# Deterrence

**Nuclear deterrence key to global stability – collapse of the deterrence norm sparks international nuclear conflict – that’s 1AC Freedman. Plan prevents nuclear deterrence collapse – drone proliferation lowers the bar to initiate conflict between nuclear actors – that’s Boyle – the impact is empirical – deterrence allows political actors to assess each actor’s motivation for war which reduces conflict – that’s Payne.**

#### 1NC\_\_\_ says plan isn’t modeled – wrong

1. Norm Establishment – other countries are copying US permissive policy – plan reverses the trend – that’s 1AC Boyle
2. Legality – the US disproportionate contributes to the regimes the international system – that’s 1AC Alston
3. Supreme Court – the decision is copied across the globe - none of their evidence assumes an unprecedented ruling that would bind the executive’s policy to international law – that’s 1AC Sylvester

#### 1NC\_\_\_ says prolif inevitable but no--- the plan establishes an *international norm* for drone use which not only makes drone misidentification less likely but also fosters an alternative recourse to violent retaliation – that’s the thesis of the AFF

# I/L

**U.S. influence means that our postures will be seen as acceptable – that’s Alston 11. If lack of oversight and accountability remain the norm, international law will continue to be systematically undermined – that’s Bowcott 12.**

# Secrets

#### No links based on leaked information:A. the 1AC Vladeck evidence argues that justices are competent in balancing classified information with defendant rights B. Statutes prevent leaks of classified information while upholding legality

Murphy and Radsan, 2009

[Richard is the AT&T Professor of Law, Texas Tech University School of Law, Afsheen John is a Professor, William Mitchell College of Law. He was assistant general counsel at the Central Intelligence Agency from 2002-2004. “DUE PROCESS AND TARGETED KILLING OF TERRORISTS,” William Mitchell College of Law Research Paper No. 126 Texas Tech Law School Research Paper No. 2010-06, accessed: 8-15-13, SpS]

In view of so many practical and legal hurdles, some courts and commentators might be inclined to categorically reject all Bivens-style challenges to targeted killings. In essence, they might view lawsuits related to targeted killing as a political question left to the executive.222 This view parallels Justice Thomas‘s that courts should not second-guess executive judgments as to who is an enemy combatant.223 Contrary to Justice Thomas‘s view, the potency of the government‘s threshold defenses means that targeted-killing cases that make it to the merits would likely involve the most egregious conduct—for example, killing an unarmed Jose Padilla at O‘Hare Airport on a shoot-to-kill order. For these egregious cases, a judicial check on executive authority is most necessary.

In terms of a Mathews balancing, the question becomes whether the benefits of Bivens actions on targeted killings of terrorists outweigh the harms. The potential harm is to the CIA‘s sources and methods on the Predator program. Lawsuits might harm national security by forcing the disclosure of sensitive information. The states-secrets privilege should block this result, however. Lawsuits might also harm national security by causing executive officials to become risk-averse about actions needed to counter terrorist activities. Qualified immunity, however, should ensure that liability exists only where an official lacks any justification for his action. On the benefit side, allowing lawsuits to proceed would, in truly exceptional cases, serve the private interest of the plaintiff in seeking compensation and, perhaps more to the point given the incommensurability of death and money, would provide accountability. Still more important, all people have an interest in casting light on the government‘s use of the power to kill in a world-wide war in which combatants and targets are not easily identified.

This balance of interests favors judicial challenges to targeted killings. Court cases, suitably circumscribed, will not harm national security and will help protect liberty. To be sure, for many practical reasons, it is unlikely that a Predator plaintiff will ever bring a case. And we hope the government exercises its power to kill wisely enough to avoid judicial challenge. Yet if the federal courts ever confront a case that has survived the government‘s threshold defenses, the Hamdi/Boumediene model suggests that the judiciary should hold the executive to account.

#### Turn – lack of transparency collapses the entire drone program – plan solves – cross apply their “drones key to warfighting” ev -

Zenko, January 2013

[Micah is the Douglas Dillon fellow in the Center for Preventive Action (CPA) at the Council on Foreign Relations (CFR). Previously, he worked for five years at the Harvard Kennedy School and in Washington, DC, at the Brookings Institution, Congressional Research Service, and State Department’s Office of Policy Planning. “Reforming U.S. Drone Strike Policies,” Council Special Report No. 65, accessed: 9-6-13, SpS]

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

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

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

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

According to U.S. diplomats and military officials, active resistance— such as the Pakistani army shooting down U.S. armed drones— is a legitimate concern. In this case, the United States would need to either end drone sorties or escalate U.S. military involvement by attacking Pakistani radar and antiaircraft sites, thus increasing the likelihood of civilian casualties.68 Beyond where drone strikes currently take place, political pressure could severely limit options for new U.S. drone bases. For example, the Obama administration is debating deploying armed drones to attack al-Qaeda in the Islamic Maghreb (AQIM) in North Africa, which would likely require access to a new airbase in the region. To some extent, anger at U.S. sovereignty violations is an inevitable and necessary trade-off when conducting drone strikes. Nevertheless, in each of these cases, domestic anger would partially or fully abate if the United States modified its drone policy in the ways suggested below.

No reason causes loss of dominance

# Jud DA

#### (--) Non-unique: The series of unpopular decisions last term should trigger the link:

Harold Maass, 7/22/2013 (staff writer, “How the Supreme Court got on the bad side of everybody,” <http://theweek.com/article/index/247206/how-the-supreme-court-got-on-the-bad-side-of-everybody>, Accessed 7/25/2013, rwg)

Why is the court's popularity suddenly in free fall? Andrew Dugan at Gallup says a key reason might be that its divisive, blockbuster decisions have disappointed conservatives and liberals alike. The justices angered the right when, in a 5-4 vote, they reaffirmed a lower court's overturning of the Defense of Marriage Act; they made the left just as mad when, in another 5-4 vote, they upheld state voter ID laws that Democrats say discourage left-leaning immigrant and minority blocs from casting ballots.¶ Unlike Congress or the presidency, one might expect the Supreme Court, as a nominally nonpartisan institution, to be sheltered from the public disaffection that has chipped away at the ratings of the other two branches. In reality, though, the court has often been a source of political polarization since 2000 and is hardly immune to the same political forces plaguing the other two branches. [Gallup]

