# T

#### 1) Counter-interpretation: Restrict does not mean total prohibition or destruction

Words and Phrases 04 (Volume 37A, p. 406)

Miss. 1927. To “restrict” is to **restrain within bounds; to limit; to confine; and does not mean to destroy or prohibit.** Dart v. City of Gulfport, 113 So. 441, 147 Miss. 534.

#### 2) Prefer the Counter-interp:

#### A) Their interp over limits- only allows one aff per area

#### B) Education: Learn about what international law standards are and how the US interacts with them

#### 3)Reasonability: Good is good enough on topicality.

#### 4) No in round abuse: they have disads, counterplans, etc.

# Ptix

#### (--) Normal means is announcing the plan in May or June—after their politics scenario:

Wikipedia**,** 7/24/**20**12 ([http://en.wikipedia.org/wiki/Procedures\_of\_the\_Supreme\_Court\_of\_the\_ United\_States#Announcement\_of\_opinions](http://en.wikipedia.org/wiki/Procedures_of_the_Supreme_Court_of_the_%20United_States#Announcement_of_opinions), Accessed 7/25/2012, rwg)

Throughout the term, but mostly during the last months of the term—May, June, and, if necessary, July—the Court announces its opinions. The decision of the Court is subsequently published, first as a slip opinion, and subsequently in the United States Reports. In recent years, opinions have been available on the Supreme Court's website and other legal websites on the morning they are announced.

#### (--) ZERO LINK AT ALL: The Supreme Court does the plan—Obama doesn’t use any capital to push the plan.

#### (--) Turn: Courts preserve president’s political capital

Tushnet, 2008 (law professor at Harvard, Mark, “THE OBAMA PRESIDENCY AND THE ROBERTS COURT: SOME HINTS FROM POLITICAL SCIENCE: POLITICAL FOUNDATIONS OF JUDICIAL SUPREM-ACY: THE PRESIDENCY, THE SUPREME COURT, AND CONSTITUTIONAL LEADERSHIP IN U.S. HISTORY”, Summer, 25 Const. Commentary 343, lexis, Accessed 2/18/2013, rwg)

What can the courts do for a resilient regime? Presidents and Congress have limited time and political energy. They will spend them on what they regard as central issues. But at any time there will be "outliers" - geographic regions as yet uncommitted to the regime's constitutional understandings, or substantive areas that plainly require change if those understandings are to become deeply implanted in society, yet politically too touchy [\*347] or relatively unimportant to Congress. "For the affiliated leader, enhancing judicial authority to define and enforce constitutional meaning provides an efficient mechanism for supervising and correcting those who might fail to adhere to the politically preferred constitutional vision" (pp. 105-06). The courts can serve as a convenient but essentially administrative mechanism for bringing these outliers into the constitutional order. n16¶ In addition, the courts may have rhetorical resources unavailable to presidents. Their obligation to explain their decisions, and the fact that they make decision after decision, means that they have an opportunity to develop a reasonably general account of the resilient regime's constitutional understandings. In Whittington's words, "It is the classic task of judges within the Anglo-American tradition ... to render new decisions and lay down new rules that can be explicated as a mere working out of previously established legal principles" (p. 84). Presidents, in contrast, only sporadically make speeches illuminating those understandings.¶ More boldly, affiliated presidents may try to use the courts to "overcomee gridlock" (p. 124) caused by the strategic positions recalcitrant opponents of the new constitutional regime may occupy. And, if not "use the courts," at least rely on the courts to take the initiative, because "the Court can sometimes move forward on the constitutional agenda where other political officials cannot" (p. 125). "Coalition leaders might be constrained by the needs of coalition maintenance," but "judges have a relatively free hand" (p. 125). This "use" of the courts, though, poses risks. The courts may push the regime's constitutional principles further and faster than is politically wise, and the regime's political leaders may find themselves on the defensive. Indeed, in this way the courts can contribute to making a resilient regime vulnerable, which may be part of the story about the Warren Court and the demise of the New Deal/Great Society regime. n17¶ [\*348] Preemptive presidents face a special strategic problem. Sometimes they take office because they manage to persuade the public that they remain committed to a resilient regime's constitutional vision even if in their hearts they want to transform the regime. n18 At other times they take office as a regime becomes vulnerable, but do not themselves have the program, vision, or charisma to be reconstructive presidents themselves. n19 They are likely to face opposition in Congress and to some degree in the courts. But they can turn divided government to their advantage by seeking judicial confirmation of executive prerogative. The judges in place might be sympathetic to such claims for doctrinal and political reasons. They will have "inherited from affiliated administrations" (p. 169) doctrines supporting executive authority. And, though Whittington doesn't make this point explicitly, they may see the preemptive president as an accident, soon to be replaced by an affiliated one whose exercises of presidential power they will want to endorse. Finally, preemptive presidents need to get their authority from somewhere when they face congressional opposition, as they will. They don't have much of their own, but they can try "to borrow from the authority of the courts in order to hold off their political adversaries" (p. 195).¶ One final point before I move to some speculations about the future of judicial supremacy. Whittington emphasizes the growth of judicial supremacy during the twentieth century, both in terms of the judges' self-understanding and, perhaps more importantly, in terms of the degree of political commitment to judicial supremacy (p. 25). He suggests that politicians have had increasingly strong reasons to support the Supreme Court. The reconstructive presidency of Ronald Reagan was less ambitious than that of Franklin Roosevelt (p. 232), assuring the American people that Reagan's policies would strengthen rather than destroy the social safety nets that Roosevelt and Lyndon Johnson's regimes had created. Even a reconstructive president could hope that the Supreme Court would assist in articulating regime principles in the way the Court ordinarily does for affiliated presidents. Further, drawing again on Skowronek's account of the [\*349] ways in which regimes leave a residue even after they have been displaced, Whittington describes the doctrinal thickening that occurred during the twentieth century with respect to essentially every possible ideological and political commitment a President could have (p. 283). Doctrinal thickening means that every member of a ruling coalition will have some basis in constitutional law for its assertions that the Constitution requires satisfaction of its policy preferences, and that the Court cannot possibly satisfy all the demands on it. n20 So, for the future, we might expect Presidents to have increasingly ambivalent views about the Supreme Court. In the twenty-first century, the Supreme Court will be useful and annoying to every President - useful because the Court can do some policy work that Presidents would rather not expend time and political capital on, and annoying because the Court's failure to satisfy all the demands emanating from a President's political supporters will put pressure on the President to do something about the Court.

