crumbling by the day,” Professor Bobby Chesney, a supporter of the program, recently said.) Judicial review could clarify the limits on the government’s legal authority and supply a degree of legitimacy to actions taken within those limits. It could also *encourage executive officials to observe these limits*. Executive officials would be less likely to exceed or abuse their authority if they were required to defend their conduct to federal judges.Even Jeh Johnson, the Defense Department’s former general counsel and a vocal defender of the targeted killing program, acknowledged in a recent speech that *judicial review could add “rigor”* to the executive’s decisionmaking process. In explaining the function of the *F*oreign *I*ntelligence *S*urveillance Court, which oversees government surveillance in certain national security investigations, executive officials have often said that *even the mere prospect of judicial review deters error and abuse.*

### Demo

#### A preponderance of studies affirm the democratic peace theory

Tessler and Grobschmidt 95

Mark Tessler Professor of Political Science and Director of the Center for International Studies at the University of Milwaukee, and Marilyn Grobschmidt, doctoral student in International Relations and Comparative Politics at Indiana University, 1995, Democracy War & Peace, p. 140-141

Although a number of studies have demonstrated that democracies, in gen­eral, are no more peaceful than non-democratic states (Small and Singer 1976; Chan 1984; Weede 1984), there is compelling evidence that democracies do not go to war against one another. As expressed by Rummel, “libertarian systems mutually preclude violence,” in other words, “violence will occur between states only if at least one is nonlibertarian.” By libertarian, Rummel means those states that “[emphasize] individual freedom and civil liberties and the rights associated with the competitive and open election of leaders” (Rummel 1983, pp. 27—28). One study providing evidence in support of this conclusion was conducted by Babst, who examined 116 major wars from 1789 to 1941 and found that “no wars [had] been fought between independent nations with elective govern­ments” (Babst 1972, p. 55). In another investigation, Doyle examined “liberal” regimes dating back to the eighteenth century and found that “even though liberal states have become involved in numerous wars with nonliberal states, constitutionally secure liberal states have yet to engage in war with one an­other” (Doyle 1983, p. 213). Doyle defined liberal states as “polities that are ex­ternally sovereign. .. [where citizens] possess juridical rights.. . [and are ruled by a] representative government” (ibid.). A third study was conducted by Maoz and Abdolali (1989), who reported that while democracies are no more peaceful than other states, they almost always go to war with nondemocratic regimes, rather than other democracies. There has been some debate about whether the relationship between de­mocracy and peace is spurious. For example, arguing that societies with greater wealth have more to lose and are therefore reluctant to go to war, one analyst suggests that the correlation may be an artifact of the high level of economic development that characterizes most democratic countries (Mueller 1989, p. 264). Yet empirical studies report that the relationship between democracy and peace holds when statistical controls for wealth and other variables are intro­duced. Studies by Maoz and Russett (1992, pp. 245—46; 1991, p. 30) demonstrate that peace among democracies cannot be explained by level or rate of develop­ment, by political stability, or by the lack of common borders. Also, with re­spect to the impact of wealth and economic development, Ember, Ember, and Russett (1992, p. 575) correctly observe that this does not explain the peace that existed among democracies prior to industrialization. Nor does it explain the outbreak of World War II, which pitted” ‘advanced capitalist.., states against each other?”

#### Democracies don’t go to war—popular accountability checks military adventurism

Sharansky 4

Nathan Sharansky, Israel’s Minister for Jerusalem and Diaspora Affairs and former Soviet dissident, 2004, The Case for Democracy, p. 78-80

So if the majority of people in all societies are inherently peace-loving, then what is so unique about democracies that keeps them from waging war with one another? The answer can be found in the political mechanics of every democratic society. Democratic leaders depend on their people. There-fore they have an enormous incentive to satisfy the demands of their constituencies if they want to stay in power. In democracies, the personal interests of the political leader­ship, even the most venal among them, is effectively tied to improving the lives of those they govern. Those leaders who are perceived to be delivering peace and prosperity tend to be reelected, while those who are not tend to be removed from office. As the United States learned during Vietnam, and the government of Spain learned during the recent war in Iraq, no democratic government will be able to fight a protracted war that the majority of its citizens does not support. This is especially true when the costs of war are felt close to home. If democratic peoples believe there is an alternative to war— whether that alternative is real or imagined is immaterial— they will demand that their government pursue it. And a democratic government that does not heed the will of the people will sooner or later be replaced by one that does. Thus, the critical factor that prevents democratic nations from fighting against each other is not values that are partic­ular to democratic peoples but rather the fact that the power of a democratic government is ultimately dependent on the popular will. When two democratic states are faced with an issue that can potentially lead to conflict, their lead­ers, whose own power depends on citizens who see war as a last resort, will do everything possible to avoid war and reach a compromise. For this reason, democratic leaders also have a propen­sity towards appeasement. Their first instinct is to seek a peaceful solution first, and they are slow to relinquish this approach. War is almost always seen as an expensive, dis­ruptive last resort, and few democratic leaders embrace the prospect with anything other than extreme caution. Indeed, so strong is the popular antipathy to war that democratic societies are at a disadvantage when confronting threats that require preemptive military action. In response to their vot­ers, most democratic leaders will be inhibited by a pacific reflex, be slow to act, and be overly cautious. This propen­sity for appeasement can be extremely dangerous if poten­tial threats that could have been nipped in the bud are instead allowed to grow more dangerous.