#### (--) Turn: Winners win for the Courts—controversial decisions enhance the court’s legitimacy:

David Law, 2009 (Professor of Law and Professor of Political Science, Washington University in St. Louis, Georgetown Law Journal, March 2009, 97 Geo. L.J. 723; “A Theory of Judicial Power and Judicial Review,” Lexis, rwg)

Part IV of this Article discusses a counterintuitive implication of a coordination-based account of judicial power. Conventional wisdom suggests that courts secure compliance with their decisions by drawing upon their store of legitimacy, which is undermined by decisions that are unpopular, controversial, or lack intellectual integrity. n25 Part IV argues that precisely the opposite is true: an unpopular or unpersuasive decision can, in fact, enhance a court's power in future cases, as long as it is obeyed. Widespread compliance with a decision that is controversial, unpopular, or unpersuasive serves only to strengthen the widely held expectation that others comply with judicial decisions. This expectation, in turn, is self-fulfilling: those who expect others to comply with a court's decisions will find it strategically prudent to comply themselves, and the aggregate result will, in fact, be widespread compliance. Part IV illustrates these strategic insights--and the Supreme Court's apparent grasp of them--by contrasting [\*734] Bush v. Gore n26 with Brown v. Board of Education n27 and Cooper v. Aaron. n28

#### (--) Non-unique: conservatives enraged about the DOMA decision:

Michael Luciano, 6/25/2013 (staff writer, “After Gay Marriage Rulings, Christian Conservatives Unconvincingly Portray Themselves As the Victims,” <http://www.policymic.com/articles/51897/marriage-equality-christian-conservatives-absurdly-claim-they-re-the-real-victims>, Accessed 7/25/2013, rwg)

After the Supreme Court struck dealt a blow to the Defense of Marriage Act and California’s Proposition 8 on Wednesday, reactions from the religious right were fervid and crazed, suggesting Christian conservatives feel their very livelihoods are imperiled. Indeed, one conservative tells us the dubious direction this is all heading:¶ The Supreme Court virtually declared an open season on those with whom the 5-4 majority disagree.¶ We are no longer relevant. What we think no longer counts. We are, after all, bigots who only want to demean homosexuals.¶ So when does the persecution begin?¶ When are we stripped of our citizen status, the right to vote, the right to bear arms and other constitutionally guaranteed liberties? Isn’t that next?

#### (--) No internal link: Capital doesn’t tradeoff between issues--

Redish and Cisar, 1991 prof law @ Northwestern and Law clerk to US Court of Appeals, 1991

(MARTIN H. REDISH, prof law and public policy @ Northwestern; ELIZABETH J. CISAR, Law Clerk to Chief Judge William Bauer, United States Court of Appeals, Seventh Circuit, Dec 1991, “CONSTITUTIONAL PERSPECTIVES: ARTICLE: "IF ANGELS WERE TO GOVERN" \*: THE NEED FOR PRAGMATIC FORMALISM IN SEPARATION OF POWERS THEORY.” 41 Duke L.J. 449)

Choper's assumption that the judiciary's institutional capital is transferable from structural cases to individual rights cases is no more credible. Common sense should tell us that the public's reaction to con- troversial individual rights cases-for example, cases concerning abor- tion,240 school prayer,241 busing,242 or criminal defendants' rights243- will be based largely, if not exclusively, on the basis of its feelings con- cerning those particular issues. It is unreasonable to assume that the public's acceptance or rejection of these individual rights rulings would somehow be affected by anything the Court says about wholly unrelated structural issues.

#### (--) Theory of institutional capital is wrong—votes are based on ideology and not institutional capital:

Cross and Nelson, 2001 Biz Law @ UT and PoliSci @ Penn State,

(Frank B. Cross, Biz Law @ UT, Blake J. Nelson, Assis prof PoliSci @ Penn State, 2001, “STRATEGIC INSTITUTIONAL EFFECTS ON SUPREME COURT DECISIONMAKING” 95 Nw. U.L. Rev. 1437)

The normative political model, sometimes called the attitudinal model, contends that judges make decisions so as to advance their political or ideological  [\*1444]  policy ends, without regard to either the demands of the normative legal model or the concerns of other institutions. [n39](https://webgateway.dartmouth.edu/us/lnacademic/%2CDanaInfo%3Dwww.lexisnexis.com%2Bframe.do?tokenKey=rsh-20.677121.178745811&target=results_DocumentContent&reloadEntirePage=true&rand=1248638109925&returnToKey=20_T7032660253&parent=docview#n39) It is normative in that it assumes that judges are unconstrained and have single-peaked utility functions. In this model, judges decide so as to advance their ideological policy ends, without regard for the formal requirements of law (e.g., constraining precedents and text) and without concern for the reaction of external entities. The political model may find support in legal sources beyond the legal realists and the contemporary critical legal theorists. [n40](https://webgateway.dartmouth.edu/us/lnacademic/%2CDanaInfo%3Dwww.lexisnexis.com%2Bframe.do?tokenKey=rsh-20.677121.178745811&target=results_DocumentContent&reloadEntirePage=true&rand=1248638109925&returnToKey=20_T7032660253&parent=docview#n40) Supreme Court Justices are commonly characterized as "liberal" or "conservative" - political terms describing the ideological import of their decisions. Significantly, this model of decisionmaking does not necessitate an extremely cynical view of judges, as the political model may reflect subconscious psychology and cognitive dissonance. [n41](https://webgateway.dartmouth.edu/us/lnacademic/%2CDanaInfo%3Dwww.lexisnexis.com%2Bframe.do?tokenKey=rsh-20.677121.178745811&target=results_DocumentContent&reloadEntirePage=true&rand=1248638109925&returnToKey=20_T7032660253&parent=docview#n41) With the growth of clerk populations, it is easy for "the appellate judge to determine a result based on personal notions of fairness and right, and then to leave to the staff attorney the task of constructing reasons to support that result." [n42](https://webgateway.dartmouth.edu/us/lnacademic/%2CDanaInfo%3Dwww.lexisnexis.com%2Bframe.do?tokenKey=rsh-20.677121.178745811&target=results_DocumentContent&reloadEntirePage=true&rand=1248638109925&returnToKey=20_T7032660253&parent=docview#n42) The political model can be descriptively accurate, even absent conscious judicial policymaking. In contrast to the normative legal model, considerable empirical data supports the claims of the political model of judicial decisionmaking. Many studies have already been described in the legal literature. [n43](https://webgateway.dartmouth.edu/us/lnacademic/%2CDanaInfo%3Dwww.lexisnexis.com%2Bframe.do?tokenKey=rsh-20.677121.178745811&target=results_DocumentContent&reloadEntirePage=true&rand=1248638109925&returnToKey=20_T7032660253&parent=docview#n43) Some prominent judges have taken issue with these studies and raised some methodological challenges, [n44](https://webgateway.dartmouth.edu/us/lnacademic/%2CDanaInfo%3Dwww.lexisnexis.com%2Bframe.do?tokenKey=rsh-20.677121.178745811&target=results_DocumentContent&reloadEntirePage=true&rand=1248638109925&returnToKey=20_T7032660253&parent=docview#n44) though the challenges are readily answered. [n45](https://webgateway.dartmouth.edu/us/lnacademic/%2CDanaInfo%3Dwww.lexisnexis.com%2Bframe.do?tokenKey=rsh-20.677121.178745811&target=results_DocumentContent&reloadEntirePage=true&rand=1248638109925&returnToKey=20_T7032660253&parent=docview#n45) Perhaps  [\*1445]  the most persuasive evidence can be found in a meta-analysis of studies on judicial decisionmaking conducted by Dan Pinello. [n46](https://webgateway.dartmouth.edu/us/lnacademic/%2CDanaInfo%3Dwww.lexisnexis.com%2Bframe.do?tokenKey=rsh-20.677121.178745811&target=results_DocumentContent&reloadEntirePage=true&rand=1248638109925&returnToKey=20_T7032660253&parent=docview#n46) He identified 140 research papers that empirically analyzed judicial decisionmaking by party affiliation. A majority of these papers reported data in a manner that could be incorporated in his meta-analysis, and he found that virtually every study showed a positive association between judicial voting and judicial ideology. [n47](https://webgateway.dartmouth.edu/us/lnacademic/%2CDanaInfo%3Dwww.lexisnexis.com%2Bframe.do?tokenKey=rsh-20.677121.178745811&target=results_DocumentContent&reloadEntirePage=true&rand=1248638109925&returnToKey=20_T7032660253&parent=docview#n47) The studies together contained over 222,000 judicial votes, and the judges' political party explained thirty-eight percent of the variance in their voting.

