## 1AC Coast Round 6

### Advantage 1 is Accountability

#### Accountability mechanisms that constrain the executive prevent drone overuse in Pakistan and Yemen---drones are key to stability but overuse is counterproductive

Benjamin R. Farley 12, JD from Emory University School of Law, former Editor-in-Chief of the Emory International Law Review, “Drones and Democracy: Missing Out on Accountability?” Winter 2012, 54 S. Tex. L. Rev. 385, lexis

Effective accountability mechanisms constrain policymakers' freedom to choose to use force by increasing the costs of use-of-force decisions and imposing barriers on reaching use-of-force decisions. The accountability mechanisms discussed here, when effective, reduce the likelihood of resorting to force (1) through the threat of electoral sanctioning, which carries with it a demand that political leaders explain their resort to force; (2) by limiting policymakers to choosing force only in the manners authorized by the legislature; and (3) by requiring policymakers to adhere to both domestic and international law when resorting to force and demanding that their justifications for uses of force satisfy both domestic and international law. When these accountability mechanisms are ineffective, the barriers to using force are lowered and the use of force becomes more likely.¶ Use-of-force decisions that avoid accountability are problematic for both functional and normative reasons. Functionally, accountability avoidance yields increased risk-taking and increases the likelihood of policy failure. The constraints imposed by political, supervisory, fiscal, and legal accountability "make[] leaders reluctant to engage in foolhardy military expeditions... . If the caution about military adventure is translated into general risk-aversion when it comes to unnecessary military engagements, then there will likely be a distributional effect on the success rates of [democracies]." n205 Indeed, this result is predicted by the structural explanation of the democratic peace. It also explains why policies that rely on covert action - action that is necessarily less constrained by accountability mechanisms - carry an increased risk of failure. n206 Thus, although accountability avoidance seductively holds out the prospect of flexibility and freedom of action for policymakers, it may ultimately prove counterproductive.¶ In fact, policy failure associated with the overreliance on force - due at least in part to lowered barriers from drone-enabled accountability avoidance - may be occurring already. Airstrikes are deeply unpopular in both Yemen n207 and Pakistan, n208 and although the strikes have proven critical [\*421] to degrading al-Qaeda and associated forces in Pakistan, increased uses of force may be contributing to instability, the spread of militancy, and the failure of U.S. policy objectives there. n209 Similarly, the success of drone [\*422] strikes in Pakistan must be balanced against the costs associated with the increasingly contentious U.S.-Pakistani relationship, which is attributable at least in part to the number and intensity of drone strikes. n210 These costs include undermining the civilian Pakistani government and contributing to the closure of Pakistan to NATO supplies transiting to Afghanistan, n211 thus forcing the U.S. and NATO to rely instead on several repressive central Asian states. n212 Arguably the damage to U.S.-Pakistan relations and the destabilizing influence of U.S. operations in Yemen would be mitigated by fewer such operations - and there would be fewer U.S. operations in both Pakistan and Yemen if U.S. policymakers were more constrained by use-of-force accountability mechanisms.¶ From a normative perspective, the freedom of action that accountability avoidance facilitates represents the de facto concentration of authority to use force in the executive branch. While some argue that such concentration of authority is necessary or even pragmatic in the current international environment, 168 it is anathema to the U.S. constitutional system. Indeed, the founding generation’s fear of foolhardy military adventurism is one reason for the Constitution’s diffusion of use-of-force authority between the Congress and the President. 169 That generation recognized that a President vested with an unconstrained ability to go to war is more likely to lead the nation into war.

#### Judicial review is key to prevent mistakes – executive targeting decisions are inevitably flawed

Ahmad Chehab 12, Georgetown University Law Center, “RETRIEVING THE ROLE OF ACCOUNTABILITY IN THE TARGETED KILLINGS CONTEXT: A PROPOSAL FOR JUDICIAL REVIEW,” March 30 2012, abstract available at http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2031572

The practical, pragmatic justification for the COAACC derives largely from considering social psychological findings regarding the skewed potential associated with limiting unchecked decision-making in a group of individuals. As an initial point, psychologists have long pointed out how individuals frequently fall prey to cognitive illusions that produce systematic errors in judgment.137 People simply do not make decisions by choosing the optimal outcome from available alternatives, but instead employ shortcuts (i.e., heuristics) for convenience.138 Cognitive biases like groupthink can hamper effective policy deliberations and formulations.139 Groupthink largely arises when a group of decision-makers seek conformity and agreement, thereby avoiding alternative points of view that are critical of the consensus position.140 This theory suggests that some groups—particularly those characterized by a strong leader, considerable internal cohesion, internal loyalty, overconfidence, and a shared world view or value system—suffer from a deterioration in their capacity to engage in critical analysis.141 Many factors can affect such judgment, including a lack of crucial information, insufficient timing for decision-making, poor judgment, pure luck, and/or unexpected actions by adversaries.142 Moreover, decision-makers inevitably tend to become influenced by irrelevant information,143 seek out data and assessments that confirm their beliefs and personal hypotheses notwithstanding contradictory evidence,144 and “[i]rrationally avoid choices that represent extremes when a decision involves a trade-off between two incommensurable values.”145 Self-serving biases can also hamper judgment given as it has been shown to induce well-intentioned people to rationalize virtually any behavior, judgment or action after the fact.146 The confirmation and overconfidence bias, both conceptually related to groupthink, also result in large part from neglecting to consider contradictory evidence coupled with an irrational persistence in pursuing ideological positions divorced from concern of alternative viewpoints.147¶ Professor Cass Sunstein has described situations in which groupthink produced poor results precisely because consensus resulted from the failure to consider alternative sources of information.148 The failures of past presidents to consider alternative sources of information, critically question risk assessments, ensure neutral-free ideological sentiment among those deliberating,149 and/or generally ensure properly deliberated national security policy has produced prominent and devastating blunders,150 including the Iraq War of 2003,151 the Bay of Pigs debacle in the 1960’s,152 and the controversial decision to wage war against Vietnam.153¶ Professor Sunstein also has described the related phenomenon of “group polarization,” which includes the tendency to push group members toward a “more extreme position.”154 Given that both groupthink and group polarization can lead to erroneous and ideologically tainted policy positions, the notion of giving the President unchecked authority in determining who is eligible for assassination can only serve to increase the likelihood for committing significant errors.155 The reality is that psychological mistakes, organizational ineptitude, lack of structural coherence and other associated deficiencies are inevitable features in Executive Branch decision-making.¶ D. THE NEED FOR ACCOUNTABILITY CHECKS¶ To check the vices of groupthink and shortcomings of human judgment, the psychology literature emphasizes a focus on accountability mechanisms in which a better reasoned decision-making process can flourish.156 By serving as a constraint on behavior, “accountability functions as a critical norm-enforcement mechanism—the social psychological link between individual decision makers on the one hand and social systems on the other.”157 Such institutional review can channel recognition for the need by government decision-makers to be more self-critical in policy targeted killing designations, more willing to consider alternative points of view, and more willing to anticipate possible objections.158 Findings have also shown that ex ante awareness can lead to more reasoned judgment while also preventing tendentious and ideological inclinations (and political motivations incentivized and exploited by popular hysteria and fear).159¶ Requiring accounting in a formalized way prior to engaging in a targeted killing—by providing, for example, in camera review, limited declassification of information, explaining threat assessments outside the immediate circle of policy advisors, and securing meaningful judicial review via a COAACC-like tribunal—can promote a more reliable and informed deliberation in the executive branch. With process-based judicial review, the COAACC could effectively reorient the decision to target individuals abroad by examining key procedural aspects—particularly assessing the reliability of the “terrorist” designation—and can further incentivize national security policy-makers to engage in more carefully reasoned choices and evaluate available alternatives than when subject to little to no review.

#### Scenario 1 is Yemen

#### Unaccountable drone strikes strengthen AQAP and destabilize Yemen

Jacqueline Manning 12, Senior Editor of International Affairs Review, December 9 2012, “Free to Kill: How a Lack of Accountability in America’s Drone Campaign Threatens U.S. Efforts in Yemen,” http://www.iar-gwu.org/node/450

Earlier this year White House counter-terrorism advisor, John Brennan, named al-Qaeda in the Arabian Peninsula (AQAP) in Yemen the greatest threat to the U.S. Since 2009, the Obama administration has carried out an estimated 28 drone strikes and 13 air strikes targeting AQAP in Yemen, while the Yemeni Government has carried out 17 strikes, and another five strikes cannot be definitively attributed to either state . There is an ongoing debate over the effectiveness of targeted killings by drone strikes in the fight against al-Qaeda. However, what is clear is that the secrecy and unaccountability with which these drone strike are being carried out are undermining U.S. efforts in Yemen.¶ The drone campaign in Yemen is widely criticized by human rights activists, the local population and even the United Nations for its resulting civilian casualties. It is also credited with fostering animosity towards the U.S. and swaying public sentiment in Yemen in favor of AQAP. The long-term effects, as detailed by a 2012 report by the Center for Civilians in Conflict, seem to be particularly devastating. The resulting loss of life, disability, or loss of property of a bread-winner can have long-term impacts, not just on an individual, but on an entire family of dependents.¶ The effectiveness of drone technology in killing al-Qaeda militants, however, cannot be denied. Targeted killings by drone strikes have eliminated several key AQAP members such as Anwar al-Awlaki, Samir Khan, Abdul Mun’im Salim al Fatahani, and Fahd al-Quso . Advocates of the counterterrorism strategy point out that it is much less costly in terms of human lives and money than other military operations.¶ While there are strong arguments on both sides of the drone debate, both proponents and critics of targeted killings of AQAP operatives by drones agree that transparency and accountability are needed.¶ Authorizing the CIA to carry out signature strikes is of particular concern. In signature strikes, instead of targeting individual Al Qaeda leaders, the CIA targets locations without knowing the precise identity of the individuals targeted as long as the locations are linked to a “signature” or pattern of behavior by Al Qaeda officials observed over time. This arbitrary method of targeting often results in avoidable human casualties.¶ Secrecy surrounding the campaign often means that victims and families of victims receive no acknowledgement of their losses, much less compensation. There are also huge disparities in the reported number of deaths. In addition, according to The New York Times, Obama administration officials define “militants” as “all military-age males in a strike zone...unless there is explicit intelligence posthumously proving them innocent” This definition leads to a lack of accountability for those casualties and inflames anti-American sentiment.¶ In a report submitted to the UN Human Rights Council, Ben Emmerson, special rapporteur on the promotion and protection of human rights while countering terrorism, asserted that, "Human rights abuses have all too often contributed to the grievances which cause people to make the wrong choices and to resort to terrorism….human rights compliant counter-terrorism measures help to prevent the recruitment of individuals to acts of terrorism." There is now statistical evidence that supports this claim. A 2010 opinion poll conducted by the New America Foundation in the Federally Administered Tribal Areas (FATA) of Pakistan, where U.S. drone strikes have been carried out on a much larger scale, shows an overwhelming opposition to U.S. drone strikes coupled with a majority support for suicide attacks on U.S. forces under some circumstances.¶ It is clear that the drone debate is not simply a matter of morality and human rights; it is also a matter of ineffective tactics. At a minimum the U.S. must implement a policy of transparency and accountability in the use of drones. Signature strikes take unacceptable risks with innocent lives. Targets must be identified more responsibly, and risks of civilian casualties should be minimized. When civilian casualties do occur, the United States must not only acknowledge them, but also pay amends to families of the victims.

#### Strengthened AQAP undermines the Saudi regime

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

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

#### That destabilizes the Middle East

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

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

#### Global nuke war

Primakov 9 [September, Yevgeny, President of the Chamber of Commerce and Industry of the Russian Federation; Member of the Russian Academy of Sciences; member of the Editorial Board of Russia in Global Affairs. This article is based on the scientific report for which the author was awarded the Lomonosov Gold Medal of the Russian Academy of Sciences in 2008, “The Middle East Problem in the Context of International Relations”]

The Middle East conflict is unparalleled in terms of its potential for spreading globally. During the Cold War, amid which the Arab-Israeli conflict evolved, the two opposing superpowers directly supported the conflicting parties: the Soviet Union supported Arab countries, while the United States supported Israel. On the one hand, the bipolar world order which existed at that time objectively played in favor of the escalation of the Middle East conflict into a global confrontation. On the other hand, the Soviet Union and the United States were not interested in such developments and they managed to keep the situation under control. The behavior of both superpowers in the course of all the wars in the Middle East proves that. In 1956, during the Anglo-French-Israeli military invasion of Egypt (which followed Cairo’s decision to nationalize the Suez Canal Company) the United States – contrary to the widespread belief in various countries, including Russia – not only refrained from supporting its allies but insistently pressed – along with the Soviet Union – for the cessation of the armed action. Washington feared that the tripartite aggression would undermine the positions of the West in the Arab world and would result in a direct clash with the Soviet Union. Fears that hostilities in the Middle East might acquire a global dimension could materialize also during the Six-Day War of 1967. On its eve, Moscow and Washington urged each other to cool down their “clients.” When the war began, both superpowers assured each other that they did not intend to get involved in the crisis militarily and that that they would make efforts at the United Nations to negotiate terms for a ceasefire. On July 5, the Chairman of the Soviet Government, Alexei Kosygin, who was authorized by the Politburo to conduct negotiations on behalf of the Soviet leadership, for the first time ever used a hot line for this purpose. After the USS *Liberty* was attacked by Israeli forces, which later claimed the attack was a case of mistaken identity, U.S. President Lyndon Johnson immediately notified Kosygin that the movement of the U.S. Navy in the Mediterranean Sea was only intended to help the crew of the attacked ship and to investigate the incident. The situation repeated itself during the hostilities of October 1973. Russian publications of those years argued that it was the Soviet Union that prevented U.S. military involvement in those events. In contrast, many U.S. authors claimed that a U.S. reaction thwarted Soviet plans to send troops to the Middle East. Neither statement is true. The atmosphere was really quite tense. Sentiments both in Washington and Moscow were in favor of interference, yet both capitals were far from taking real action. When U.S. troops were put on high alert, Henry Kissinger assured Soviet Ambassador Anatoly Dobrynin that this was done largely for domestic considerations and should not be seen by Moscow as a hostile act. In a private conversation with Dobrynin, President Richard Nixon said the same, adding that he might have overreacted but that this had been done amidst a hostile campaign against him over Watergate. Meanwhile, Kosygin and Foreign Minister Andrei Gromyko at a Politburo meeting in Moscow strongly rejected a proposal by Defense Minister Marshal Andrei Grechko to “demonstrate” Soviet military presence in Egypt in response to Israel’s refusal to comply with a UN Security Council resolution. Soviet leader Leonid Brezhnev took the side of Kosygin and Gromyko, saying that he was against any Soviet involvement in the conflict. The above suggests an unequivocal conclusion that control by the superpowers in the bipolar world did not allow the Middle East conflict to escalate into a global confrontation. After the end of the Cold War, some scholars and political observers concluded that a real threat of the Arab-Israeli conflict going beyond regional frameworks ceased to exist. However, in the 21st century this conclusionno longer conforms to the realit**y**. The U.S. military operation in Iraq has changed the balance of forces in the Middle East. The disappearance of the Iraqi counterbalance has brought Iran to the fore as a regional power claiming a direct role in various Middle East processes. I do not belong to those who believe that the Iranian leadership has already made a political decision to create nuclear weapons of its own. Yet Tehran seems to have set itself the goal of achieving a technological level that would let it make such a decision (the “Japanese model”) under unfavorable circumstances. Israel already possesses nuclear weapons and delivery vehicles. In such circumstances, the absence of a Middle East settlement opens a dangerous prospect ofa nuclear collision in the region, which would have catastrophic consequences for the whole world**.** The transition to a multipolar world has objectively strengthened the role of states and organizations that are directly involved in regional conflicts, which increases the latter’s danger and reduces the possibility of controlling them. This refers, above all, to the Middle East conflict. The coming of Barack Obama to the presidency has allayed fears that the United States could deliver a preventive strike against Iran (under George W. Bush, it was one of the most discussed topics in the United States). However, fears have increased that such a strike can be launched *Yevgeny Primakov* 1 3 2 RUSSIA IN GLOBAL AFFAIRS VOL. 7 • No. 3 • JULY – SEPTEMBER• 2009 by Israel, which would have unpredictable consequences for the region and beyond. It seems that President Obama’s position does not completely rule out such a possibility.

