### OFF

**“Statutory restrictions” require congressional action**

Kershner 10 (Joshua, Articles Editor, Cardozo Law Review. J.D. Candidate (June 2011), Benjamin N. Cardozo School of Law, “Political Party Restrictions and the Appointments Clause: The Federal Election Commission's Appointments Process Is Constitutional” Cardozo Law Review de novo 2010 Cardozo L. Rev. De Novo 615)

**The process by which the President fills an Executive Branch position is governed by the Appointments Clause:**

[The President] shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments. n81

**This process is divided into three phases: (1) Congress creates an Executive Branch position by statute**; n82 (2) the President nominates an individual to fill the position; n83 and (3) the Senate confirms the nominee. n84 The Clause covers a specified list of positions and the generic "other Officers of the United States." n85 **The Clause controls who nominates, appoints, and confirms an individual for such a position**. n86 Finally, the Clause defines a separate process for inferior officers. n87 It should be noted, however, that the Appointments Clause limits but does not empower Congress to create positions. n88 That power comes from the Necessary and Proper Clause. n89

**The House of Representatives has no role in the process of nomination and appointment and is specifically not mentioned in the [\*626] Appointments Clause**. All of **the powers contained in the Appointments Clause are reserved to the President, the Senate, or both**. n90 The Appointments Clause makes a distinction between the power to nominate and the separate power to appoint. **The power of nomination is textually reserved to the President of the United States, n91 whereas the power of appointment is shared by the President and the Senate**. n92 **Statutory restrictions violate the plain text of the Appointments Clause because the very act of passing a statute requires the involvement of the House of Representatives.** n93

**Statutory restrictions on the appointments process are further problematic because the Appointments Clause's power to nominate is vested solely in the President**. n94 Those statutory restrictions that limit the President's power to nominate violate the plain text of the Clause. n95 **Where the Constitution provides a clear procedural process, the Supreme Court has consistently applied strict principles of formalism,** construing the text so as to limit, rather than expand, the powers of the various branches of government. n96

The Senate's role in the appointments process is the final confirmation of a nominee. n97 The "advice and consent" of the Senate applies only to the appointment power. n98 The President and the Senate have interpreted advice as non-binding guidance, and have interpreted [\*627] consent as the act of confirmation. n99 Thus, the Appointments Clause gives the Senate only the narrow function of confirming nominees. n100

**Judicial restrictions” are imposed by the court**

Singer 7 (Jana, Professor of Law, University of Maryland School of Law, SYMPOSIUM A HAMDAN QUARTET: FOUR ESSAYS ON ASPECTS OF HAMDAN V. RUMSFELD: HAMDAN AS AN ASSERTION OF JUDICIAL POWER, Maryland Law Review 2007 66 Md. L. Rev. 759)

n25. See, e.g., Dep't of the Navy v. Egan, 484 U.S. 518, 530 (1988) (**noting the reluctance of courts "to intrude upon the authority of the Executive in military and national security affairs**"); see also Katyal, supra note 1, at 84 (noting that "in war powers cases, the passive virtues operate at their height to defer adjudication, sometimes even indefinitely"); Harold Hongju Koh, Why the President (Almost) Always Wins in Foreign Affairs: Lessons of the Iran-Contra Affair, 97 Yale L.J. 1255, 1313-17 (1988) (**discussing the Court's use of justiciability doctrines to refuse to hear challenges to the President's authority in cases involving foreign affairs**); Gregory E. Maggs, The Rehnquist Court's Noninterference with the Guardians of National Security, 74 Geo. Wash. L. Rev. 1122, 1124-38 (2006) (discussing the Rehnquist Court's general policy of nonintervention in cases concerning actions of governmental agencies and political entities in national security matters); Peter E. Quint, **Reflections on the Separation of Powers and Judicial Review at the End of the Reagan Era**, 57 Geo. Wash. L. Rev. 427, 433-34 (1989) (**discussing the use of the political question doctrine as a means to avoid judicial restrictions on presidential power in cases involving military force**).

#### authority is delegated power from a principle to an agent- the president can’t restrict their own authority

Hawkins et al, 5(Darren, professor of law at Brigham Young, Delegation Under Anarchy: States, International Organizations, and Principal-Agent Theory, <http://mjtier.people.wm.edu/papers/INTRO%20HLNT%20July%2031.pdf>

The relations between a principal and an agent are always governed by a con-tract,1 even if this agreement is implicit (never formally acknowledged) or informal (based on an unwritten agreement). To be a principal, an actor must be able to both grant authority and rescind it. The mere ability to terminate a contract does not make an actor a principal. Congress can impeach a president, and thereby remove him from office, but this power does not make Congress the principal of the president as we define it. Alternatively, Congress can authorize the president to decide policy on its behalf in a specific issue area – for example, to design environmental regulations – and then later revoke that authority if it disapproves of the president’s policies. In this case, the Congress is indeed the principal of the president. To be principals, actors must both grant and have the power to revoke authority.

#### vote neg

#### ground- they can read the ER CP on the aff- also avoid flex, circumvention, the core of the war powers debate

#### limits- they justify doing anything with the military--the check of “statuatory/judicial” is key to place a lid an otherwise unmanageable topic

#### Extra-T is an independent voter—changing the way we debate about drones is not a reason the resolution is true—extra-T explodes limits because it means the aff can get offense based on anything they do in the debate

### OFF

#### Targeted killing is an extra-judicial military strike for military objectives, and are distinct from assassination in that they are not politically motivated

Dreyfuss 22

[Mike, Candidate for Doctor of Jurisprudence, May 2012, Vanderbilt University Law School. “NOTE: My Fellow Americans, We Are Going to Kill You: The Legality of Targeting and Killing U.S. Citizens Abroad” Vanderbilt Law Review, 65 Vand. L. Rev. 249, Nexis]

II. Targeted Killing Is a Distinct Type of State Action Requiring Distinct Rules A. Extrajudicial Killing Targeted killing does not have an agreed-upon definition under international law. n13 For purposes of this Note, "target-ed killing" denotes a state's intentional and premeditated use of lethal force through agents acting under color of law against a specific, reasonably [\*253] unobtainable individual. n14 It has become the preferred term for military opera-tions of this nature. In the context of U.S. operations, targeted killing often involves a missile strike by an unmanned aerial vehicle, the Predator drone, against a known terrorist. n15 The government elects to kill individuals who have mili-tary importance. Targeted killings are extrajudicial, in that they do not require court approval. n16 Extrajudicial killings are not generally legal under international law. n17 However, this Note argues that they can be legal in certain extraordi-nary situations, including self-defense cases in which the state addresses due process concerns. An extrajudicial killing is a "deliberated killing not authorized by a previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples." n18 The term specifically excludes "any such killing that, under international law, is lawfully carried out under the authority of a foreign nation." n19 This exemption refers to [\*254] killings that are lawful under International Humanitarian Law ("IHL"), which only applies to war, and Human Rights Law ("HRL"), which applies more generally. B. Killings in Territories of Armed Conflict Military strikes are most common in the context of armed conflict, so the discussion begins there. Within a territory engaged in armed conflict, targeted killing is a more clear-cut proposition. The familiar legal framework of IHL applies in armed conflicts whether of an international character or not of an international character. n20 With some exceptions, n21 the Geneva Conventions apply only in international armed conflicts. Military commanders have greater latitude in zones of armed conflict than they have in peaceful areas. n22 Within zones of armed conflict, commanders can select lawful targets for attack. The OLC memo found that Al-Aulaqi's dis-tance from the battlefield did not preclude a U.S. attack targeting him. n23 In the context of a global war, n24 commanders have always possessed authority to act that extends beyond the front lines. n25 Targeted killing is no different. C. Targeted Killing vs. Assassination Targeted killing and assassination are similar but distinct operations that commentators often conflate. n26 Specifically, [\*255] assassinations are killings that are politically motivated and use subterfuge, while targeted killings are military strikes. n27 This distinction is important because President Ronald Reagan's Executive Order 12,333 bans assassination. n28 In the section entitled "Prohibition on Assassination," President Reagan ordered, "No person employed by or acting on behalf of the United States Government shall engage in, or conspire to engage in, assassination." n29 The order also prohibits indirect participation in any "activities forbidden by [Executive Order 12,333]." n30 Therefore, targeted killing is only legal if it is distinct from assassination under Executive Order 12,333. Although Executive Order 12,333 is just the latest in a series beginning with President Gerald Ford's Executive Or-der 11,905, none of the executive orders defines assassination. n31 Nonetheless, an analysis of how the executive orders refer to assassination is potentially enlightening. President Ford's 1976 Executive Order, for example, expressly prohib-ited "political assassination." n32 Both Presidents Jimmy Carter's and Ronald Reagan's subsequent orders, however, simp-ly ban "assassination" without the modifier "political." n33 Two possible and contradictory interpretations arise from President [\*256] Carter's deletion of "political" from his order. He either meant the 1978 ban to include apolitical as-sassination or considered political motives inherent to the definition of assassination, making the modifier superfluous. n34 Based on the conduct of subsequent administrations, including the current administration, the second interpretation appears to be the one in force. Targeted killing is based strictly on security concerns; assassination is political. Another area of contention is whether the term "assassination" applies to killings committed during armed conflict. n35 The drafting history of the three bans implies the orders apply only outside of armed conflict. n36 The reports to Con-gress on the bans repeatedly use language like "covert," "treacherous," or "surprise." n37 Hague law, the law of war, pro-hibits killing individuals "treacherously." n38 Treacherousness helps distinguish lawful killing from cloak-and-dagger assassination. Under Hague law, it is impermissible to kill a person by surprise in peacetime, but it is permissible to use a surprise attack to kill a person in war. n39 Notwithstanding any of the above, the President can revoke or modify Executive Order 12,333 by issuing a new executive order. Executive orders do not bind executive practice any more than the President wants them to, and the President can keep executive orders secret if he so chooses. n40 Typically, new executive orders have to be published in the Federal Register. n41 However, when the President determines that as a result of an attack or a threatened attack on the United States, publication would be impracticable or would not "give appropriate notice to the public," the President can suspend this filing [\*257] requirement. n42 So while targeted killing is distinct from assassination and, under cur-rently published laws, must be distinct to be legal, the distinction matters little. Even classifying all targeted killings as assassinations within the meaning of Executive Order 12,333 would be of little practical importance, as any President who wished to continue the programs could secretly modify the order to carve out an exception for whatever activities he wished to conduct. D. Targeting Killing vs. Execution The first image to come to mind when picturing the U.S government killing a U.S. citizen is that of an execution. Tar-geted killing and execution are distinct from one another, but legal scholars often compare and conflate the two. n43 It is therefore worthwhile at the outset to distinguish targeted killing from execution. Execution is a judicial, postconviction sentence reserved for a narrow subset of the most serious offenders within a narrow subset of all possible crimes. State law, as opposed to international law, governs execution. n44 Execution pro-vides years of appellate process and judicial review. If targeted killing is execution, all feasible judicial review is woe-fully inadequate. To survive as a practice, therefore, targeted killing must be distinguished from execution. Execution differs from targeted killing in terms of the person the government targets. States execute criminals who have, by definition, been convicted of crimes. The government reserves targeted killings for individuals of military sig-nificance who cannot be brought to justice by other means. n45 In the United States, the federal and state governments can execute criminals. n46 Execution is a judicial process [\*258] and therefore has the protections inherent to a judicial process, while targeted killings are extrajudicial. The federal government may target and kill individuals who have not been convicted of crimes, because targeted killing and execution serve different purposes. Execution is a punishment for a crime. Targeted killing is not a punish-ment. It is a military strike. The state does not intend to right a wrong but to further a military objective. Viewed in this light, prior judicial review of targeted killings - like prior judicial review of military decisions to kill enemies (U.S. citi-zens or not) on the battlefield - is unnecessary. As a practical matter, the United States already engages in targeted killings. During questioning before Congress, Dennis Blair, while Director of National Intelligence, told then Representative Peter Hoekstra that if the government thinks "direct action will involve killing an American, we get specific permission to do that." n47 Targeted killings by the United States in the War on Terror take place inside and outside of regions of armed conflict. n48 The primary factors the U.S. intelligence community considers when deciding whether to direct a targeted killing against an American are, ac-cording to Blair, "whether that American is involved in a group that is trying to attack us, whether that American is a threat to other Americans." n49 Accordingly, the secret OLC memo concluded the government could kill Al-Aulaqi be-cause it was not feasible to capture him, he posed a significant threat to Americans, and Yemeni authorities were unable or unwilling to stop him. n50

#### Vote neg:

#### Limits and ground- they justify an unpredictable flood of affs banning assassinations of any political, military or religious leader in the world with unpredictable relations or credibility advantages-- the explicit limit to military strikes is the only guarantee of core neg ground

#### Precision-- Maintaining a strict brightline between targeted killing and its close relatives is key to legal clarity--Precision key to predictable research and divison of ground

### OFF

#### The Executive Branch of the United States should publically affirm the opposition of the grand Jirga to conduct legalized assassination in Pakistan, and implement this through self-binding mechanisms including, but not limited to independent commissions to review and ensure compliance with the order and transparency measures that gives journalists access to White House decisionmaking.

CP sends the most powerful signal

Zbigniew Brzezinski, national security advisor under U.S. President Jimmy Carter, 12/3/12, Obama's Moment, [www.foreignpolicy.com/articles/2012/12/03/obamas\_moment](http://www.foreignpolicy.com/articles/2012/12/03/obamas_moment) gender edited

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

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

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

**OFF**

**Obama’s successfully holding off pressure for wider sanctions by taking a calculated approach – failure causes Russian retaliation**

**AP, 3—22**—14 “Are Tougher Sanctions Against Russia To Come?”, http://www.theyeshivaworld.com/news/headlines-breaking-stories/223017/are-tougher-sanctions-against-russia-to-come.html

**Putin has mocked the punitive steps** President Barack **Obama has taken so far** in their post-Cold War game of chess — or chicken.¶ **Putin made jokes of Obama’s decision** this week **to freeze the assets of businessmen** with close ties to him as well as Bank Rossiya, which provides them support. **Putin quickly retaliated by slapping travel restrictions on nine U.S. officials** and lawmakers, including Sen. John McCain, who quipped: “I guess this means my spring break in Siberia is off.”¶ **More serious repercussions loom if the standoff heats up**.¶ **For now, Putin says there is no need for further Russian retaliation**, yet his Foreign Ministry said Moscow would “respond harshly.”¶ **Putin claims to have no plans for further incursions into Ukraine or elsewhere in the neighborhood**. But he’s not planning to reverse Russia’s annexation of Crimea either.¶ **The U.S.** and Europe are **left to weigh the possibility of levying tougher measures on Russia’s energy and banking sectors.** **That could backfire if Moscow, in turn, seized American or other foreign assets or cut exports of natural gas to Europe, which is heavily dependent on Russia for energy**.¶ “**If Russia doesn’t do anything other than what they’ve done so far with Crimea, I think the Obama administration will probably stand pat with the sanctions that it has already imposed,” said** Richard **Fontaine, president of the** Washington-based Center for a **New American Security**. “I think they are waiting to see if this is the end of the Russian adventurism, or if there is more to come, and then they will react with more sanctions accordingly.”¶ **By taking a step-by-step approach, the U.S. is giving Russia a chance to take the “diplomatic off-ramp” and resolve the crisis,** Fontaine said. “The problem with that is that Putin has shown absolutely no appetite to take any off-ramp,” he said. “If the off-ramp means reversing what he’s done in Crimea, I don’t think these sanctions are going to achieve that.”¶ Just the threat of harsher sanctions has dampened the outlook for the fragile Russian economy. Russian stocks were under pressure Friday as a second credit rating agency put the country on notice of a possible downgrade. Visa and MasterCard stopped serving two Russian banks, including Bank Rossiya.¶ The Russian stock market has lost more than 10 percent this month.¶ Also Friday, Russia said it might scrap plans to tap international markets for money this year.¶ The European Union hit 12 more people with sanctions Friday over Russia’s annexation of Crimea, bringing its list of those facing visa bans and asset freezes to more than 30. They include one of Russia’s deputy prime ministers, two Putin advisers and the speakers of both houses of Russia’s parliament.¶ But it is still short of the top-tier list of Putin associates punished by the United States, and evidence that Europe is not as eager to punish its energy supplier and trade partner.¶ U.S. Sen. Dick **Durbin**, who went to Ukraine with McCain last week, **urged Obama to rally the support of U.S. allies on sanctions.** “To do it alone is very limited. To do it with our allies can have some impact on Putin,” he said.¶ McCain also said cracking down on Russian lawmakers and Putin’s inner circle won’t get Putin’s attention. He said the U.S. should provide financial aid to Ukraine, immediately send defensive weapons to the country, resume work on a missile defense system in Poland and develop a long-term plan to get energy to Europe and Ukraine.¶ “The higher price that Putin thinks he has to pay for further aggression, the more likely that he doesn’t act,” said McCain.¶ **Fifty former U.S. government officials and foreign policy experts wrote Obama** on **Friday urging him** **to** strengthen Ukraine’s democratic transition and **impose “real costs” on Putin.**¶ **They said Obama should** go after Putin, and **expand the sanctions to isolate Russian financial institutions** and businesses that are complicit in Russia’s incursion into Crimea or support Syrian President Bashar Assad.