#### (--) No link: no one pays attention to the court:

Noah Feldman**,** 6/17/2012 ( professor of constitutional and international law at Harvard, “Supreme Court’s Super Mondays Don’t Serve Justice,” <http://www.bloomberg.com/news/2012-06-17/supreme-court-s-super-mondays-don-t-serve-justice.html>, Accessed 7/28/2012, rwg)

The club of Supreme Court devotees (OK, junkies) likes to think of the first Monday in October as opening day, and the last Monday in June as game seven of the [World Series](http://topics.bloomberg.com/world-series/). But many years, the series is a dud. Most of the cases are technical and unexciting, they enter the casebooks with little fanfare, and the public barely notices. This year will be the exception that proves the rule.

#### (--) Individual decisions don’t affect capital.

Gibson et al., 2003 PoliSci @ Wash U in St. Louis and Ohio State, 2003

James L. Gibson, PoliSci @ Wash U in St. Louis, Gregory A. Caldeira, PoliSci @ Ohio State, Lester Kenyatta Spence, Poli Sci @ Wash U in St. Louis, Apr. 2003, “Measuring Attitudes toward the United States Supreme Court” American Journal of Political Science, Vol. 47, No. 2 (Apr., 2003), pp. 354-367

Perhaps more important is the rather limited rela- tionship between performance evaluations and loyalty to the Supreme Court. These two types of attitudes are of course not entirely unrelated, but commitments to the Supreme Court are not largely a function of whether one is pleased with how it is doing its job. Even less influential are perceptions of decisions in individual cases. When people have developed a "running tally" about an institution-a sort of historical summary of the good and bad things an institution has done-it is difficult for any given decision to have much incremental influence on that tally. Insti- tutional loyalty is valuable to the Court precisely because it is so weakly related to actions the Court takes at the moment.

**US and Russia have good relations now – won’t go to war**

**Krickus 10** (Richard, prof, http://www.rferl.org/content/The\_Road\_To\_Resetting\_Moscow\_Ties\_Passes\_Through\_Berlin/1966883.html, dw: 2-24-2010, da: 7-9-2011)

What is more, important developments are changing the dynamics of the German-Russian energy relationship. **Many energy experts believe that Russia cannot provide the product to make the Nord Stream project an economic success, while new sources of natural gas are becoming available on the world market as a result of technological breakthroughs in extraction**. These and other matters could be discussed at a summit with the purpose of maintaining good economic relations with Russia while making certain that they don’t cause serious friction among alliance members. Finally, **U.S. foreign-policy makers have a stake in improving relations with Berlin that have been sullied over differences associated with Iraq and Afghanistan, the proper response to the global economic crisis, as well as conflicting views regarding relations with Moscow. To promote more harmonious relations with the largest and richest country in Europe, the United States could develop a special working group with Germany to resolve** -- or at least mollify -- **outstanding differences between both countries.** Washington, in short, should acknowledge that it must reengage Berlin at the same time that it resumes relations with Moscow. A May summit in Berlin could advance that agenda.

# K

#### Conditionality is a voting issue

#### A. Education – the NEG only goes for what has the least coverage and analysis, preventing in-depth discussion

#### B. Strategic Skew – conditionality undermines AFF ability to generate offense and skews time allocation undermining AFF ability to hedge against the block

#### C. Advocacy – conditionality prevents the NEG from learning consistent advocacy and encourages argument irresponsibility

#### D. No Offense – pre-tournament research and dispositional CPs capture all NEG offense, while still preserving side balance

#### Perm – we can acknowledge that liberal regimes conceptualize human rights through the lens of security – but that doesn’t mean intervention is evil in all instances – their alternative ignores the reality of genocide

Davidson, 2012

[ Joanna, Emory College Institute of Critical International Studies States at Regional Risk post-doctoral fellow, "Humanitarian Intervention as Liberal Imperialism: Force for Good?" www.polis.leeds.ac.uk/assets/files/students/student-journal/ug-summer-12/joanna-davidson.pdf, accessed: 9-17-13, SpS]