#### Democracy solves great power war – more likely to negotiate, and when they do fight they choose easy targets

Tarzi 7

Shah, Professor of Economic Affairs @ Bradley, Democratic Peace, Illiberal Democracy and Conflict Behavior, International Journal on World Peace, vol 24

Bueno de Mequita, Morrow, Siverson, and Smith are among the few who have sought to overcome the conceptual dilemmas noted above. Specifically they have provided insights on the link between institutions and foreign policy choices with reference to international disputes and conflicts. They find that democratic leaders, when faced with a choice, are more likely to shift greater resources to war efforts than leaders of the autocratic governments because political survival of the elected democratic regime demands successful policy performance, especially as the winning coalition grows. Thus, democratic regimes tend to have a military edge over autocratic regimes in war because of the extra efforts required. Also, "democratic leaders only choose to fight when they are confident of victory. Otherwise they prefer to negotiate." (22) Bueno de Mequita and his colleagues conclude, Democrats make relatively unattractive targets because domestic reselection pressures cause leaders to mobilize resources for the war effort. This makes it harder for other states to target them for aggression. In addition to trying harder than autocrats, democrats are more selective in their choice of targets. Defeat typically leads to domestic replacement for democrats, so they only initiate war when they expect to win. These two factors lead to the interaction between polities that is often termed the democratic peace. Autocrats need a slight expected advantage over other autocratic adversaries in devoting additional resources to the war effort. In order to initiate war, democrats need overwhelming odds of victory, but that does not mean they are passive. Because democrats use their resources for the war effort rather than reserve them to reward backers, they are generally able, given their selection criteria for fighting, to overwhelm autocracies, which results in short and relatively less costly wars. Yet, democracies find it hard to overwhelm other democracies because they also try hard. In general, democracies make unattractive targets, particularly for other democracies. Hence, democratic states rarely attack one another. (23)

### addon

#### Attempts to foresee existential risks is the best approach to policy-making

Bostrom 02, Professor of Philosophy at Oxford University and Director of the Future of Humanity Institute, ’2 (Nick, March, “Existential Risks: Analyzing Human Extinction Scenarios and Related Hazards” Journal of Evolution and Technology, Vol 9, http://www.nickbostrom.com/existential/risks.html

I shall use the following definition of existential risks: Existential risk – One where an adverse outcome would either annihilate Earth-originating intelligent life or permanently and drastically curtail its potential. An existential risk is one where humankind as a whole is imperiled. Existential disasters have major adverse consequences for the course of human civilization for all time to come. 2 The unique challenge of existential risks Risks in this sixth category are a recent phenomenon. This is part of the reason why it is useful to distinguish them from other risks. We have not evolved mechanisms, either biologically or culturally, for managing such risks. Our intuitions and coping strategies have been shaped by our long experience with risks such as dangerous animals, hostile individuals or tribes, poisonous foods, automobile accidents, Chernobyl, Bhopal, volcano eruptions, earthquakes, draughts, World War I, World War II, epidemics of influenza, smallpox, black plague, and AIDS. These types of disasters have occurred many times and our cultural attitudes towards risk have been shaped by trial-and-error in managing such hazards. But tragic as such events are to the people immediately affected, in the big picture of things – from the perspective of humankind as a whole – even the worst of these catastrophes are mere ripples on the surface of the great sea of life. They haven’t significantly affected the total amount of human suffering or happiness or determined the long-term fate of our species. With the exception of a species-destroying comet or asteroid impact (an extremely rare occurrence), there were probably no significant existential risks in human history until the mid-twentieth century, and certainly none that it was within our power to do something about. The first manmade existential risk was the inaugural detonation of an atomic bomb. At the time, there was some concern that the explosion might start a runaway chain-reaction by “igniting” the atmosphere. Although we now know that such an outcome was physically impossible, it qualifies as an existential risk that was present at the time. For there to be a risk, given the knowledge and understanding available, it suffices that there is some subjective probability of an adverse outcome, even if it later turns out that objectively there was no chance of something bad happening. If we don’t know whether something is objectively risky or not, then it is risky in the subjective sense. The subjective sense is of course what we must base our decisions on.[2] At any given time we must use our best current subjective estimate of what the objective risk factors are.[3] A much greater existential risk emerged with the build-up of nuclear arsenals in the US and the USSR. An all-out nuclear war was a possibility with both a substantial probability and with consequences that might have been persistent enough to qualify as global and terminal. There was a real worry among those best acquainted with the information available at the time that a nuclear Armageddon would occur and that it might annihilate our species or permanently destroy human civilization.[4] Russia and the US retain large nuclear arsenals that could be used in a future confrontation, either accidentally or deliberately. There is also a risk that other states may one day build up large nuclear arsenals. Note however that a smaller nuclear exchange, between India and Pakistan for instance, is not an existential risk, since it would not destroy or thwart humankind’s potential permanently. Such a war might however be a local terminal risk for the cities most likely to be targeted. Unfortunately, we shall see that nuclear Armageddon and comet or asteroid strikes are mere preludes to the existential risks that we will encounter in the 21st century. The special nature of the challenges posed by existential risks is illustrated by the following points: · Our approach to existential risks cannot be one of trial-and-error. There is no opportunity to learn from errors. The reactive approach – see what happens, limit damages, and learn from experience – is unworkable. Rather, we must take a proactive approach. This requires foresight to anticipate new types of threats and a willingness to take decisive preventive action and to bear the costs (moral and economic) of such actions. · We cannot necessarily rely on the institutions, moral norms, social attitudes or national security policies that developed from our experience with managing other sorts of risks. Existential risks are a different kind of beast. We might find it hard to take them as seriously as we should simply because we have never yet witnessed such disasters.[5] Our collective fear-response is likely ill calibrated to the magnitude of threat. · Reductions in existential risks are global public goods [13] and may therefore be undersupplied by the market [14]. Existential risks are a menace for everybody and may require acting on the international plane. Respect for national sovereignty is not a legitimate excuse for failing to take countermeasures against a major existential risk.