**Plan destroys Obama – political strength sustains support of his base**

**Loomis 7** Dr. Andrew J. Loomis is a Visiting Fellow at the Center for a New American Security, and Department of Government at Georgetown University, “Leveraging legitimacy in the crafting of U.S. foreign policy”, March 2, 2007, pg 36-37, <http://citation.allacademic.com//meta/p_mla_apa_research_citation/1/7/9/4/8/pages179487/p179487-36.php>

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

**Political capital is critical for Obama to hold off hawks and promote conflict de-escalation**

**Richmanm, 3—6**—14. Sheldon – VP of the Future of Freedom Foundation and editor of Future of Freedom, FFF's monthly publication. “American Hawks Risk Escalating the Ukrainian Crisis”, <http://reason.com/archives/2014/03/06/american-hawks-escalate-ukrainian-crisis>.

**With Russia and the United States confronting each other over Ukraine, the world is at a dangerous juncture.** **While the chances of war** between the two behemoths **seem small**—these are, after all, nuclear powers that have avoided war for over 60 years—**nothing can be taken for granted**. **No one wanted the Great War** that began in central Europe a century ago this year either, **but things can get out of control.** Governments are run by human beings who, perhaps more than others, are tainted by arrogance, vainglory, and the fear of humiliation.¶ **What’s most worrisome is not what** Russian President Vladimir **Putin is doing in Crimea** and threatening to do in eastern Ukraine. Not that Putin’s actions are good or justified—they are neither. **What’s most worrisome are the actions of the U.S. government, which could aggravate the conflict**.¶ **U.S. regimes from** George **H.W. Bush onward have done their utmost to demean Russia** and its rulers. In violation of Bush’s promise to Mikhail Gorbachev, NATO expanded its membership to include states formerly part of the defunct Soviet Union’s empire and publicly talked about admitting both Ukraine and another former Soviet republic, Georgia. The United States has also cut deals with former Soviet republics in central Asia, further putting Russian rulers on edge.¶ But despite these aggressive U.S. actions, Putin should not have escalated the Ukrainian conflict by sending troops to Crimea or obtaining his parliament’s authorization to invade the rest of Ukraine.¶ No government is to be trusted, and among the most fearful components of government is the military. Thus Putin’s moves toward mobilization are to be condemned by all who love peace and oppose war. **Any war would** kill innocents and **run a high risk of careening out of control**. For that reason, Putin’s responses to events in Ukraine merit the contempt of all decent people.¶ But **Putin alone cannot heighten the risk of a big war. That would also require certain moves by the Obama administration.** President Barack **Obama talks about imposing sanctions, which is bad enough. The question is whether he has the backbone to withstand the pressure to “get tougher” with Russia**.¶ **This pressure comes from the** usual **hawks,** like the dependably opportunistic Republican senators John McCain (R-Ariz.) and Lindsey Graham (R-S.C.) and Rep. Mike Rogers (R-Mich.), as well as The Wall Street Journal and The Washington Post. Obama, we’re told, is naïve, playing marbles while Putin plays chess. Do they not see the hypocrisy of supporting America’s preventive wars while condemning Russia for violating another country’s sovereignty?¶ **The theme** of the Obama-goading is that **Putin wouldn’t have dreamed of intervening in Ukraine had America not “retreated from the world.**”¶ The problem with this claim is that it is utterly without foundation. There has been no U.S. retreat from the world. After pointing out that Secretary of State John Kerry has both asserted and rejected the retreat claim, foreign policy writer John Glaser commented, “I can’t think of one single place in the world where the United States is withdrawing.”¶ Not only is the U.S. government exerting influence, however ineptly, in Latin America, the Middle East, Africa, and Asia, it’s been heavily involved in the very location under examination, Russia’s backyard. (I agree that Russia should not attempt to control its backyard, but how many Americans believe the U.S. government should stop trying to manage its backyard?) As Glaser writes,¶ Our State Department has helped usher in a change of government in Ukraine, as Washington continues to compete with Moscow for influence in a post-Soviet state that is of no vital interest to the U.S. Across Europe, in countries like Germany, Italy, Greece, Belgium, et al., Washington maintains military bases and continues to push for the expansion of NATO.¶ Yes, indeed. Talk about bringing Ukraine and Georgia into NATO is heard once again. NATO, which should have disbanded along with the Soviet Union, operates on the principle that an attack on one member is an attack on all. Imagine if Georgia had been a member when it fought with Russia over South Ossetia in 2008. Imagine if Ukraine were a member now.¶ **It’s unlikely any good would come from more U.S. intervention. Obama should pull back and resist the confrontationists.**

**Broad sanctions cause retaliation and the greatest global economic collapse of the 21st century**

**Mercier, 3—16**—14. Gilbert – Global Research Analyst) “Ukraine’s Crisis: Economic Sanctions Could Drive a Fragile World Economy into a Financial Quagmire”, <http://www.globalresearch.ca/ukraines-crisis-economic-sanctions-could-drive-a-fragile-world-economy-into-a-financial-quagmire/5373597?print=1>

**The referendum in Crimea** on March 16, 2014 will probably attach the peninsula to the Russian federation. While **it is unlikely that NATO will intervene and seek a direct military confrontation** with Russia, **the United States** and the European Union **are** already **cooking some broad and unwise** **economic sanctions with which to punish Russia**. ¶ **Russia**, for its part, **has at its disposal some mighty economic weapons with which to retaliate**, as needed.¶ **The economic pain from this tit for tat of sanctions will be**, in particular, **inflicted to the EU. Because of the interconnections between all** economies and **financial markets**, mutual **economic sanctions could drive a still fragile world economy to a financial crash**.¶ The West, acting as if it solely and arrogantly represents the international community, has formulated a hazardous policy to isolate Russia. This ill-advised strategy is extremely shortsighted on all levels. Unlike Iran, Russia is fully integrated into the global economy.¶ A test for BRICS¶ The Ukraine crisis is a major test of BRICS‘ geopolitical validity as an economic group, political force and potential military alliance. China, Russia’s biggest partner in BRICS, has been strangely muted about Ukraine and the Crimea referendum, urging for “restraint on all sides” and pushing for a political solution.¶ During the emergency meeting of the United Nations Security Council on March 15, 2014, on a resolution to declare Crimea’s referendum illegal, China did not side with Russia by using its veto power but instead abstained from voting. China’s abstention does not fare well for the future of BRICS, as it plays into the strategy of the US and its EU partner to isolate Russia. China, by its abstention from the UN vote, and India, Brazil and South Africa, by their subdued responses, have already played into the hands of the US and its European allies. Will China and other BRICS members step in forcefully to stop the madness of multilateral economic sanctions?¶ Dumping US Treasury Bonds¶ Russia, to prevent the announced freeze of its assets in the US, has already acted on the looming sanctions by liquidating more than $100 billion of its holdings in US Treasury Bonds. The bonds, which represent about 80 percent of Russia’s holding in US T-Bonds, were transferred out of the US Central Bank. The withdrawal was revealed by the US central bank when it announced that its holdings in T-Bonds dropped by $105 billion for the week ending March 12, 2014, from $2.96 trillion to $2.85 trillion. This abrupt sale is three times higher than any weekly sale was at the peak of the 2008 financial crisis.¶ Of all countries, China has the means to diffuse the potential economic crisis by also threatening to dump US T-Bonds. China owns an estimated $1.3 trillion in US Treasury Bonds and is the number one investor amongst foreign governments. Other BRICS members such Brazil and India own respectively $250 billion and $64 billion in T-Bonds. Consequently, the threat by BRICS members of a coordinated fire sale would represent more than $1.6 trillion in T-Bonds. This would be a powerful enough “financial weapon of mass destruction,” to quote Warren Buffet, to crash Wall Street, the US dollar, and by a ripple effect, the European financial markets.¶ Economic sanctions’ global boomerang effect¶ **China has** rightly **warned that drastic economic sanctions against Russia, and Russia’s subsequent retaliation could make the global economy “spiral into chaos**.” Sanctions on Russian exports would greatly expose the EU. Europe imports 30 percents of its gas from the Russian state-owned company Gazprom. Russia is also Europe’s biggest customer. The EU is, by far, Russia’s leading trade partner and accounts for about 50 percent of all Russian exports and imports. In 2014, EU-Russia overall trade stands at around 360 billion Euros per year. Russia’s total export to the EU, which is principally raw materials such as gas and oil, stands at around 230 billion Euros, while Russia’s imports from the EU amount to around 130 billion Euros of mainly manufactured products as well as foodstuff. The EU is also the largest investor in the Russian economy and accounts for 75 percent of all foreign investments in Russia.¶ In case of Western economic sanctions, **Russian lawmakers have announced** that **they would** pass a bill to **freeze the assets of European and American companies that operate in Russia**. On the other side, more than 100 Russian businessmen and politicians are allegedly targeted by the EU for a freeze of their European assets. Besides Alexey Miller, head of the state-owned Gazprom, the CEO of Rosneft, Igor Sechin, is also apparently on the sanction hit list. Rosneft is the largest listed oil company in the world and, as such, has partners worldwide, including in the West. For example, the US-based company Exxon-Mobil has a $500 million oil-exploration project with Rosneft in Siberia, and Exxon-Mobil is already in partnership with the Russian giant oil company to exploit Black Sea oil reserves.¶ Global zero sum game or is it fracking stupid?¶ The US’ booming fracking business and its lobbyists in Washington view Ukraine’s crisis as an opportunity for expansion into new markets. They argue that the US can provide Europe with all its gas needs and, by doing so, make obsolete Russia’s main economic weapon of shutting off EU’s main gas supply. Needless to say, this would harm the Russian economy by cutting off one of its key sources of revenue, which amounts to $230 billion a year of export to the EU.¶ On paper and in theory, the plan to supply the EU with natural gas from fracking sounds manageable. Fortunately, for the sake of the environment, this idea to provide Europe with gas proudly made in the USA is a pie in the sky. Fracking has been singled out as perhaps the most damaging way to extract energy, due to its pollution of water, release of the extremely strong greenhouse gas methane, and potential to cause earthquakes. Realistically, it would take at least three years to sort out the issues of transport, storage and distribution of the US-derived natural gas for Europe. Europeans have a choice: either stick to Gazprom’s cheap and reliable gas or rely on Uncle Sam’s pipe dream for their energy needs. **Military escalation is unlikely once Crimea decides to join the Russian federation: NATO doesn’t have the stomach for it**. **On the other hand, economic sanctions and the Russian retaliations are a recipe for disaster. This game of sanctions is a global zero sum game that could make the 2008 crash look for all of us like a walk in the park**.

**Collapse causes global nuclear warfare**

**Merlini 11** (Cesare, nonresident senior fellow, Center on the United States and Europe, chairman of the Board of Trustees of the Italian Institute for International Affairs, “A Post-Secular World?” Survival, 53(2), 2011, ebsco, ldg)

Two neatly opposed scenarios for the future of the world order illustrate the range of possibilities, albeit at the risk of oversimplification. The first scenario entails the premature crumbling of the post-Westphalian system. **One or more of the acute tensions apparent today evolves into an open and traditional conflict between states, perhaps** even **involving the use of nuclear weapons. The crisis** **might be triggered by a collapse of the global economic and financial system**, the vulnerability of which we have just experienced, **and the prospect of a second Great Depression, with consequences for peace and democracy similar to those of the first. Whatever the trigger, the unlimited exercise of national sovereignty, exclusive self-interest and rejection of** **outside interference** would self-interest and rejection of outside interference **would** likely **be amplified, emptying**, perhaps entirely, the half-full glass of **multilateralism**, including the UN and the European Union. Many of the more likely conflicts, such as between Israel and Iran or India and Pakistan, have potential religious dimensions. Short of war, **tensions** such as those related to immigration might **become unbearable.** **Familiar issues of creed and identity could be exacerbat**ed. One way or another, the **secular rational approach would be sidestepped by a return to theocratic absolutes**, competing or **converging** **with** secular absolutes such as **unbridled nationalism.**

### OFF

#### Wartime causes circumvention--The intractable battle creates a national diversion that impairs military wartime decisions

Lobel 8—Professor of Law @ University of Pittsburgh [Jules Lobel, “Conflicts Between the Commander in Chief and Congress: Concurrent Power over the Conduct of War,” Ohio State Law Journal, Vol. 69, 2008, pg. 391]

The critical difficulty with a contextual approach is its inherent ambiguity and lack of clarity, which tends to sharply shift the balance of power in favor of a strong President acting in disregard of congressional will. For example, the application of the Feldman and Issacharoff test asking whether the congressional restriction makes realistic sense in the modern world would yield no coherent separation of powers answer if applied to the current Administration’s confrontation with Congress. It would undoubtedly embolden the President to ignore Congress’s strictures. The President’s advisors would argue that the McCain Amendment’s ban on cruel and inhumane treatment, or FISA’s requirement of a warrant, does not make realistic sense in the context of the contemporary realities of the war on terror in which we face a shadowy, ruthless nonstate enemy that has no respect for laws or civilized conduct, a conclusion hotly disputed by those opposed to the President’s policies. Focusing the debate over whether Congress has the power to control the treatment of detainees on the President’s claim that the modern realities of warfare require a particular approach will merge the separation of powers inquiry of who has the power with the political determination of what the policy ought to be. Such an approach is likely to encourage the President to ignore and violate legislative wartime enactments whenever he or she believes that a statute does not make realistic sense—that is, when it conflicts with a policy the President embraces. 53¶ The contextual approach has a “zone of twilight” quality that Justice Jackson suggested in Youngstown. 54 Often constitutional norms matter less than political realities—wartime reality often favors a strong President who will overwhelm both Congress and the courts. While it is certainly correct— as Jackson noted—that neither the Court nor the Constitution will preserve separation of powers where Congress is too politically weak to assert its authority, a fluid contextual approach is an invitation to Presidents to push beyond the constitutional boundaries of their powers and ignore legislative enactments that seek to restrict their wartime authority.¶ Moreover, another substantial problem with a contextual approach in the war powers context is that the judiciary is unlikely to resolve the dispute. 55 The persistent refusal of the judiciary to adjudicate the constitutionality of the War Powers Resolution strongly suggests that courts will often refuse to intervene to resolve disputes between the President and Congress over the constitutionality of a statute that a President claims impermissibly interferes with her conduct of an ongoing war. 56 This result leaves the political branches to engage in an intractable dispute over the statute’s constitutionality that saps the nation’s energy, diverts focus from the political issues in dispute, and endangers the rule of law.¶ Additionally, in wartime it is often important for issues relating to the exercise of war powers to be resolved quickly. Prompt action is not usually the forte of the judiciary. ¶ If, however, a constitutional consensus exists or could be consolidated that Congress has the authority to check the President’s conduct of warfare, that consensus might help embolden future Congresses to assert their power. Such a consensus might also help prevent the crisis, chaos, and stalemate that may result when the two branches assert competing constitutional positions and, as a practical matter, judicial review is unavailable to resolve the dispute.¶ Moreover, the adoption of a contextual, realist approach will undermine rather than aid the cooperation and compromise between the political branches that is so essential to success in wartime. In theory, an unclear, ambiguous division of power between the branches that leaves each branch uncertain of its legal authority could further compromise and cooperation. However, modern social science research suggests that the opposite occurs. 57 Each side in the dispute is likely to grasp onto aspects or factors within the ambiguous or complex reality to support its own self-serving position. This self-serving bias hardens each side’s position and allows the dispute to drag on, as has happened with the ongoing, unresolved dispute over the constitutionality of the War Powers Resolution. Pg. 407-409

#### The impact is great power war

Haass 13 (Richard N. Haass, President, Council on Foreign Relations, “What is the effect of U.S. domestic political gridlock on international relations?” http://www.cfr.org/us-strategy-and-politics/effect-us-domestic-political-gridlock-international-relations/p30725)

There is a well-known adage that politics stops at the water's edge, but this tends to be more hope than reality. American history is filled with examples in which political disagreement at home has made it difficult for the United States to act, much less lead, abroad. Division within Congress or between the legislative and executive branches can make it impossible for individuals to be placed in senior positions. Such divisions can also make it impossible to conclude treaties, appropriate funds for foreign assistance, or pass specific reforms, such as the current proposed reform for immigration policy. A lack of consensus also can undermine investment in the foundations of American power, from resources for defense and diplomacy to education and infrastructure. Gridlock at home can also work against the ability of the United States to set an example that other societies will want to emulate. And it makes the United States less predictable, something that can unnerve allies and others who depend on this country, and embolden adversaries. All this tends to contribute to global disorder—one reason I titled my new book Foreign Policy Begins at Home.