The debate over the legitimacy and conduct of humanitarian intervention continues to rage fiercely within the international community, particularly in the aftermath of the 9/11 attacks and the declaration of the War on Terror. From growing calls for more humanitarian action and political involvement to solve the humanitarian crises of the 90s, to international scepticism and condemnation of the liberal interventions in the Middle East following the events of 9/11, it comes as no surprise that humanitarian intervention is generally deemed to be ―in crisis‖ (Rieff 2002). As this essay has demonstrated, the waning of state sovereignty and the subsequent rise in ‗humanitarian‘ interventions has been an emergent reality throughout the 1990s; yet far from being the result of a growing humanism amongst the powerful liberal states, such a shift in concern from the state to the individual is in reality part of a much more sinister liberal enterprise which is quintessentially concerned with the art of global governance (Gordon 1991: 14). The repercussions of the implication of liberal self- interests alongside the achievement of humanitarian goals has been highlighted only too clearly in an analysis of the development of humanitarian intervention throughout the 1990s, during which time it became painfully clear that intervention undertaken for purely humanitarian concerns, if it occurs at all, has generally been underfunded and insufficient (Falk 2000: 333), therefore leading to interventions which arguably did more harm than good. Rwanda provides us with a clear example of what happens when, despite grave humanitarian concerns, there exists no strategic interests for the states with the power to intervene, whilst events in Somalia, Bosnia and Kosovo illustrated the fact that in the absence of state selfinterest, there exists little political will to pay the costs of blood and gold in order to ensure that ―humanitarian war is conducted in a humanitarian manner.‖ (Falk 2000: 331) The 1990s then, far from being the ‗golden era of humanitarian intervention‘ (Bellamy and Wheeler 2008), were in reality an experimentation in liberal expansionism, yet where there existed few security concerns for the liberal states, there existed little political will to commit to the mission. It is only when national interests are implicated that states are willing to accept the costs and stay the duration necessary to alter the humanitarian situation in any meaningful way (Weiss 2004: 37).

As has been noted throughout this essay, the vital interests of the intervening states are grounded in liberal notions of human security; that is to say entire swathes of the world‘s population are re-conceptualized as a threat to humanity which requires pacification through assimilation into the liberal world order or, failing that, destruction. In liberalisms quest to expand its control and influence across the world, the remit of intervention has been broadened to include within its scope democracy spreading, nation building, and regime change, as has been demonstrated in Iraq, Afghanistan, and more recently, Libya. It would seem undeniable that humanitarian intervention is essentially a veil behind which liberal imperialism can disguise itself, despite protestations of liberals heralding a ―revolution of moral concern‖. Indeed, we can see clear similarities between the old rhetoric of empire and current discussions surrounding liberal imperialism. As Nardin has noted, in the old days of empire humanitarianism was used to justify the imposition of foreign power on populations at the margins of the ‗civilized‘ world in order to uphold the standards of civilized morality; essentially in order to protect the population from themselves. We can see that little has changed between then and now when we note that current rhetoric on humanitarian intervention constructs the third world as a threat to itself and to the rest of the world, and therefore the barbarity of tyranny and terrorism that these ‗uncivilized‘ regions breed ―must be countered, in the name of humanity, by the exercise of imperial power‖ (Nardin 2006: 25). In construing humanitarian intervention as liberal imperialism, the motives behind liberal intervention become clearer, in that essentially liberal regimes wish to subjugate and impose indirect control on those portions of the population securitization discourse has constructed as a threat to global security. Whilst it is true that the days of territorial expansion are over, what we are experiencing now is by no means a waning of imperial ambition, as through the spread of liberal values and the imposition of liberal structures, through force if necessary, liberalism is extending its ‗universal‘ values across the world, justifying any means by the end which is indisputably morally right (Bishai 2004: 51).

Indeed, as was highlighted in chapter four, there exists a significant cognitive dissonance between liberal universalism, with its proclaimed notions of a cosmopolitan humanitarianism, and liberal imperialism, which finds its expression through intervention which is justified on a humanitarian basis, yet which in reality functions through the eradication or exclusion of all life forms which do not conform to liberalism (McCarthy 2009: 166). It would seem that the obvious conclusion to draw would be one which wholly condemns the practise of humanitarian intervention as a front for the furthering of a liberal ideology which functions through the subjugation of ‗morally inferior‘ populations so as to extend its own remit of control and power. Humanitarian intervention is less about a moral concern for the suffering of people, than a method through which Western liberal states can secure their own populations from a global imaginary of threat. Yet such a damning analysis of liberal intervention is incomplete, as it fails to give a sufficient analysis of the effects these interventions have on the populations concerned, not to mention the effects non-intervention could have on those populations suffering human rights abuses. Of course a proclaimed interest in ‗saving strangers‘ will only ever be put into action when the strategic interests of liberal states are at stake, meaning liberal cries of a ‗duty to intervene‘ and a ‗responsibility to protect‘ in those situations that shock the moral conscience of mankind must be regarded with scepticism. Such scepticism, however, should not be translated into an absolute rule of nonintervention, as to do so would be to turn our backs completely on the suffering of those that need our help, in whatever form such help may come in. Indeed, the spread of liberal imperialism does not necessarily signify the death of humanitarian sentiments; rather the two can coincide, and when they do, a greater window of opportunity is created for those wishing to act on the humanitarian impulse in the Security Council (Weiss 2004: 37).

When we consider the globalizing effect the War on Terror has had on liberal intervention, however, as we move further into the new millennium it is becoming ever clearer that liberal intervention is being stretched to its limits. Ten years after the invasion of Afghanistan and eight years after the invasion of Iraq, 99,000 and 46,000 US troops remained in each country respectively (New York Times 2011), highlighting the extensive nature of the liberal imperial mission in the aftermath of 9/11. The ‗unending war‘ against terrorism seems to have taken its toll on Western liberal states capacity to intervene, meaning that, rather than coinciding, the requirements of the war against terrorism will have to be balanced against the more distant demands of humanity (Macfarlane et al 2007: 985), and it is not difficult to work out which will prevail. Indeed, since the coming to power of the Bush administration in 2001, humanitarian intervention where no national interests were at stake has been dismissed as ―blunting the purpose of the military‖ (Ignatieff 2003), yet quite paradoxically Bush pinned continuing support for the wars in Iraq and Afghanistan on humanitarian rhetoric regarding nation-building and the promotion of democracy for the Afghan and Iraqi people. In doing so it would seem that the US has manipulated the idea of a responsibility to protect to include a much broader remit for intervention, embracing not just the ―responsibility to react‖ but the ―responsibility to prevent‖ and the ―responsibility to rebuild‖ as well (Evans and Sahnoun 2002: 101), stretching the language of humanitarianism to suit liberalisms own political agenda. As has been evidenced by the growing disillusionment with the on-going operations in the Middle East in which thousands of western troops have been killed, the continued threat of terrorist attacks, and more recently the lack of political support for further meaningful interventions in Libya and Syria, it would seem that liberal interventionism has not only lost sight of the universal humanitarian notions that lie at its roots, but is struggling to retain its omnipotence in the face of widespread opposition to the invasions in Iraq and Afghanistan. Whilst the 9/11 attacks may have had a ‗rally round the flag‘ effect within the US, the most ardent exporter of international liberalism, it has had the opposite effect across the rest of the international community, which has sought to distance itself from the aggressively Western liberal interventionist stance that provoked such terrorist attacks (Ignatieff 2003).