#### Scenario 2 is Pakistan

#### Overuse of drones in Pakistan empowers militants and destabilizes the government

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

The escalation of drone strikes in Pakistan to its current tempo—one every few days—directly contradicts the long-term American strategic goal of boosting the capacity and legitimacy of the government in Islamabad. Drone attacks are more than just temporary incidents that erase all traces of an enemy. They have lasting political effects that can weaken existing governments, undermine their legitimacy and add to the ranks of their enemies. These political effects come about because drones provide a powerful signal to the population of a targeted state that the perpetrator considers the sovereignty of their government to be negligible. The popular perception that a government is powerless to stop drone attacks on its territory can be crippling to the incumbent regime, and can embolden its domestic rivals to challenge it through violence. Such continual violations of the territorial integrity of a state also have direct consequences for the legitimacy of its government. Following a meeting with General David Petraeus, Pakistani President Asif Ali Zardari described the political costs of drones succinctly, saying that ‘continuing drone attacks on our country, which result in loss of precious lives or property, are counterproductive and difficult to explain by a democratically elected government. It is creating a credibility gap.’75 Similarly, the Pakistani High Commissioner to London Wajid Shamsul Hasan said in August 2012 that¶ what has been the whole outcome of these drone attacks is that you have directly or indirectly contributed to destabilizing or undermining the democratic government. Because people really make fun of the democratic government—when you pass a resolution against drone attacks in the parliament and nothing happens. The Americans don’t listen to you, and they continue to violate your territory.76¶ The appearance of powerlessness in the face of drones is corrosive to the appearance of competence and legitimacy of the Pakistani government. The growing perception that the Pakistani civilian government is unable to stop drone attacks is particularly dangerous in a context where 87 per cent of all Pakistanis are dissatisfied with the direction of the country and where the military, which has launched coups before, remains a popular force.77

#### Pakistan instability causes loose nukes and Indian intervention --- goes nuclear

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PhD in public and international affairs from Princeton, Apr 27 2005, “Dealing with the Collapse of a Nuclear-Armed State: The Cases of North Korea and Pakistan,” http://www.princeton.edu/~ppns/papers/ohanlon.pdf

Were Pakistan to collapse, it is unclear what the United States and like-minded states would or should do. As with North Korea, it is highly unlikely that “surgical strikes” to destroy the nuclear weapons could be conducted before extremists could make a grab at them. The United States probably would not know their location – at a minimum, scores of sites controlled by Special Forces or elite Army units would be presumed candidates – and no Pakistani government would likely help external forces with targeting information. The chances of learning the locations would probably be greater than in the North Korean case, given the greater openness of Pakistani society and its ties with the outside world; but U.S.-Pakistani military cooperation, cut off for a decade in the 1990s, is still quite modest, and the likelihood that Washington would be provided such information or otherwise obtain it should be considered small.¶ If a surgical strike, series of surgical strikes, or commando-style raids were not possible, the only option would be to try to restore order before the weapons could be taken by extremists and transferred to terrorists. The United States and other outside powers might, for example, respond to a request by the Pakistani government to help restore order. Given the embarrassment associated with requesting such outside help, the Pakistani government might delay asking until quite late, thus complicating an already challenging operation. If the international community could act fast enough, it might help defeat an insurrection. Another option would be to protect Pakistan’s borders, therefore making it harder to sneak nuclear weapons out of the country, while only providing technical support to the Pakistani armed forces as they tried to quell the insurrection. Given the enormous stakes, the United States would literally have to do anything it could to prevent nuclear weapons from getting into the wrong hands.¶ India would, of course, have a strong incentive to ensure the security of Pakistan’s nuclear weapons. It also would have the advantage of proximity; it could undoubtedly mount a large response within a week, but its role would be complicated to say the least. In the case of a dissolved Pakistani state, India likely would not hesitate to intervene; however, in the more probable scenario in which Pakistan were fraying but not yet collapsed, India’s intervention could unify Pakistan’s factions against the invader, even leading to the deliberate use of Pakistani weapons against India. In such a scenario, with Pakistan’s territorial integrity and sovereignty on the line and its weapons put into a “use or lose” state by the approach of the Indian Army, nuclear dangers have long been considered to run very high.

#### Extinction

Greg Chaffin 11, Research Assistant at Foreign Policy in Focus, July 8, 2011, “Reorienting U.S. Security Strategy in South Asia,” online: http://www.fpif.org/articles/reorienting\_us\_security\_strategy\_in\_south\_asia

A nuclear conflict in the subcontinent would have disastrous effects on the world as a whole. In a January 2010 paper published in Scientific American, climatology professors Alan Robock and Owen Brian Toon forecast the global repercussions of a regional nuclear war. Their results are strikingly similar to those of studies conducted in 1980 that conclude that a nuclear war between the United States and the Soviet Union would result in a catastrophic and prolonged nuclear winter, which could very well place the survival of the human race in jeopardy. In their study, Robock and Toon use computer models to simulate the effect of a nuclear exchange between India and Pakistan in which each were to use roughly half their existing arsenals (50 apiece). Since Indian and Pakistani nuclear devices are strategic rather than tactical, the likely targets would be major population centers. Owing to the population densities of urban centers in both nations, the number of direct casualties could climb as high as 20 million. ¶ The fallout of such an exchange would not merely be limited to the immediate area. First, the detonation of a large number of nuclear devices would propel as much as seven million metric tons of ash, soot, smoke, and debris as high as the lower stratosphere. Owing to their small size (less than a tenth of a micron) and a lack of precipitation at this altitude, ash particles would remain aloft for as long as a decade, during which time the world would remain perpetually overcast. Furthermore, these particles would soak up heat from the sun, generating intense heat in the upper atmosphere that would severely damage the earth’s ozone layer. The inability of sunlight to penetrate through the smoke and dust would lead to global cooling by as much as 2.3 degrees Fahrenheit. This shift in global temperature would lead to more drought, worldwide food shortages, and widespread political upheaval.

### Advantage 2 is Preemption

#### US justifications for targeted killing will spill over to erode legal restraints on all violence and legitimize preventive war

Craig Martin 11, Associate Professor of Law at Washburn University School of Law, “Going Medieval: Targeted Killing, Self-Defence, and the Jus Ad Bellum Regime,” Ch 8 in TARGETED KILLINGS: LAW & MORALITY IN AN ASYMMETRICAL WORLD, p. 223, available at http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=1956141

IV. The potential impact of the targeted killing policy on international law

The United States has been engaging in this practice of using drone-mounted missile systems to kill targeted individuals since at least 2002.98 An increasing number of countries have employed different methods of targeted killing that constitute a use of force under jus ad bellum.99 The evidence suggests that the United States intends to continue and indeed expand the program, and there is a growing body of scholarly literature that either defends the policy’s legality, or advocates adjustment in international law to permit such action. There is, therefore, a real prospect that the practice could become more widespread, and that customary international law could begin to shift to reflect the principles implicit in the U.S. justification and in accordance with the rationales developed to support it.¶ Some of the implications of such an adjustment in the jus ad bellum regime are obvious from the foregoing analysis. As discussed, there would be a rejection of the narrow principle of self-defense in favor of something much closer to the Grotian concept of defensive war, encompassing punitive measures in response to past attacks and preventative uses of force to halt the development of future threats. The current conditions for a legitimate use of force in self-defense, namely the occurrence or imminence of an armed attack, necessity, and proportionality, would be significantly diluted or abandoned. Not only the doctrine of self-defense, but other aspects of the collective security system would be relaxed as well. Harkening back to Grotian notions of law enforcement constituting a just cause for war, the adjusted jus ad bellum regime would potentially permit the unilateral use of force against and within states for the purpose of attacking NSAs as such, in effect to enforce international law in jurisdictions that were incapable of doing so themselves.100 This would not only further undermine the concept of self-defense, but would undermine the exclusive jurisdiction that the U.N. Security Council currently has to authorize the use of force for purposes of “law enforcement” under Chapter VII of the Charter. Thus, both of the exceptions to the Article 2(4) prohibition on the use of force would be expanded.¶ In addition, however, the targeted killing policy threatens to create other holes in the jus ad bellum regime. This less obvious injury would arise from changes that would be similarly required of the IHL regime, and the resulting modifications to the fundamental relationship between the two regimes. These changes could lead to a complete severance of the remaining connection between the two regimes. Indeed, Ken Anderson, a scholar who has testified more than once on this subject before the U.S. Congress,101 has advocated just such a position, suggesting that the United States should assert that its use of force against other states in the process of targeted killings, while justified by the right to self-defense, does not rise to such a level that it would trigger the existence of an international armed conflict or the operation of IHL principles.102 If customary international law evolved along such lines, reverting to gradations in the types of use of force the change would destroy the unity of the system comprised of the jus ad bellum and IHL regimes, and there would be legal “black holes” in which states could use force without being subject to the limitations and conditions imposed by the IHL regime.¶ The structure of Harold Koh’s two-pronged justification similarly implies a severance of this relationship between jus ad bellum and IHL, albeit in a different and even more troubling way. His policy justification consists of two apparently independent and alternative arguments—that the United States is in an armed conflict with Al Qaeda and associated groups; and that the actions are justified as an exercise of self-defense. The suggestion seems to be that the United States is entitled on either basis to use armed force not just against the individuals targeted, but also against states in which the terrorist members are located. In other words, the first prong of the argument is that the use of force against another sovereign state, for the purposes of targeting Al Qaeda members, is justified by the existence of an armed conflict with Al Qaeda. If this is indeed what is intended by the policy justification, it represents an extraordinary move, not just because it purports to create a new category of armed conflict (that is, a “transnational” armed conflict without geographic limitation),103 but because it also suggests that there need be no jus ad bellum justification at all for a use of force against another state. Rather, the implication of Koh’s rationale is that the existence of an armed conflict under IHL can by itself provide grounds for exemption from the prohibition against the threat or use of force under the jus ad bellum regime.¶ This interpretation of the justifications cannot be pressed too far on the basis of the language of Mr. Koh’s speech alone, which he hastened to explain at the time was not a legal opinion.104 The two justifications could be explained as being supplementary rather than independent and alternative in nature. But the conduct of the United States in the prosecution of the policy would appear to confirm that it is based on these two independent justifications.105 The strikes against groups and states unrelated to the 9/11 attacks could be explained in part by the novel idea that force can be used against NSAs as such, wherever they may be situated. But even assuming some sort of strict liability for states in which guilty NSAs are found, that explanation still does not entirely account for the failure to tie the use of force against the different groups to specific armed attacks launched by each such group. This suggests that the United States is also relying quite independently on the argument that it is engaged in an armed conflict with all of these groups, and that the existence of such an armed conflict provides an independent justification for the use of force against the states in which the groups may be operating.¶ While the initial use of force in jus ad bellum terms is currently understood to bring into existence an international armed conflict and trigger the operation of IHL, the changes suggested by the policy would turn this on its head, by permitting the alleged existence of a “transnational” armed conflict to justify the initial use of force against third states. Whereas the two regimes currently operate as two components of an overall legal system relating to war, with one regime governing the use of force and the other the conduct of hostilities in the resulting armed conflict, the move attempted by the U.S. policy would terminate these independent but inter-related roles within a single system, and expand the role and scope of IHL to essentially replace aspects of the jus ad bellum regime. This would not only radically erode the jus ad bellum regime’s control over the state use of force, but it could potentially undermine the core idea that war, or in more modern terms the use of force and armed conflict, constitutes a legal state that triggers the operation of special laws that govern the various aspects of the phenomenon. There is a risk of return to a pre-Grotian perspective in which “war” was simply a term used to describe certain kinds of organized violence, rather than constituting a legal institution characterized by a coherent system of laws designed to govern and constrain all aspects of its operation.¶ There is a tendency in the U.S. approach to the so-called “global war on terror” to cherry-pick principles of the laws of war and to apply them in ways and in circumstances that are inconsistent with the very criteria within that legal system that determine when and how it is to operate. This reflects a certain disdain for the idea that the laws of war constitute an internally coherent system of law.106 In short, the advocated changes to the jus ad bellum regime and to the relationship between it and the IHL regime, and thus to the laws of war system as a whole,107 would constitute marked departures from the trajectory the system has been on during its development over the past century, and would be a repudiation of deliberate decisions that were made in creating the U.N. system after the Second World War.108¶ The premise of my argument is not that any return to past principles is inherently regressive. A rejection of recent innovations in favor of certain past practices might be attractive to some in the face of new transnational threats. The argument here is not even to deny the idea that the international law system may have to adapt to respond to the transnational terrorist threat. The point, rather, is that the kinds of changes to the international law system that are implicit in the targeted killing policy, and which are advocated by its supporters, would serve to radically reduce the limitations and constraints on the use of force by states against states. The modern principles that are being abandoned were created for the purpose of limiting the use of force and thus reducing the incidence of armed conflict among nations. The rejection of those ideas and a return to older concepts relating to the law of war would restore aspects of a system in which war was a legitimate tool of statecraft, and international armed conflict was thus far more frequent and widespread.109¶ The entire debate on targeted killing is so narrowly focused on the particular problems posed by transnational terrorist threats, and how to manipulate the legal limitations that tend to frustrate some of the desired policy choices, that there is insufficient reflection on the broader context, and the consequences that proposed changes to the legal constraints would have on the wider legal system of which they are a part. It may serve the immediate requirements of the American government, in order to legitimize the killing of AQAP members in Yemen, to expand the concept of self-defense, and to suggest that states can use force on the basis of a putative “transnational” armed conflict with NSAs. The problem is that the jus ad bellum regime applies to all state use of force, and it is not being adjusted in some tailored way to deal with terrorism alone. If the doctrine of self-defense is expanded to include preventative and punitive elements, it will be so expanded for all jus ad bellum purposes. The expanded doctrine of self-defense will not only justify the use of force to kill individual terrorists alleged to be plotting future attacks, but to strike the military facilities of states suspected of preparing for future aggression. If the threshold for use of force against states “harboring” NSAs is significantly reduced, the gap between state responsibility and the criteria for use of force will be reduced for all purposes. If the relationship between jus ad bellum and IHL is severed or altered, so as to create justifications for the use of force that are entirely independent of the jus ad bellum regime, then states will be entitled to use force against other states under the pretext of self-proclaimed armed conflict with NSAs generally.¶ We may think about each of these innovations as being related specifically to operations against terrorist groups that have been responsible for heinous attacks, and applied to states that have proven uniquely unwilling or unable to take the actions necessary to deal with the terrorists operating within their territory. But no clear criteria or qualifications are in fact tied to the modifications that are being advanced by the targeted killing policy. Relaxing the current legal constraints on the use of force and introducing new but poorly defined standards, will open up opportunities for states to use force against other states for reasons that have nothing to do with anti-terrorist objectives. Along the lines that Jeremy Waldron argues in chapter 4 in this volume,110 more careful thought ought to be given to the general norms that we are at risk of developing in the interest of justifying the very specific targeted killing policy. Ultimately, war between nations is a far greater threat, and is a potential source of so much more human suffering than the danger posed by transnational terrorism. This is not to trivialize the risks that terrorism represents, particularly in an age when Al Qaeda and others have sought nuclear weapons. But we must be careful not to undermine the system designed to constrain the use of force and reduce the incidence of international armed conflict, in order to address a threat that is much less serious in the grand scheme of things.

#### Robust norms restricting the use of force empirically prevent conflict escalation among great powers

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Wallensteen’s examination of the characteristics of particularist periods provides significant additional evidence that the steps-to-war analysis is on the right track. Realist practices are associated with war, and peaceful systems are associated with an emphasis on other practices. Peaceful systems are exemplified by the use of practices like buffer states, compensation, and concerts of power that bring major states together to form a network of institutions that provide governance for the system. The creation of rules of the game that can handle certain kinds of issues – territorial and ideological questions – and/or keep them off the agenda seems to be a crucial variable in producing peace.¶ Additional evidence on the import of rules and norms is provided in a series of studies by Kegley and Raymond (1982, 1984, 1986, 1990) that are operationally more precise than Wallensteen’s (1984) analysis. Kegley and Raymond provide evidence that when states accept norms, the incidence of war and military confrontation is reduced. They find that peace is associated with periods in which alliance norms are considered binding and the unilateral abrogation of commitments and treaties illegitimate. The rules imposed by the global political culture in these periods result in fewer militarized disputes and wars between major states. In addition, the wars that occur are kept at lower levels of severity, magnitude, and duration (i.e. they are limited wars).¶ Kegley and Raymond attempt to measure the extent to which global cultural norms restrain major states by looking at whether international law and commentary on it sees treaties and alliances as binding. They note that there have been two traditions in international law – pacta sunt servanda, which maintains that agreements are binding, and clausa rebus sic stantibus, which says that treaties are signed “as matters stand” and that any change in circumstances since the treaty was signed permits a party to withdraw unilaterally. One of the advantages the Kegley-Raymond studies have over Wallensteen (1984) is that they are able to develop reliable measures of the extent to which in any given half-decade that tradition in international law emphasizes the rebus or pacta sunt servanda tradition. This indicator is important not only because it focuses in on the question of unilateral actions, but because it can serve as an indicator of how well the peace system is working. The pacta sunt servanda tradition implies a more constraining political system and robust institutional context which should provide an alternative to war.¶ Kegley and Raymond (1982: 586) find that in half-decades (from 1820 to 1914) when treaties are considered non-binding (rebus), wars between major states occur in every half-decade (100 percent), but when treaties are considered binding (pacta sunt servanda), wars between major states occur in only 50 percent of the half-decades. The Cramer’s V for this relationship is .66. When the sample is expanded to include all states in the central system, Cramer’s V is 0.44, indicating that global norms have more impact on preventing war between major states. Nevertheless, among central system states between 1820 and 1939, war occurred in 93 percent of the half-decades where the rebus tradition dominated and in only 60 percent of the half-decades where the pacta sunt sevanda tradition dominated.¶ In a subsequent analysis of militarized disputes from 1820 to 1914, Kegley and Raymond (1984: 207-11) find that there is a negative relationship between binding norms and the frequency and scope of disputes short of war. In periods when the global culture accepts the pacta sunt servanda tradition as the norm, the number of military disputes goes down and the number of major states involved in a dispute decreases. Although the relationship is of moderate strength, it is not eliminated by other variables, namely alliance flexibility. As Kegley and Raymond (1984: 213) point out, this means “that in periods when the opportunistic renunciation of commitments” is condoned, militarized disputes are more likely to occur and to spread. The finding that norms can reduce the frequency and scope of disputes is significant evidence that rules can permit actors to successfully control and manage disputes so that they are not contagious and they do not escalate to war. These findings are consistent with Wallensteen’s (1984) and suggest that one of the ways rules help prevent war is by reducing, limiting, and managing disputes short of war.