## Case

**Calc Good: 1NC**

**Calculation is good, inevitable and ethical**

Richard L. Revesz, Professor, Law, NYU and Michael A. **Livermore**, Executive Director, Institute for Policy Integrity, RETAKING RATIONALITY: HOW COST-BENEFIT ANALYSIS CAN BETTER PROTECT THE ENVIRONMENT AND OUR HEALTH, 20**08**, p. 1-4.

**Governmental decisions are** also **fundamentally different from personal decisions** in that **they** often **affect people in the aggregate**. In our individual lives, we come into contact with at least some of the consequences of our decisions. If we fail to consult a map, we pay the price: losing valuable time driving around in circles and listening to the complaints of our passengers. We are constantly confronted with the consequences of the choices that we have made. Not so for governments, however, which exercise authority by making decisions at a distance. Perhaps one of the most challenging aspects of governmental decisions is that they require a special kind of compassion—one that can seem, at first glance, cold and calculating, the antithesis of empathy. The aggregate and complex nature of governmental decisions does not address people as human beings, with concerns and interests, families and emotional relationships, secrets and sorrows. Rather, people are numbers stacked in a column or points on a graph, described not through their individual stories of triumph and despair, but by equations, functions, and dose-response curves. The language of **governmental decisionmaking can seem to**—and to a certain extent does—**ignore what makes individuals** unique and morally important. But, although the language of bureaucratic decisionmaking can be dehumanizing, **it is** also **a prerequisite for the** kind of **compassion** that is **needed** in contemporary society. Elaine Scarry has developed a comparison between individual compassion and statistical compassion.' Individual compassion is familiar—when we see a person suffering, or hear the story of some terrible tragedy, we are moved to take action. Statistical compassion seems foreign—we hear only a string of numbers but must comprehend "the concrete realities embedded there."' Individual compassion derives from our social nature, and may be hardwired directly into the human brain.' Statistical compassion calls on us to use our higher reasoning power to extend our natural compassion to the task of solving more abstract—but no less real—problems. Because compassion is not just about making us feel better—which we could do as easily by forgetting about a problem as by addressing it—we have a responsibility to make the best decisions that we can. This book argues that cost-benefit analysis, properly conducted, can improve environmental and public health policy. **Cost-benefit analysis**—the translation of human lives and acres of forest into the language of dollars and cents—**can seem harsh** and impersonal. **But such an approach is** also **necessary** to improve the quality of decisions that regulators make. **Saving the most lives**, and best protecting the quality of our environment and our health—in short, exercising our compassion most effectively—**requires us to step back** and use our best analytic tools. Sometimes, in order to save a life, we need to treat a person like a number. This is the challenge of statistical compassion. This book is about making good decisions. It focuses on the area of environmental, health and safety regulation. These regulations have been the source of numerous and hard-fought controversies over the past several decades, particularly at the federal level. Reaching the right decisions in the areas of environmental protection, increasing safety, and improving public health is clearly of high importance. Although it is admirable (and fashionable) for people to buy green or avoid products made in sweatshops, efforts taken at the individual level are not enough to address the pressing problems we face—there is a vital role for government in tackling these issues, and sound collective decisions concerning regulation are needed. There is a temptation to rely on gut-level decisionmaking in order to avoid economic analysis, which, to many, is a foreign language on top of seeming cold and unsympathetic. For government to make good decisions, however, it cannot abandon reasoned analysis. Because of the complex nature of governmental decisions, we have no choice but to deploy complex analytic tools in order to make the best choices possible**. Failing to use these tools**, which **amounts to abandoning our duties to one another,** is not a legitimate response. Rather, **we** must **exercise** statistical **compassion by recognizing** what **numbers** of lives saved **represent: living** and breathing **human beings,** unique, with rich inner lives and an interlocking web of emotional relationships. The acres of a forest can be tallied up in a chart, but that should not blind us to the beauty of a single stand of trees. We need to use complex tools to make good decisions while simultaneously remembering that we are not engaging in abstract exercises, but that we are having real effects on people and the environment. In our personal lives, it would be unwise not to shop around for the best price when making a major purchase, or to fail to think through our options when making a major life decision. It is equally foolish for government to fail to fully examine alternative policies when making regulatory decisions with life-or-death consequences. This reality has been recognized by four successive presidential administrations. Since 1981, the cost-benefit analysis of major regulations has been required by presidential order. Over the past twenty-five years, however, environmental and other progressive groups have declined to participate in the key governmental proceedings concerning the cost-benefit analysis of federal regulations, instead preferring to criticize the technique from the outside. The resulting asymmetry in political participation has had profound negative consequences, both for the state of federal regulation and for the technique of cost-benefit analysis itself. Ironically, this state of affairs has left progressives open to the charge of rejecting reason, when in fact strong environmental and public health pro-grams are often justified by cost-benefit analysis. It is time for progressive groups, as well as ordinary citizens, to retake the high ground by embracing and reforming cost-benefit analysis. The difference between being unthinking—failing to use the best tools to analyze policy—and unfeeling—making decisions without compassion—is unimportant: Both lead to bad policy. **Calamities** can **result from the failure to use** either emotion or **reason.** Our emotions provide us with the grounding for our principles, our innate interconnectedness, and our sense of obligation to others. We use our powers of reason to build on that emotional foundation, and act effectively to bring about a better world.

**Util Good: Core—1NC**

**Default to consequences and util—anything else is tautological**

Joshua **Greene**, Associate Professor, Harvard University, “The Secret Joke of Kant’s Soul,” 20**10**, www.fed.cuhk.edu.hk/~lchang/material/Evolutionary/Developmental/Greene-KantSoul.pdf

What turn-of-the-millennium science is telling us is that human moral judgment is not a pristine rational enterprise, that our moral judgments are driven by a hodgepodge of emotional dispositions, which themselves were shaped by a hodgepodge of evolutionary forces, both biological and cultural. Because of this, **it is exceedingly unlikely** that **there is any** rationally **coherent** normative moral **theory that can accommodate** our **moral intuitions**. Moreover, anyone who claims to have such a theory, or even part of one, almost certainly doesn't. Instead, what that person probably has is a moral rationalization. It seems then, that we have somehow crossed the infamous "is"-"ought" divide. How did this happen? Didn't Hume (Hume, 1978) and Moore (Moore, 1966) warn us against trying to derive an "ought" from and "is?" How did we go from descriptive scientific theories concerning moral psychology to skepticism about a whole class of normative moral theories? The answer is that we did not, as Hume and Moore anticipated, attempt to derive an "ought" from and "is." That is, our method has been inductive rather than deductive. We have inferred on the basis of the available evidence that the phenomenon of rationalist deontological philosophy is best explained as a rationalization of evolved emotional intuition (Harman, 1977). Missing the Deontological Point I suspect that rationalist deontologists will remain unmoved by the arguments presented here. Instead, I suspect, they will insist that I have simply misunderstood whatKant and like-minded deontologists are all about. **Deontology,** they will say, isn't about this intuition or that intuition. It's not defined by its normative differences with consequentialism. Rather, deontology **is about taking humanity seriously**. Above all else, it's about respect for persons. It's about treating others as fellow rational creatures rather than as mere objects, about acting for reasons rational beings can share. And so on (Korsgaard, 1996a; Korsgaard, 1996b).This is, no doubt, how many deontologists see deontology. **But this** insider's view, as I've suggested, may be misleading. The problem, more specifically, is that it **defines deontology in terms of values that are not distinctively** **deontological**, though they may appear to be from the inside. Consider the following analogy with religion. When one asks a religious person to explain the essence of his religion, one often gets an answer like this: "It's about love, really. It's about looking out for other people, looking beyond oneself. It's about community, being part of something larger than oneself." This sort of answer accurately captures the phenomenology of many people's religion, but it's nevertheless inadequate for distinguishing religion from other things. This is because many, if not most, non-religious people aspire to love deeply, look out for other people, avoid self-absorption, have a sense of a community, and be connected to things larger than themselves. In other words, secular humanists and atheists can assent to most of what many religious people think religion is all about. From a secular humanist's point of view, in contrast, what's distinctive about religion is its commitment to the existence of supernatural entities as well as formal religious institutions and doctrines. And they're right. These things really do distinguish religious from non-religious practices, though they may appear to be secondary to many people operating from within a religious point of view. In the same way, I believe that most of the standard deontological/Kantian self-characterizatons fail to distinguish deontology from other approaches to ethics. (See also Kagan (Kagan, 1997, pp. 70-78.) on the difficulty of defining deontology.) It seems to me that consequentialists, as much as anyone else, have respect for persons, are against treating people as mere objects, wish to act for reasons that rational creatures can share, etc. **A consequentialist respects other persons, and** **refrains from treating them as mere objects, by counting every person's well-being** in the decision-making process. Likewise, **a consequentialist** attempts to **act according to reasons that rational creatures can share** by acting according to principles **that give equal weight to everyone's interests**, i.e. that are impartial. This is not to say that consequentialists and deontologists don't differ. They do. It's just that the real differences may not be what deontologists often take them to be. What, then, distinguishes deontology from other kinds of moral thought? A good strategy for answering this question is to start with concrete disagreements between deontologists and others (such as consequentialists) and then work backward in search of deeper principles. This is what I've attempted to do with the trolley and footbridge cases, and other instances in which deontologists and consequentialists disagree. **If you ask** a deontologically-minded person **why it's wrong to push someone** in front of speeding trolley in order **to save five** others, you will getcharacteristically deontological **answers.** Some **will be tautological:** "Because it's murder!"Others will be more sophisticated: "The ends don't justify the means." "You have to respect people's rights." But, as we know, these answers don't really explain anything, because if you give the same people (on different occasions) the trolley case or the loop case (See above), they'll make the opposite judgment, even though their initial explanation concerning the footbridge case applies equally well to one or both of these cases. Talk about rights, respect for persons, and reasons we can share are natural attempts to explain, in "cognitive" terms, what we feel when we find ourselves having emotionally driven intuitions that are odds with the cold calculus of consequentialism. Although these explanations are inevitably incomplete, there seems to be "something deeply right" about them because they give voice to powerful moral emotions. But, as with many religious people's accounts of what's essential to religion, they don't really explain what's distinctive about the philosophy in question.

### Case: Drones Stuff

#### Civilian deaths overestimated and declining – prefer most recent evidence

**Cohen 13** 5/23 (Michael, “Give President Obama a chance: there is a role for drones”, 2013, <http://www.guardian.co.uk/commentisfree/2013/may/23/obama-drone-speech-use-justified>, CMR)

I disagree. Increasingly it appears that arguments like Friedersdorf makes are no longer sustainable (and there's real question if they ever were). Not only have drone strikes decreased, but so too have the number of civilians killed – and dramatically so.¶ This conclusion comes not from Obama administration apologists but rather, Chris Woods, whose research has served as the empirical basis for the harshest attacks on the Obama Administration's drone policy.¶ Woods heads the covert war program for the Bureau of Investigative Journalism (TBIJ), which maintains one of three major databases tabulating civilian casualties from US drone strikes. The others are the Long War Journal and the New America Foundation (full disclosure: I used to be a fellow there). While LWJ and NAJ estimate that drone strikes in Pakistan have killed somewhere between 140 and 300 civilians, TBIJ utilizes a far broader classification for civilians killed, resulting in estimates of somewhere between 411-884 civilians killed by drones in Pakistan. The wide range of numbers here speaks to the extraordinary challenge in tabulating civilian death rates.¶ There is little local reporting done on the ground in northwest Pakistan, which is the epicenter of the US drone program. As a result data collection is reliant on Pakistani news reporting, which is also dependent on Pakistani intelligence, which has a vested interest in playing up the negative consequences of US drones.¶ When I spoke with Woods last month, he said that a fairly clear pattern has emerged over the past year – far fewer civilians are dying from drones. "For those who are opposed to drone strikes," says Woods there is historical merit to the charge of significant civilian deaths, "but from a contemporary standpoint the numbers just aren't there."¶ While Woods makes clear that one has to be "cautious" on any estimates of casualties, it's not just a numeric decline that is being seen, but rather it's a "proportionate decline". In other words, the percentage of civilians dying in drone strikes is also falling, which suggests to Woods that US drone operators are showing far greater care in trying to limit collateral damage.¶Woods estimates are supported by the aforementioned databases. In Pakistan, New America Foundation claims there have been no civilian deaths this year and only five last year; Long War Journal reported four deaths in 2012 and 11 so far in 2013; and TBIJ reports a range of 7-42 in 2012 and 0-4 in 2013. In addition, the drop in casualty figures is occurring not just in Pakistan but also in Yemen.¶ These numbers are broadly consistent with what has been an under-reported decline in drone use overall. According to TBIJ, the number of drone strikes went from 128 in 2010 to 48 in 2012 and only 12 have occurred this year. These statistics are broadly consistent with LWJ and NAF's reporting. In Yemen, while drone attacks picked up in 2012, they have slowed dramatically this year. And in Somalia there has been no strike reported for more than a year.¶ Ironically, these numbers are in line with the public statements of CIA director Brennan, and even more so with Senator Dianne Feinstein of California, chairman of the Select Intelligence Committee, who claimed in February that the numbers she has received from the Obama administration suggest that the typical number of victims per year from drone attacks is in "the single digits".¶¶ Part of the reason for these low counts is that the Obama administration has sought to minimize the number of civilian casualties through what can best be described as "creative bookkeeping". The administration counts all military-age males as possible combatants unless they have information (posthumously provided) that proves them innocent. Few have taken the White House's side on this issue (and for good reason) though some outside researchers concur with the administration's estimates.¶ Christine Fair, a professor at Georgetown University has long maintained that civilian deaths from drones in Pakistan are dramatically overstated. She argues that considering the alternatives of sending in the Pakistani military or using manned aircraft to flush out jihadists, drone strikes are a far more humane method of war-fighting.¶ So how does one explain this rather important shift in the US drone war? ¶ The reasons appear to be three-fold. First, as technology has improved so too have the capabilities of drone operators to be more precise. Second, there appears to be shift in targeting, particularly away from so-called "signature strikes" that rely more on behavior than specific intelligence to justify kills. Considering the criticism of the program – from both inside and outside the US – it's difficult to imagine this hasn't given impetus for Obama administration officials to take even greater caution in how drones are utilized. Or to put it more directly, drone critics are having a constructive impact.¶ But there's a third reason: as the war in Afghanistan has begun to wind down the use of drones against militants across the border from Pakistan has declined as well.

#### Limiting targeted killings in Pakistan causes a shift to ground assaults---turns the case and collapses the Pakistani government

Richard Weitz 11, Senior Fellow and Director of the Center for Political-Military Analysis at the Hudson Institute, 1/2/11, “WHY UAVS HAVE BECOME THE ANTI-TERROR WEAPON OF CHOICE IN THE AFGHAN-PAK BORDER,” http://www.sldinfo.com/why-uavs-have-become-the-anti-terror-weapon-of-choice-in-the-afghan-pak-border/

Perhaps the most important argument in favor of using UAV strikes in northwest Pakistan and other terrorist havens is that alternative options are typically worse.

The Pakistani military has made clear that it is neither willing nor capable of repressing the terrorists in the tribal regions. Although the controversial ceasefire accords Islamabad earlier negotiated with tribal leaders have formally collapsed, the Pakistani Army has repeatedly postponed announced plans to occupy North Waziristan, which is where the Afghan insurgents and the foreign fighters supporting them and al-Qaeda are concentrated.

Such a move that would meet fierce resistance from the region’s population, which has traditionally enjoyed extensive autonomy. The recent massive floods have also forced the military to divert its assets to humanitarian purposes, especially helping the more than ten million displaced people driven from their homes.