All things considered, it would seem that Fukuyama‘s prediction in 1992 that the rise to predominance of Western liberal democracy would signal the ‗End of History‘ in that it would become the universal and final form of human government (Fukuyama 1992) is increasingly being challenged. The rise in militant Islam and terrorist attacks against the West highlights inescapably that the proclaimed universal moral righteousness of the liberal mission is in reality far from universal, whilst the rising spectre of China as the new superpower on the international stage could diminish Western liberalisms power and influence in years to come. This being said, the reality remains that, for now at least, Western liberal regimes retain hegemony on the global stage, and therefore hegemony in decisions to intervene or not. As we have seen, liberal ‗humanitarian‘ intervention is deeply flawed; oftentimes the primary motives for intervention are far from humanitarian, and there is much resentment in the international community regarding the omnipotence of the Western liberal states wishing to impose their world view on weaker states. What is more, the War on Terror has only exemplified such concerns, highlighting the way in which liberal states have manipulated humanitarian sentiments to justify intervention with other motives (Ayoob 2002) and allowed liberalism to broaden its scope of expansion globally (Evans 2010). Yet the reality is that liberal intervention, however imperfect and unpalatable it may be is currently the only choice the international community has if it is to avoid another Rwanda, or another Srebenica, to avoid once again becoming a bystander to genocide. As we have seen, where no other interests exist, attempts at humanitarianism will flounder. To argue for intervention motivated by purely humanitarian motives and conducted in a completely humanitarian manner is to ignore the realities of the world in which we live. The reality is that, as Weiss quite succinctly put it, the rise to predominance of liberal imperialism and the resultant convergence of humanitarian values and liberal security interests ―has not brought utopia, but made the world a somewhat more liveable place than it would have been otherwise‖ (2001: 104). Whether this remains the case in the aftermath of the wars in Afghanistan and Iraq, in a seemingly endless War against Terror, and in a world where Western liberalism is increasingly feeling threatened yet where political support and capacity for liberal intervention is low, remains to be seen.

#### Turn – Force - Plan prevents the erosion of use of force norm - that’s 1AC Boyle – this contains the K impact because removing international legal constraints on use of force leads to unchecked unilateral aggression – only a robust international legal system prevents a hegemonic free-for-all and the escalation of global violence

**Demenchonok**, Professor of Foreign Languages and Philosophy at Fort Valley State University, **2009**

[Edward, Russian Academy of Sciences Philosophy Institute Senior Researcher, P.h.D. in Philosophy, Institute of Philosophy of the Russian Academy of Sciences, Moscow, "Philosophy After Hiroshima: From Power Politics to the Ethics of Nonviolence and Co-Responsibility," American Journal of Economics and Sociology, 68.1]

The project of a hegemonic-centered world order means **abandoning the international system based on the rule of law and collective actions** (including collective security), and replacing it by unilateral actions of individual states (or coalitions of states). **Removing the existing legal procedural constraints on the** use of force **will result in the stronger states becoming unchecked, while the weaker ones remain unprotected**. This would also mean falling back toward the violent, unlawful “state of nature.”

The prospects of a unipolar hegemonic world look grim: a world of “social Darwinism,” where the divided nations would be dominated by a hegemonic power, but each nation would be left on its own in striving for survival in a hostile environment. Facing the economic challenges and the negative consequences of climate change and other environmental problems, the poor nations would be the most vulnerable. The major powers would more aggressively compete for the dominant position and control over the economy and the limited natural resources of the planet. Since the decisive factor in this competition is military force, this would boost militarization and the arms race, thus increasing the possibility of wars and the escalation of global violence.

A traditional reaction to social and global problems is governmental reliance on force and power politics, accompanied by “emergency” measures and a myth of protection. This simplistic approach obfuscates the root causes of the problems and thus is unable to solve them. Instead, the resulting arms race, the infringement of civil liberties, and the tendency toward neototalitarian control have become problems in themselves, keeping society hostage to a spiral of violence. 40

For those politicians who rely mainly on military “hard power” rather than on the “soft power” of diplomacy, the reasoning seems to be that the use of force is a quick and efﬁcient means for the solution to the problems of security, stability, human rights, and so on. However, many human and social problems by their very nature can not be resolved by force, and an unrestricted use of force can make things even worse, creating new problems. Even well-intentioned leaders or “benevolent hegemons,” being limited by their political cultures and interests, cannot know whether the consequences of their policies and actions are equally good for all. Therefore, policies and decisions that potentially could affect society and the international community must be based on collective wisdom in a broad context, through deliberative democracy, international multilateral will formation, and inclusive legal procedures, thus equally considering the cognitive points of view and interests of all those potentially affected. The complex, diverse, and interdependent high-tech world of the twenty-ﬁrst century requires genuinely robust democratic relations within society and among nations as equals, an adequate political culture, and an enlightened “reasoning public.” Otherwise, a society that has powerful techno-economic means but is ethically blind and short-sighted could ultimately suffer the same fate as the dinosaurs, with their huge bodies but disproportionately small brains.

Here we again return to the legacy of Hiroshima. Reﬂecting on the suffering and horror of the atomic bombings, we see all too clearly that the decision to develop and use weapons of mass destruction, inhumane by deﬁnition, reveals the problems of social power structures and decision making in the current scientiﬁc and global age. 41 In constitutional democracies, the existing system of division of powers with checks and balances has shown its “democratic deﬁcit” in not being a strong enough safeguard for the prevention of abuse of power or the risk of misguided decisions, especially regarding the use of force. It is too risky for the contemporary, complex, high-tech societies in an interrelated world to become dependent on the subjective decisions of an unaccountable leader or on the volatile policies of only one state. Any concentration of power and decision making in the hands of a few is problematic.