#### Specifically, executive discretion over the legitimacy of targets will eviscerate legal restrictions on self-defense

Rosa Brooks 13, Professor of Law at the Georgetown University Law Center, Bernard L. Schwartz Senior Fellow at the New America Foundation, “The Constitutional and Counterterrorism Implications of Targeted Killing,” http://www.judiciary.senate.gov/pdf/04-23-13BrooksTestimony.pdf

5. Setting Troubling International Precedents ¶ Here is an additional reason to worry about the U.S. overreliance on drone strikes: Other states will follow America's example, and the results are not likely to be pretty. Consider once again the Letelier murder, which was an international scandal in 1976: If the Letelier assassination took place today, the Chilean authorities would presumably insist on their national right to engage in “targeted killings” of individuals deemed to pose imminent threats to Chilean national security -- and they would justify such killings using precisely the same legal theories the US currently uses to justify targeted killings in Yemen or Somalia. We should assume that governments around the world—including those with less than stellar human rights records, such as Russia and China—are taking notice. ¶ Right now, the United States has a decided technological advantage when it comes to armed drones, but that will not last long. We should use this window to advance a robust legal and normative framework that will help protect against abuses by those states whose leaders can rarely be trusted. Unfortunately, we are doing the exact opposite: Instead of articulating norms about transparency and accountability, the United States is effectively handing China, Russia, and every other repressive state a playbook for how to foment instability and –literally -- get away with murder. ¶ Take the issue of sovereignty. Sovereignty has long been a core concept of the Westphalian international legal order.42 In the international arena, all sovereign states are formally considered equal and possessed of the right to control their own internal affairs free of interference from other states. That's what we call the principle of non-intervention -- and it means, among other things, that it is generally prohibited for one state to use force inside the borders of another sovereign state. There are some well-established exceptions, but they are few in number. A state can lawfully use force inside another sovereign state with that state's invitation or consent, or when force is authorized by the U.N. Security Council, pursuant to the U.N. Charter,43 or in self-defense "in the event of an armed attack." ¶ The 2011 Justice Department White Paper asserts that targeted killings carried out by the United States don't violate another state's sovereignty as long as that state either consents or is "unwilling or unable to suppress the threat posed by the individual being targeted." That sounds superficially plausible, but since the United States views itself as the sole arbiter of whether a state is "unwilling or unable" to suppress that threat, the logic is in fact circular. ¶ It goes like this: The United States -- using its own malleable definition of "imminent" -- decides that Person X, residing in sovereign State Y, poses a threat to the United States and requires killing. Once the United States decides that Person X can be targeted, the principle of sovereignty presents no barriers, because either 1) State Y will consent to the U.S. use of force inside its borders, in which case the use of force presents no sovereignty problems or 2) State Y will not consent to the U.S. use of force inside its borders, in which case, by definition, the United States will deem State Y to be "unwilling or unable to suppress the threat" posed by Person X and the use of force again presents no problem. ¶ This is a legal theory that more or less eviscerates traditional notions of sovereignty, and has the potential to significantly destabilize the already shaky collective security regime created by the U.N. Charter.44 If the US is the sole arbiter of whether and when it can use force inside the borders of another state, any other state strong enough to get away with it is likely to claim similar prerogatives. And, of course, if the US executive branch is the sole arbiter of what constitutes an imminent threat and who constitutes a targetable enemy combatant in an ill- defined war, why shouldn’t other states make identical arguments—and use them to justify the killing of dissidents, rivals, or unwanted minorities?

#### Now is key---US targeted killing is driving a global shift in strategic doctrines---results in nuclear war

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Preventive self-defense entails waging a war or an attack by choice, in order to prevent a suspected enemy from changing the status quo in an unfavorable direction. Prevention is acting in anticipation of a suspected latent threat that might fully emerge someday. One might rightfully point out that preventive strikes are nothing new—the Iraq War is simply a more recent example in a long history of the preventive use of force. The strategic theorist Colin Gray (2007:27), for example, argues that “far from being a rare and awful crime against an historical norm, preventive war is, and has always been, so common, that its occurrence seems remarkable only to those who do not know their history.” Prevention may be common throughout history, but this does not change the fact that it became increasingly difficult to justify after World War II, as the international community developed a core set of normative principles to guide state behavior, including war as a last resort. The threshold for war was set high, imposing a stringent standard for states acting in self-defense. Gray concedes that there has been a “slow and erratic, but nevertheless genuine, growth of a global norm that regards the resort to war as an extraordinary and even desperate measure” and that the Iraq war set a “dangerous precedent” (44). Although our cases do not provide a definitive answer for whether a preventive self-defense norm is diffusing, they do provide some initial evidence that states are re-orienting their military and strategic doctrines toward offense. In addition, these states have all either acquired or developed unmanned aerial vehicles for the purposes of reconnaissance, surveillance, and/or precision targeting.¶ Thus, the results of our plausibility probe provide some evidence that the global norm regarding the use of force as a last resort is waning, and that a preventive self-defense norm is emerging and cascading following the example set by the United States. At the same time, there is variation among our cases in the extent to which they apply the strategy of self-defense. China, for example, has limited their adaption of this strategy to targeted killings, while Russia has declared their strategy to include the possibility of a preventive nuclear war. Yet, the preventive self-defense strategy is not just for powerful actors. Lesser powers may choose to adopt it as well, though perhaps only implementing the strategy against actors with equal or lesser power. Research in this vein would compliment our analyses herein.¶ With the proliferation of technology in a globalized world, it seems only a matter of time before countries that do not have drone technology are in the minority. While preventive self-defense strategies and drones are not inherently linked, current rhetoric and practice do tie them together. Though it is likely far into the future, it is all the more important to consider the final stage of norm evolution—internalization—for this particular norm. While scholars tend to think of norms as “good,” this one is not so clear-cut. If the preventive self-defense norm is taken for granted, integrated into practice without further consideration, it inherently changes the functioning of international relations. And unmanned aerial vehicles, by reducing the costs of war, make claims of preventive self-defense more palatable to the public. Yet a global norm of preventive self-defense is likely to be destabilizing, leading to more war in the international system, not less. It clearly violates notions of just war principles—jus ad bellum. The United States has set a dangerous precedent, and by continuing its preventive strike policy it continues to provide other states with the justification to do the same.

#### Credible external oversight is key to solve---the alternative is an anything-goes standard

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Further, the U.S. counterterrorism chief John Brennan has noted that the administration is "establishing precedents that other nations may follow." But, for now, other countries have no reason to believe that the United States carries out its own targeted killing operations responsibly. Without a credible oversight program, those negative perceptions of U.S. behavior will fill the vacuum, and an anything-goes standard might be the result. U.S. denunciations of other countries' programs could come to ring hollow. ¶ If the United States did adopt an oversight system, those denunciations would carry more weight. So, too, would U.S. pressure on other states to adopt similar systems: just as suspicions grow when countries refuse nuclear inspection, foreign governments that turned down invitations to apply a proven system of oversight to their own drone campaigns would reveal their disregard for humanitarian concerns.

#### A norm of preventive war pushes regional conflicts over the brink---causes multiple scenarios for nuclear war

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A final concern relates to the impact of the precedent set by the United States legitimating action that others might emulate, at the same time reducing its leverage to convince such countries not to use force. This concern is theoretical at one level, since it relates to stated doctrine as opposed to actual U.S. actions. But it is very real at another level. Today's international system is characterized by a relative infrequency of interstate war. Developing doctrines that lower the threshold for preemptive action could put that accomplishment at risk, and exacerbate regional crises already on the brink of open conflict.¶ Of course, no country will embark suddenly on a war of aggression simply because the United States provides it with a quasi-legal justification to do so. But countries already on the brink of war, and leaning strongly towards war, might use the doctrine to justify an action they already wished to take, and the effect of the U.S. posture may make it harder for the international community in general, and the U.S. in particular, to counsel delay and diplomacy.¶ Potential examples abound, ranging from Ethiopia and Eritrea, to China and Taiwan, to the Middle East. But perhaps the clearest case is the India-Pakistan crisis. Last spring, India was poised to attack Pakistan, given Pakistan's suspected complicity in assisting Islamic extremist terrorists who went from Pakistan into the disputed territory of Kashmir. A combination of U.S. pressure on both countries, with some last-minute caution by the leaders of Pakistan and India, narrowly averted a war that had the potential to escalate to the nuclear level once it began. Although India might have intended to limit its action to eliminating terrorist bases in Pakistan-held Kashmir and perhaps some bases inside Pakistan, nuclear-armed Pakistan might well have believed that India's intentions were to overthrow the regime in Islamabad or to eliminate its nuclear weapons capability. That situation would have further exacerbated the risks of escalation. Unfortunately, the terrorist infiltrations from Pakistan to Kashmir that did much to spark the earlier crisis appear to be resuming. Kashmir's status remains contentious, meaning that the risk of conflict remains.¶ Should the crisis resume, a U.S. policy of preemption may provide hawks in India the added ammunition they need to justify a strike against Pakistan in the eyes of their fellow Indian decision-makers. Recently, India Finance Minister (and former Foreign Minister) Jaswant Singh welcomed the administration's new emphasis on the legitimacy of preemption.

#### Legitimizing preventive war causes a Chinese attack on US missile defense

Stephen Walt 4, Robert and Renee Belfer Professor of International Affairs at Harvard, PhD in Political Science from UC Berkeley, October 1 2004, “The Strategic Environment,” Panel Discussion at “Preemptive Use of Force: A Reassessment,” Conference held by the Fletcher Forum on International Affairs, <http://www.brookings.edu/views/papers/daalder/daalder_fletcher.pdf>

Finally, as Ivo has already noted, there is this precedent problem. By declaring that preventive war is an effective policy option for us, we make it easier for others to see it as an effective policy option for them. Why can’t India attack Pakistan before it develops more nuclear weapons? Why can’t Turkey attack Iraqi Kurdistan to prevent the emergence of an independent state there? Why was it wrong for Serbia to take preventive action against the Kosovars, given that there was a guerilla army attacking Serbs in Kosovo, and given that the Serbs could see a long term threat to their national security if the Kosovar-Albanians got more and more politically organized and tried to secede? Why couldn’t a stronger China decide that America’s national missile defense program was a direct threat to their nuclear deterrent capability, and therefore decide to order a preventive commando strike against American radar sites in Alaska? Now this sounds wildly far-fetched, of course, but imagine the situation being reversed. Imagine if another country threatened our second strike capability, wouldn’t we have looked for some way to prevent that from happening? Of course we would. So again, we’re creating a precedent here.

#### That goes nuclear

John W. Lewis 12, William Haas Professor of Chinese Politics, emeritus, at Stanford University, PhD from UCLA, and Xue Litai, research scholar at the Project on Peace and Cooperation in the Asian-Pacific Region at Stanford University’s Center for International Security and Cooperation, “Making China’s nuclear war plan,” Bulletin of the Atomic Scientists September/October 2012 vol. 68 no. 5 45-65, http://bos.sagepub.com/content/68/5/45.full

If the CMC authorizes a missile base to launch preemptive conventional attacks on an enemy, however, the enemy and its allies could not immediately distinguish whether the missiles fired were conventional or nuclear. From their perspective, the enemy forces could justifiably launch on warning and retaliate against all the command-and-control systems and missile assets of the Chinese missile launch base and even the overall command-and-control system of the central Second Artillery headquarters. In the worst case, a self-defensive first strike by Chinese conventional missiles could end in the retaliatory destruction of many Chinese nuclear missiles and their related command-and-control systems. That disastrous outcome would force the much smaller surviving and highly vulnerable Chinese nuclear missile units to fire their remaining missiles against the enemy’s homeland. In this quite foreseeable action-reaction cycle, escalation to nuclear war could become accelerated and unavoidable. This means that the double policies could unexpectedly cause, rather than deter, a nuclear exchange.

### Plan

#### The United States federal government should limit the President's war powers authority to assert, on behalf of the United States, immunity from judicial review by establishing a cause of action allowing civil suits brought against the United States by those unlawfully injured by targeted killing operations, their heirs, or their estates in security cleared legal proceedings.

### Solvency

#### The plan establishes legal norms and ensures compliance with the laws of war

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The better course is to ensure meaningful review after the fact. To this end, Congress should authorize federal damages suits by the immediate family members of individuals killed in drone strikes.¶ Such ex post review would serve two main functions: providing judicial scrutiny of the underlying legal basis for targeted killings and affording victims a remedy. It would also give judges more leeway to evaluate the facts without fear that an error on their part might leave a dangerous terrorist at large.¶ For review to be meaningful, judges must not be restricted to deciding whether there is enough evidence in a particular case, as they would likely be under a FISA model. They must also be able to examine the government's legal arguments and, to paraphrase the great Supreme Court chief justice John Marshall, "to say what the law is" on targeted killings.¶ Judicial review through a civil action can achieve that goal. It can thus help resolve the difficult questions raised by the Justice Department white paper, including the permissible scope of the armed conflict with al Qaeda and the legality of the government's broad definition of an "imminent" threat.¶ Judges must also be able to afford a remedy to victims. Mistakes happen and, as a recent report by Columbia Law School and the Center for Civilians in Conflict suggests, they happen more than the U.S. government wants to acknowledge.¶ Errors are not merely devastating for family members and their communities. They also increase radicalization in the affected region and beyond. Drone strikes -- if unchecked -- could ultimately create more terrorists than they eliminate.¶ Courts should thus be able to review lethal strikes to determine whether they are consistent with the Constitution and with the 2001 Authorization for Use of Military Force, which requires that such uses of force be consistent with the international laws of war. If a drone strike satisfies these requirements, the suit should be dismissed.

#### Cause of action creates a deterrent effect that makes officials think twice about drones---drawbacks of judicial review don’t apply

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At first blush, it may seem like many of these issues would be equally salient in the context of after-the-fact damages suits. But as long as such a regime was designed carefully and conscientiously, I believe that virtually all of these concerns could be mitigated. ¶ For starters, retrospective review doesn’t raise anywhere near the same concerns with regard to adversity or judicial competence. With respect to adversity, presumably those who are targeted in an individual strike could be represented as plaintiffs in a post-hoc proceeding, whether through their next friend or their heirs. And as long as they could state a viable claim for relief, it’s difficult to see any pure Article III problem with such a suit for retrospective relief.¶ As for competence, judges routinely review whether government officers acted in lawful self-defense under exigent circumstances (this is exactly what the Supreme Court’s 1985 decision in Tennessee v. Garner20 contemplates, after all). And if the Guantánamo litigation of the past five years has shown nothing else, it demonstrates that judges are also more than competent to resolve not just whether individual terrorism suspects are who the government says they are (and thus members of al Qaeda or one of its affiliates), but to do so using highly classified information in a manner that balances—albeit not always ideally—the government’s interest in secrecy with the detainee’s ability to contest the evidence against him.21 Just as Guantánamo detainees are represented in their habeas proceedings by security-cleared counsel who must comply with court-imposed protective orders and security procedures,22 so too, the subjects of targeted killing operations could have their estates represented by security-cleared counsel, who would be in a far better position to challenge the government’s evidence and to offer potentially exculpatory evidence / arguments of their own. And although the Guantánamo procedures have been developed by courts on an ad hoc basis (a process that has itself been criticized by some jurists), 23 Congress might also look to provisions it enacted in 1996 in creating the little-known Alien Terrorist Removal Court, especially 8 U.S.C. § 1534,24 as a model for such proceedings. ¶ More to the point, it should also follow that courts would be far more able as a practical matter to review the relevant questions in these cases after the fact. Although the pure membership question can probably be decided in the abstract, it should stand to reason that the imminence and infeasibility-of-capture issues will be much easier to assess in hindsight—removed from the pressures of the moment and with the benefit of the dispassionate distance that judicial review provides. To similar effect, whether the government used excessive force in relation to the object of the attack is also something that can only reasonably be assessed post hoc.¶ In addition to the substantive questions, it will also be much easier for courts to review the government’s own internal procedures after they are employed, especially if the government itself is already conducting after-action reviews that could be made part of the (classified) record in such cases. Indeed, the government’s own analysis could, in many cases, go a long way toward proving the lawfulness vel non of an individual strike.¶ As I mentioned before, there would still be a host of legal doctrines that would likely get in the way of such suits. Just to name a few, there is the present (albeit, in my view, unjustified) hostility to judicially inferred causes of actions under Bivens; the state secrets privilege;and sovereign and official immunity doctrines. But I am a firm believer that, except where the President himself is concerned (where there’s a stronger argument that immunity is constitutionally grounded),25 each of these concerns can be overcome by statute—as at least some of them arguably have been in the context of the express damages actions provided for under FISA. 26 So long as Congress creates an express cause of action for nominal damages, and so long as the statute both (1) expressly overrides state secrets and immunity doctrines; and (2) replaces them with carefully considered procedures for balancing the secrecy concerns that would arise in many—if not most—of these cases, these legal issues would be vitiated. Moreover, any concerns about exposing to liability government officers who acted in good faith and within the scope of their employment can be ameliorated by following the model of the Westfall Act, and substituting the United States as the proper defendant in any suit arising out of such an operation.27¶ Perhaps counterintuitively, I also believe that after-the-fact judicial review wouldn’t raise anywhere near the same prudential concerns as those noted above. Leaving aside how much less pressure judges would be under in such cases, it’s also generally true that damages regimes don’t have nearly the same validating effect on government action that ex ante approval does. Otherwise, one would expect to have seen a dramatic upsurge in lethal actions by law enforcement officers after each judicial decision refusing to impose individual liability arising out of a prior use of deadly force. So far as I know, no such evidence exists.¶ Of course, damages actions aren’t a perfect solution here. It’s obvious, but should be said anyway, that in a case in which the government does act unlawfully, no amount of damages will make the victim (or his heirs) whole. It’s also inevitable that, like much of the Guantánamo litigation, most of these suits would be resolved under extraordinary secrecy, and so there would be far less public accountability for targeted killings than, ideally, we might want. Some might also object to this proposal as being unnecessary—that, given existing criminal laws and executive orders, there is already a sufficiently clear prohibition on unlawful strikes to render any such damages regime unnecessarily superfluous. ¶ At least as to this last objection, it bears emphasizing that the existing laws depend entirely upon the beneficence of the Executive Branch, since they assume both that the government will (1) willfully disclose details of unlawful operations rather than cover them up; and (2) prosecute its own in cases in which they cross the line. Given both prior practice and unconfirmed contemporary reports of targeted killing operations that appear to raise serious legality issues, such as “signature strikes,” it doesn’t seem too much of a stretch to doubt that these remedies will prove sufficient.¶ In addition, there are two enormous upsides to damages actions that, in my mind, make them a least-worst solution—even if they are deeply, fundamentally flawed:¶ First, if nothing else, the specter of damages, even nominal damages, should have a deterrent effect on future government officers, such that, if a targeted killing operation ever was carried out in a way that violated the relevant legal rules, there would be liability—and, as importantly, precedent—such that the next government official in a similar context might think twice, and might make sure that he’s that much more convinced that the individual in question is who the government claims, and that there’s no alternative to the use of lethal force. Second, at least where the targets of such force are U.S. citizens, I believe that there is a non-frivolous argument that the Constitution may even compel at least some form of judicial process. 28 Compared to the alternatives, nominal damages actions litigated under carefully circumscribed rules of secrecy may be the only way to balance all of the relevant private, government, and legal interests at stake in such cases.¶ \* \* \*¶ In his concurrence in the Supreme Court’s famous decision in the Steel Seizure case, Justice Frankfurter suggested that “The accretion of dangerous power does not come in a day. It does come, however slowly, from the generative force of unchecked disregard of the restrictions that fence in even the most disinterested assertion of authority.”¶ 29 It seems to me, Mr. Chairman, that targeted killing operations by the Executive Branch present the legislature with two realistic choices: Congress could accept with minimal scrutiny the Executive Branch’s claims that these operations are carried out lawfully and with every relevant procedural safeguard to maximize their accuracy—and thereby open the door to the “unchecked disregard” of which Justice Frankfurter warned. Or Congress could require the government to defend those assertions in individual cases before a neutral magistrate invested with the independence guaranteed by the Constitution’s salary and tenure protections. So long as the government’s interests in secrecy are adequately protected in such proceedings, and so long as these operations really are consistent with the Constitution and laws of the United States, what does the government have to hide?