But the main reason for their not attacking the Afghan Taliban or its foreign allies based in Pakistan’s tribal areas is that doing so would result in their joining the Pakistani Taliban in its vicious fight with the Islamabad government.

Yet, sending in U.S. combat troops on recurring raids or a protracted occupation of Pakistani territory would provoke widespread outrage in Pakistan and perhaps in other countries as well since the UN Security Council mandate for the NATO-led International Security Assistance Force (ISAF) in Afghanistan only authorizes military operations in Pakistan.

On the one known occasion when U.S. Special Forces actually conducted a ground assault in the tribal areas in 2008, the Pakistanis reacted furiously. On September 3, 2008, a U.S. Special Forces team attacked a suspected terrorist base in Pakistan’s South Waziristan region, killing over a dozen people. These actions evoked strong Pakistani protests. Army Chief of Staff Gen. Ashfaq Kayani, who before November 2007 had led Pakistan’s Inter-Services Intelligence (ISI), issued a written statement denying that “any agreement or understanding [existed] with the coalition forces” [in Afghanistan] allowing them to strike inside Pakistan.” The general pledged to defend Pakistan’s sovereignty and territorial integrity “at all cost.” Prime Minister Yousaf Raza Gilani and President Asif Ali Zardari also criticized the U.S. ground operation on Pakistani territory. On September 16, 2008, the Pakistani army announced it would shoot any U.S. forces attempting to cross the Afghan-Pakistan border.

On several occasions since then, Pakistani troops and militia have fired at what they believed to be American helicopters flying from Afghanistan to deploy Special Forces on their territory, though there is no conclusive evidence that the U.S. military has ever attempted another large-scale commando raid in Pakistan after the September 2008 incident.

Further large-scale U.S. military operations into Pakistan could easily rally popular support behind the Taliban and al-Qaeda. It might even precipitate the collapse of the Islambad government and its replacement by a regime in nuclear-armed Pakistan that is less friendly to Washington.

Given these alternatives, continuing the drone strikes appears to be the best of the limited options available to deal with a core problem, giving sanctuary to terrorists striking US and coalition forces in Afghanistan and beyond.

**Their Islamophobia claims are too sweeping --- our authors are epistemologically sound and the West isn’t inevitably tainted**

**Joppke 9**, professor of politics – American University of Paris, PhD Sociology – Berkeley

(Christian, “Limits of Integration Policy: Britain and Her Muslims,” Journal of Ethnic and Migration Studies, Volume 35, Issue 3)

**The** Runnymede **report defines Islamophobia as certain ‘closed’ views of Islam**, which are **distinguished from ‘open views’ in terms of** eight **binary oppositions, such as ‘monolithic/diverse’, ‘separate/interacting’, or ‘inferior/different’** (the first adjective always marking a ‘closed’, the second an ‘open’ view). **This makes for an elastic definition of Islamophobia, with little that could not be packed into it.** Consider the eighth binary opposition, ‘Criticism of West rejected/considered’. **If ‘criticisms made by Islam of “The West**” (**are**) **rejected out of hand’, there is an instance of Islamophobia**, the non-biased attitude being that ‘criticisms of “the West” and other cultures are considered and debated’. Is it reasonable to assume that people enter debate by putting their point of view to disposition? **Under such demanding standards, only an advocate of Habermasian communicative rationality would go free of the charge of Islamophobia.** However, the real problem is to leave unquestioned the exit position, ‘criticism of the West’. **In being sweeping and undifferentiated, such a stance seems to be no less phobic than the incriminated opposite.** If the point of the Runnymede report is to ‘counter Islamophobic assumptions that Islam is a single monolithic system’, **it seems inconsistent to take for granted a** similarly **monolithic ‘criticism of “the West”’, which the ‘West’ is asked to ‘consider and debate’**. **There is a double standard here**, in that ‘**the West’ is asked to swallow what on the other side would qualify as phobia.**

**Islamophobia has zero causal explanatory power as a method and can’t solve it because it’s so nebulous**

**Bleich 11**, professor of political science – Middlebury (Erik, “What Is Islamophobia and How Much Is There? Theorizing and Measuring an Emerging Comparative Concept,” American Behavioral Scientist, 55(12) p. 1581-1600)

**Islamophobia is a widely used concept** in public and scholarly circles. It was originally **developed** in the late 1990s and early 2000s by political activists, nongovernmental organizations (NGOs), public commentators, and international organizations **to draw attention to harmful rhetoric and actions directed at Islam and Muslims in Western liberal democracies.** For actors like these, the term not only identifies anti- Islamic and anti-Muslim sentiments, it also provides a language for denouncing them. In recent years, **Islamophobia has evolved from a primarily political concept toward one increasingly deployed for analytical purposes. Researchers have begun using the term to identify the history, presence, dimensions, intensity, causes, and consequences of anti-Islamic and anti-Muslim sentiments**. In short, Islamophobia is an emerging comparative concept in the social sciences. **Yet, there is no widely accepted definition of the term.** **As a result, it is extremely difficult to compare levels of Islamophobia** across time, location, or social group, or to levels of analogous categories such as racism, anti-Semitism, or xenophobia. **Without a concept that applies across these comparative dimensions, it is** also virtually **impossible to identify** the **causes and consequences** **of Islamophobia with any precision.**

**No empirical support for Islamophobia driving violence**

**Halliday**, professor of international relations – London School of Economics, **‘99**

(Fred, “`Islamophobia’ reconsidered,” *Ethnic and Racial Studies* Volume 22, Number 5, p. 892-902, September)

**To identify conflicts between Muslims and non-Muslims is**, however, **not sufficient to explain such tensions** or to identify how to resolve them. It is here that some of the conciliatory coverage, exempliéed in the Runnymede and Wilton Park reports, may be open to question. **Too often political and humanist good intentions** seem to have **got the better of sociological analysis**. In the érst place, **there is the question of historical context. It is tempting, but misleading, to link** contemporary **hostility to Muslims to the long history of conflict between ‘Islam’ and the West.** Bobby Sayyid does this – ‘the return of the repressed’ – without evidence. Even more so is it mistaken, as so many commentators seem to think they are clever by doing, to ascribe contemporary hostility to ‘Islam’, to the end of the Cold War. T**his presupposes something, for which there is little evidence, that modern society, ‘the West’, needs an enemy**.2 **One has to apply to this prejudice** and, indeed, to the study of prejudice in general, **the same sociological critique** that is **applied to other ideologies**: the perennialists *will* argue that such ideologies are permanent, be they Islamophobia or anti-Semitism. But **a modernist reading is** also possible and **more plausible.**

**1. Application of the Jirga to competitive debate and specifically their claim that the 1ac was performing a jirga requires rejection of the aff because they select Jirga members who have personal interest in the decision of the dispute – ie the ballot**

**CAMP, 12** COMMUNITY APPRAISAL AND MOTIVATION PROGRAMME and SAFERWORLD, march 2012, http://www.saferworld.org.uk/downloads/pubdocs/The20Jirga20justice20and20conflict20transformation.pdf

Apart from women’s participation in Jirga, there were also concerns raised about which members of society were selected for a Jirga. Some of the groups interviewed as part of the research would support attempts to encourage a broadening of participation in the Jirga process. Youth respondents argued that every strata of society should be given proper representation, and should be proportional to population and should include “…Falah-i Tanzeem [social organisations], NGOs, government institutions and CBOs… [t]his will also broaden the scope of the Jirga.”57 Younger respondents wanted to see a broader selection of Jirga leaders and the creation of a formal office, which would move meetings from a hujra (a place of guests and gatherings for the male population in the community) to a permanent community hall. The selection of Jirga members and the Jirgamaar in particular was identified as being critical to ensuring credible and fair resolutions. Both male and female respondents felt that the most important criteria for a Jirga member is their knowledge of the local customs and that they should have earned respect in the area, be honest and be well respected among the community (though defining this is problematic). In other words, as each village and region practices their own traditions, values and customs, the member should be knowledgeable and well versed in the local traditions and regulations. The specific tribal position of a potential Jirga member was another factor to be taken in to consideration in member selection. The members should also be unbiased and just when resolving conflicts and disputes. Lastly, they said that the leader of the Jirga should have no personal interest in the decision of a dispute.

**2. They inappropriately romanticize the Jirga – can’t solve social change and too prone to perceptions of corruption**

**CAMP, 12** COMMUNITY APPRAISAL AND MOTIVATION PROGRAMME and SAFERWORLD, march 2012, http://www.saferworld.org.uk/downloads/pubdocs/The20Jirga20justice20and20conflict20transformation.pdf

Despite the centrality of Jirga in Pakhtun society, it would be inappropriate to romanti-cise the Jirga and Pakhtun society in general. The recent past, with experiences of militancy and natural disasters, have presented the Jirga with an unprecedented challenge: to provide local leadership but at the same time to respond to the changing demands of the population, the state and the international community. This has been further complicated by modernisation and globalisation which have brought new found wealth and power to particular groups and, in the eyes of some communities, has contributed to the degradation and corruption of the Jirga. Several respondents noted that there has been a diminishing strength of Jirga in the region as a result of the socio-economic and political processes in the last generation. As one respondent explained ".. .the Swat dynastic system was based upon the Riwaj (tradition) in which Jirga played a very important role, but merging with Pakistan in 1969 disturbed that fabric. The government tried to introduce an alternative to the Jirga system; it was a legal system from 1975 under FATA Regulation Act. The system worked up until 1993, after which that system also diminished the new type of Jirga system and thus Jirga faced its decay."35 The long term decay of the Jirga as a viable system of governance was reiterated by a respondent who said, ".. .after the establishment of government system, the role of the Jirga was passed on to the government institution, which led to the decay of Jirga. After the disappearance of Swat dominion [in 1969] the Government of Pakistan failed to maintain the previous political system. Thus the locals lost their political system as well as Jirga system."36 Thus, while recognising the importance of Jirga to Pakhtun society, it is not appropriate to assume that it holds all the answers. Social and political changes in Pakistan and the influence of conflict in neighbouring Afghanistan have affected the evolution of the Jirga. Despite enjoying a renaissance in the recent past, research participants believed that as a viable system of governance the Jirga has been in long-term decay. While defending its continued importance to Pakhtun society, stressing its value and relevance, there was tacit acceptance that the experience of Jirga now is different to that in the past and those involved in the Jirga no longer command the same respect, not least due to perceived corruption in the system.

**3. Jirgas too easily corrupted – allow protection for most powerful at expense of true justice**

**CAMP, 12** COMMUNITY APPRAISAL AND MOTIVATION PROGRAMME and SAFERWORLD, march 2012, http://www.saferworld.org.uk/downloads/pubdocs/The20Jirga20justice20and20conflict20transformation.pdf

While there were concerns about general bias in the group discussions, respondents in the individual interviews, who were perhaps more willing to discuss sensitive issues, identified corruption as the main issue that has weakened the Jirga system. There are clearly concerns with some Jirgas as one respondent from Lower Dir noted that ".. .in our area when a dispute is solved between two people and the influential person does not listen or follow the decision there is nothing that we can do about it." In early practice Jirga members would be chosen in line with their age and place in the community (i.e. tribal lineage). However several respondents described how money is now one of the key determinants about what role a Jirga member can play in resolving disputes. The emergence of new power centres based on wealth, social status and political influence has also diluted the authority of Jirga which have found that they cannot always enforce decisions that the Jirga members have taken. The consensual nature of the Jirga decisions means that they rely on the powerful members of the community to back those decisions (implicitly or explicitly). There have even been cases (see case study above) where the Supreme Court of Pakistan has lacked the necessary influence to enforce decisions, as a powerful group of elders in the tribal regions has more influence in that area than the courts. However, this then begs the question: who would be able to enforce a decision on the leaders who are already powerful if they themselves have engaged in an event that could or should be sanctioned by a Jirga? The extent of the monetisation of justice has led some local people to refer to the system as da Paiso Jirga, or literally 'the Money Jirga, meaning that **Jirgas have become a commodity that can be purchased for the right price**. The concerns about corruption are the same as those leveled by many local people about the formal system, which may indicate that it is the broader system of justice that is being corrupted rather than simply the formal or informal system. Thus reform of the broader judicial system is required. These respondents also reject the notion that Jirga has been delivering quick and cost effective justice, undermining romantic and historical notions of the Jirga being open to all. For example, the Jirga decisions are often made after several meetings and both parties have to arrange grand feasts, and at times gifts are offered to the Jirga members, which can be costly for the plaintiffs. The more recent concerns about corruption and da Paiso Jirga mean that it can fail to deliver justice because, like the formal system, it can be manipulated easily using power and money. This would suggest that one of the reasons that the extreme forms of Sharia law may have been appealing to some segments of society was due to the fact that it was faster and more efficient than both the Jirga and court systems, and more generally the gap between the formal (court) and informal (Jirga) systems allows space for militant groups to provide justice.34

**4. Executive will interpret enforcement of ANY restriction on targeted killing authority as constitutionally void**

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

Congressional action of any kind, however, faces a very serious hurdle: as the DOJ made clear in the Aulaqi case, the executive branch position is that any infringement on the President’s targeted killing authority is simply unconstitutional. Yet if congress were to prohibit targeted killing and a court found that such a law is an unconstitutional infringement on executive authority, there is still another and perhaps final option. In the event that a federal court interprets the constitution to actually permit the targeted killing of Americans by the Executive Branch, then it would be necessary to fix this constitutional flaw. A constitutional amendment prohibiting the practice of targeted killing would thus permanently extinguish the concerns over targeted killing.243

**5. Broad interpretation of plan’s international self defense law standards are inevitable – ensure zero meaningful constraint, international controversy and global norm for preventative, active defense and anticipatory drone strikes**

**Anderson 09** [Kenneth, American University law professor, "Targeted Killing in U.S. Counterterrorism Strategy and Law", May, http://www.brookings.edu/~/media/research/files/papers/2009/5/11%20counterterrorism%20anderson/0511\_counterterrorism\_anderson.pdf]