Our global problems are interrelated and constitute a bewildering system of difﬁcult challenges without obvious solutions. But the problem of war continues to lie at the heart of many of the problems of the present. The arms industry absorbs colossal amounts of human and economic resources and aggravates the ecological crisis. Meanwhile, the hegemonic politics of the few who control the resources of the many is reinforced by cultures of militarism, thus making a vicious circle of violence against humans and nature, and leaving no room for the positive programs of social development and preservation of the environment. The policy of domination of the outer world has as its mirror-like inner extension the militarization of society, infringement of civil liberties, and a neototalitarian control over people.

We can no longer deny the obvious, which is that humanity ﬁnds itself today on a planet with a rapidly deteriorating ecology and the risk of potentially becoming “Hiroshimized” on a global scale. The “overkill” capacity of the existing stockpiles of thermonuclear weaponry is so enormous that even if 90 percent of them were eliminated, the remaining 10 percent would still be enough to exterminate much of the life on Earth, perhaps even threatening all life. There exists not only the immediate threat of living on the “powder keg” of the stocks of nuclear and other weapons of mass destruction, which can be detonated by regional wars and explode at any time, but also the “time bombs” of the escalating ecological crisis and of the deteriorating social-economic conditions in the underdeveloped countries. The “end of history” of humanity can come “not as a bang but as a whimper”: an entropy-like, agonizing process of degradation.

These threats to the human race raise fundamental metaphysical questions about the meaning of history, limits, horizons, evil, nothingness, and the suicidal character of war itself. But they also put at the forefront escalating social and global problems, such as the deepening ecological crisis, third-world underdevelopment, and war in a world full of weapons of mass destruction.

#### (--) The security dilemma doesn’t apply to situations where states pose genuine threats.

Randall Schweller, (professor of political science at Ohio State) Security Studies, Spring 1996 p. 117-118)

The crucial point is that the security dilemma is always apparent, not real. If states are arming for something other than security; that is, if aggressors do in fact exist, then it is no longer a security dilemma but rather an example of a state or a coalition mobilizing for the purpose of expansion and the targets of that aggression responding and forming alliances to defend themselves. Indeed, Glenn Snyder makes this very important point (disclaimer?) in his discussion of the security dilemma and alliance politics: “Uncertainty about the aims of others is inherent in structural anarchy. If a state clearly reveals itself as an expansionist, however, the alliance that forms against it is not self defeating as in the prisoners’ dilemma (security dilemma) model” 89 That is, if an expansionist state exists, there is no security dilemma/spiral model effect. Moreover, if all states are relatively sure that none seeks expansion, then the security dilemma similarly fades away. It is only the misplaced fear that others harbor aggressive designs that drive the security dilemma.

#### (--) Most wars are caused by deliberate threats, not spiraling insecurities.

Randall Schweller, (professor of political science at Ohio State) Security Studies, Spring 1996 p. 120)
War is almost always intended by someone. Throughout history it has been decided upon in cold blood not for reasons of self-preservation but for the purpose of greedy expansion at the expense of others’ security, prestige, and power. “What was so often unintentional about war,” Blainey points out, “was not the decision to fight but the outcome of the fighting.” 98
(--) War preparation deters aggression, the kritik prevents these efforts.
Edward Luttwak (Senior Fellow, Center for Strategic and International Studies), BOSTON REVIEW, October 1997, p.11.
More generally, war-preparation by those actually willing to fight (not just ritualistic preparations, as is mostly the case in advanced countries nowadays) may avert war by dissuading others' hopes of easy victories -- even Bosnia might have done it, had it raised a good army before declaring independence -- whereas wishing for peace, marching for peace, etc., is as relevant as wishing and marching for good weather -- except if it interferes with concrete war-preparations, when it may be counterproductive.

#### Consequences key to ethics

Issac 2002 (Jeffery, professor of political science @ Indiana University. Dissent, Spring 2002, 49: 2, p. 32)

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

# CP

#### 1. Perm Do Both

#### 2. No solvency – International Signal – only an external check on the executive sends a credible signal abroad – prefer comparative evidence

Somin, 2013

[Illya, GMU Constitutional Law Prof, "Hearing on 'Drone Wars: the Constitutional and counterterrorism implications of targeted killing,’" TESTIMONY BEFORE THE UNITED STATES SENATE JUDICIARY SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND HUMAN RIGHTS, April 23, 2013, www.judiciary.senate.gov/pdf/04-23-13SominTestimony.pdf, accessed: 8-20-13, SpS]

We might even consider developing a system of judicial approval for targeted strikes aimed at non-citizens. The latter process might have to be more streamlined than that for citizens, given the larger number of targets it would have to consider. But it is possible that it could act quickly enough to avoid compromising operations, while simultaneously acting as a check on abusive or reckless targeting. However, the issue of judicial review for strikes against non-citizens is necessarily more difficult than a court that only covers relatively rare cases directed at Americans.

Alternatively, one can envision some kind of more extensive due process within the executive branch itself, as advocated by Neal Katyal of the Georgetown University Law Center.24 But any internal executive process has the flaw that it could always be overriden by the president, and possibly other high-ranking executive branch officials. Moreover, lowerlevel executive officials might be reluctant to veto drone strikes supported by their superiors, either out of careerist concerns, or because administration officials are naturally likely to share the ideological and policy priorities of the president. An external check on targeting reduces such risks. External review might also enhance the credibility of the target-selection process with informed opinion both in the United States and abroad.

Doesn’t solve and links to politics – president will ignore the counterplan
Posner, 2011

[Eric A., University of Chicago Law School Professor, “DEFERENCE TO THE EXECUTIVE IN THE UNITED STATES AFTER 9/11:

CONGRESS, THE COURTS AND THE OFFICE OF LEGAL COUNSEL,” <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1932393>, accessed: 9-22-13, SpS]

These two events neatly encapsulate the dilemma for OLC, and indeed all the president’s legal advisers. If OLC tries to block the president from acting in the way he sees fit, it takes the risk that he will disregard its advice and marginalize the institution. If OLC gives the president the advice that he wants to hear, it takes the risk that it will mislead him and fail to prepare him for adverse reactions from the courts, Congress, and the public.