#### Ex post review creates a credible signal of compliance that restrains future executives

Kwame Holman 13, congressional correspondent for PBS NewsHour; citing Rosa Brooks, Prof of Law at Georgetown University Law Center, former Counselor to the Under Secretary of Defense for Policy, former senior advisor at the US Dept of State, “Congress Begins to Weigh In On Drone Strikes Policy,” http://www.pbs.org/newshour/rundown/2013/04/congress-begins-to-weigh-in-on-drone-strikes-policy.html

While some experts have argued for court oversight of drone strikes before they're carried out, Brooks sides with those who say that would be unwieldy and unworkable.¶ Brooks says however an administration that knows its strikes could face court review after the fact -- with possible damages assessed -- would be more responsible and careful about who it strikes and why.¶ "If Congress were to create a statutory cause of action for damages for those who had been killed in abusive or mistaken drone strikes, you would have a court that would review such strikes after the fact. [That would] create a pretty good mechanism that would frankly keep the executive branch as honest as we hope it is already and as we hope it will continue to be into administrations to come," Brooks said.¶ "It would be one of the approaches that would go a very long way toward reassuring both U.S. citizens and the world more generally that our policies are in compliance with rule of law norms."

#### Only judicial oversight can credibly verify compliance with the laws of war

Avery Plaw 7, Associate Prof of Political Science at the University of Massachusetts at Dartmouth, PhD in Political Science from McGill University, “Terminating Terror: The Legality, Ethics and Effectiveness of Targeting Terrorists,” Theoria: A Journal of Social and Political Theory, No. 114, War and Terror (December 2007), pp. 1-27

To summarize, the general policy of targeting terrorists appears to be defensible in principle in terms of legality, morality and effectiveness. However, some specific targetings have been indefensible and should be prevented from recurring. Critics focus on the indefensible cases and insist that these are best prevented by condemning the general policy. States which target terrorists and their defenders have insisted that self-defense provides a blanket justification for targeting operations. The result has been a stalemate over terrorist targeting harmful to both the prosecution of the war on terror and the credibility of international law. Yet neither advocates nor critics of targeting appear to have a viable strategy for resolving the impasse. A final issue which urgently demands attention, therefore, is whether there are any plausible prospects for a coherent and principled political compromise over the issue of targeting terrorists.¶ Conclusion: the Possibility of Principled Compromise ¶ This final section offers a brief case that there is room for a principled compromise between critics and advocates of targeting terrorists. The argument is by example—a short illustration of one promising possibility. It will not satisfy everyone, but I suggest that it has the potential to resolve the most compelling concerns on both sides.¶ The most telling issues raised by critics of targeting fall into three categories: (1) the imperative need to establish that targets are combatants; (2) the need in attacking combatants to respect the established laws of war; and (3) the overwhelming imperative to avoid civilian casualties. The first issue seems to demand an authoritative judicial determination that could only be answered by a competent court. The second issue requires the openly avowed and consistent implementation of targeting according to standards accepted in international law—a requirement whose fulfillment would best be assured through judicial oversight. The third issue calls for independent evaluation of operations to assure that standards of civilian protection are robustly upheld, a role that could be effectively performed by a court.

#### Now is key and only the US can lead---lack of rules undermines all other norms on violence

James Whibley 13, received a M.A. in International Relations from Victoria University of Wellington, New Zealand, February 6th, 2013 "The Proliferation of Drone Warfare: The Weakening of Norms and International Precedent," Georgetown Journal of International Affairs,journal.georgetown.edu/2013/02/06/the-proliferation-of-drone-warfare-the-weakening-of-norms-and-international-precedent-by-james-whibley/

While drone advocates such as Max Boot argue that other countries are unlikely to follow any precedents about drone use established by America, power has an undeniable effect in establishing which norms are respected or enforced. America used its power in the international system after World War 2 to embed norms about human rights and liberal political organization, not only in allies, but in former adversaries and the international system as a whole. Likewise, the literature on rule-oriented constructivism presents a powerful case that norms have set precedents on the appropriate war-fighting and deterrence policies when using weapons of mass destruction and the practices of colonialism and human intervention. Therefore, drones advocates must consider the possible **unintended consequences of** lending legitimacy **to the** unrestricted use of drones. However, with the Obama administration only now beginning to formulate rules about using drones and seemingly uninterested in restraining its current practices, the US may miss an opportunity to entrench international norms about drone operations.¶ If countries begin to follow the precedent set by the US, there is also the risk of weakening pre-existing international norms about the use of violence. In the summer 2000 issue of International Security, Ward Thomas warned that, while the long-standing norm against assassination has always been less applicable to terrorist groups, the targeting of terrorists is, “likely to undermine the norm as a whole and erode the barriers to the use of assassination in other circumstances.” Such an occurrence would represent a deleterious unintended consequence to an already inhumane international system, justifying greater scrutiny of the drone program.¶ Realism cautions scholars not to expect ethical behaviour in international politics. Yet, the widespread use of drones by recent administrations with little accountability and the lack of any normative framework about their deployment on the battlefield could come to be seen as a serious strategic error and moral failing. If the Obama administration was nervous about leaving an amorphous drone policy to a possible Romney Presidency, then surely China or Russia possessing such a program would be terrifying.

## 2AC

### Topicality

#### We meet---plan text in a vacuum---increases restrictions

#### We meet---plan restricts Presidential authority to construe the legal limits on TK---assassination ban proves---means NOT effects T

Jonathan Ulrich 5, associate in the International Arbitration Group of White & Case, LLP, JD from the University of Virginia School of Law, “NOTE: The Gloves Were Never On: Defining the President's Authority to Order Targeted Killing in the War Against Terrorism,” 45 Va. J. Int'l L. 1029, lexis

The discretionary authority to construe the limits of the assassination ban remains in the hands of the president. He holds the power, moreover, to amend or revoke the Executive Order, and may do so without publicly disclosing that he has done so; since the Order addresses intelligence activities, any modifications may be classified information. n24 The placement of the prohibition within an executive order, therefore, effectively "guarantees that the authority to order assassination lies with the president alone." n25 Congress has similar authority to revise or repeal the Order - though its failure to do so, when coupled with the three unsuccessful attempts to legislate a ban, may be read as implicit authority for the president to retain targeted killing as a [\*1035] policy option. n26 Indeed, in recent years, there have been some efforts in Congress to lift the ban entirely. n27

#### Restrictions mean limitations

CAA 8,COURT OF APPEALS OF ARIZONA, DIVISION ONE, DEPARTMENT A, STATE OF ARIZONA, Appellee, v. JEREMY RAY WAGNER, Appellant., 2008 Ariz. App. Unpub. LEXIS 613

P10 The term "restriction" is not defined by the Legislature for the purposes of the DUI statutes. See generally A.R.S. § 28-1301 (2004) (providing the "[d]efinitions" section of the DUI statutes). In the absence of a statutory definition of a term, we look to ordinary dictionary definitions and do not construe the word as being a term of art. Lee v. State, 215 Ariz. 540, 544, ¶ 15, 161 P.3d 583, 587 (App. 2007) ("When a statutory term is not explicitly defined, we assume, unless otherwise stated, that the Legislature intended to accord the word its natural and obvious meaning, which may be discerned from its dictionary definition.").¶ P11 The dictionary definition of "restriction" is "[a] limitation or qualification." Black's Law Dictionary 1341 (8th ed. 1999). In fact, "limited" and "restricted" are considered synonyms. See Webster's II New Collegiate Dictionary 946 (2001). Under these commonly accepted definitions, Wagner's driving privileges were "restrict[ed]" when they were "limited" by the ignition interlock requirement. Wagner was not only [\*7] statutorily required to install an ignition interlock device on all of the vehicles he operated, A.R.S. § 28-1461(A)(1)(b), but he was also prohibited from driving any vehicle that was not equipped with such a device, regardless whether he owned the vehicle or was under the influence of intoxicants, A.R.S. § 28-1464(H). These limitations constituted a restriction on Wagner's privilege to drive, for he was unable to drive in circumstances which were otherwise available to the general driving population. Thus, the rules of statutory construction dictate that the term "restriction" includes the ignition interlock device limitation.

#### We restrict the war power to assert sovereign immunity AND cause of action is a restriction

Edward Keynes 10, Professor of Political Science at The Pennsylvania State University and has been visiting professor at the universities of Cologne, Kiel, and Marburg. A University of Wisconsin Ph.D., he has been a Fulbright and an Alexander von Humboldt fellow, “Undeclared War: Twilight Zone of Constitutional Power”, Google Books, p. 119-120

Despite numerous cases challenging the President’s authority to initiate and conduct the Vietnam War, the Federal courts exhibited extreme caution in entering this twilight zone of constitutional power. The federal judiciary’s reluctance to decide war-powers controversies reveals a respect for the constitutional separation of powers, an appreciation of the respective constitutional functions of Congress and the President in external affairs, and a sense of judicial self-restraint. Although most Federal courts exercised self-restraint, several courts scaled such procedural barriers as jurisdiction, standing to sue, sovereign immunity, and the political question to address the scope of congressional and presidential power to initiate war and military hostilities without a declaration of war. The latter decisions reveal an appreciation of the constitutional equilibrium upon which the separation of powers and the rule of law rest. Despite judicial caution, several Federal courts entered the political thicket in order to restore the constitutional balance between Congress and the President. Toward the end of the war in Indochina, judicial concern for the rule of law recommended intervention rather than self-restraint.

#### So is ex post

ECHR 91,European Court of Human Rights, Decision in Ezelin v. France, 26 April 1991, http://www.bailii.org/eu/cases/ECHR/1991/29.html

The main question in issue concerns Article 11 (art. 11), which provides:¶ "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.¶ 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. ..."¶ Notwithstanding its autonomous role and particular sphere of application, Article 11 (art. 11) must, in the present case, also be considered in the light of Article 10 (art. 10) (see the Young, James and Webster judgment of 13 August 1981, Series A no. 44, p. 23, § 57). The protection of personal opinions, secured by Article 10 (art. 10), is one of the objectives of freedom of peaceful assembly as enshrined in Article 11 (art. 11).¶ A. Whether there was an interference with the exercise of the freedom of peaceful assembly¶ In the Government’s submission, Mr Ezelin had not suffered any interference with the exercise of his freedom of peaceful assembly and freedom of expression: he had been able to take part in the procession of 12 February 1983 unhindered and to express his convictions publicly, in his professional capacity and as he wished; he was reprimanded only after the event and on account of personal conduct deemed to be inconsistent with the obligations of his profession.¶ The Court does not accept this submission. The term "restrictions" in paragraph 2 of Article 11 (art. 11-2) - and of Article 10 (art. 10-2) - cannot be interpreted as not including measures - such as punitive measures - taken not before or during but after a meeting (cf. in particular, as regards Article 10 (art. 10), the Handyside judgment of 7 December 1976, Series A no. 24, p. 21, § 43, and the Müller and Others judgment of 24 May 1988, Series A no. 133, p. 19, § 28).

#### Counter-interp---authority means legality

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

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

#### We meet---cause of action clarifies permissible scope---that’s 1AC Vladeck

#### Counter-interp---war powers authority is OVERALL power over war-making---we meet

Manget 91 Fred F, Assistant General Counsel with the CIA, "Presidential War Powers", 1991, media.nara.gov/dc-metro/rg-263/6922330/Box-10-114-7/263-a1-27-box-10-114-7.pdf

The President's war powers authority is actually a national defense power that exists at all times, whether or not there is a war declared by Congress, an armed conflict, or any other hostilities or fighting. In a recent case the Supreme Court upheld the revocation of the passport of a former CIA employee (Agee) and rejected his contention that certain statements of Executive Branch policy were entitled to diminished weight because they concerned the powers of the Executive in wartime. The Court stated: "History eloquently attests that grave problems of national security and foreign policy are by no means limited to times of formally declared war. " 3 ; Another court has said that the war power is not confined to actual engagements on fields of battle only but embraces every aspect of national defense and comprehends everything required to wage war successfully. 3 H A third court stated: "It is-and must be-true that the Executive should be accorded wide and normally unassailable discretion with respect to the conduct of the national defense and the prosecution of national objectives through military means . "39 ¶ Thus, the Executive Branch's constitutional war powers authority does not spring into existence when Congress declares war, nor is it dependent on there being hostilities. It empowers the President to prepare for war as well as wage it, in the broadest sense. It operates at all times.

#### Prefer it

#### Ground---legality is key to advantages against the exec counterplan---total ban affs lose to agent counterplans and reform counterplans

#### Topic education---most nuanced and discussed mechs involve reforms, not bans---reading them on the aff is key to most in-depth debate

#### Core of the topic---they ignore discretionary authority the exec creates by interpreting statute

William G. Howell 11, Sydney Stein Professor in American Politics at the University of Chicago, PhD in political science from Stanford University, “The Future of the War Presidency: the Case of the War Powers Consultation Act,” in The Presidency in the Twenty-first Century, Aug 1 2011, ed. Charles Dunn, google books

But a basic point remains: over the nation’s history, presidents have managed to secure a measure of influence over the doings of government that cannot be found either in a strict reading of the Constitution or in the expressed authority that Congress has delegated. This discretionary influence of presidential power encompasses a major pillar of recent scholarship on the modern presidency. Article II of the Constitution is notoriously vague. As a practical matter, Congress cannot write statutes with enough clarity or detail to keep presidents from reading into them at least some discretionary authority. And for their part, the courts have established as a basic principle of jurisprudence deference to administrative (and by extension presidential) expertise.17 It is little wonder, then, that through ambiguity presidents have managed to radically transform their office, placing it at the very epicenter of U.S. foreign policy.¶ By way of example, consider the mileage that President Bush derived from the 2001 Authorization for the Use of Military Force (AUMF). According to that law, the president was authorized to use all necessary and appropriate force against those nations, organizations, or persons he determined had planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or those that had harbored such organizations, or persons. President Bush cited this language to justify actions ranging from military deployments in Iraq, to the warrantless wiretapping of U.S. citizens to the indefinite detainment of enemy combatants at Guantanamo Bay, to the adoption of “enhanced interrogation techniques,” to the seizure of funds held by charities suspected of supporting terrorist activities. As the Iraq and Afghanistan wars and the war on terror proceeded, the adjoining branches of government looked upon such interpretations with increasing skepticism. But President Bush held steadfast to an expansive reading of the law and the seemingly limitless authority it conferred upon his office. As the U.S. Department of Justice put it, the AUMF “does not lend itself to a narrow reading.” Quite to the contrary: “The AUMF places the President’s authority at its zenith under Youngston.”18

#### Reasonability---competing interps cause a race to the bottom to arbitrarily exclude the aff

### Outlawry CP

#### Notification wrecks TKs

Mike Dreyfuss 12, J.D., Vanderbilt University Law School, January, 2012, “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

Military expedience and security arguments support the practice of nonpublication of the lists. If the targets know that they have been designated, then they will make it more difficult, more expensive, and more dangerous for our armed forces to kill them. Notifying the targets will also make continued intelligence gathering more difficult.

#### Reject the counterplan for no solvency advocate---authors only answer policy options that exist in the literature---their author advocates outlawry for citizens only

Jane Y. Chong 12, “Targeting the Twenty-First Century Outlaw,” http://www.yalelawjournal.org/images/pdfs/1123.pdf

abstract. This Note proposes using outlawry proceedings to bring legitimacy to the government’s targeted killing regime. Far from clearly contrary to the letter and spirit of American due process, outlawry endured for centuries at English common law and was used to sanction lethal force against fugitive felons in the United States until as recently as 1975. Because it was the outlaw’s refusal to submit to the legal process that warranted the use of lethal force against him, the choice of process was necessarily preserved through basic protections such as charges and notice. This Note argues that these principles can be updated for the twenty-first century and used to subject the government’s targeted killing of U.S. citizens to limited judicial review.

#### Preventive War DA---counterplan leaves executive discretion about imminent threats in place---that causes nuclear war---that’s 1AC Brooks

Jane Y. Chong 12, “Targeting the Twenty-First Century Outlaw,” http://www.yalelawjournal.org/images/pdfs/1123.pdf

Meanwhile, the judiciary would hold the power to declare a citizen an "outlaw" based on a procedural definition of a legitimate target of lethal force: a suspect who refuses to submit to the legal process, as defined by a set of procedural requisites specified under statute, or perhaps left to the courts' design. This form of judicial review is most notable for what it would not involve: outlawry proceedings would not compel the judiciary to make real-time assessments of the threat posed by individual targets, to determine when the use of military force against such threats is justified, or to demand from the Executive comprehensive proof that use of lethal force is warranted.