As I have already let on, the proper international legal rationale for targeted killing is self-defense, not that the target is a combatant under IHL. Unfortunately, self-defense is one of the most contested issues in all of public international law. The U.N. Charter says, at Article 2(4), that all member-states shall “refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state.” It also goes on to say, at Article 51, that nothing in the present Charter shall “impair the inherent right of individual…self-defence if an armed attack occurs against a Member of the United Nations.” As readers are likely well aware, the potential conflicts between these two articles (as well as the potential conflicts and interpretive issues, especially with respect to the meaning of “armed attack” and the “inherent” right of self-defense under customary law, long predate the Charter) fill whole libraries of commentary. In this discussion, I confine myself strictly to the question of how a targeted killing might be viewed with respect to self-defense.64 Even so, the question remains alarmingly broad, on account of the fact that targeted killing is an activity on the cusp of perhaps the most difficult practical issue of self-defense: preemption and prevention and anticipatory self-defense.65¶ There are many views on this question and nearly endless controversies. But in the long-standing U.S. view, self-defense encompasses at least three categories:¶ • Self-defense against an actual use of force or hostile act;¶ • “Preemptive self defense against an imminent use of force;” and¶ • “Self defense against a continuing threat.”¶ These categories of U.S. interpretation are not new.66 Senior Department of Defense law of war lawyer Hays Parks noted them, for example, in a memorandum on assassinations back in 1989, long before the emergence of al Qaeda or the circumstances of September 11.67 Broadly speaking, the United States grounds its customary law views concerning anticipatory self-defense on the so-called Caroline Doctrine, which permits such actions but also limits them to circumstances in which the “necessity of self-defense is instant, overwhelming, leaving no choice of means, and no moment for deliberation.”68 Despite the apparent restrictiveness of the Caroline language, and despite the fact that many international law commentators regard it has having been superseded or at least severely curtailed by the U.N. Charter, it has served as a source of evolving state practice for the United States view since before the Civil War down to the present day, and has been seen as a source of legal justification for preemptive and preventative self-defense. One corollary of the long-standing American interpretation (but widely reflected in the views and state practice of other states since 1945) of self-defense is that, notwithstanding the apparent literal language of Article 51, no “armed attack” need have occurred “before a state may use force to counter a threat.”69¶ Moreover, as Parks also noted, the United States has always interpreted international law (including the Caroline Doctrine) so as to allow it to respond to the emergence of new kinds of threats.70 These interpretations include the self-defense right to respond to non-state actors, such as al Qaeda (indeed, the Caroline Doctrine originally concerned a non-state actor at the U.S.-Canadian border in 1837). And the United States also appears to have accepted some evolving version of what has sometimes been called the “accumulation of events” or “active defense” view of anticipatory self-defense—a variation of the category of “self-defense against a continuing threat.” As one scholar describes this “active defense” view:¶ A state may use past practices of terrorist groups and past instances of aggression as evidence of a recurring threat. In light of this threat, a state may invoke [the right of self defense]…if there is sufficient reason to believe that a pattern of aggression exists. What may appear to be retaliation is quite often an “active defense” in which a state uses past terrorist acts to justify launching preemptive strikes. Advocates of this theory believe that it offers a much more practical response to a terrorist threat; in effect, a state will no longer need to wait until it is attacked before it may use force.71¶ This theory unsurprisingly suffered something in prestige when Saddam Hussein’s Iraq turned out not to have weapons of mass destruction. Nonetheless, it remains the legal view of the United States, particularly with regard to terrorist non-state-actors. It almost unquestionably remains the view of the Obama Administration, which has been notably slow formally to relinquish legal powers of counterterrorism exercised under the Bush Administration. The legal policy of the United States has remained remarkably stable on this topic; as Hays Parks stated in 1989, the right of self-defense would support direct attack—and we can add, targeted killing—on terrorist leaders when “their actions pose a continuing threat to U.S. citizens or the national security of the United States.”72 That is not narrow language, and it was not devised after September 11 or by the Bush Administration, but was an accurate statement of American policy in the 1980s. Through the Clinton Administration, the Bush Administration, and down into the Obama Administration today, some version of self-defense has remained the true, if sometimes obfuscated, underlying legal rationale for targeted killings.¶ What does this mean for targeted killing under international law, under long-standing U.S. views? Three things primarily: First, the United States accepts as a matter of international law that a targeted killing requires justification in some fashion as self-defense in order to be a legal resort to force. Second, however, the American view of international law governing self-defense is pragmatic, flexible, and changes over time to meet new circumstances. Third and crucially from the standpoint of protecting the American legal position, the question of whether something plausibly constitutes self-defense is debated by many different “communities of interpretation” of international law, including states, congeries of states, academics and non-governmental organizations, the Security Council, the General Assembly, and the International Court of Justice. That said, the United States is entitled to assert its own interpretation of international law should it choose to make the effort to do so—and provided it is willing to bear possible substantial international diplomatic costs. That requires, however, being willing to assert it and reassert it over time, to announce a view and to act upon that view.¶ The trouble, once again, is that much of the world sees the American right of self-defense far more narrowly. Important actors in the community of international law do not even accept that the situations in which the United States has undertaken targeted killing in, for example, Pakistan constitute legitimate self-defense under the U.N. Charter. For example, the eminent international law scholar Sean D. Murphy has a forthcoming article in the influential U.S. Naval War College’s International Law Studies journal expressing grave and careful concern that, in the absence of meaningful consent by the government of Pakistan, a broad “right of self-defense against al Qaeda targets in Pakistan based on the attacks of 9/11, however, is…problematic, since the requirements of necessity and proportionality likely preclude unilateral uses of force against a third State that was not implicated in those attacks.”73¶ The gap between U.S. needs and consequent views of self-defense and the views of the international law community is probably unbridgeable. But this is not a case of the United States versus the rest of the world. There are, rather, a sizable number of states that have to worry about the possibility of enemies using havens in third countries, shielded by claims of that third country’s sovereignty. It is a delicate dance in international law; no one wants to say too much one way or the other, and when actual instances of state practice occur, very often the reaction is a discreet silence. Thus, leaving aside the United States or Israel, Murphy notes that Turkey has undertaken “various cross-border operations against the Kurdish separatist guerrilla organization…without being condemned by the Security Council, General Assembly, or [the] International Court.”74 When in 2008 Colombia attacked FARC guerrilla camps across the border in Ecuador, none of the “principal organizations of the United Nations criticized the action; while the Organization of American States adopted a resolution declaring the Colombian raid to be a violation of Ecuador’s sovereignty, the OAS stopped short of expressly condemning Colombia.”75 Two judges of the International Court of Justice each stated in separate opinions in the 2005 case Armed Activities on the Territory of the Congo that if the ICJ still endorses a literal reading of Article 51, limiting self-defense to an attack by another state, then the ICJ is no longer consistent with either state practice or the practice of the Security Council.76¶ In other words, it is important not to see the U.S. on this point as some solitary outlier from other states. The gap, rather, lies with the influential, loose body of “soft-law” opinion-makers, activists, academics, and commentators. And the tension here is neither surprising nor necessarily unhealthy. The United States will always have a need to make these kinds of flexible decisions about national security. And the dynamic will always and forever be that middling state powers, emerging great powers, outright enemies, idealistic NGOs, United Nations functionaries, law professors and intellectuals, and other such actors will seek to leverage their influence by using the rhetoric of international law to constrain U.S. flexibility in exactly this regard.

## 2NC

### T

#### The Jirga is not a law-making entity

Basturk 13 (Levint, World Bulletin, 11/23, “Loya Jirga and the future of the U.S. soldiers in Afghanistan”, http://www.worldbulletin.net/news-analysis/123515/loya-jirga-and-the-future-of-the-us-soldiers-in-afghanistan, zzx)

A "loya jirga" is essentially a gathering on a much larger scale. It is more like a “national” or “grand” assembly where elders and community leaders from across Afghanistan can debate and discuss matters of major national importance, mutually consult and ultimately vote on a proposition. Loya Jirga is an Afghan tradition which started almost three centuries ago. It is an attempt by the ruler to seek legitimacy for his government or decision. An American anthropologist Thomas Barfield argues that after a jirga chose Ahmd Shah in 1747 as the new head of the Durrani Empire, whose members would rule Afghanistan until 1978, the practice was dropped until 1915. King Habibullah made a call for a loya jirga in 1915 when he sought backing for staying neutral during World War I. Under Habibullah's successor Amanullah, they became more frequent. However, after the U.S. led invasion of Afghanistan, what we observe is a kind of "invented tradition" which followed the overthrow of the Taliban. Five loya jirgas convened in the past decade. The first of them in 2002 elected Hamid Karzai as president, the choice of the international community for interim leadership. Another loya jirga convened in 2003. It ratified the existing Afghan constitution and determined the terms of what would constitute a loya jirga, or grand assembly. It specified who must be included in it. The Loya Jirga is not a law-making body. The Afghan constitution of 2003 does allow for a Loya Jirga, made up of both houses of parliament and elected heads of regional administrations, with the power to amend the constitution, impeach the president and decide on matters of national sovereignty.

#### they un-limit the topic

BARRON\* & LEDERMAN\*\* 08 \*Professor of Law, Harvard Law School. \*\* Visiting Professor of Law, Georgetown University Law Center. [David J. Barron\* & Martin S. Lederman\*\*, THE COMMANDER IN CHIEF AT THE LOWEST EBB - FRAMING THE PROBLEM, DOCTRINE, AND ORIGINAL UNDERSTANDING, January, 2008, Havard Law Review, 121 Harv. L. Rev. 689]

5. Further Assertions of the Preclusive Commander in Chief Power. - In light of the Bush Administration's theory of preclusive Commander in Chief authority, and its consistent invocation of that argument across so many distinct areas, there are probably other examples as well. Because any further OLC documents containing arguments in support of such statutory noncompliance are not public, we do not know the extent of the phenomenon. On dozens of occasions, however, the President has invoked his power as Commander in Chief in issuing signing statements objecting to statutory enactments, suggesting that he will not fully comply with such laws in some circumstances, in particular when they cut too close to his chosen means of conducting a military campaign. n66 Moreover, the President, as we have noted, has invoked a Commander in Chief objection in vetoing a bill purporting to regulate the use of troops in Iraq. n67 The Administration has further indicated that any statutory restrictions Congress might approve on the use of force against Iran would be unconstitutional. n68 These recent assertions give practical effect to the expansive and uncompromising constitutional theory of preclusive executive war powers first enunciated in the OLC memorandum drafted two weeks after the attacks of September 11. n69

### limits impact

#### . Decision-making—having a limited topic with equitable ground is necessary to foster decision-making and clash

**Steinberg & Freeley 8** \*Austin J. Freeley is a Boston based attorney who focuses on criminal, personal injury and civil rights law, AND \*\*David L. Steinberg , Lecturer of Communication Studies @ U Miami, Argumentation and Debate: Critical Thinking for Reasoned Decision Making pp 45-

Debate is a means of settling differences, so there must be a difference of opinion or a conflict of interest before there can be a debate. If everyone is in agreement on a tact or value or policy, there is no need for debate: the matter can be settled by unanimous consent. Thus, for example, it would be pointless to attempt to debate "Resolved: That two plus two equals four," because there is simply no controversy about this statement. (Controversy is an essential prerequisite of debate. Where there is no clash of ideas, proposals, interests, or expressed positions on issues, there is no debate. In addition, debate cannot produce effective decisions without clear identification of a question or questions to be answered. For example, general argument may occur about the broad topic of illegal immigration. How many illegal immigrants are in the United States? What is the impact of illegal immigration and immigrants on our economy? What is their impact on our communities? Do they commit crimes? Do they take jobs from American workers? Do they pay taxes? Do they require social services? Is it a problem that some do not speak English? Is it the responsibility of employers to discourage illegal immigration by not hiring undocumented workers? Should they have the opportunity- to gain citizenship? Docs illegal immigration pose a security threat to our country? Do illegal immigrants do work that American workers are unwilling to do? Are their rights as workers and as human beings at risk due to their status? Are they abused by employers, law enforcement, housing, and businesses? I low are their families impacted by their status? What is the moral and philosophical obligation of a nation state to maintain its borders? Should we build a wall on the Mexican border, establish a national identification can!, or enforce existing laws against employers? Should we invite immigrants to become U.S. citizens? Surely you can think of many more concerns to be addressed by a conversation about the topic area of illegal immigration. Participation in this "debate" is likely to be emotional and intense. However, it is not likely to be productive or useful without focus on a particular question and identification of a line demarcating sides in the controversy. To be discussed and resolved effectively, controversies must be stated clearly. Vague understanding results in unfocused deliberation and poor decisions, frustration, and emotional distress, as evidenced by the failure of the United States Congress to make progress on the immigration debate during the summer of 2007. Someone disturbed by the problem of the growing underclass of poorly educated, socially disenfranchised youths might observe, "Public schools are doing a terrible job! They are overcrowded, and many teachers are poorly qualified in their subject areas. Even the best teachers can do little more than struggle to maintain order in their classrooms." That same concerned citizen, facing a complex range of issues, might arrive at an unhelpful decision, such as "We ought to do something about this" or. worse. "It's too complicated a problem to deal with." Groups of concerned citizens worried about the state of public education could join together to express their frustrations, anger, disillusionment, and emotions regarding the schools, but without a focus for their discussions, they could easily agree about the sorry state of education without finding points of clarity or potential solutions. A gripe session would follow. But if a precise question is posed—such as "What can be done to improve public education?"—then a more profitable area of discussion is opened up simply by placing a focus on the search for a concrete solution step. One or more judgments can be phrased in the form of debate propositions, motions for parliamentary debate, or bills for legislative assemblies. The statements "Resolved: That the federal government should implement a program of charter schools in at-risk communities" and "Resolved: That the state of Florida should adopt a school voucher program" more clearly identify specific ways of dealing with educational problems in a manageable form, suitable for debate. They provide specific policies to be investigated and aid discussants in identifying points of difference. To have a productive debate, which facilitates effective decision making by directing and placing limits on the decision to be made, the basis for argument should be clearly defined. If we merely talk about "homelessness" or "abortion" or "crime'\* or "global warming" we are likely to have an interesting discussion but not to establish profitable basis for argument. For example, the statement "Resolved: That the pen is mightier than the sword" is debatable, yet fails to provide much basis for clear argumentation. If we take this statement to mean that the written word is more effective than physical force for some purposes, we can identify a problem area: the comparative effectiveness of writing or physical force for a specific purpose. Although we now have a general subject, we have not yet stated a problem. It is still too broad, too loosely worded to promote well-organized argument. What sort of writing are we concerned with—poems, novels, government documents, website development, advertising, or what? What does "effectiveness" mean in this context? What kind of physical force is being compared—fists, dueling swords, bazookas, nuclear weapons, or what? A more specific question might be. "Would a mutual defense treaty or a visit by our fleet be more effective in assuring Liurania of our support in a certain crisis?" The basis for argument could be phrased in a debate proposition such as "Resolved: That the United States should enter into a mutual defense treatv with Laurania." Negative advocates might oppose this proposition by arguing that fleet maneuvers would be a better solution. This is not to say that debates should completely avoid creative interpretation of the controversy by advocates, or that good debates cannot occur over competing interpretations of the controversy; in fact, these sorts of debates may be very engaging. The point is that debate is best facilitated by the guidance provided by focus on a particular point of difference, which will be outlined in the following discussion.

### Circumvention

#### Obama lies- he loves drones

Lauren Byrd 14 1-15, Alternet¶ Wednesday, Jan 15, 2014 06:50 AM CST¶ Obama’s staggering drone hypocrisy http://www.salon.com/2014/01/15/the\_hypocrisy\_of\_drones\_what\_the\_obama\_administration\_says\_vs\_what\_happens\_partner/

 In 2013, the discussion about the Obama administration’s use of drones as weapons of war intensified. Americans became more aware of the practice, and President Obama outlined his vision of counterterrorism efforts, and how the use of these unmanned bombers fit into that vision. The upshot is that the administration continues to deploy drone strikes as its main counterterrorism strategy, ignoring both the high rate of civilian casualties associated with these attacks, and the high cost to U.S. taxpayers.¶ ¶ Take a look back at some of the statements the Obama administration made about drones in 2013, and you’ll see there’s a disconnect between what is said and what actually happens, as this brief timeline will show. Drone policy and reality are not the same. Increasingly, progressives want to know what they can do to reduce or do away with this weapon of mass destruction in 2014.¶ Winter 2013¶ ¶ What was said:¶ ¶ In March, during his confirmation hearings to become CIA director, John Brennan says this about drones: “We only use these authorities and these capabilities as a last resort.” President Obama says the U.S. government would rather capture and interrogate suspected terrorists than use targeted killings, but he echoes the Bush administration claim that it is not possible to use capture methods in the tribal areas of Pakistan. He says this is because the Pakistan government’s legal authority does not extend to federally administered tribal areas (FATAs).¶ ¶ What was done:¶ ¶ Recently, drones strikes have occurred outside of Pakistan’s tribal areas. They continue in Somalia, and in Yemen, where 15 civilians attending a wedding were reportedly killed by a drone strike in December.¶ ¶ Spring¶ ¶ What was said:¶ advertisement¶ ¶ In May, during his speech on counterterrorism at the National Defense University at Fort McNair, President Obama first defended drone strikes as legal, and said we are still at war with Al Qaeda and its affiliates. He also said our use of drones was “heavily constrained” and only in the case where a “terrorist poses a continuing and immediate threat to the American people.” He predicted that by the end of 2014 there would be a “reduced need for unmanned strikes.” Finally, he said he was releasing the framework behind the administration’s use of drone strikes to provide greater transparency on the issue.¶ ¶ What was done:¶ ¶ Obama had said the Presidential Policy Guidance would provide clear guidelines, oversight and accountability of the drone program. The PPG was only two-and-a-half pages long and does not outline legal reasoning, how strikes are coordinated with broader foreign policy objectives or the scope of legitimate targets.¶ ¶ Summer¶ ¶ What was said:¶ ¶ When asked when the U.S. would end drone strikes, Secretary of State John Kerry stated in an interview with Pakistan TV: “I think the president has a very real timeline and we hope it’s going to be very, very soon.”¶ ¶ What was done:¶ ¶ Almost immediately the State Department refuted Kerry’s statement, saying there is “no exact timeline” for ending drone strikes.¶ ¶ Things We Still Don’t Know About Drones¶ ¶ The Obama administration has not followed through on its promise to provide greater transparency about the drone program. Most of the legal rationale and procedures behind the drone program still have not been explained to the American public. Most importantly, there is no end date for the drone program, as the State Department admitted above.¶ ¶ Here’s a list of things the American public still doesn’t know about drone strikes:¶ ¶ The U.S. government’s count of civilian deaths¶ Who can be targeted¶ Which strikes are conducted by the U.S.¶ The legal processes behind who the Obama administration decides to target¶ The rationale/reasoning process in who or where they decide to strike¶ ¶ The upshot is that drone policy continues without any transparency or accountability. It became clear last year that while our government continues to cloak this policy in mystery, innocent people are dying, as Pakistani Rafiq ur Rehman testified before Congress. His family members are just a few of the innocent