Can OLC constrain the executive? That is the position taken by many scholars, most notably Jack Goldsmith.18 The underlying idea here is that even if Congress and the courts cannot constrain the executive, perhaps offices within the executive can. The opposite view, advanced by Bruce Ackerman, is that OLC is a rubber stamp.19 I advocate a third view: OLC does not constrain the executive but enables him to accomplish goals that he would not otherwise be able to accomplish. It is more accurate to say that OLC enables than constrains.

A. Background on OLC

OLC is a small office in the Justice Department headed by an assistant U.S. Attorney General.20 The OLC head is nominated by the president and confirmed by the Senate, and is formally a subordinate of the Attorney General. OLC is essentially an adviser to an adviser. The Attorney General’s chief obligation is to give advice to the president; he typically relies on OLC to produce that advice. But he retains the authority to disagree and disregard it if he so chooses. In practice, OLC often gives advice directly to the president because the Attorney General has delegated to it much of his advice-giving role.

Most matters that come before OLC are routine. OLC provides legal analysis of bills, executive orders, and signing statements. OLC also plays an important role in resolving disputes among executive agencies over legal authority. In most of these cases, the president does not have any particular agenda, and so OLC can give honest advice without fear of retribution. In a number of significant cases, however, OLC is asked by the White House to evaluate a proposed action or policy that the president clearly seeks to pursue. For example, the president may seek to launch a military intervention, and asks OLC for legal authorization. In these cases, the White House may put pressure on OLC to rubber stamp the action.

B. OLC as a Constraint on the Executive

A number of scholars have argued that OLC can serve as an important constraint on executive power. I will argue that OLC cannot act as a constraint on executive power. Indeed, its only function is the opposite—as an “enabler” (as I will put it) or extender of executive power. A president must choose a course of action. He goes to OLC for advice. Ideally, OLC

will provide him good advice as to the legality of the course of action. It will not provide him political advice and other relevant types of advice. The president wants to maximize his political advantage,21 and so he will follow OLC’s advice only if the legal costs that OLC identifies are greater than the political benefits. On this theory, OLC will properly always give the president neutral advice, and the president will gratefully accept it although not necessarily follow it.

If the story ended here, then it would be hard to see what the controversy over OLC could be about. As an adviser, it possesses no ability to constrain the executive. It merely provides doctrinal analysis, in this way, if it does its job properly, merely supplying predictions as to how other legal actors will react to the president’s proposed action. The executive can choose to ignore OLC’s advice, and so OLC cannot serve as a “constraint” on executive power in any meaningful sense. Instead, it merely conveys to the president information about the constraints on executive power that are imposed from outside the executive branch.

However, there is an important twist that complicates the analysis. The president may choose to publicize OLC’s opinions. Naturally, the president will be tempted to publicize only favorable opinions. When Congress22 claims that a policy is illegal, the president can respond that his lawyers advised him that the policy is legal. This response at least partially deflects blame from the president. There are two reasons for this. First, the Senate consented to the appointment of these lawyers; thus, if the lawyers gave bad advice, the Senate is partly to blame, and so the blame must be shared. Second, OLC lawyers likely care about their future prospects in the legal profession, which will turn in part on their ability to avoid scandals and to render plausible legal advice; they may also seek to maintain the office’s reputation. When OLC’s opinions are not merely private advice, but are used to justify actions, then OLC takes on a quasi-judicial function. Presidents are not obliged to publicize OLC’s opinions, but clearly they see an advantage to doing so, and they have in this way given OLC quasi-judicial status.

But if the president publicizes OLC opinions, he takes a risk. The risk is that OLC will publicly advise him that an action is illegal. If OLC approval helps deflect blame from the president, then OLC disapproval will tend to concentrate blame on the president who ignores its advice. Congress and the public will note that after all the president is ignoring the advice of lawyers that he appointed and thus presumably he trusts, and this can only make the president look bad. To avoid such blame, the president may refrain from engaging in a politically advantageous action. In this way, OLC may be able to prevent the president from taking an action that he would otherwise prefer. At a minimum, OLC raises the political cost of the action.

I have simplified greatly, but I believe that this basic logic has led some scholars to believe that OLC serves as a constraint on the president. But this is a mistake. OLC strengthens the president’s hand in some cases and weakens them in others; but overall it extends his power—it serves as enabler, not constraint.

To see why, consider an example in which a president must choose an action that lies on a continuum. One might consider electronic surveillance. At one extreme, the president can engage in actions that are clearly lawful—for example, spying on criminal suspects after obtaining warrants from judges. At the other extreme, the president can engage in actions that are clearly unlawful—for example, spying on political opponents. OLC opinions will not affect Congress’s or the public’s reaction to either the obviously lawful or the obviously unlawful actions. But then there are middle cases. Consider a policy L, which is just barely legal, and a policy I, which is just barely illegal. The president would like to pursue policy L but fears that Congress and others will mistakenly believe that L is illegal. As a result, political opposition to L will be greater than it would be otherwise.

In such a case, a favorable advisory opinion from a neutral legal body that has credibility with Congress will help the president. OLC’s approval of L would cause political opposition (to the extent that it is based on the mistaken belief that L is unlawful) to melt away. Thus, OLC enables the president to engage in policy L, when without OLC’s participation that might be impossible. True, OLC will not enable the president to engage in I, assuming OLC is neutral. And, indeed, OLC’s negative reaction to I may stiffen Congress’ resistance. However, the president will use OLC only because he believes that OLC will strengthen his hand on net.

It might be useful to make this point using a little jargon. In order for OLC to serve its ex ante function of enabling the president to avoid confrontations with Congress in difficult cases, it must be able to say “no” to him ex post for barely illegal actions as well as “yes” to him for barely legal actions. It is wrong to consider an ex post no as a form of constraint because, ex ante, it enables the president to act in half of the difficult cases. OLC does not impose any independent constraint on the president, that is, any constraint that is separate from the constraint imposed by Congress.

An analogy to contract law might be useful. People enter contracts because they enable them to do things ex ante by imposing constraints on them ex post. For example, a debtor can borrow money from a creditor only because a court will force the debtor to repay the money ex post. It would be strange to say that contract law imposes “constraints” on people because of ex post enforcement. In fact, contract law enables people to do things that they could not otherwise do—it extends their power. If it did not, people would not enter contracts.