#### Pakistan and Yemen DAs---enforcing i-law and imminence is key to solve

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

In his second term, President Obama has an opportunity to reverse course and establish a new drones policy which mitigates these costs and avoids some of the long-term consequences that flow from them. A more sensible US approach would impose some limits on drone use in order to minimize the political costs and long-term strategic consequences. One step might be to limit the use of drones to HVTs, such as leading political and operational figures for terrorist networks, while reducing or eliminating the strikes against the ‘foot soldiers’ or other Islamist networks not related to Al-Qaeda. This approach would reduce the number of strikes and civilian deaths associated with drones while reserving their use for those targets that pose a direct or imminent threat to the security of the United States. Such a self-limiting approach to drones might also minimize the degree of political opposition that US drone strikes generate in states such as Pakistan and Yemen, as their leaders, and even the civilian population, often tolerate or even approve of strikes against HVTs. Another step might be to improve the levels of transparency of the drone programme. At present, there are no publicly articulated guidelines stipulating who can be killed by a drone and who cannot, and no data on drone strikes are released to the public.154 Even a Department of Justice memorandum which authorized the Obama administration to kill Anwar al-Awlaki, an American citizen, remains classified.155 Such non-transparency fuels suspicions that the US is indifferent to the civilian casualties caused by drone strikes, a perception which in turn magnifies the deleterious political consequences of the strikes. Letting some sunlight in on the drones programme would not eliminate all of the opposition to it, but it would go some way towards undercutting the worst conspiracy theories about drone use in these countries while also signalling that the US government holds itself legally and morally accountable for its behaviour.156

#### Their author concedes it doesn’t solve perception

Jane Y. Chong 12, “Targeting the Twenty-First Century Outlaw,” http://www.yalelawjournal.org/images/pdfs/1123.pdf

Concededly, outlawry offers the prospective target highly circumscribed protections. Not trial, but the right to trial.156 Not individualized notice, but centralized notice.157 Not express waiver, but implied waiver.158 As such, outlawry is unlikely to actually fully satisfy the civil libertarians, and is vulnerable to a criticism made of counterterrorism laws more generally: guilty of providing “too narrow a band of remedies focused on process.”159

### Bivens CP

#### Perm do both---shields politics link

Alison M. Martens, political science at University of Louisville, 2007 (Perspectives on Politics 5.3)

The outline of this revised research agenda, begins by looking at a 1993 article written by Mark Graber challenging the countermajoritarian difficulty paradigm. Graber's observations point to the importance of studying systemic transformations, such as the evolution of judicial supremacy. Using historical case studies on abortion, the *Dred Scott* controversy, and anti-trust issues to study perceived incidents of judicial independence, he contends that scholars who seek to justify independent judicial policymaking, even in the face of believed democratic deficiencies, misunderstand and inaccurately represent the relationships between justices and elected officials. By looking at the dialogues between these parties it becomes apparent that judicial independence, when it actually occurs, is often exercised **at the invitation of elected officials**, and in the absence of any expressed majoritarian choice, in order to **resolve political controversies** that elected officials cannot or do not want to resolve themselves. Hence the counter-majoritarian difficulty can be more appropriately characterized as the “non-majoritarian difficulty.” [33](http://journals.cambridge.org.ezp-prod1.hul.harvard.edu/action/displayFulltext?type=6&fid=1300748&jid=PPS&volumeId=5&issueId=03&aid=1300740&fulltextType=RA&fileId=S1537592707071484#fn33#fn33)

According to Graber, where crosscutting issues divide a lawmaking majority an invitation is often tacitly but consciously issued to the Court by political elites to resolve the political controversy that they themselves are unwilling or unable to address, thereby “foisting disruptive political debates off on the Supreme Court.” [34](http://journals.cambridge.org.ezp-prod1.hul.harvard.edu/action/displayFulltext?type=6&fid=1300748&jid=PPS&volumeId=5&issueId=03&aid=1300740&fulltextType=RA&fileId=S1537592707071484#fn34#fn34) Graber writes that “elected officials encourage or tacitly support judicial policymaking both as a means of avoiding political responsibility for making tough decisions and as a means of pursuing controversial policy goals that they cannot publicly advance through open legislative and electoral politics.” [35](http://journals.cambridge.org.ezp-prod1.hul.harvard.edu/action/displayFulltext?type=6&fid=1300748&jid=PPS&volumeId=5&issueId=03&aid=1300740&fulltextType=RA&fileId=S1537592707071484#fn35#fn35) Furthermore, political and electoral advantages can accrue by ducking these tough questions and sending them on to be settled by the Court. Graber explains that elites (including the executive) can benefit from passing the political buck to the Court in multiple ways. Party activists can be redirected to focus on legal action in the courts, thereby reducing pressure on mainstream politicians who wish to maintain a more politically viable moderate stance. Voters can be redirected to focus any ire they might have over policy outcomes on the Court. Politicians can take responsive positions on judicial decisions that may make for a good sound bite but really require no politically accountable action on their part. Finally, political compromise between the legislature and the executive might be had under the table of Court policymaking. [36](http://journals.cambridge.org.ezp-prod1.hul.harvard.edu/action/displayFulltext?type=6&fid=1300748&jid=PPS&volumeId=5&issueId=03&aid=1300740&fulltextType=RA&fileId=S1537592707071484#fn36#fn36) This is an impressive set of political benefits that can stem from a practice of judicial supremacy that creates a Court equipped with the interpretive authority and legitimacy to make controversial public policies. Graber's article, then, highlights the perversion of political accountability that can possibly occur where everyone in the system, the public included, accepts and expects interpretive authority to reside with the courts.

#### Links to politics

Mr. Mirengoff 10 is an attorney in Washington, D.C. A.B., Dartmouth College J.D., Stanford Law School, June 23 The Federalist Society Online Debate Series, http://www.fed-soc.org/debates/dbtid.41/default.asp

The other thing I found interesting was the degree to which Democrats used the hearings to attack the "Roberts Court." I don't recall either party going this much on the offensive in this respect during the last three sets of hearings. What explains this development? My view is that liberal Democratic politicians (and members of their base) think they lost the argument during the last three confirmation battles. John Roberts and Samuel Alito "played" well, and Sonia Sotomayor sounded like a conservative. The resulting frustration probably induced the Democrats to be more aggressive in general and, in particular, to try to discredit Roberts and Alito by claiming they are not the jurists they appeared to be when they made such a good impression on the public. I'm pretty sure the strategy didn't work. First, as I said, these hearings seem not to have attracted much attention. Second, Senate Democrats are unpopular right now, so their attacks on members of a more popular institution are not likely to resonate. Third, those who watched until the bitter end saw Ed Whelan, Robert Alt and others persuasively counter the alleged examples of "judicial activism" by the Roberts Court relied upon by the Democrats -- e.g., the Ledbetter case, which the Democrats continue grossly to mischaracterize. There's a chance that the Democrats' latest **partisan innovation** will **come back to haunt them**. Justice Sotomayor and soon-to-be Justice Kagan are on record having articulated a **traditional, fairly minimalist view of the role of judges**. If a liberal majority were to emerge -- or even **if the liberals prevail in a few high profile cases** -- the charge of "deceptive testimony" could be turned against them. And if Barack **Obama** is still president at that time, he likely **will receive** some of **the blame**.

#### Only Congress can authorize

Richard D. Rosen 11, Professor of Law and Director of the Center for Military Law & Policy at Texas School of Law, “Drones and the U.S. Courts,” W. Mitchell L. Rev. Vol. 37:5, pp. 5280-5293, http://repository.law.ttu.edu/bitstream/handle/10601/1918/Drones%20and%20the%20U.S.%20Courts.pdf?sequence=1

Second, some have suggested the possibility of Bivens actions76 for the victims of drone attacks; that is, a damages claim against federal officials for violating constitutional rights.77 Constitutional tort claims are specifically excepted from the Westfall Act;78 nevertheless, these lawsuits face several barriers. As an initial matter, noncitizen victims of overseas drone strikes have no constitutional rights.79 While the Supreme Court in Boumediene v. Bush80 held that the Suspension Clause reaches alien detainees confined at Guantanamo Bay, a territory over which the United States exercises de facto sovereignty,81 its decision was carefully circumscribed and neither extended the reach of habeas corpus beyond Guantanamo82 nor recognized that aliens outside the United States (including Guantanamo) enjoy substantive constitutional protections.83 Nor did the Court “disturb existing law governing the extraterritorial reach of any constitutional provisions, other than the Suspension Clause.”84¶ Even if the Constitution has universal extraterritorial application, a Bivens remedy for constitutional violations connected with the use of drones would still be unavailable. In Bivens, the Court recognized limits on the remedy, most notably the existence of special factors that may counsel hesitation against such a remedy in the absence of affirmative action by Congress.85 The lower courts have found special factors to exist in Bivens lawsuits against “military and foreign policy officials for allegedly unconstitutional treatment of foreign subjects causing injury abroad.”86 Given the Supreme Court’s “reluctan[ce] to extend Bivens liability ‘to any new context or new category of defendants,”’87 it is highly unlikely that the Court will recognize constitutional tort claims by foreign nationals who are victims of drone strikes in the nation’s war with al Qaeda and the Taliban.88

#### That means no precedent

Martha J. Dragich, Associate Professor of Law at Missouri-Columbia, 2-1995 44 Am. U.L. Rev. 757

Perhaps the most troublesome manner in which selective publication, summary dispositions, and vacatur weaken the development of the law is their failure to provide guidance for future conduct and for resolving future disputes. That is, even if a relevant decision can be located, and its precedential value ascertained, it may provide insufficient information about the facts of the case, the relevant rules, and the reasoning behind the rules' application. 260 Judges, no less than attorneys, must be able to evaluate prior decisions based upon a sophisticated understanding of what the court actually decided. Failing to provide sufficient guidance for future decisions jeopardizes the courts' ability to decide cases consistently and according to the law. 261 [\*798] Two examples illustrate the practical difficulties judges face in applying summary dispositions and unpublished opinions. In Burgin v. Henderson, 262 a district judge dismissed the complaint, relying on a previous, unreported decision that had been orally affirmed by the Second Circuit. 263 On appeal, the Second Circuit remanded Burgin for a factual hearing. 264 The appellate court stated that the question was still open because its affirmance of the district judge's earlier opinion was of no precedential value. 265 Thus, even though affirmance indicates that the lower court reached the correct result in the earlier case, it is impossible to know whether the lower court's analysis was sound. In future cases the trial judge cannot rely with confidence on the rationale previously employed.

#### Only Congress can authorize damage payments

Eric A. Posner 7, the Kirkland & Ellis Professor of Law, University of Chicago Law School; and Adrian Vermuele, Professor of Law, Harvard Law School, 2007, “The Credible Executive,” https://lawreview.uchicago.edu/sites/lawreview.uchicago.edu/files/uploads/74.3/74\_3\_Posner\_Vermeule.pdf

For completeness, we mention that the well-motivated executive might in principle subject himself to legal liability for actions or outcomes that only an ill-motivated executive would undertake. Consider the controversy surrounding George W. Bush’s telecommunications surveillance program, which the president has claimed covers only communications in which one of the parties is overseas, not domesticto-domestic calls.103 There is widespread suspicion that this claim is false.104 In a recent poll, 26 percent of respondents believed that the National Security Agency listens to their calls.105 The credibility gap arises because it is difficult in the extreme to know what exactly the Agency is doing, and what the costs and benefits of the alternatives are. ¶ Here the credibility gap might be narrowed by creating a cause of action, for damages, on behalf of anyone who can show that domesticto-domestic calls were examined.106 Liability would be strict, because a negligence rule—whether the Agency exerted reasonable efforts to avoid examining the communication—requires too much information for judges, jurors, and voters to evaluate, and would just reproduce the monitoring problems that gave rise to the credibility gap in the first place. Strict liability, by contrast, would require a much narrower factual inquiry. Crucially, a commitment to strict liability would only be made by an executive who intended to minimize the incidence of (even unintentional and nonnegligent) surveillance of purely domestic communications. ¶ However, there are legal and practical problems here, perhaps insuperable ones. Legally, it is hardly clear that the president could, on his own authority, create a cause of action against himself or his agents to be brought in federal court.¶ It is well within presidential authority to create executive commissions for hearing claims against the United States, for disbursing funds under benefit programs, and so on; but the problem here is that there might be no pot of money from which to fund damages. The so-called Judgment Fund, out of which damages against the executive are usually paid, is restricted to statutorily specified lawsuits.107 Even so, statutory authorization for the president to create the strict liability cause of action would be necessary,108 as we discuss shortly.109 Practically, it is unclear whether government agents can be forced to “internalize costs” through money damages in the way that private parties can, at least if the treasury is paying those damages.110 And if it is, voters may not perceive the connection between governmental action and subsequent payouts in any event.

#### Courts alone don’t solve

Taylor 13 [Paul Taylor, Senior Fellow at the Center for Policy & Research, JD from Seton Hall Law School, “A FISC for Drones?” Feb 9 2013, http://transparentpolicy.org/2013/02/a-fisc-for-drones/]

Judges would likely be much more comfortable with ex post review. Ex post review would free them from any implication that they are issuing a “death warrant” and would place them in a position that they are much more comfortable with: reviewing executive uses of force after the fact. While there are clearly parallels that could be drawn between the ex ante review proposed here and the search and seizure warrants that judges routinely deal with, there are also important differences. First and foremost is that this implicates not the executive’s law enforcement responsibility but its war-making and foreign relations responsibilities, with which courts are loath to interfere, but are sometimes willing to review for abuse.¶ Additionally, in search and seizure warranting, there an ex post review will eventually be available. That will likely not be the case in drone strikes and other targeted killings unless such a process is specifically created. There are simply too many hurdles to judicial review (including state secrets, political questions, discovery problems, etc) for the courts to create such an opportunity without congressional action.

#### Obama is Velcro – he’ll get blame for the CP

**Nicholas & Hook 10** Peter and Janet, Staff Writers---LA Times, “Obama the Velcro president”, LA Times, 7-30, http://articles.latimes.com/2010/jul/30/nation/la-na-velcro-presidency-20100730/3

If Ronald Reagan was the classic Teflon president, Barack Obama is made of Velcro.¶ Through two terms, Reagan eluded much of the responsibility for recession and foreign policy scandal. In less than two years, Obama has become **ensnared in blame**.¶ Hoping to **better insulate Obama**, White House aides have sought to **give other Cabinet officials a higher profile** and additional public exposure. They are also crafting new ways to explain the president's policies to a skeptical public.¶ **But Obama remains the colossus of his administration** — to a point where trouble anywhere in the world is often his to solve.¶ The president is on the hook to repair the Gulf Coast oil spill disaster, stabilize Afghanistan, help fix Greece's ailing economy and do right by Shirley Sherrod, the Agriculture Department official fired as a result of a misleading fragment of videotape¶ What's **not sticking to Obama** is a legislative track record that his recent predecessors might envy. **Political dividends** from passage of a healthcare overhaul or a financial regulatory bill **have been fleeting**.¶ Instead, voters are measuring his presidency by a more immediate yardstick: Is he creating enough jobs? So far the verdict is no, and that has taken a toll on Obama's approval ratings. Only 46% approve of Obama's job performance, compared with 47% who disapprove, according to Gallup's daily tracking poll.¶ "I think the accomplishments are very significant, but I think most people would look at this and say, 'What was the plan for jobs?' " said Sen. Byron L. Dorgan (D-N.D.). "The agenda he's pushed here has been a very important agenda, but it hasn't translated into dinner table conversations."¶ Reagan was able to glide past controversies with his popularity largely intact. He maintained his affable persona as a small-government advocate while seeming above the fray in his own administration.¶ Reagan was untarnished by such calamities as the 1983 terrorist bombing of the Marines stationed in Beirut and scandals involving members of his administration. In the 1986 Iran-Contra affair, most of the blame fell on lieutenants.¶ Obama lately has tried to rip off the Velcro veneer. In a revealing moment during the oil spill crisis, he reminded Americans that his powers aren't "limitless." He told residents in Grand Isle, La., that he is a flesh-and-blood president, not a comic-book superhero able to dive to the bottom of the sea and plug the hole.¶ "I can't suck it up with a straw," he said.¶ But as a candidate in 2008, he set sky-high expectations about what he could achieve and what government could accomplish.¶ Clinching the Democratic nomination two years ago, Obama described the moment as an epic breakthrough when "we began to provide care for the sick and good jobs to the jobless" and "when the rise of the oceans began to slow and our planet began to heal."¶ Those towering goals remain a long way off. And most people would have preferred to see Obama focus more narrowly on the "good jobs" part of the promise.¶ A recent Gallup poll showed that 53% of the population rated unemployment and the economy as the nation's most important problem. By contrast, only 7% cited healthcare — a single-minded focus of the White House for a full year.¶ At every turn, Obama makes the argument that he has improved lives in concrete ways.¶ Without the steps he took, he says, the economy would be in worse shape and more people would be out of work. There's evidence to support that. Two economists, Mark Zandi and Alan Blinder, reported recently that without the stimulus and other measures, gross domestic product would be about 6.5% lower.¶ Yet, Americans aren't apt to cheer when something bad doesn't materialize.¶ Unemployment has been rising — from 7.7% when Obama took office, to 9.5%. Last month, more than 2 million homes in the U.S. were in various stages of foreclosure — up from 1.7 million when Obama was sworn in.¶ "Folks just aren't in a mood to hand out gold stars when unemployment is hovering around 10%," said Paul Begala, a Democratic pundit.¶ **Insulating the president from bad news has proved impossible**. Other White Houses have tried doing so with more success. **Reagan's Cabinet officials often took the blame, shielding the boss**.¶ But **the Obama administration is about one man**. Obama is the White House's chief spokesman, policy pitchman, fundraiser and negotiator. **No Cabinet secretary has emerged as an adequate surrogate**. Treasury Secretary Timothy F. Geithner is seen as a tepid public speaker; Energy Secretary Steven Chu is prone to long, wonky digressions and has rarely gone before the cameras during an oil spill crisis that he is working to end.¶ So, **more falls to Obama, reinforcing the Velcro effect: Everything sticks to him**. He has opined on virtually everything in the hundreds of public statements he has made: nuclear arms treaties, basketball star LeBron James' career plans; Chelsea Clinton's wedding.¶ Few audiences are off-limits. On Wednesday, he taped a spot on ABC's "The View," drawing a rebuke from Democratic Pennsylvania Gov. Edward G. Rendell, who deemed the appearance unworthy of the presidency during tough times.¶ "Stylistically he creates some of those problems," Eddie Mahe, a Republican political strategist, said in an interview. "His favorite pronoun is 'I.' When you position yourself as being all things to all people, the ultimate controller and decision maker with the capacity to fix anything, you set yourself up to be blamed when it doesn't get fixed or things happen."¶ A new White House strategy is to forgo talk of big policy changes that are easy to ridicule. Instead, aides want to market policies as more digestible pieces. So, rather than tout the healthcare package as a whole, advisors will talk about smaller parts that may be more appealing and understandable — such as barring insurers from denying coverage based on preexisting conditions.¶ But at this stage, it may be late in the game to downsize either the president or his agenda.