### Isenberg

#### **DOD contractor litigation isn’t protected by PQD in the status quo anyway – proves no impact or internal link**

Isenberg 10 (David, Research Fellow – Independent Institute, "Contractor Legal Immunity and the ’Political Questions’ Doctrine," CATO Institute, 1-19, http://www.cato.org/publications/commentary/contractor-legal-immunity-political-questions-doctrine)

Yet, notwithstanding the foregoing prohibitions on judicial conduct, the Supreme Court has cautioned, “it is error to suppose that every case or controversy which touches foreign relations lies beyond judicial cognizance.” As mentioned earlier, vast precedent exists for judicial involvement in foreign and military affairs. Case law establishes that military decisions are reviewable by federal courts. An assertion of military necessity, standing alone, is not a bar to judicial action. Merely because a dispute can be tied in some way to combat activities does not prevent a court from reviewing it. Although an action arises in a contingency environment, if a case is essentially “an ordinary tort suit” it is well within the competence of the courts to entertain. Courts have underscored the point: no litmus test exists that prohibits judicial action merely because an issue involves the military in some fashion. Where plaintiffs seek only damages and not injunctive relief, such cases are “particularly judicially manageable.” When such a damages-only lawsuit concerns only a defense contractor (as opposed to the Federal Government), courts have held that such actions do not involve “overseeing the conduct of foreign policy or the use and disposition of military power.” Thus, those actions are less likely to raise political questions than suits against the Government, suits seeking injunctive relief, or both.

#### **No internal link – no evidence says that litigation of DOD contractors would hurt DOD operations – the Afghan instability evidence just says DOD contractors are key – litigation won’t chill operations**

Isenberg 10 (David, Research Fellow – Independent Institute, "Contractor Legal Immunity and the ’Political Questions’ Doctrine," CATO Institute, 1-19, http://www.cato.org/publications/commentary/contractor-legal-immunity-political-questions-doctrine)

Traditionally, the reason given for this is that such cases may involve “political questions” that the Judicial Branch is ill-equipped to decide. Thus defense contractor advocates claim these actions must be dismissed, else there be grim consequences for Government contingency contracting. But according to Maj. Carter, “the recent developments in political question doctrine case law are significant to the future of Government contingency contracting. However, they are not catastrophic — although portrayed as such by some defense contractor advocates. There will not be an explosion of contracting costs passed on to the Government. There will not be a mass refusal of defense contractors to accept contingency contracts. There will not be chaos on the battlefield. Such predictions are nothing more than “bellowing bungle.” Carter wrote: What is the political question doctrine? According to Chief Justice John Marshall, “[q]uestions, in their nature political, or which are, by the constitution and laws, submitted to the executive, can never be made in [the U.S. Supreme Court].” In 2004, the Court held “[s]ometimes .. . the law is that the judicial department has no business entertaining [a] claim of unlawfulness — because the question is entrusted to one of the political branches or involves no judicially enforceable rights. Such questions are said to be ‘nonjusticiable,’ or ‘political questions.’” What this means is that traditionally courts have deferred to the political branches in matters of foreign policy and military affairs. Policy decisions regarding the employment of U.S.military forces in combat belong to the political branches, not the courts. The Supreme Court has held that, due to their “complex, subtle, and professional” nature, decisions as to the “composition, training, equipping, and control of a military force” are “subject always” to the control of the political branches. Tort suits that challenge the internal operations of these areas of the military are likely to be dismissed as political questions.