#### Obama can circumvent the plan- covert loopholes are inevitable

Lohmann 1-28-13 [Julia, director of the Harvard Law National Security Research Committee, BA in political science from the University of California, Berkeley, “Distinguishing CIA-Led from Military-Led Targeted Killings,” <http://www.lawfareblog.com/wiki/the-lawfare-wiki-document-library/targeted-killing/effects-of-particular-tactic-on-issues-related-to-targeted-killings/>]

The U.S. military—in particular, the Special Operations Command (SOCOM), and its subsidiary entity, the Joint Special Operations Command (JSOC)—is responsible for carrying out military-led targeted killings.¶ Military-led targeted killings are subject to various legal restrictions, including a complex web of statutes and executive orders. For example, because the Covert Action Statute does not distinguish among institutions undertaking covert actions, targeted killings conducted by the military that fall within the definition of “covert action” set forth in 50 U.S.C. § 413(b) are subject to the same statutory constraints as are CIA covert actions. 50 U.S.C. § 413b(e). However, as Robert Chesney explains, many military-led targeted killings may fall into one of the CAS exceptions—for instance, that for traditional military activities—so that the statute’s requirements will not always apply to military-led targetings. Such activities are exempted from the CAS’s presidential finding and authorization requirements, as well as its congressional reporting rules.¶ Because such unacknowledged military operations are, in many respects, indistinguishable from traditional covert actions conducted by the CIA, this exception may provide a “loophole” allowing the President to circumvent existing oversight mechanisms without substantively changing his operational decisions. However, at least some military-led targetings do not fall within the CAS exceptions, and are thus subject to that statute’s oversight requirements. For instance, Chesney and Kenneth Anderson explain, some believe that the traditional military activities exception to the CAS only applies in the context of overt hostilities, yet it is not clear that the world’s tacit awareness that targeted killing operations are conducted (albeit not officially acknowledged) by the U.S. military, such as the drone program in Pakistan, makes those operations sufficiently overt to place them within the traditional military activities exception, and thus outside the constraints of the CAS.¶ Chesney asserts, however, that despite the gaps in the CAS’s applicability to military-led targeted killings, those targetings are nevertheless subject to a web of oversight created by executive orders that, taken together, largely mirrors the presidential authorization requirements of the CAS. But, this process is not enshrined in statute or regulation and arguably could be changed or revoked by the President at any time. Moreover, this internal Executive Branch process does not involve Congress or the Judiciary in either ex ante or ex post oversight of military-led targeted killings, and thus, Philip Alston asserts, it may be insufficient to provide a meaningful check against arbitrary and overzealous Executive actions.

### Calc Good: Ethics—1NC

#### Calculation is key to ethics—is the only way we can fight injustice

Santilli 03

[Paul C., Siena College, “Radical Evil, Subjection, and Alain Badiou’s Ethic of the Truth Event,” *World Congress of the International Society for Universal Dialogue*, May 18-22, [www.isud.org/papers/pdfs/Santilli.pdf](http://www.isud.org/papers/pdfs/Santilli.pdf)]

From the standpoint of an ethics of subjection there is even something unnecessary or superfluous about the void of suffering in the subject bearers of evil. For Levinas, the return to being from the ethical encounter with the face and its infinite depths is fraught with the danger the subject will reduce the other to a "like-me," totalizing and violating the space of absolute alterity. As Chalier puts it, "Levinas conceives of the moral subject's awakening, or the emergence of the human in being, as a response to that pre-originary subjection which is not a happenstance of being." But if there really is something inaccessible about suffering itself, about the 'other' side of what is manifestly finite, subjected, and damaged, then to a certain extent it is irrelevant to ethics, as irrelevant as the judgment of moral progress in the subject-agent. Let me take the parent-child relation again as an example. Suppose the child to exhibit the symptoms of an illness. Are not the proper "ethical" questions for the parent to ask questions of measure and mathematical multiples: How high is the fever? How long has it lasted? How far is the hospital? Can she get out of bed? Has this happened before? These are the questions of the doctor, the rescue squads and the police. They are questions about being, about detail, causes and effects. Ethically our response to the needs of must be reduced to a positivity simply because we have access to nothing but the symptoms, which are like mine. Our primary moral responsibility is to treat the symptoms that show up in being, not the radically other with whom I cannot identify. Say we observe someone whose hands have been chopped off with a machete. How would we characterize this? Would it not be slightly absurd to say, "He had his limbs severed and he suffered," as though the cruel amputation were not horror enough. Think of the idiocy in the common platitude: "She died of cancer, but thank God, she did not suffer", as though the devastating annihilation of the human by a tumor were not evil itself. For ethics, then, the only suffering that matters are the visible effects of the onslaught of the world. All other suffering is excessive and inaccessible. Therefore, it is in being, indeed in the midst of the most elemental facts about ourselves and other people, that we ethically encounter others by responding to their needs and helping them as best we can It is precisely by identifying being and not pretending that we know any thing about suffering, other than it is a hollow in the midst of being, that we can act responsibly. What worries me about Levinas is that by going beyond being to what he regards as the ethics of absolute alterity, he risks allowing the sheer, almost banal facticity of suffering to be swallowed in the infinite depths of transcendence. Indeed, it seems to me that Levinas too often over emphasizes the importance of the emergence of the subject and the inner good in the ethical encounter, as though the point of meeting the suffering human being was to come to an awareness of the good within oneself and not to heal and repair. I agree with Chalier's observation that Levinas's "analyses adopt the point of view of the moral subject, not that of a person who might be the object of its solicitude." Ethics has limits; there are situations like the Holocaust where to speak of a moral responsibility to heal and repair seems pathetic. But an ethics that would be oriented to the vulnerabilities of the subjected (which are others, of course, but also myself) needs to address the mutilation, dismemberment, the chronology of torture, the numbers incarcerated, the look of the bodies, the narratives, the blood counts, the mines knives, machetes, and poisons. Evil really is all that. When the mind does its work, it plunges into being, into mathematical multiples and starts counting the cells, the graveyards, and bullet wounds. Rational practical deliberation is always about the facts that encircle the void inaccessible to deliberation and practical reason.

### Calc Good: Maximize Life—1NC

#### Every life is an end in and of itself – All lives are infinitely valuable, the only ethical option is to maximize the number saved

Cummisky 96 (David, professor of philosophy at Bates, “Kantian Consequentialism”, p. 131)

Finally, even if one grants that saving two persons with dignity cannot outweigh and compensate for killing one—because dignity cannot be added and summed in this way—this point still does not justify deontological constraints. On the extreme interpretation, why would not killing one person be a stronger obligation than saving two persons? If I am concerned with the priceless dignity of each, it would seem that I may still save two; it is just that my reason cannot be that the two compensate for the loss of the one. Consider Hill's example of a priceless object: If I can save two of three priceless statutes only by destroying one, then I cannot claim that saving two makes up for the loss of the one. But similarly, the loss of the two is not outweighed by the one that was not destroyed. Indeed, even if dignity cannot be simply summed up, how is the extreme interpretation inconsistent with the idea that I should save as many priceless objects as possible? Even if two do not simply outweigh and thus compensate for the loss of the one, each is priceless; thus, I have good reason to save as many as I can. In short, it is not clear how the extreme interpretation justifies the ordinary killing/letting-die distinction or even how it conflicts with the conclusion that the more persons with dignity who are saved, the better.8

### Util Good: Isaac—1NC

#### They are moral tunnel vision

Jeffrey Issac (professor of political science at Indiana University) 2002 Dissent, Spring, ebsco

As writers such as Niccolo Machiavelli, Max Weber, Reinhold Niebuhr, and Hannah Arendt have taught, an unyielding concern with moral goodness undercuts political responsibility. The concern may be morally laudable, reflecting a kind of personal integrity, but it suffers from three fatal flaws: (1) It fails to see that the purity of one’s intention does not ensure the achievement of what one intends. Abjuring violence or refusing to make common cause with morally compromised parties may seem like the right thing; but if such tactics entail impotence, then it is hard to view them as serving any moral good beyond the clean conscience of their supporters; (2) it fails to see that in a world of real violence and injustice, moral purity is not simply a form of powerlessness; it is often a form of complicity in injustice. This is why, from the standpoint of politics—as opposed to religion—pacifism is always a potentially immoral stand. In categorically repudiating violence, it refuses in principle to oppose certain violent injustices with any effect; and (3) it fails to see that politics is as much about unintended consequences as it is about intentions; it is the effects of action, rather than the motives of action, that is most significant. Just as the alignment with “good” may engender impotence, it is often the pursuit of “good” that generates evil. This is the lesson of communism in the twentieth century: it is not enough that one’s goals be sincere or idealistic; it is equally important, always, to ask about the effects of pursuing these goals and to judge these effects in pragmatic and historically contextualized ways. Moral absolutism inhibits this judgment. It alienates those who are not true believers. It promotes arrogance. And it undermines political effectiveness.

### DA: Cruise Missile Shift

#### Drones are popular---limiting use causes cruise missiles – increases blowback and civilian casualties

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

But even the most unfavorable estimates of drone casualties reveal that the ratio of civilian to militant deaths—about one to three, according to the Bureau of Investigative Journalism—is lower than it would be for other forms of strikes. Bombings by F-16s or Tomahawk cruise missile salvos, for example, pack a much more deadly payload. In December 2009, the United States fired Tomahawks at a suspected terrorist training camp in Yemen, and over 30 people were killed in the blast, most of them women and children. At the time, the Yemeni regime refused to allow the use of drones, but had this not been the case, a drone’s real-time surveillance would probably have spotted the large number of women and children, and the attack would have been aborted. Even if the strike had gone forward for some reason, the drone’s far smaller warhead would have killed fewer innocents. Civilian deaths are tragic and pose political problems. But the data show that drones are more discriminate than other types of force.¶ FOREIGN FRIENDS¶ It is also telling that drones have earned the backing, albeit secret, of foreign governments. In order to maintain popular support, politicians in Pakistan and Yemen routinely rail against the U.S. drone campaign. In reality, however, the governments of both countries have supported it. During the Bush and Obama administrations, Pakistan has even periodically hosted U.S. drone facilities and has been told about strikes in advance. Pervez Musharraf, president of Pakistan until 2008, was not worried about the drone program’s negative publicity: “In Pakistan, things fall out of the sky all the time,” he reportedly remarked. Yemen’s former president, Ali Abdullah Saleh, also at times allowed drone strikes in his country and even covered for them by telling the public that they were conducted by the Yemeni air force. When the United States’ involvement was leaked in 2002, however, relations between the two countries soured. Still, Saleh later let the drone program resume in Yemen, and his replacement, Abdu Rabbu Mansour Hadi, has publicly praised drones, saying that “they pinpoint the target and have zero margin of error, if you know what target you’re aiming at.”¶ As officials in both Pakistan and Yemen realize, U.S. drone strikes help their governments by targeting common enemies. A memo released by the antisecrecy website WikiLeaks revealed that Pakistan’s army chief, Ashfaq Parvez kayani, privately asked U.S. military leaders in 2008 for “continuous Predator coverage” over antigovernment militants, and the journalist Mark Mazzetti has reported that the United States has conducted “goodwill kills” against Pakistani militants who tshreatened Pakistan far more than the United States. Thus, in private, Pakistan supports the drone program. As then Prime Minister Yousaf Raza Gilani told Anne Patterson, then the U.S. ambassador to Pakistan, in 2008, “We’ll protest [against the drone program] in the National Assembly and then ignore it.”¶ Still, Pakistan is reluctant to make its approval public. First of all, the country’s inability to fight terrorists on its own soil is a humiliation for Pakistan’s politically powerful armed forces and intelligence service. In addition, although drones kill some of the government’s enemies, they have also targeted pro-government groups that are hostile to the United States, such as the Haqqani network and the Taliban, which Pakistan has supported since its birth in the early 1990s. Even more important, the Pakistani public is vehemently opposed to U.S. drone strikes.¶ A 2012 poll found that 74 percent of Pakistanis viewed the United States as their enemy, likely in part because of the ongoing drone campaign. Similarly, in Yemen, as the scholar Gregory Johnsen has pointed out, drone strikes can win the enmity of entire tribes. This has led critics to argue that the drone program is shortsighted: that it kills today’s enemies but creates tomorrow’s in the process.¶ Such concerns are valid, but the level of local anger over drones is often lower than commonly portrayed. Many surveys of public opinion related to drones are conducted by anti-drone organizations, which results in biased samples. Other surveys exclude those who are unaware of the drone program and thus overstate the importance of those who are angered by it. In addition, many Pakistanis do not realize that the drones often target the very militants who are wreaking havoc on their country. And for most Pakistanis and Yemenis, the most important problems they struggle with are corruption, weak representative institutions, and poor economic growth; the drone program is only a small part of their overall anger, most of which is directed toward their own governments. A poll conducted in 2007, well before the drone campaign had expanded to its current scope, found that only 15 percent of Pakistanis had a favorable opinion of the United States. It is hard to imagine that

#### Other covert ops cause the DA

Saulino, JD and MPP – Harvard, ‘11

(James J., 2 Harv. Nat'l Sec. J. 247)

Finally, in the debates over both the legality and the effectiveness of drones, it should be noted that drones are but one of the covert action capabilities utilized by the U.S. government in Pakistan for CT purposes. U.S. special opera-tions forces have also been involved in conducting more traditional covert actions in Pakistan. For example, it was re-ported that in September 2008, U.S. special forces conducted a cross-border raid from Afghanistan into Pakistan target-ing al Qaeda and Taliban targets. The operation centered on Jalal Khel, a village in South Waziristan less than a mile from the Afghan Border. According to one account, the attack involved three U.S. helicopters. Two hovered overhead, while special operators landed in the other, executing their mission on foot. n153 Accounts differ on the extent of civilian casualties associated with the operation. n154

Like drone strikes, however, it is the perception, not necessarily the reality, of civilian casualties that ultimately matters for the U.S.-Pakistani relationship, and the assault was criticized by Pakistani officials for just that reason. A spokesman for the Pakistani military said that, following the raid, there was a greater risk of uprising by tribesman who had previously been supportive of Pakistani soldiers stationed in the border area. "Such actions are completely counter-productive and can result in huge losses, because it gives the civilians a cause to rise against the Pakistani military," he told the New York Times. n155

### Jirga

**Women are excluded from the decision making process- resulting in worse resolutions and not a representative dispute mechanism and Jirga decisions reproduce rape culture, Honor Killings and marginalization of women – the reprisal component of the Jirga described in their Ahmed evidence and below explains how punishments target women**

Marie D. **Castetter**, J.D., Indiana University School of Law - Indianapolis, **2004** (expected); B.S. in Organizational Leadership, Purdue University, 2003, "TAKING LAW INTO THEIR OWN HANDS: UNOFFICIAL AND ILLEGAL SANCTIONS BY THE PAKISTANI TRIBAL COUNCILS" Lexis