#### Restrictions inevitable---the aff prevents haphazard ones which are worse

Benjamin Wittes 9, senior fellow and research director in public law at the Brookings Institution, is the author of Law and the Long War: The Future of Justice in the Age of Terror and is also a member of the Hoover Institution's Task Force on National Security and Law, “Legislating the War on Terror: An Agenda for Reform”, November 3, Book, p. 17

A new administration now confronts the same hard problems that plagued its ideologically opposite predecessor, and its very efforts to turn the page on the past make acute the problems of institutionalization. For while the new administration can promise to close the detention facility at Guantanamo Bay and can talk about its desire to prosecute suspects criminally, for example, it cannot so easily forswear noncriminal detention. While it can eschew the term "global war on terror," it cannot forswear those uses of force—Predator strikes, for example—that law enforcement powers would never countenance. Nor is it hastening to give back the surveillance powers that Congress finally gave the Bush administration. In other words, its very efforts to avoid the Bush administrations vocabulary have only emphasized the conflicts hybrid nature—indeed- emphasized that the United States is building something new here, not merely applying something old.¶ That point should not provoke controversy. The evidence that the United States is fumbling toward the creation of hybrid institutions to handle terrorism cases is everywhere around us. U.S. law, for example, now contemplates extensive- probing judicial review of detentions under the laws of war—a naked marriage of criminal justice and wartime traditions. It also contemplates warrantless wiretapping with judicial oversight of surveillance targeting procedures—thereby mingling the traditional judicial role in reviewing domestic surveillance with the vacuum cleaner-type acquisition of intelligence typical of overseas intelligence gathering. Slowly but surely, through an unpredictable combination of litigation, legislation, and evolutionary developments within executive branch policy, the nation is creating novel institutional arrangements to authorize and regulate the war on terror. The real question is not whether institutionalization will take place but whether it will take place deliberately or haphazardly, whether the United States will create through legislation the institutions with which it wishes to govern itself or whether it will allow an endless sequence of common law adjudications to shape them.¶ The authors of the chapters in this book disagree about a great many things. They span a considerable swath of the U.S. political spectrum, and they would no doubt object to some of one another's policy prescriptions. Indeed, some of the proposals are arguably inconsistent with one another, and it will be the very rare reader who reads this entire volume and wishes to see all of its ideas implemented in legislation. What binds these authors together is not the programmatic aspects of their policy prescriptions but the belief in the value of legislative action to help shape the contours of the continuing U.S. confrontation with terrorism. That is, the authors all believe that Congress has a significant role to play in the process of institutionalization—and they have all attempted to describe that role with reference to one of the policy areas over which Americans have sparred these past several years and will likely continue sparring over the next several

### Flex DA

#### Hard power’s no longer key to peace

Zenko & Cohen 12 – Micah Zenko, Fellow in the Center for Preventive Action at the Council on Foreign Relations; and Michael A. Cohen, Fellow at the Century Foundation, March/April 2012, “Clear and Present Safety,” Foreign Affairs, Vol. 91, No. 2, p. 79-93

DEFENDERS OF the status quo might contend that chronic threat inflation and an overmilitarized foreign policy have not prevented the United States from preserving a high degree of safety and security and therefore are not pressing problems. Others might argue that although the world might not be dangerous now, it could quickly become so if the United States grows too sanguine about global risks and reduces its military strength. Both positions underestimate the costs and risks of the status quo and overestimate the need for the United States to rely on an aggressive military posture driven by outsized fears.

Since the end of the Cold War, most improvements in U.S. security have not depended primarily on the country's massive military, nor have they resulted from the constantly expanding definition of U.S. national security interests. The United States deserves praise for promoting greater international economic interdependence and open markets and, along with a host of international and regional organizations and private actors, more limited credit for improving global public health and assisting in the development of democratic governance. But although U.S. military strength has occasionally contributed to creating a conducive environment for positive change, those improvements were achieved mostly through the work of civilian agencies and nongovernmental actors in the private and nonprofit sectors. The record of an overgrown post-Cold War U.S. military is far more mixed. Although some U.S.-led military efforts, such as the NATO intervention in the Balkans, have contributed to safer regional environments, the U.S.-led wars in Afghanistan and Iraq have weakened regional and global security, leading to hundreds of thousands of casualties and refugee crises (according to the Office of the UN High Commissioner for Refugees, 45 percent of all refugees today are fleeing the violence provoked by those two wars). Indeed, overreactions to perceived security threats, mainly from terrorism, have done significant damage to U.S. interests and threaten to weaken the global norms and institutions that helped create and sustain the current era of peace and security. None of this is to suggest that the United States should stop playing a global role; rather, it should play a different role, one that emphasizes soft power over hard power and inexpensive diplomacy and development assistance over expensive military buildups.

#### No risk of nuclear terrorism---too many obstacles

John J. Mearsheimer 14, R. Wendell Harrison Distinguished Service Professor of Political Science at the University of Chicago, “America Unhinged”, January 2, nationalinterest.org/article/america-unhinged-9639?page=show

Am I overlooking the obvious threat that strikes fear into the hearts of so many Americans, which is terrorism? Not at all. Sure, the United States has a terrorism problem. But it is a minor threat. There is no question we fell victim to a spectacular attack on September 11, but it did not cripple the United States in any meaningful way and another attack of that magnitude is highly unlikely in the foreseeable future. Indeed, there has not been a single instance over the past twelve years of a terrorist organization exploding a primitive bomb on American soil, much less striking a major blow. Terrorism—most of it arising from domestic groups—was a much bigger problem in the United States during the 1970s than it has been since the Twin Towers were toppled.¶ What about the possibility that a terrorist group might obtain a nuclear weapon? Such an occurrence would be a game changer, but the chances of that happening are virtually nil. No nuclear-armed state is going to supply terrorists with a nuclear weapon because it would have no control over how the recipients might use that weapon. Political turmoil in a nuclear-armed state could in theory allow terrorists to grab a loose nuclear weapon, but the United States already has detailed plans to deal with that highly unlikely contingency.¶ Terrorists might also try to acquire fissile material and build their own bomb. But that scenario is extremely unlikely as well: there are significant obstacles to getting enough material and even bigger obstacles to building a bomb and then delivering it. More generally, virtually every country has a profound interest in making sure no terrorist group acquires a nuclear weapon, because they cannot be sure they will not be the target of a nuclear attack, either by the terrorists or another country the terrorists strike. Nuclear terrorism, in short, is not a serious threat. And to the extent that we should worry about it, the main remedy is to encourage and help other states to place nuclear materials in highly secure custody.

#### Ex post improves drone operations---increases intel without overdeterring the military

[Also in AT Drone Court CP]

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

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

#### No deference now and courts are increasing restrictions

Andrew Kent 10-8, Faculty Advisor of the Center on National Security at

Fordham Law School, professor at Fordham University School of Law, constitutional law, foreign relations law, national security law, federal courts and procedure, October 8th, 2013, “ARE DAMAGES DIFFERENT?: BIVENS AND NATIONAL SECURITY,” http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2330476

But the refusal to allow Bivens damages remedies in these national security cases is exceptional in another sense: the Supreme Co urt has never been more assertive in adjudicating national security and foreign relations issues than it has in recent years. The last decade saw the executive lose (or have its legal arguments offered as amicus curiae rejected) time after time in Supreme Court cases concerning questions of judicial power and justiciability in foreign relations and national security.11 In the most high profile of these cases, the ones concerning the post-9/11 war on terror, the Court emphatically asserted its authority and rejected or ignored the notion that deference to the executive was appropriate because of the national security or foreign affairs dimensions of the disputes.12 In these war-on-terror cases as well as in other national security or foreign relations contexts, the Supreme Court has ruled repeatedly against the executive and, in so doing, approved judicial review of the executive’s national security actions, in suits where plaintiffs sought prospective, injunctive-type remedies against the government.13 Remedies of that type are typically thought to involve much more judicial intrusion into executive functioning than would a retrospective award of money damages,14 and in some instances injunctive-type remedies were implied by the courts from a jurisdictional statute or said to be required by the Constitution itself, rather than being expressly created by Congress. In addition, the war-on-terror decisions in Rasul, Hamdi, Hamdan and Boumediene were intended by the Court to have, and did in fact have, enormously significant practical effects—restructuring the worldwide interrogation, detention and military commission policies of the executive branch.15 The many critics who think the judiciary has not done enough to remedy perceived excesses in the war-on-terror are missing the larger picture of unprecedented judicial assertiveness and effectiveness.16

#### Deference causes whistleblowers---causes worse intel leaks and restrictions

Peter Marguilies 10, Professor of Law, Roger Williams University, November 8th, 2010, “Judging Myopia in Hindsight: Bivens Actions, National Security Decisions, and the Rule of Law” IOWA LAW REVIEW Vol. 96:195, http://www.uiowa.edu/~ilr/issues/ILR\_96-1\_Margulies.pdf

The categorical-deference approach also fails to acknowledge that those stymied by the lack of formal redress can substitute for litigation other paths that pose greater danger. For example, consider the perspective of the official who leaks a document, not to advance a personal agenda, but to focus public attention on government policy.170 Whistleblowers of this kind, like Daniel Ellsberg, who leaked the Pentagon Papers to the New York Times, 171 are advancing a constitutional vision of their own in which senior officials have strayed from the limits of the original understanding.172 If the courts and Congress do not work to restore the balance, the whistleblower engages in self-help. Because leakers are risk-seekers who believe the status quo is unacceptable, they lack courts’ interest in safeguarding sensitive information. Policy shaped by blowback from leaks is far more volatile than policy reacting to judicial precedent.173 Similarly, the media has a constitutional role to play that includes investigative reporting. The media will step up its efforts if other institutions like courts take a more deferential stance.174 When government hides information, the media’s sense of its own role leads to greater distrust of government and a willingness to both uncover and publish more information. On some occasions, the First Amendment will oblige us to tolerate journalists’ disclosure of operational details of covert programs.175 Journalists will understandably view government’s claims that information is sensitive with greater skepticism when government has methodically locked down information in other settings. Similarly, shutting off damage suits regarding terrorism issues leaves other kinds of litigation, including litigation the government has initiated. Journalists and activists will seek to scrutinize and mobilize around these cases, even if the avenue of civil suits is closed. Indeed, activism may be distorted in these other venues when they are the only game in town. For example, journalists may be more inclined to credit even outlandish claims made by some lawyers on behalf of detainees when the government has a track record of concealing information.176 While some might argue that courts should not speculate about future conduct of third parties, a court that makes empirical predictions about the effect of liability should not selectively ignore major unintended consequences of its holding. There are parallel developments in international law. Some countries have prosecuted criminal cases against American agents who allegedly were complicit in extraordinary renditions. In Italy, a number of American government employees and personnel were convicted in absentia because of legal action generated by popular pressure.177 U.S. public-interest organizations, like the Center for Constitutional Rights, have encouraged these assertions of universal jurisdiction. These prosecutions occurred because of officials’ sense that they were above the law. Judicial remedies available in the United States can check these officials, thereby reducing the incidence and impact of universal-jurisdiction proceedings in the future.

#### Non-unique and link turn---state secrets are leaked now---cause of action creates legitimacy that decreases public and international pressure for more disclosure

Holly Wells 9, J.D. Candidate, University of Arizona James E. Rogers College of Law, 2008, "The State Secrets Privilege: Overuse Causing Unintended Consequences," Arizona Law Review, 50 Ariz. L. Rev. 967, lexis nexis

Although it may be too late to safeguard information about Extraordinary Rendition and NSA wiretapping, a change in the current practice of asserting the state secrets privilege will be more successful in keeping information secret in future cases. All of the strategies listed above would make the executive branch seem more cooperative with litigants and would assure the public that litigants do have some chance of redress. Even if courts ultimately side with the executive branch, the process itself would create legitimacy. The public is more likely to believe that government practices and programs are valid if litigants at least had a chance to make their case.¶ Similarly, the state secrets privilege is more likely to be accepted and respected if the public perceives that the executive branch is only asserting it when absolutely necessary and that, even with a valid assertion, litigants still have a chance to argue the merits of their case. Foreign governments are also less likely to get involved or to comment if they know that there is an opportunity for redress available in the United States. Future administrations could be more successful at dodging the attention and subsequent critic ism by using alternate practices, which would not be hard to implement, considering that many of them have already been used in state secrets cases and in other contexts. 268 Alternate practices would bring more legitimacy to the government, reduce public and media attention, and still adequately protect state secrets.¶ CONCLUSION¶ The current use of the state secrets privilege has been ineffective in keeping information about Extraordinary Rendition and NSA wiretapping secret. Politicians, media, and the public continue to focus their attention on the two programs, cases continue to be filed, and critics are mounting. If the state secrets privilege is really intended to protect state secrets as enunciated in Reynolds, and if national security interests are in fact at stake, then future administrations should decline to follow the Bush Administration’s example. Invoking the privilege only in the rarest of cases, attempting to proceed with discovery, however limited it might be, and using special procedures when necessary would lend legitimacy to the executive branch’s treatment of sensitive cases. If the executive branch is perceived to be adequately handling these important cases, there will be less reason to speculate as to what state secrets are involved. Then, perhaps the state secrets privilege can better serve its original purpose: keeping state secrets secret.

### Politics DA

#### No impact to biodiversity

Sagoff 97  Mark, Senior Research Scholar – Institute for Philosophy and Public policy in School of Public Affairs – U. Maryland, William and Mary Law Review, “INSTITUTE OF BILL OF RIGHTS LAW SYMPOSIUM DEFINING TAKINGS: PRIVATE PROPERTY AND THE FUTURE OF GOVERNMENT REGULATION: MUDDLE OR MUDDLE THROUGH? TAKINGS JURISPRUDENCE MEETS THE ENDANGERED SPECIES ACT”, 38 Wm and Mary L. Rev. 825, March, L/N

Note – Colin Tudge - Research Fellow at the Centre for Philosophy at the London School of Economics. Frmr Zoological Society of London: Scientific Fellow and tons of other positions. PhD. Read zoology at Cambridge.

Simon Levin = Moffet Professor of Biology, Princeton. 2007 American Institute of Biological Sciences Distinguished Scientist Award 2008 Istituto Veneto di Scienze Lettere ed Arti 2009 Honorary Doctorate of Science, Michigan State University 2010 Eminent Ecologist Award, Ecological Society of America 2010 Margalef Prize in Ecology, etc… PhD