A question naturally arises about OLC’s incentives. I have assumed that OLC provides neutral advice—in the sense of trying to make accurate predictions as to how other agents like Congress and the courts would reaction to proposed actions. It is possible that OLC could be biased—either in favor of the president or against him. However, if OLC were biased against the president, he would stop asking it for advice (or would ask for its advice in private and then ignore it). This danger surely accounts for the fact that OLC jurisprudence is pro-executive.23 But it would be just as dangerous for OLC to be excessively biased in favor of the president. If it were, it would mislead the president and lose its credibility with Congress, with the result that it could not help the president engage in L policies. So OLC must be neither excessively propresident nor anti-president. If it can avoid these extremes, it will be an “enabler”; if it cannot, it will be ignored. In no circumstance could it be a “constraint.”24

If the OLC cannot constrain the president on net, why have people claimed that OLC can constrain the president? What is the source of this mistake?

One possibility, which I have already noted, is that commentators might look only at one side of the problem. Scholars note that OLC may “prevent” the president from engaging in barely illegal actions without also acknowledging that it can do so only if at the same time it enables the president to engage in barely legal actions. This is simply a failure to look at the full picture.

For example, in The Terror Presidency, Goldsmith argues that President Bush abandoned a scheme of warrantless wiretapping without authorization from the FISA court because OLC declared the scheme illegal, and top Justice Department officials threatened to resign unless Bush heeded OLC’s advice.25 This seems like a clear example of constraint. But it is important to look at the whole picture. If OLC had approved the scheme, and subsequently executive branch agents in the NSA had been prosecuted and punished by the courts, then OLC’s credibility as a supplier of legal advice would have been destroyed. For the president, this would have been a bad outcome. As I have argued, a credible OLC helps the president accomplish his agenda in “barely legal” cases. Without taking into account those cases where OLC advice helps the president’s agenda ex post as well as the cases where OLC advice hurts the president’s agenda ex post, one cannot make an overall judgment about OLC’s ex ante effect on executive power.

Another possible source of error is that scholars imagine that “neutral” advice will almost always prevent the president from engaging in preferred actions, while rarely enabling the president to engage in preferred actions. The implicit picture here is that a president will normally want to break the law, that under the proper interpretation of the Constitution and relevant standards the president can accomplish very little. So if OLC is in fact neutral and the president does obey its advice, then it must constrain the president.

But this theory cannot be right, either. If OLC constantly told the president that he cannot do what he wants to do, when in fact Congress and other agents would not object to the preferred actions, then the president would stop asking OLC for advice. As noted above, for OLC to maintain its relevance, it cannot offer an abstract interpretation of the Constitution that is divorced from political realities; it has to be able to make realistic predictions as to how other legal agents will react to the president’s actions. This has led OLC to develop a pro-executive jurisprudence in line with the long-term evolution of executive power. If OLC tried to impose constraints other than those imposed by Congress and other institutions with political power, then the president would ignore it.

#### 3. Links to the net benefit

#### 4. Doesn’t Solves International LawSylvester 94 cites three reasons:

#### A) The judiciary must apply international law to have a significant impact on the development of international law—they solve none of the spill-over.

#### B) The judiciary is needed in international law cases to aid in the development of international law.

#### C) Incorporation by the judiciary is necessary to make violations of international law more difficult to occur.

####  Circumvention – Normal means suggests that the president gets to define which parts of ILAW applies to its policy – this creates non-compliance – extend the Ramsden evidence read in the 1AC

#### Future presidents roll back the counterplan

Cooper, 1997

[Philip is the Gund professor of liberal arts at the University of Vermont, "Pwer tools for an effective an responsible presidency," Administration and Society, 29.5 (Nov. 1997). Academic One File, Accessed: 8-21-13, SpS]

Even if one takes a purely utilitarian approach, dangers exist in the use of executive orders. Because their development is unsystematic and ad hoc, they can create burdensome duplicative or overlapping obligations that do not fit well with statutory and regulatory obligations. Where the effort was merely to block action, as was true with the regulatory review orders, those burdens seem to help the president, but if the chief executive wants something positive to happen, the orders can be needless burdens on the accomplishment of the president's wishes. Even if they serve temporary goals, executive orders can produce a significant amount of complexity and conflict and not yield a long-term benefit because the next president may dispose of predecessors' orders at a whim. It may be easier than moving a statute through Congress and faster than waiting for agencies to use their rule-making processes to accomplish policy ends, but executive orders may ultimately be a much weaker foundation on which to build a policy than the alternatives. And to the degree that agencies prepare and advocate executive orders to avoid the burdensome process of rule making, they are plainly subverting the very body of law that supports their authority and effectiveness.

#### AND --- fiat is durable isn’t responsive – other countries would perceive that future presidents can roll back executive action and therefore believe that the counterplan lacks credibility

#### Cred matters more than flexibility

Schwarz 7 senior counsel, and Huq, associate counsel at the Brennan Center for Justice at NYU School of Law, (Frederick A.O., Jr., partner at Cravath, Swaine & Moore, chief counsel to the Church Committee, and Aziz Z, former clerk for the U.S. Supreme Court, Unchecked and Unbalanced: Presidential Power in a Time of Terror, p. 201)

The Administration insists that its plunge into torture, its lawless spying, and its lock-up of innocents have made the country safer. Beyond mere posturing, they provide little evidence to back up their claims. Executive unilateralism not only undermines the delicate balance of our Constitution, but also lessens our human liberties and hurts vital counterterrorism campaigns. How? Our reputation has always mattered. In 1607, Massachusetts governor John Winthrop warned his fellow colonists that because they were a "City on a Hill," "the eyes of all people are upon us."4 Thomas Jefferson began the Declaration of Independence by invoking the need for a "decent respect to the opinions of mankind:' In today's battle against stateless terrorists, who are undeterred by law, morality, or the mightiest military power on earth, our reputation matters greatly.¶ Despite its military edge, the United States cannot force needed aid and cooperation from allies. Indeed, our status as lone superpower means that only by persuading other nations and their citizens—that our values and interests align with theirs, and so merit support, can America maintain its influence in the world. Military might, even extended to the globe's corners, is not a sufficient condition for achieving America's safety or its democratic ideals at home. To be "dictatress of the world," warned John Quincy Adams in 1821, America "would be no longer the ruler of her own spirit." A national security policy loosed from the bounds of law, and conducted at the executive's discretion, will unfailingly lapse into hypocrisy and mendacity that alienate our allies and corrode the vitality of the world's oldest democracy.5

#### A multitude of other actors hamper presidential flexibility

Rozell 12

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

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