1. Introduction In June 2002, a Pakistani tribal village council sentenced a woman to be gang raped in order to restore the honor of an opposing tribe. n1 It is unfathomable that such an atrocious human rights violation could be rendered as a form of punishment in a civilized country. In order to understand how something like that could happen in the twenty-first century, one only need look at the state of Pakistani law and order, or the lack thereof. n2 This Note will look at the historical effects that led up to the present-day determination that the country is in a state of lawlessness. n3 More importantly, this Note will look at the effects on the Pakistani culture and society when such inhumane punishment is ordered by the tribal justice system. An analysis will be conducted to determine what role these tribal councils play as an alternative to the official court system in resolving disputes and how some of the remedies sanctioned by the council are in conflict with the Pakistan Constitution. In addition, this Note will compare how India officially utilizes the tribal councils within their society for the purpose of illustrating how Pakistan could utilize a tribal jury system effectively and officially. Finally, this Note will analyze whether the tribal councils should be abolished or reformed. n4 [\*544] II. Incident of Gang-Rape In June 2002, a human rights atrocity occurred in the Punjab n5 province of Pakistan when **a young woman** from the Gujjar tribe n6 **was** **sentenced to a gang rape** in order **to restore the honor** **of another woman** from the Mastoi tribe. n7 An unofficial **tribal jury,** armed with machine guns, **laid** down **the sentence** in order **to punish the victim's twelve-year-old brother.** n8 The victim's brother was allegedly having an illicit affair with a Mastoi woman, who was from a tribe of a highe
2. r caste. n9 It was later proven that the alleged affair was simply a cover-up by the Mastoi tribe after several tribal members kidnapped, beat, and sodomized the young boy. n10 They held the boy captive until the boy's uncle requested the boy's captivity be resolved before a tribal council or what is commonly referred to as a panchayat in Pakistan. n11 Although the victim's father offered to allow the boy to marry the Mastoi woman, the Mastoi tribe rejected this offer because the boy was from a lower caste. n12 Subsequently, the panchayat decided that the aggrieved family members of the higher caste could be restored after members of the Mastoi tribe disgraced a member of the boy's family. n13 The young Gujjar woman had been at the court to seek leniency for her brother, but immediately after the ruling, four Mastoi [\*545] tribesmen dragged her to a nearby hut and repeatedly raped her. n14 While this by itself is extremely disturbing, even more appalling was the fact that **the** young **victim**, who happened to teach the Quran n15 to the Mastoi tribe's children, **pleaded for mercy** **as** several **hundred villagers** stood outside the hut and jeered and **laughed** while she was being gang-raped. n16 After the horrendous ordeal, **the woman was forced to return home by walking** **naked** through the village; under the Pakistan Penal Code, **being in public in a state of undress is a crime** in itself. n17 This story only became public after a local reporter heard about the atrocious act and subsequently published the story in a local newspaper. n18 Upon hearing about this ordeal, Pakistan's President, Pervez **Musharraf**, n19 **and the Pakistani Supreme Court** n20 **ordered** the local **police to apprehend the offenders.** n21 Additionally, many human rights organizations voiced their outrage at this horrible human rights violation. n22 Although the victim filed a complaint with the local police, it was not until one week later that the police arrested any suspects in the gang rape. n23 Subsequently, a member of the police force was arrested for failing to file a [\*546] report of the woman being gang-raped. n24 Local human rights activists accused the police of knowing about the tribal council meeting, but then failing to stop the attack on the woman. n25 Pakistani **officials brought** the suspected **rapists**, **as well as** some members of the **tribal council**, **to trial in the Anti-Terrorism Court (**ATC). n26 The ATC was created under the Anti-Terrorism Act of 1997 in order to expedite criminal trials so they are completed within thirty days. n27 Because the panchayat is not an official court and Punjab is not one of the federally recognized tribal areas subject to their own rule, **the rapists could not claim** that their **tribal law was sovereign**, and they were, therefore, immune to prosecution. n28 However, one of the accused did try to prove his innocence by claiming that the woman was given to him in marriage and therefore there was no violation of rape. n29 Ultimately, **the ATC found six of the fourteen arrested guilty** and sentenced them to death. n30 III. Analysis of Pakistani Law and Order It is arguable that Pakistan is not a civilized country, but rather is in a primitive state. n31 One comparison between the two terms "primitive" n32 and [\*547] civilized" n33 indicates that the former is generally where the people identify themselves by a particular blood relationship, whereas in the latter, the people define themselves in terms of relation to a given territory. n34 Typically, there are two forms of government. n35 The first form, social organization, or society, is analyzed by how the government deals with the people in their capacity as members of tribal groups. n36 The second form, political organization, is based on a territorial state whereby the government deals with the constituents as a region. n37 The rural area of Pakistan consists primarily of tribes that are organized on the basis of kinship with each tribe functioning as a simple society with tribal governments. n38 This has been equated with a primitive government. n39 This varies from a higher civilization where one would find multiple cultures living under the same authority. n40 A. Historical Aspect As a result of the partitioning of British India, n41 Pakistan was formed on August 14, 1947. n42 However, many conflicts arose between the Pakistan refugees that came from Afghanistan and India and the traditional rural tribal people who already inhabited Pakistan. n43 The typical village in Pakistan is divided into separate factions based upon kinship, ethnic, ideological, or class rationales. n44 Many of the country's punishments, such as amputation, whipping, and stoning, have been sanctioned for decades. n45 These punishments are viewed by modern societies as barbaric and uncivilized. n46 The Human Rights [\*548] Commission of Pakistan (HRCP) n47 stated that the informal justice the tribal councils provide is simply the tribe taking the law into their own hands and rendering justice in a medieval way. n48 The state of lawlessness has been present since the Islamic Republic of Pakistan was formed. n49 Ethnic, regional, or sectarian conflicts factored in the breakdown of social order in Pakistan. n50 The State's failure to manage and meet the demands of minority groups drove the tribal areas to change their focus from demanding cultural and political autonomy to seeking territorial sovereignty. n51 The majority of Pakistan people live in the rural areas as opposed to the urban cities. n52 According to the 1981 census, seventy-one percent (71%) of Pakistan's population lived in a village with fewer than 5000 inhabitants. n53 Pakistan's rural areas suffer from extremely rapid population growth. n54 The major source of this growth is the influx of refugees from Afghanistan and India. n55 Subsequently, such rapid growth played havoc on rural development plans and placed severe demands on an already inefficient local government structure. n56 The military and civilian rulers created authoritarian measures to oppress the citizens of Pakistan. n57 As a result, several decades of economic and social inequality burdened the development of a democratic regime over a heterogeneous population. n58 In 1981, while the State was under martial law, [\*549] Zia ul-Haq n59 replaced sections of the 1973 Constitution with a Provisional Constitutional Order that required the judiciary to be subordinate to the military. n60 The current federal justices were forced to take a new oath or else lose their position on the court. n61 Several judges lost their jobs because they would not accept the fact that the courts were under the military's power. n62 In 1985, Pakistan adopted the United Nations Convention on the Prevention of Crime and the Treatment of Offenders. n63 This UN Convention stated, "certain forms of crime can hamper the political, economic, social and cultural development of peoples and threaten human rights, fundamental freedoms, and peace, stability and security." n64 By adopting this Convention, Pakistan agreed to strengthen crime prevention programs and undertake a criminal justice process that is responsive to the diversity of political and economic systems as well as the ever- changing conditions of society. n65 Despite Pakistan's adoption of this Convention, it is doubtful that Pakistan has adequate programs in place to change social conditions. n66 During the early 1990s, maintaining law and order was no longer a priority in Pakistan. n67 This resulted in violence and corruption. n68 In addition, the resolution of judicial matters became increasingly difficult. n69 During this time, the Pakistani government routinely denied its human rights abuses. n70 Nevertheless, Pakistan was quick to publicize the deteriorating human rights situation in the valley of Kashmir. n71 By the early 1990s, institutional life was so underdeveloped and weakened that the tribal areas disregarded the authority of the State. n72 The basic administration of the area, such as census taking, school regulation, and taxation, had been interrupted. n73 Yet, without the interference of federal governmental administration, the tribal people were able to survive in a state [\*550] of isolation by continuing their daily struggles regardless of the power plays of the self-interested elites of the local government. n74 B. Women's Role in Society **Violence against women**, within their own families, **is** **an extension of** the **subordination** of women in the larger society, which is **reinforced** **by** religious beliefs, cultural **norms**, traditional practices, **and** actual **laws** in Pakistan. n75 The women of Pakistan are subjected to the social code of behavior known as purda, which requires that women be safeguarded from unauthorized persons. n76 When a woman is allowed outdoors, she must be covered completely except for the upper part of her face; and she also must be chaperoned by a male family member. n77 This social custom scars the women in Pakistan because they develop a deep-seated fear of any interaction with men. n78 In Pakistan and some other Muslim countries, there is a unique category of criminal conduct committed by women known as "crimes of honor." n79 Honor is a very important aspect of Pakistani culture whereby a man's honor resides in the actions of the women of his family. n80 These crimes include adultery, freely choosing a marriage partner without the father's permission, or seeking a divorce. n81 This practice has been deeply rooted in tribal societies for decades. n82 The woman holds all of the honor for the family and the social order depends upon her maintaining this honor. n83 In addition, the woman's honor or shame strongly affects the general standing of the tribe within the [\*551] community. n84 To ensure that the women do not dishonor their families and tribes, women are restricted in their activities, limited in their mobility, and allowed very limited contact with the opposite sex. n85 In addition to the common occurrence of gang rape, many women have been killed for a violation of honor. n86 Unfortunately for tribal women, **the community socially and morally sanctions** such "**honor killings**." n87 Further hindering the system is the fact that the State does not generally condemn these activities nor take action against the murderers. n88 Nevertheless, in 2000 the government declared that there is nothing honorable in this form of murder and that the practice, carried over from ancient tribal customs, is anti-Islamic. n89 The fact that women are treated less favorably than men is in conflict with the Quran, n90 which says that men and women should be treated equally. n91 Furthermore, the Quran reminds men that women have the same status as human beings that men enjoy. n92 However, **the Quran's teachings are in direct conflict with** **tribal culture**, where daughters are often not particularly welcome at birth. n93 Recent studies referred to rape as an act of deliberate communal humiliation in this region. n94 Rape is so rampant in Pakistan that every two hours a woman is raped. n95 Statistics also report that in Punjab, a woman is gang-raped every four days. n96 However, even with these high rates of occurrence, rape is seldom reported for fear of retaliation. n97 Even the victim [\*552] of the gang rape discussed did not register a complaint with the local police force until eight days later. n98 In addition to rape, honor killings frequently occur in Pakistan. n99 The killings are on the rise because the murderers in honor killings are rarely punished. n100 Furthermore, as the women in Pakistan gain knowledge of their rights and begin to assert them, the rate of honor killings also increases. n101 C. National Identity The **lack of a national identity** **has a causal connection with** Pakistan's state of **lawlessness**. n102 Within the territorial boundaries, there are several ethnic and **tribal areas** that **maintain** their own **autonomy**. n103 Therefore, **Pakistan has a hodgepodge** **of** governing **laws** gathered from old British laws, Islam laws, state and tribal laws. n104 In the rural areas where transportation and communication is poor, the tribes are independent and the villages tend to be isolated even from neighboring tribes. n105 When the tribes live by the law of their own tribe without the social interaction from other tribes, the traditional social customs dominate their life. n106 The notion of national identity or loyalty has little value to the Pakistani citizens. n107 Ethnic, regional, caste, and family loyalties factor more in society than the national loyalty. n108 An individual's loyalties are defined in terms of family, local leaders, clan or tribe, and caste. n109 The **people** of Pakistan **have** always **remained distant from the political system** **and** they **have been unable to understand** a **Constitutional theory** or relate to the idea of a consensual plurality or national identity. n110 On the contrary, the **citizens** have continued to **follow** the local **tribal leaders** whom **they trust**. n111 [\*553] Without a national identity, Pakistan has created a weak and shaky political and social structure. n112 As a result, society has disintegrated into a collection of individual and tribes where the lawlessness further reinforces the tribal loyalties. n113 The tribes live and socialize amongst themselves and are only concerned with the political and economic benefits for themselves. n114 D. Caste Systems A caste system exists in Pakistan to distinguish the different levels of society. n115 The structure of **society** in the provinces of Pakistan **are** **caste-ridden and tribal-feudal**, n116 with the upper castes having large holdings of land while the lower castes consist of peasants who are treated as slaves. n117 The caste's levels are based upon the specialized occupations that one holds. n118 Ideally, the multi-level caste systems are self- sufficient in providing the community with the needed goods and services thereby alienating them from other tribal interaction. n119 The landed-elite were favored during the pre-Pakistan days when Britain ruled the region whereby an exchange was made for the British to meet the wants and needs of the Punjab tribal landlords who reciprocated by maintaining the law and order in the rural areas. n120 With agriculture being the main industry in Pakistan's economy, landlords are prominent figures in society because they wield both political and economic power to either grant favors or render sanctions against others. n121 When Pakistan was formed, the State's independence did not change this social and cultural atmosphere. n122 Although the lower castes are guaranteed equal rights through the Constitution, it is clear they are being denied economic and political [\*554] privileges. n123 Furthermore, the landlords defied the courts and provincial law by holding illegal tribal jirgas to settle feuds, award fines, and even sentence people to the death penalty. n124 Similar to the discrimination that the women in these tribal regions endure, the **lower castes are** also **subjected to discrimination**. n125 The **higher** caste **members** generally **are segregated** from the lower castes and typically cannot share food with the lower castes nor can they marry someone from the lower castes. n126 Furthermore, the **inequality** in the distribution of income **adversely affects crime** **prevention** **and criminal justice** systems. n127 The wealthy and influential citizens benefit from the police protection, while the less fortunate victims and witnesses end up facing retaliation for reporting the offense. n128 Consequently, there is a miscarriage of justice when there is a failure to convict the guilty among the rich and powerful higher castes; while the lower castes are wrongfully convicted. n129 Some citizens petitioned the courts to look into the wrongdoings of the police, but even the court ordered inquiries result in very few trials and so far no convictions have been obtained against any police officers. n130 E. Economic Effect Unfortunately, Pakistan has not maintained the economic growth that its neighboring countries have sustained. n131 Countries without the law and order [\*555] problems that plague Pakistan, generally benefit from having economic stability and economic growth. n132 Because of its state of lawlessness, Pakistan has suffered the effects of the industrialists fleeing the region. n133 Also, Pakistan is somewhat disadvantaged where foreign investment is concerned. n134 Economists believe that foreign investment is closely related to domestic investment. n135 Many of the more advantaged members of society are merely concerned with their wants and needs. n136 As a result, foreign investors do not build business relationships with the local entrepreneurs. n137 Many of the impoverished are in the rural areas where they are plagued with problems. n138 The Pakistan government has not made sufficient efforts to provide any social services to the tribal people. n139 Thus, even though millions are being spent on nuclear warfare, most of society remains in poverty. n140 The amount of funding that is allocated for criminal justice administration is extremely inadequate. n141 Nonetheless, it is reported that Pakistan spends seventy percent (70%) of its budget on defense-related projects. n142 Additionally, the Pakistani economy ultimately is disadvantaged because they have excluded women from the social and political process. n143 Modern economic advisers see the need for women to participate in the economic sector in order to promote development of the country. n144 Unfortunately, the traditional cultural norm is that women should not be allowed out of the house, much less employed. n145 [\*556] IV. Role of Tribal Councils In some rural areas of Pakistan, a tribal judiciary forum traditionally deals with crimes of dignity and punishes the offenders outside of Pakistani law. n146 Their role is to bring reconciliation between the conflicting parties, based upon evidence and arguments presented. n147 During this process, the respected elder members of the jirga are consulted frequently. n148 Similar to the Western tort law system, the tribal council's focus is on reconciliation and conflict resolution; however, it is not focused on punishment. n149 Also, **tribal law** **is not** necessarily **aimed** **at finding out the truth**. n150 In the federal court system, often the individual takes an oath, and then **fearing** that **the truth will come out** and he will consequently lose the case, **he proceeds to lie** in his testimony. n151 In contrast, the panchayat system allows the individual to give a true account because there is trust among the locals as opposed to the federal justices who are mistrusted. n152 With regard to reconciliation, the panchayat system has the objective of ending the hostility peacefully. n153 In a trial court, the hostility remains after the verdict and sentence are imposed. n154 The jirgas often resolve land conflicts between two warring factions, water disputes, inheritance disputes, honor breaches, and internal and external tribal killings. n155 Many cases have been reported where the jirgas have sentenced the tribes to pay for crimes its members have committed such as kidnapping or theft. n156 Some wrongful death claims have also been settled before a jirga. n157 The **tribal juries** **have been known to impose cruel and degrading punishments**; and although they rarely impose the death penalty, they have rendered the death sentence in some honor cases. n158 [\*557] It appears that the tribal council form of justice increased in the past few years. n159 The HRCP n160 filed a report in 2001 with three full pages dedicated to a discussion of jirga rule. n161 There also are regular adjudication days that are widely known and attended by many individuals. n162 Generally, the State has been supportive toward the actions of the tribal councils. n163 When actions have violated human rights or caused severe physical harm, the council members have not been prosecuted by the State. n164 However, after the gang-rape incident, the government urged the local police to investigate and arrest those that violated the law. n165 Many human rights **organizations** and others **would like to see these tribal councils eliminated**. n166 It is clear that the jirgas affect the human rights of the citizens. n167 However, the State appears to acquiesce to these frequent practices. n168 Although the Pakistan Constitution outlaws the panchayats, Pakistan is ultimately responsible for their actions. n169 The government has failed to use due diligence to prevent the abuses and provide adequate justice to the victims. n170 The **councils** **consist of non-elected bureaucrats** **who** usually **come from the** prominent **landholding class**. n171 Many **tribal leaders** are actually parliamentary members themselves or **have family links with the government** administration. n172 However, **there is no** specialized **training provided** to the tribal councils who are making judgments. n173 [\*558] Some courts refer civil disputes to the tribal councils. n174 Although state officials avoid recognizing the tribal justice system as a legitimate judiciary, the officials ask for advice on how to handle complicated cases. n175 However, those proceedings related to criminal actions, including murder, assault, and land trespasses, are to be tried by the constitutional court system. n176 Yet, in the tribal regions, the government has little or no authority over citizens, rendering the federal court system somewhat useless. n177 Primarily, laws enforced in the tribal courts have been handed down from one generation to the next. n178 Rural tribal villages have persisted effectively for centuries without laws but have maintained a code of informal standards of social conduct. n179 Furthermore, the informal set of codes that the tribes follow may have a more powerful hold on behavior of its members than the State's formal laws. n180 The tribal code has been enforced through the conscience of the tribal members and also by the tribal councils sanctions such as ostracision. n181 Typically, the social pressure from the tribal community requires that the verdicts be carried out. n182 The tribal jury may consult with tribal elders or schoolteachers when determining decisions. n183 These advisers or counselors feel honored when consulted and their opinions are respected and highly valued. n184 The proceedings continue through a mediation-type process until a compromise is met. n185 There is no appellate procedure; thus, the Supreme Court cannot hear an appeal on a jirga ruling because they do not recognize the tribunal. n186 V. Conflicts with Pakistani Law Pakistan is a country with Muslim ideology as the rule of law. n187 According to some modern Muslim leaders, a country cannot be an Islamic state when there is a feeling of insecurity as a result of lawmakers breaking the [\*559] law. n188 Subsequently, the citizens fear the police, who are there to protect and enforce the law, more than fearing those that break the law. n189 The Pakistan Constitution n190 has an Equal Protection section that prohibits discrimination on account of religion, race, caste, color, or creed. n191 Although fundamental rights were given through the Pakistan Constitution, they are still subject to law. n192 Consequently, if the laws in question are in conflict with public morality or public order, it is likely that these fundamental rights will be ignored. n193 Although the panchayat involved in the gang rape of the Gujjar woman rendered the sanction, rape is a criminal offense in Pakistan. n194 However, this is not an isolated event where the panchayat has sexually harassed a party to the dispute. n195 It also has been reported that a Punjab village council ordered the wife of a man who was convicted of rape to be raped by the victim's husband. n196 The tribal community socially and morally accepted these sanctions as punishment. n197 Furthermore, the State failed to take any action against the tribal councils for their human rights violations. n198 **Other** **violations** of human rights committed **by** the **tribal councils** **include** the **trading** **or killing of women** **as** a means of **retribution** to settle the scores between conflicting parties, n199 and the handing over of women as a form [\*560] of settlement of a dispute. n200 In this often-repeated act, the unfortunate **women are not consulted**, **nor do they give** their **consent**, yet they are turned over to live in a hostile environment. n201 Disputes involving honor result in the exchange of women. n202 For purposes of compensation payments, the standard amount of compensation for the murder of a man is rs200,000 n203 while the murder of a woman is rs400,000. n204 However, when murder has occurred, the jirga generally resolves the dispute without having the local authorities involved. n205 **One jirga** **decided** that **two very young girls** **from the murderer's side** of the family **would be turned over to the** **family of the victim**. n206 Unfortunately for females, the handing over of women is considered to be the best way to cool tempers and heal the conflict by bringing the families together through marriage. n207 Before 1979, the Pakistan Penal Code n208 regulated the criminal offense of rape. n209 However, after a military coup brought General Zia n210 to power with a goal to Islamisize Pakistan, he enacted the Zina Ordinance, n211 which repealed the crime of rape under the Pakistan Penal Code. n212 The Zina Ordinance regulated sexual intercourse between two individuals who were not married, whether it was consensual or not. n213 If the intercourse was [\*561] consensual, the crime of zina n214 was committed; and if the intercourse was not consensual, the crime was zina-bil-jabr. n215 In addition, the Zina Ordinance sets forth the evidentiary standards and the punishments available for the criminal offense of rape. n216 The punishment for rape, if convicted, is the death penalty; however, there have been no executions carried out under this law. n217 Despite the punishments available for the crime of rape, it is so widespread that rape has been decriminalized. n218 Furthermore, the burden of proof in a rape claim falls upon the victim. n219 This is extremely hard to prove because the Law of Evidence provides that the testimony of a woman is equated to that of two [\*562] men. n220 In addition, claims of rape can be proven by the rapist admitting to the attack after the woman has filed a First Information Report (FIR) n221 or by having four male witnesses of good standing in the community to verify the claim. n222 Although rape is hard to prove, if successfully proven, possible punishments include death by hanging. n223