Although one may agree with ecologists such as Ehrlich and Raven that the earth stands on **the brink of** an episode of **massive extinction, it may not follow** from this grim fact **that human** being**s will suffer** as a result. On the contrary, skeptics such as science writer Colin Tudge have challenged biologists to explain **why we need more than a tenth of the 10 to 100 million species that grace the earth**. Noting that "cultivated systems often out-produce wild systems by 100-fold or more," Tudge declared that "the argument that humans need the variety of other species is, when you think about it, a theological one." n343 Tudge observed that "the elimination of all but a tiny minority **of our fellow creatures does not affect the material well-being of humans** one iota."n344 This skeptic challenged ecologists to list more than 10,000 species (other than unthreatened microbes) that are essential to ecosystem productivity or functioning. n345 "**The human species could survive just as well** if 99.9% of our fellow creatures went extinct, provided only that we retained the appropriate 0.1% that we need." n346   [\*906]   The monumental Global Biodiversity Assessment ("the Assessment") identified two positions with respect to redundancy of species. "At one extreme is the idea that each species is unique and important, such that its removal or loss will have demonstrable consequences to the functioning of the community or ecosystem." n347 The authors of the Assessment, a panel of eminent ecologists, endorsed this position, saying it is "unlikely that there is much, if any, ecological redundancy in communities over time scales of decades to centuries, the time period over which environmental policy should operate." n348 These eminent ecologists rejected the opposing view, "the notion that species overlap in function to a sufficient degree that removal or loss of a species will be compensated by others, with negligible overall consequences to the community or ecosystem." n349  Other biologists believe, however, that species are so fabulously redundant in the ecological functions they perform that the life-support systems and processes of the planet and ecological processes in general will function perfectly well with fewer of them, certainly fewer than the millions and millions we can expect to remain **even if** **every threatened organism becomes extinct**. n350 Even the kind of sparse and miserable world depicted in the movie Blade Runner could provide a "sustainable" context for the human economy as long as people forgot their aesthetic and moral commitment to the glory and beauty of the natural world. n351 The Assessment makes this point. "Although any ecosystem contains hundreds to thousands of species interacting among themselves and their physical environment, the emerging consensus is that the system is driven by a small number of . . . biotic variables on whose interactions the balance of species are, in a sense, carried along." n352   [\*907]   To make up your mind on the question of the functional redundancy of species, consider an endangered species of bird, plant, or insect and ask how the ecosystem would fare in its absence. The fact that the creature is endangered suggests an answer: it is already in limbo as far as ecosystem processes are concerned. What crucial ecological services does the black-capped vireo, for example, serve? Are any of the species threatened with extinction necessary to the provision of any ecosystem service on which humans depend? If so, which ones are they?  Ecosystems and the species that compose them have changed, dramatically, continually, and totally in virtually every part of the United States. There is little ecological similarity, for example, between New England today and the land where the Pilgrims died. n353 In view of the constant reconfiguration of the biota, **one may wonder why Americans have not suffered more as a result of ecological catastrophes**. The cast of species in nearly every environment changes constantly-local extinction is commonplace in nature-but the crops still grow. Somehow, it seems, property values keep going up on Martha's Vineyard in spite of the tragic disappearance of the heath hen.  One might argue that the sheer number and variety of creatures available to any ecosystem buffers that system against stress. Accordingly, we should be concerned if the "library" of creatures ready, willing, and able to colonize ecosystems gets too small. (Advances in genetic engineering may well permit us to write a large number of additions to that "library.") In the United States as in many other parts of the world, however, the number of species has been increasing dramatically, not decreasing, as a result of human activity. This is because the hordes of exotic species coming into ecosystems in the United States far exceed the number of species that are becoming extinct. Indeed, introductions may outnumber extinctions by more than ten to one, so that the United States is becoming more and more species-rich all the time largely as a result of human action. n354 [\*908] Peter Vitousek and colleagues estimate that over 1000 non-native plants grow in California alone; in Hawaii there are 861; in Florida, 1210. n355 In Florida more than 1000 non-native insects, 23 species of mammals, and about 11 exotic birds have established themselves. n356 Anyone who waters a lawn or hoes a garden knows how many weeds desire to grow there, how many birds and bugs visit the yard, and how many fungi, creepy-crawlies, and other odd life forms show forth when it rains. All belong to nature, from wherever they might hail, but not many homeowners would claim that there are too few of them. Now, not all exotic species provide ecosystem services; indeed, some may be disruptive or have no instrumental value. n357 This also may be true, of course, of native species as well, especially because all exotics are native somewhere. Certain exotic species, however, such as Kentucky blue grass, establish an area's sense of identity and place; others, such as the green crabs showing up around Martha's Vineyard, are nuisances. n358 Consider an analogy [\*909] with human migration. Everyone knows that after a generation or two, immigrants to this country are hard to distinguish from everyone else. The vast majority of Americans did not evolve here, as it were, from hominids; most of us "came over" at one time or another. This is true of many of our fellow species as well, and they may fit in here just as well as we do. It is possible to distinguish exotic species from native ones for a period of time, just as we can distinguish immigrants from native-born Americans, but as the centuries roll by, species, like people, fit into the landscape or the society, changing and often enriching it. Shall we have a rule that a species had to come over on the Mayflower, as so many did, to count as "truly" American? Plainly not. When, then, is the cutoff date? Insofar as we are concerned with the absolute numbers of "rivets" holding ecosystems together, extinction seems not to pose a general problem because a far greater number of kinds of mammals, insects, fish, plants, and other creatures thrive on land and in water in America today than in prelapsarian times. n359 The Ecological Society of America has urged managers to maintain biological diversity as a critical component in strengthening ecosystems against disturbance. n360 Yet as Simon Levin observed, "much of the detail about species composition will be irrelevant in terms of influences on ecosystem properties." n361 [\*910] He added: "For net primary productivity, as is likely to be the case for any system property, **biodiversity matters only up to a point**; above a certain level, increasing biodiversity is likely to make **little difference**." n362 What about the use of plants and animals in agriculture? There is no scarcity foreseeable. "Of an estimated 80,000 types of plants [we] know to be edible," a U.S. Department of the Interior document says, "only about 150 are extensively cultivated." n363 About twenty species, not one of which is endangered, provide ninety percent of the food the world takes from plants. n364 Any new food has to take "shelf space" or "market share" from one that is now produced. Corporations also find it difficult to create demand for a new product; for example, people are not inclined to eat paw-paws, even though they are delicious. It is hard enough to get people to eat their broccoli and lima beans. It is harder still to develop consumer demand for new foods. This may be the reason the Kraft Corporation does not prospect in remote places for rare and unusual plants and animals to add to the world's diet. Of the roughly 235,000 flowering plants and 325,000 nonflowering plants (including mosses, lichens, and seaweeds) available, farmers ignore virtually all of them in favor of a very few that are profitable. n365 To be sure, any of the more than 600,000 species of plants could have an application in agriculture, but would they be preferable to the species that are now dominant? Has anyone found any consumer demand for any of these half-million or more plants to replace rice or wheat in the human diet? There are reasons that farmers cultivate rice, wheat, and corn rather than, say, Furbish's lousewort. There are many kinds of louseworts, so named because these weeds were thought to cause lice in sheep. How many does agriculture really require? [\*911] The species on which agriculture relies are domesticated, not naturally occurring; they are developed by artificial not natural selection; they might not be able to survive in the wild. n366 This argument is not intended to deny the religious, aesthetic, cultural, and moral reasons that command us to respect and protect the natural world. These spiritual and ethical values should evoke action, of course, but we should also recognize that they are spiritual and ethical values. We should recognize that ecosystems and all that dwell therein compel our moral respect, our aesthetic appreciation, and our spiritual veneration; we should clearly seek to achieve the goals of the ESA. There is no reason to assume, however, that these goals have anything to do with human well-being or welfare as economists understand that term. These are ethical goals, in other words, not economic ones. Protecting the marsh may be the right thing to do for moral, cultural, and spiritual reasons. We should do it-but someone will have to pay the costs. In the narrow sense of promoting human welfare, protecting nature often represents a net "cost," not a net "benefit." It is largely for moral, not economic, reasons-ethical, not prudential, reasons- that we care about all our fellow creatures. They are valuable as objects of love not as objects of use. What is good for   [\*912]  the marsh may be good in itself even if it is not, in the economic sense, good for mankind. The most valuable things are quite useless.

#### Global biodiversity collapse inevitable – farm bill can’t solve

Knight 10 Matthew Knight is a CNN staff writer, citing a UN report. " U.N. report: Eco-systems at 'tipping point'" May 10, http://edition.cnn.com/2010/WORLD/africa/05/10/biodiversity.loss.report/,

(CNN) -- The world's eco-systems are at risk of "rapid degradation and collapse" according to a new United Nations report.

The third Global Biodiversity Outlook (GBO-3) published by the Convention on Biological Diversity (CBD) warns that unless "swift, radical and creative action" is taken "massive further loss is increasingly likely."

Ahmed Djoghlaf, executive secretary of the CBD said in a statement: "The news is not good. We continue to lose biodiversity at a rate never before seen in history."

The U.N. warns several eco-systems including the Amazon rainforest, freshwater lakes and rivers and coral reefs are approaching a "tipping point" which, if reached, may see them never recover.

The report says that no government has completely met biodiversity targets that were first set out in 2002 -- the year of the first GBO report.

Executive Director of the U.N. Environmental Program Achim Steiner said there were key economic reasons why governments had failed in this task.

"Many economies remain blind to the huge value of the diversity of animals, plants and other life-forms and their role in healthy and functioning eco-systems," Steiner said in a statement.

Although many countries are beginning to factor in "natural capital," Steiner said that this needs "rapid and sustained scaling-up."

Despite increases in the size of protected land and coastal areas, biodiversity trends reported in the GBO-3 are almost entirely negative.

Vertebrate species fell by nearly one third between 1970 and 2006, natural habitats are in decline, genetic diversity of crops is falling and sixty breeds of livestock have become extinct since 2000.

#### No impact – empirically denied

The Gazette 12 – The Gazette, October 1st, 2012, "Expiration of farm bill should have little impact on Iowans" thegazette.com/2012/10/01/expiration-of-farm-bill-should-have-little-impact-on-iowans/

The expirationof the federal farm bill will be unpredictable for Iowa farmers. It will also be a hardship and an unnecessary burden.¶ But it won’t be new.¶ Twice before in recent history, in 1996 and 2007, Congress has failed to renew the bill, which expires every five years. The current bill expired on Sunday.¶ Congress adjourned Sept. 19 without renewing the bill, and won’t return to work until after the Nov. 6 election for a lame-duck session.¶ Congress had considered a short-term extension of the bill, between three months and a year, but the Republican-controlled House couldn’t even agree on that.

#### Obama’s PC is dead and he’s not using it anyway---and minimum wage, education, and climate chnge thump

Nancy Benac AND\*\*\* Julie Pace 1-1, AP writers, January 1st, 2014, "Obama’s presidency, beset by fits, starts new year," Wisconsin Gazette, www.wisconsingazette.com/breaking-news/obamas-presidency-beset-by-fits-starts-year-5.html

In 2013, Obama’s critics doubled down. Fractured Republicans, swore off compromise. The president’s outreach to Congress was lacking or at times even non-existent. Obama’s team dropped the ball — calamitously — on his health care law. Snowden’s revelations had Democrats and Republicans alike calling for tighter surveillance rules. Foreign leaders were in a huff — Brazil’s president snubbing a proposed White House state dinner, Germany’s Angela Merkel incensed that her cellphone calls had been intercepted. The president’s pledge that people who liked their health plans would be able to keep them ran into a harsh reality as millions saw their coverage canceled.¶ The year ended with a only small-bore budget deal.¶ White House communications director Jennifer Palmieri called it a year of “fits and starts” for the president — and predicted better days ahead.¶ Yet Obama’s agenda of gun control, immigration reform, a grand budget bargain sits unfulfilled. Obama’s job approval and personal favorability ratings are near the lowest point of his presidency, with increasing numbers of Americans saying they no longer consider him to be honest or trustworthy. Abroad, too, positive views of Obama have slipped.¶ The mantra for the Obama White House has always been to take the long view. Officials scoff at the “who’s up, who’s down” churn of Washington’s chattering class.¶ But as Obama embarked on his second term, some of his closest outside advisers warned him that the next four years would have to be different: He might have just 18 months, perhaps as little as a year, to accomplish big domestic priorities.¶ Obama’s team thought it had a strategy for overcoming the second-term curse. They would make a quick play for stricter gun control measures, then press for an immigration overhaul and float the possibility of a big budget deal.¶ Each of those efforts failed and Obama quickly found himself consumed by distractions.¶ Some were fleeting, like the revelations that the Internal Revenue Service was applying extra scrutiny to conservative groups. But others threatened long-term damage to his presidency: the National Security Agency disclosures and the disastrous rollout of the “Obamacare” health law.¶ Some events were beyond Obama’s control, including the chemical weapons crisis in Syria.¶ But how could he not have known that his government was spying on the private communications of friendly world leaders? Why didn’t he know his health care website wouldn’t work? How could he have promised over and over again that Americans could keep their health insurance when his own advisers knew it wasn’t that simple?¶ As a result, the president is ending his fifth year in office in a “defensive crouch,” says presidential historian Douglas Brinkley, and may have to be content with simply protecting his health care law and other Democratic-backed programs that Republicans are eager to repeal.¶ The 2014 midterm elections give Obama his best opportunity to rebound. But Democrats, who just weeks ago saw an opportunity to retake the House after Republicans got blamed for the government shutdown, now fret about the health care law’s ongoing problems and may be content to just keep control of the Senate.¶ Lawmakers from both parties say Obama doesn’t talk to them much, nor do his aides. Both sides wistfully recall the voluble Clinton, who figured out how to craft deals with Republicans on welfare reform and other agenda.¶ Sen. Tom Coburn, an Oklahoma Republican who worked with Obama when he was a senator and still considers the president a friend, says flatly: “He’s flunked in terms of relations with Congress.”¶ “If you know him personally, he’s a very likable person,” says Coburn. “But it’s different than with most other presidents in terms of having relationships with Congress.”¶ Of course, the president’s tepid relationship with Congress is hardly his fault alone. The forces that pulled House Republicans to the right made it difficult for the GOP to reach agreement with Democrats on much of anything.¶ What does it matter if Obama doesn’t buddy up to his former colleagues?¶ “Instead of going out and talking to his enemies, making friends and schmoozing, or banging heads together with them or whatever, you can see that the man is diffident — deeply, deeply diffident about the kinds of politicking that are necessary to build consensus,” says Nigel Nicholson, a professor at the London Business School.¶ The president has been getting plenty of that kind of advice in recent weeks. Critics called for a sweeping shake-up of his White House inner circle.¶ Obama has responded in his typically restrained fashion. No one has lost a job over the massive health care screw-up, though the White House hasn’t ruled that out. And while the president is doing some minor reshuffling, he’s largely bringing in people he already knows.¶ To critics, the limited staff changes smack of a White House that doesn’t fully understand the depths of its problems.¶ But to presidential friend Ron Kirk said they are indicative of Obama’s “fairly dispassionate temperament.”¶ “He understands that overreacting to any one development in the moment is not the best way to achieve a long-term and stable objective,” said Kirk.¶ The president’s agenda for his sixth year in office is a stark reminder of how little he accomplished in 2013.¶ Obama plans to make another run at immigration reform. He’ll seek to increase the minimum wage, expand access to early childhood education, and look to implement key climate changes.¶ Foreign policy could be an oasis for the struggling second-term president. With Russia’s help, he turned his public indecision over attacking Syria into an unexpected agreement to strip President Bashar Assad of his chemical weapons, though the success of the effort won’t be known for some time and the civil war in Syria rages on. Obama also authorized daring secret negotiations with Iran, resulting in an interim nuclear agreement. But even the president says the prospects of getting a final deal are only 50-50.¶ In a year-end news conference, the president optimistically predicted that 2014 would be “a breakthrough year for America.” But Obama’s dismal standings in the polls suggest he can’t count on a public groundswell.

#### PC low now---plan’s a win

Jill Lawrence 9-17**,** national correspondent at National Journal, September 17th, 2013, “Obama Says He’s Not Worried About Style Points. He Should Be,” National Journal, <http://www.nationaljournal.com/whitehouse/obama-says-he-s-not-worried-about-style-points-he-should-be-20130917>

In some ways Obama's fifth year is typical of fifth years, when reelected presidents aim high and often fail. But in some ways it is atypical, notably in the number of failures, setbacks, and incompletes Obama has piled up. Gun control and immigration reform are stalled. Two Obama favorites withdrew their names as potential nominees in the face of congressional opposition – Susan Rice, once a frontrunner for secretary of state, followed by Larry Summers, a top candidate to head the Federal Reserve. Secretary of State John Kerry's possibly offhand remark about Assad giving up his chemical weapons, and Putin's jump into the arena with a diplomatic proposal, saved him from almost certain defeat on Capitol Hill. Edward Snowden set the national security establishment on its heels, then won temporary refuge from … Putin. It's far from clear how that will be resolved.¶ And that's as true for the budget and debt-limit showdowns ahead.¶ Some of Obama's troubles are due to the intransigence of House conservatives, and some may be inevitable in a world far less black and white than the one Reagan faced. But the impression of ineffectiveness is the same.¶ "People don't like it when circumstances are dictating the way in which a president behaves. They want him to be the one in charge," says Dallek, who has written books about nine presidents, including Reagan and Franklin Roosevelt. "It's unfair… On the other hand, that's what goes with the territory. People expect presidents to be in command, and they can't always be in command, and the public is not forgiving."¶ Obama's job approval numbers remain in the mid-40s. The farther they fall below 50 percent, history suggests, the worse he can expect Democrats to do in the midterm House and Senate elections next year. Obama would likely be in worse trouble with the public, at least in the short term, if he had pushed forward with a military strike in Syria. In fact, a new Pew Research Center poll shows 67 percent approve of Obama's switch to diplomacy. But his journey to that point made him look weak and indecisive.¶ Indeed, the year's setbacks are accumulating and that is dangerous for Obama.¶ "At some point people make a collective decision and they don't listen to the president anymore. That's what happened to both Jimmy Carter and George W. Bush," Cannon says. "I don't think Obama has quite gone off the diving board yet in the way that Carter or Bush did … but he's close to the edge. He needs to have some successes and perceptions of success."

#### Won’t pass---partisan divisions and earmark rule

Amy Mayer 12/30, "One thing that didn't happen in 2013: a Farm Bill", 2013, hppr.org/post/one-thing-didn-t-happen-2013-farm-bill

If it seems like Congress just can’t get the farm bill done, well… that’s because it can’t.¶ All year long, Washington lawmakers have been saying they want to pass a full five-year farm bill. But even though leaders of the House-Senate conference committee say they are close, they have acknowledged it just won’t get done this year. They’re pushing it off until January.¶ The inability to settle on a farm bill illustrates the deep divisions that have become the norm on Capitol Hill. The massive food and agriculture package used to be relatively easy thanks to bipartisan and urban-rural alliances. But this year, progress was a slow slog. ¶ A nine-month extension passed in January bought some time. This summer, the Senate passed its bill, but the House didn’t. Then the House sent two bills to the conference committee, one for agriculture and the other for food stamps. ¶ The conference committee charged with drafting a final bill met off and on for months. The main negotiators were the leaders from each party of the Agriculture Committees of each house – Sen. Debbie Stabenow and Sen. Thad Cochran from the Senate, and Rep. Colin Peterson and Rep. Frank Lucas from the House. Despite reporting progress, the four lawmakers were unable to finish the job before the House adjourned for the year on Friday.¶ There are three fundamental reasons today’s lawmakers have such a hard time getting the job done. Iowa State University political scientist David Peterson says one is the striking chasm separating today’s Washington politicians.¶ “We’ve seen an increasing polarization within Congress, in particular we’ve seen the modern Republican Party move further to the right,” Peterson said. “The Democrats have moved some to the left, but really what is driving it is the Republicans have moved further to the right.”¶ That leaves fewer players drawn toward the middle, where compromises are forged. And it takes a majority of both bodies, plus the president, to enact laws.¶ “The problem we’ve got right now is that the amount of things that a majority of the House, and in particular a majority of the Republicans—a majority of the majority party in the House—the Democratic Senate, and the Democratic president can agree on is vanishingly small,” Peterson said.¶ On top of polarization and gridlock, add the lack of earmarks. Peterson says in times past, Congressional leaders could use those small, very specific addendums to sway neutral lawmakers to their side of a bill. But in the last decade, he says, Congress got rid of earmarks. Now deadlines are a main driver pushing Congress to act, though they haven’t been very effective. To be sure, it’s not just the farm bill suffering from this. Everything in Congress is, but the farm bill’s history of wending its way through relatively easily makes the delay more striking. ¶ “This is a very, very visible policy that has really dramatic effects on a lot of people, particularly a lot of people in this area,” Peterson said. “And so it’s more visible. But it’s the same all around.”¶ The farm bill negotiations were full of stops and starts. Just before Thanksgiving, Iowa Republican Rep. Steve King, a conference committee member, remained optimistic a deal could be reached by Christmas.¶ “It’s more than 50/50 in my mind right now, the momentum of this,” King said at the time. “There really was a sincere effort to get it done by Thanksgiving, but we didn’t get there.”¶ Now Christmas and New Year’s Day are out, too.

#### Obamacare will continue to DIRECTLY trade off with his agenda

Melanie Batley 12-17, December 17th, 2013, "Obamacare Failures Imperil Hopes for Immigration Reform," www.newsmax.com/Newsfront/immigration-sidetracked-competence-management/2013/12/17/id/542296

President Barack Obama's ambitious and once promising plans to pass a comprehensive overhaul of the nation's immigration system have been sidetracked amid the fallout from the botched implementation of Obamacare, which continues to dog the administration.¶ According to Politico, the diversion over the troubled healthcare law has enabled House Republicans to avoid divisive debate on the bipartisan immigration bill passed by the Senate in the summer. Doubts, meanwhile, are mounting about the administration's competence to manage the complexity of a reformed immigration system, given the problems with the healthcare law.¶ "There's a loss of confidence in the government's ability," former Los Angeles Major Antonio Villaraigosa, a Democrat and proponent of the immigration reform bill, said at an event this month, according to Politico.¶ "Clearly, the last few months, our experience with [the] Affordable Care Act does not help when you look at other big things like immigration reform."¶ Conservatives may be able to mount a credible case in the public eye against the government's ability to manage major programs by capitalizing on the widespread skepticism of Obamacare, according to Politico.¶ The Senate immigration bill would create a pathway to citizenship for the nation's 11 million undocumented immigrants, strengthen border security, and expand the temporary worker program. Those plans are increasingly looking too ambitious to achieve in the current divisive partisan environment.¶ "It's going to make it harder to sell big deals" South Carolina Republican Sen. Lindsey Graham, a lead co-sponsor of the Senate immigration bill, told Politico. "People are now saying, 'So you're gonna do immigration. You're gonna let the same people manage the immigration system that's managed Obamacare?'"¶ House Speaker John Boehner's spokesman, Brendan Buck, echoed those sentiments, saying that the troubled rollout of Obamacare "validated our warnings against jamming one massive bill that few have read and even fewer fully comprehend."¶ "If the Obamacare train wreck has any lesson, it's that big policy challenges should be addressed deliberatively and one step at a time," he said.¶ The Obama administration, however, is trying to sever the link between the two issues, even though it acknowledges that the drop in public confidence over Obamacare may have an effect on its other policy initiatives.

## 1AR

### CP

**The phrase "the USFG" doesn't mean we have to use all three branches**

**WORDS AND PHRASES, 2004**, Cummulative Supplementary Pamphlet, v. 16A, p. 42 (PDNS3485)

N.D.Ga. 1986. Action against the Postal Service, although an independent establishment of the executive branch of the federal government, is an action against the “Federal Government” for purposes of rule that plaintiff in action against government has right to jury trial only where right is one of terms of government’s consent to be sued; declining to follow Algernon Blair Industrial Contractors, Inc. v. Tennessee Valley Authority, 552 F.Supp. 972 (M.D.Ala.). 39 U.S.C.A. 201; U.S.C.A. Const.Amend. 7.—Griffin v. U.S. Postal Service, 635 F.Supp. 190.—Jury 12(1.2).

#### Perm do both---shields the link

Perine, 6/12/2008 (Katherine – staff at CQ politics, Congress unlikely to try to counter Supreme Court detainee ruling, CQ Politics, p. http://www.cqpolitics.com/wmspage.cfm?docID=news-000002896528&cpage=2)

Thursday’s decision, from a Supreme Court dominated by Republican appointees, gives Democrats further cover against GOP sniping. “This is something that the court has decided, and very often the court gives political cover to Congress,” said Ross K. Baker, a Rutgers University political science professor. “You can simply point to a Supreme Court decision and say, ‘The devil made me do it.’ ”

Lubbock Avalanche-Journal, 4-16-2012, “Obama Scapegoats Others,” http://lubbockonline.com/interact/blog-post/may/2012-04-16/obama-scapegoats-others#.UVD0bBzFXzw

Rather than behaving like a leader and taking full responsibility for his own actions, President Barack Obama blames others. If the problem has been created by Radical Islam, Democrats, or other Socialists, Obama deflects the blame to others. For every problem, and for everything he wants to Socialize, Barack Obama picks a scapegoat, isolates them, and places all blame on them for the problem. Obama’s approach is to create hatred between groups of people, to divide, and to conquer. President George W. Bush has been Obama’s primary target. Obama blamed President Bush for liberating Iraq from Saddam Hussein, for the luxurious prison accommodations for terrorists at Guantanamo Bay, and for the housing bubble enabled by the Democrats and created by incompetent and corrupt management at Fannie Mae and Freddie Mac. Obama blames Jews and other rich persons for not paying enough taxes as the reason for the trillions of dollars of debt the Obama Administration has created. Obama does not take any blame for wasting taxpayer money on his $1 trillion Stimulus Plan, also known as The American Recovery and Reinvestment Act of 2009. Obama did not accept any blame for the billions of dollars of bad investments our Federal Government made in Solyndra and other failing Green Energy Companies. Obama instead blamed bankers and the rich people on Wall Street. Health care costs were not the fault of government, according to Obama. He blamed insurance companies and massively cut payments to physicians and hospitals. ObamaCare is simply massive amounts of additional government health care bureaucracy that is despised by a majority of the American people, most of who realize it is unconstitutional. After the Supreme Court heard the case against ObamaCare, Obama singled out the Supreme Court Justices and told them that they must support ObamaCare or the failure of health care would be their fault.

#### Courts alone don’t solve

Taylor 13 [Paul Taylor, Senior Fellow at the Center for Policy & Research, JD from Seton Hall Law School, “A FISC for Drones?” Feb 9 2013, http://transparentpolicy.org/2013/02/a-fisc-for-drones/]

 There are simply too many hurdles to judicial review (including state secrets, political questions, discovery problems, etc) for the courts to create such an opportunity without congressional action.

### DA

#### No resource wars

Tetrais 12—Senior Research Fellow at the Fondation pour la Recherche Stratgique (FRS). Past positions include: Director, Civilian Affairs Committee, NATO Assembly (1990-1993); European affairs desk officer, Ministry of Defense (1993-1995); Visiting Fellow, the Rand Corporation (1995-1996); Special Assistant to the Director of Strategic Affairs, Ministry of Defense (1996-2001).(Bruno, The Demise of Ares, csis.org/files/publication/twq12SummerTertrais.pdf)

The Unconvincing Case for ‘‘New Wars’’ ¶ Is the demise of war reversible? In recent years, the metaphor of a new ‘‘Dark Age’’ or ‘‘Middle Ages’’ has flourished. 57 The rise of political Islam, Western policies in the Middle East, the fast development of emerging countries, population growth, and climate change have led to fears of ‘‘civilization,’’ ‘‘resource,’’ and ‘‘environmental’’ wars. We have heard the New Middle Age theme before. In 1973, Italian writer Roberto Vacca famously suggested that mankind was about to enter an era of famine, nuclear war, and civilizational collapse. U.S. economist Robert Heilbroner made the same suggestion one year later. And in 1977, the great Australian political scientist Hedley Bull also heralded such an age. 58 But the case for ‘‘new wars’’ remains as flimsy as it was in the 1970s.¶ Admittedly, there is a stronger role of religion in civil conflicts. The proportion of internal wars with a religious dimension was about 25 percent between 1940 and 1960, but 43 percent in the first years of the 21st century. 59 This may be an effect of the demise of traditional territorial conflict, but as seen above, this has not increased the number or frequency of wars at the global level. Over the past decade, neither Western governments nor Arab/Muslim countries have fallen into the trap of the clash of civilizations into which Osama bin Laden wanted to plunge them. And ‘‘ancestral hatreds’’ are a reductionist and unsatisfactory approach to explaining collective violence. Professor Yahya Sadowski concluded his analysis of post-Cold War crises and wars, The Myth of Global Chaos, by stating, ‘‘most of the conflicts around the world are not rooted in thousands of years of historythey are new and can be concluded as quickly as they started.’’ 60¶ Future resource wars are unlikely. There are fewer and fewer conquest wars. Between the Westphalia peace and the end of World War II, nearly half of conflicts were fought over territory. Since the end of the Cold War, it has been less than 30 percent. 61 The invasion of Kuwaita nationwide bank robberymay go down in history as being the last great resource war. The U.S.-led intervention of 1991 was partly driven by the need to maintain the free flow of oil, but not by the temptation to capture it. (Nor was the 2003 war against Iraq motivated by oil.) As for the current tensions between the two Sudans over oil, they are the remnants of a civil war and an offshoot of a botched secession process, not a desire to control new resources.¶ China’s and India’s energy needs are sometimes seen with apprehension: in light of growing oil and gas scarcity, is there not a risk of military clashes over the control of such resources? This seemingly consensual idea rests on two fallacies. One is that there is such a thing as oil and gas scarcity, a notion challenged by many energy experts. 62 As prices rise, previously untapped reserves and non-conventional hydrocarbons become economically attractive. The other is that spilling blood is a rational way to access resources. As shown by the work of historians and political scientists such as Quincy Wright, the economic rationale for war has always been overstated. And because of globalization, it has become cheaper to buy than to steal. We no longer live in the world of 1941, when fear of lacking oil and raw materials was a key motivation for Japan’s decision to go to war. In an era of liberalizing trade, many natural resources are fungible goods. (Here, Beijing behaves as any other actor: 90 percent of the oil its companies produce outside of China goes to the global market, not to the domestic one.) 63 There may be clashes or conflicts in regions in maritime resource-rich areas such as the South China and East China seas or the Mediterranean, but they will be driven by nationalist passions, not the desperate hunger for hydrocarbons.

#### No resource wars---tech and adaptation solves---any empirical evidence is anecdotal at best

Thomas Bernauer et al 10 is a professor of political science at ETH Zurich, \*\*Ms. Anna Kalbhenn is PhD candidate at the Center for Comparative and International Studies (CIS), Zurich \*\*\*Vally Koubi is a senior fellow at the Center for Comparative and International Studies (CIS) at the Swiss Federal Institute of Technology Zurich \*\*\*\* Gabriele Ruoff is postdoctoral researcher in the “International Political Economy” group of Thomas Bernauer at the Center for Comparative and International Studies, Climate Change, Economic Growth, and Conflict climsec.prio.no/papers/Climate\_Conflict\_BKKR\_Trondheim\_2010.pdf

Other scholars, commonly referred to as cornucopians or resource optimists, do not share this pessimistic view. They acknowledge that environmental degradation may negatively affect human wellbeing. But they argue that humans can adapt to resource scarcity by using market mechanisms (pricing), technological innovation, and other means (Lomborg 2001; Simon 1998). Simon (1998) for instance notes that, although population growth can lead to shortages or increased economic burdens in the short run, the ability of society to respond to such circumstances by improvements in technology and efficiency usually outstrips the constraints imposed by an increasing population**.**

The neo-Malthusian argument has also been criticized for being overly complex and deterministic, and for ignoring important economic and socio-political factors (e.g. Gleditsch 1998; de Soysa 2002a,b; Barnett and Adger 2007; Salehyan 2008). Critics have argued that scarcity of renewable resources is just one of the factors in the overall relationship between climate change and conflict. Buhaug et al. (2008:20) note that “climate change may increase the risk of armed conflict only under certain conditions and in interaction with several socio-political factors”. They reject the idea that climate change has a direct effect on the likelihood of conflict and propose several causal pathways through which economic and political instability, social fragmentation, and migration could increase the probability of climate change leading to armed conflict.

Qualitative case studies (e.g. Baechler et al. 1996) provide some, albeit anecdotal evidence that climate change induced environmental degradation (such as water scarcity, soil degradation, or deforestation) has contributed to conflict in some parts of the world (e.g. the Sahel region**).** But it remains unclear to what extent these case specific findings can be generalized. Large-N studies have, so far, not been able to provide conclusive evidence. One part of this variance in empirical evidence is certainly due to the use of different measures of climate change and environmental degradation, data problems, and different sample sizes and time periods. Another part, we submit, is due to the fact that past research has focused on identification of a direct link between climatic conditions and conflict. Conditional effects that stem from key factors such as economic development and the political system characteristics may thus have been overlooked.

#### Global economic governance institutions guarantee resiliency

Daniel W. Drezner 12, Professor, The Fletcher School of Law and Diplomacy, Tufts University, October 2012, “The Irony of Global Economic Governance: The System Worked,” <http://www.globaleconomicgovernance.org/wp-content/uploads/IR-Colloquium-MT12-Week-5_The-Irony-of-Global-Economic-Governance.pdf>

Prior to 2008, numerous foreign policy analysts had predicted a looming crisis in global economic governance. Analysts only reinforced this perception since the financial crisis, declaring that we live in a “G-Zero” world. This paper takes a closer look at the global response to the financial crisis. It reveals a more optimistic picture. Despite initial shocks that were actually more severe than the 1929 financial crisis, global economic governance structures responded quickly and robustly. Whether one measures results by economic outcomes, policy outputs, or institutional flexibility, global economic governance has displayed surprising resiliency since 2008. Multilateral economic institutions performed well in crisis situations to reinforce open economic policies, especially in contrast to the 1930s. While there are areas where governance has either faltered or failed, on the whole, the system has worked. Misperceptions about global economic governance persist because the Great Recession has disproportionately affected the core economies – and because the efficiency of past periods of global economic governance has been badly overestimated. Why the system has worked better than expected remains an open question. The rest of this paper explores the possible role that the distribution of power, the robustness of international regimes, and the resilience of economic ideas might have played.

#### No chance of war from economic decline---best and most recent data

Daniel W. Drezner 12, Professor, The Fletcher School of Law and Diplomacy, Tufts University, October 2012, “The Irony of Global Economic Governance: The System Worked,” <http://www.globaleconomicgovernance.org/wp-content/uploads/IR-Colloquium-MT12-Week-5_The-Irony-of-Global-Economic-Governance.pdf>

The final outcome addresses a dog that hasn’t barked: the effect of the Great Recession on cross-border conflict and violence. During the initial stages of the crisis, multiple analysts asserted that the financial crisis would lead states to increase their use of force as a tool for staying in power.37 Whether through greater internal repression, diversionary wars, arms races, or a ratcheting up of great power conflict, there were genuine concerns that the global economic downturn would lead to an increase in conflict. Violence in the Middle East, border disputes in the South China Sea, and even the disruptions of the Occupy movement fuel impressions of surge in global public disorder.

The aggregate data suggests otherwise, however. The Institute for Economics and Peace has constructed a “Global Peace Index” annually since 2007. A key conclusion they draw from the 2012 report is that “The average level of peacefulness in 2012 is approximately the same as it was in 2007.”38 Interstate violence in particular has declined since the start of the financial crisis – as have military expenditures in most sampled countries. Other studies confirm that the Great Recession has not triggered any increase in violent conflict; the secular decline in violence that started with the end of the Cold War has not been reversed.39 Rogers Brubaker concludes, “the crisis has not to date generated the surge in protectionist nationalism or ethnic exclusion that might have been expected.”40

None of these data suggest that the global economy is operating swimmingly. Growth remains unbalanced and fragile, and has clearly slowed in 2012. Transnational capital flows remain depressed compared to pre-crisis levels, primarily due to a drying up of cross-border interbank lending in Europe. Currency volatility remains an ongoing concern. Compared to the aftermath of other postwar recessions, growth in output, investment, and employment in the developed world have all lagged behind. But the Great Recession is not like other postwar recessions in either scope or kind; expecting a standard “V”-shaped recovery was unreasonable. One financial analyst characterized the post-2008 global economy as in a state of “contained depression.”41 The key word is “contained,” however. Given the severity, reach and depth of the 2008 financial crisis, the proper comparison is with Great Depression. And by that standard, the outcome variables look impressive. As Carmen Reinhart and Kenneth Rogoff concluded in This Time is Different: “that its macroeconomic outcome has been only the most severe global recession since World War II – and not even worse – must be regarded as fortunate.”42

#### Bipartisanship is dead and there’s too many defections within parties for agreement

Michael O'Brien 12-31, political reporter for NBC News, December 31st, 2013, "Despite hunger for change, Washington gridlock will likely continue," nbcpolitics.nbcnews.com/\_news/2013/12/31/21892891-despite-hunger-for-change-washington-gridlock-will-likely-continue?lite

Past is predictive¶ Just take a look at the few instances of bipartisanship in this past Congress if you want to understand why the outlook for future success is so bleak.¶ On gun control, a modest, bipartisan proposal crafted by Sens. Joe Manchin, D-W.Va., and Pat Toomey, R-Pa., couldn’t even win enough votes in the more deliberative Senate.¶ "You know, that's Harry Reid's decision," Toomey said last week on MSNBC about the prospects for reviving the bill. "Honestly, I don't think we've got the votes to pass it in the Senate."¶ Maybe the biggest bipartisan breakthrough this year came when the Senate passed a comprehensive immigration reform law after months of hushed negotiation among a group of senators from both parties. But that bill’s dead in the House, where Republican leaders want to break the legislation down to some of its component parts. And even those pieces might not make it to Obama’s desk next year.¶ The other bipartisan “achievement” – the agreement to re-open the government after a prolonged shutdown and avert a default on the national debt – came against a deadline that threatened economic catastrophe. And each party split over the bill nonetheless.¶ Renewed hopes of bipartisanship did spike after Wisconsin Rep. Paul Ryan, negotiating for House Republicans, and Washington Sen. Patty Murray, bargaining for Senate Democrats, came together to propose a modest budget compromise that would stabilize government spending levels for the next two years.¶ "I actually called them after they struck the deal, and I said congratulations, and I hope that creates a good pattern for next year, where we work on at least the things we agree to, even if we agree to disagree on some of the other big-ticket items," Obama said at his December press conference.¶ At his final news conference of the year, House Speaker John Boehner had a message for the conservative groups who demanded that they try to stop the healthcare law. NBC's Kelly O'Donnell reports.¶ But that agreement was so narrow in scope precisely because both parties remain so far apart on the major issues of tax and entitlement reform. And even then, the agreement forced leaders from both parties to paper over dissent in their own ranks.¶ House Minority Leader Nancy Pelosi, D-Calif., encouraged Democrats to “embrace the suck” in supporting the package; Speaker John Boehner, R-Ohio, lashed out at conservative groups that had opposed the agreement, and suffered 62 GOP defections on the final House vote to approve the budget framework.¶ The legislation also faced some resistance in the Senate, where the atmosphere took a sharp turn toward acrimony after Democrats engineered a change to the chamber’s rules to allow easier passage for presidential nominees. The move angered Senate Republicans, whose eagerness to partner with the other party further plummeted to new lows.¶ To boot, GOP senators forced Democratic leaders to exhaust every hour of debate time before approving a slate of presidential nominees this week. The procedural tactic didn’t accomplish much except force around-the-clock work into the early hours of the morning, which further fueled partisan bitterness in the chamber.¶ “McConnell and Reid despise each other,” Cook said, referring to the Republican and Democratic Senate leaders, “and the relationship between them will never improve.”