## 1NR

### Jirga Neg: Case – AT Expertism Bad

#### Expertism K’s can go too far. We should consider many perspectives, but not sweepingly denounce people who know a lot about science.

Bronner ’4 (Stephen, prof of political science at Rutgers, PhD from Berkeley "Reclaiming the Enlightenment," Columbia University Press, p. 77-78)

But praise for the amateur also has its limits. To ignore the need for critical disciplinary intellectuals with various forms of scientific expertise is to abdicate responsibility for a host of issues involving knowledge of fields ranging from physics and genetics to electronics and even environmentalism. There is surely an overabundance of jargon and mystification and, as has been mentioned before, the need exists for a new sensitivity to the vernacular. 39 But it is also the case that complex issues sometimes require complex language and, often for good reasons, fields generate their own vocabularies. A judgment is undoubtedly necessary with respect to whether the language employed in a work is necessary for illuminating the issue under investigation: that judgment, however, can never be made in advance. There must be a place for the technocrat a with political conscience as surely as for the humanist with a particular specialty. The battle against oppression requires a multi-frontal strategy. Best to consider the words of Primo Levi who understood the critical intellectual as a person educated beyond his daily trade, whose culture is alive insofar as it makes an effort to renew itself, and keep up to date, and who does not react with indifference or irritation when confronted by any branch of knowledge, even though, obviously, he cannot cultivate all of them.

#### The alternative to expertise is naïve faith- Palin proves this disastrous

Harris ’8 (Sam, - Ph.D. in neuroscience from UCLA, CEO of Project Reason "When Atheists Attack," http://www.thedailybeast.com/newsweek/2008/09/19/when-atheists-attack.html)

The prospects of a Palin administration are far more frightening, in fact, than those of a Palin Institute for Pediatric Neurosurgery. Ask yourself: how has "elitism" become a bad word in American politics? There is simply no other walk of life in which extraordinary talent and rigorous training are denigrated. We want elite pilots to fly our planes, elite troops to undertake our most critical missions, elite athletes to represent us in competition and elite scientists to devote the most productive years of their lives to curing our diseases. An

d yet, when it comes time to vest people with even greater responsibilities, we consider it a virtue to shun any and all standards of excellence. When it comes to choosing the people whose thoughts and actions will decide the fates of millions, then we suddenly want someone just like us, someone fit to have a beer with, someone down-to-earth—in fact, almost anyone, provided that he or she doesn't seem too intelligent or well educated. I believe that with the nomination of Sarah Palin for the vice presidency, the silliness of our politics has finally put our nation at risk. The world is growing more complex—and dangerous—with each passing hour, and our position within it growing more precarious. Should she become president, Palin seems capable of enacting policies so detached from the common interests of humanity, and from empirical reality, as to unite the entire world against us. When asked why she is qualified to shoulder more responsibility than any person has held in human history, Palin cites her refusal to hesitate. "You can't blink," she told Gibson repeatedly, as though this were a primordial truth of wise governance. Let us hope that a President Palin would blink, again and again, while more thoughtful people decide the fate of civilization.

#### The link alone rolls-back solvency

Kassop 11 (Nancy, Professor at the State University of New York at New Paltz, and former chair of the Political Science Department at the school , “Reverse Effect: Congressional¶ and Judicial Restraints¶ on Presidential Power”, p. 65-66)

An example of a ―statutory superstructure‖ is the War Powers Resolution of 1973, born¶ out of Congress‘s frustration and inability to assert its own constitutional prerogatives and to¶ effectively challenge a president during an unpopular war. The Constitution gives Congress in¶ Article I and the president in Article II specific and distinct **war powers** responsibilities, but¶ **questions of how and when each branch was supposed to act have engendered** controversy¶ **since the nation‘s founding**. The War Powers Resolution, similar to other framework laws,¶ may be viewed as a separate layer of law sitting on top of those constitutional articles (hence,¶ ―a statutory superstructure‖) as an attempt to clarify the respective duties of each institution and to provide an orderly process through a series of sequential actions by which those duties¶ are exercised. In this sense and in the most charitable description of the resolution, although it¶ does not change or add to the Constitution, it ―facilitates‖ the legal authorities specified in Articles I and II. Similar descriptions would apply to other framework laws.¶ Koh focused exclusively on the use of these laws in foreign policy decision-making,¶ where they were ―designed not only to restrain executive discretion, but also to increase¶ congressional input into key foreign policy decisions,‖ [4] although this description applies as¶ well to such laws in the domestic policy arena. As examples, in addition to the War Powers¶ Resolution of 1973, he cites the National Emergencies Act of 1976 and the International¶ Emergency Economic Powers Act of 1977, to which one can also add the Case-Zablocki Act¶ of 1972 (regulating executive agreements), the Hughes Ryan Amendment to the Foreign¶ Assistance Act of 1974 (requiring presidential reporting to Congress of covert actions), the¶ Foreign Intelligence Surveillance Act (FISA) of 1978 (regulating national security¶ surveillance), and the Intelligence Oversight Act of 1980 (the product of the 1976 Church and¶ Pike congressional committee hearings on intelligence operations, establishing congressional¶ intelligence committees and requiring presidential ―findings‖ for covert operations). In the¶ domestic policy field, examples include the Congressional Budget and Impoundment Control¶ Act of 1974 (establishing new congressional budget committees and a new budget process),¶ the Ethics in Government Act of 1978 (containing provisions to determine the need for and¶ selection of an independent counsel), and the Presidential Records Act of 1978 (establishing¶ governmental control of presidential records and a process for public release of them).¶ The intended purpose common to all of these laws is to both limit discretionary actions of¶ presidents and to promote greater participation by Congress. This was to be accomplished by¶ congressional monitoring and close oversight of executive actions through the imposition of¶ procedural requirements, such as reporting and consulting provisions, legislative vetoes,¶ findings of fact, and/or funding restrictions.¶ It is not difficult to see how these desired outcomes were an obvious reaction to the¶ Watergate/Vietnam era where the exact opposite inter-branch dynamic predominated:¶ unlimited discretion by presidents and ineffective efforts by Congress to exercise its¶ constitutional powers.¶ Koh was quick to note, specifically in reference to foreign affairs but equally as true in¶ domestic affairs, that ―virtually overlooked…..was that this generation of **statutes created** not¶ only procedural constraints, but also substantial fresh delegations of foreign affairs authority.¶ By 1988, it had become clear that the executive branch had successfully tapped many of these¶ broad new authorizations while paying only lip service to the accompanying procedural¶ strictures.‖ [5]¶ Herein, then, lies the key to why these statutes, prompted by a congressional motive to¶ restrain the chief executive, resulted, instead, in expanding executive power because they¶ simultaneously delegated power to that office. Additionally, **the** intense politics **involved in**¶ **the legislative process through which each of these statutes was produced** ultimately **led**¶ **negotiators to compromise, which**, thus, diluted **the** force **and** effect **of the proposed**¶ **legislation**. In other words, **presidentialists** would not willingly agree to tie the hands of future¶ chief executives: therefore, in exchange, they demanded **and** received some **new delegation of**¶ **power from Congress to** counter-balance **their grudging acceptance of new legislative**¶ **restrictions and controls on presidential policy-making**.

### IL: A2 "PC Fails (Klein)"

#### History proves that capital is effective --- backroom negotiations can produce agreements

Mandel, 12 --- Assistant Editor of Commentary magazine (Seth, 3/23/2012, “Contentions Lessons of Presidential Persuasion: Be the Commander-In-Chief,” http://www.commentarymagazine.com/2012/03/23/presidential-persuasion-commander-in-chief-obama-reagan-clinton/)

I want to offer Klein one more note of optimism. He writes:

Back-room bargains and quiet negotiations do not, however, present an inspiring vision of the Presidency. And they fail, too. Boehner and Obama spent much of last summer sitting in a room together, but, ultimately, the Speaker didn’t make a private deal with the President for the same reason that Republican legislators don’t swoon over a public speech by him: he is the leader of the Democratic Party, and if he wins they lose. This suggests that, as the two parties become more sharply divided, it may become increasingly difficult for a President to govern—and there’s little that he can do about it.

I disagree. The details of the deal matter, not just the party lines about the dispute. There is no way the backroom negotiations Clinton conducted with Gingrich over social security reform could have been possible if we had prime ministers, instead of presidents. Thepresident possesses political capital Congress doesn’t. History tells us there are effective ways to use that capital. One lesson: quiet action on domestic policy, visible and audible leadership on national security.

#### PC is key and effective—Klein ignores historical examples

**Drum 12** (Kevin, political blogger for Mother Jones, “Presidents and the Bully Pulpit”, http://motherjones.com/kevin-drum/2012/03/presidents-and-bully-pulpit, CMR)

I also think that Ezra doesn't really grapple with the strongest arguments on the other side. For one thing, although there are examples of presidential offensives that failed (George Bush on Social Security privatization), there are also example of presidential offensives that succeeded(George Bush ongoing to war with Iraq). The same is true for broader themes. For example, Edwards found that "surveys of public opinion have found that support for regulatory programs and spending on health care, welfare, urban problems, education, environmental protection and aid to minorities increased rather than decreased during Reagan’s tenure." OK. But what about the notion that tax cuts are good for the economy? The public may have already been primed to believe this by the tax revolts of the late '70s, but I'll bet Reagan did a lot to cement public opinion on the subject. And the Republican tax jihad has been one of the most influential political movements of the past three decades.

More generally, I think it's a mistake to focus narrowly on presidential speeches about specific pieces of legislation. Maybe those really don't do any good. But presidents do have the ability to rally their **own** troops, and that matters. That's largely what Obama has done in the contraception debate. Presidents also have the ability to set agendas. Nobody was talking about invading Iraq until George Bush revved up his marketing campaign in 2002, and after that it suddenly seemed like the most natural thing in the world to a lot of people.

Beyond that, it's too cramped to think of the bully pulpit as just the president, just giving a few speeches. It's more than that. It's a president mobilizing his party and his supporters and doing it over the course of years. That's harder to measure, and I can't prove that presidents have as much influence there as I think they do. But I confess that I think they do. Truman made containment national policy for 40 years, JFK made the moon program a bipartisan national aspiration, Nixon made working-class resentment the driving spirit of the Republican Party, Reagan channeled the rising tide of the Christian right and turned that resentment into the modern-day culture wars, andGeorge Bush forged a bipartisan consensus that the threat of terrorism justifies nearly any defense. It's true that in all of these cases presidents were working with public opinion, not against it, but I think it's also true that different presidents might have shaped different consensuses.

### IL: A2 “Compartmentalization”

#### Vote switching happens—even on unrelated legislation

Dmitri **Simes**, Executive Director, Nixon Center and Paul Saunders, “START of a Pyrrhic Victory,” NATIONAL INTEREST, 20**10**, http://nationalinterest.org/commentary/start-pyrrhic-victory-4626, accessed 10-2-11.

Had the lame-duck session not already been so contentious, this need not have been a particular problem. Several Senate Republicans indicated openness to supporting the treaty earlier in the session, including Senator Lindsey Graham and Senator John McCain. Senator Jon Kyl—seen by many as leading Republican opposition to the agreement—was actually quite careful to avoid saying that he opposed New START until almost immediately prior to the vote. Our own conversations with Republican Senate sources during the lame duck session suggested that several additional Republicans could have voted to ratify New START under other circumstances; Senator Lamar Alexander is quoted in the press as saying that Republican anger over unrelated legislation cost five to ten votes. By the time the Senate reached New START, earlier conduct by Senate Democrats and the White House had alienated many Republicans who could have voted for the treaty. That the administration secured thirteen Republican votes (including some from retiring Senators) for the treaty now—and had many more potentially within its grasp—makes clear what many had believed all along: it would not have been so difficult for President Obama to win the fourteen Republican votes needed for ratification in the new Senate, if he had been prepared to wait and to work more cooperatively with Senate Republicans. Senator Kerry’s comment that “70 votes is yesterday’s 95” ignores the reality that he and the White House could have secured many more than 70 votes had they handled the process differently and attempts to shift the blame for the low vote count onto Republicans.