#### (--) No spillover evidence: no reason this issue would spill from the courts to Congress or from issue to issue.

#### (--) Turn: Plan popular – judicial review gains traction with both sides of the political aisle

Boot, 2-11-13 [Max, is a leading military historian and foreign-policy analyst. The Jeane J. Kirkpatrick Senior Fellow in National Security Studies at the Council on Foreign Relations, "A Drone Court is a Terrible Idea," www.commentarymagazine.com/2013/02/11/a-drone-court-is-a-terrible-idea-fisa-terroris/, accessed; 8-21-13, SpS]

There is no doubt that putting judicial imprimatur on such strikes would help to dissipate growing opposition to the use of drones and could help to rein in capricious decision-making by this administration or a future administration. This proposal is sure to gain traction on both the antiwar left and the anti-government right—as well as among many in the general public who have a certain unease about the idea of presidentially ordered “assassinations” a la fictional characters like Jason Bourne.

#### (--) Won’t pass- neither side will cave

**The Hill, 10-8** (Who’ll blink first, Obama or Boehner?, <http://thehill.com/homenews/house/327079-wholl-blink-obama-or-boehner>, F.A.B.)

President Obama and Speaker John Boehner (R-Ohio) are showing no signs of caving in the fiscal fight gripping Washington, raising worries the standoff will bring the economy to its knees.¶ The White House has made clear it thinks it has the upper hand in the fight over opening the government and raising the $16.7 trillion debt ceiling, especially after Boehner’s comments — in public and to his conference —that he wants to avoid a default on the U.S. debt.¶ Obama and Senate Majority Leader Harry Reid (D-Nev.) have yet to budge from their stance that budget negotiations be kept separate from measures opening the government and raising the debt ceiling.¶ Allies of the Speaker, however, insist that Obama has the highest personal stakes in the standstill, giving the president more motivation to cave.¶ The risk that neither side will blink first is apparent to partisans on both sides, with Treasury saying the debt limit needs to be raised by Oct. 17.¶ “I hope they have something else up their sleeve,” said Jamal Simmons, a Democratic strategist, of the White House strategy.¶ “I know they’re counting on John Boehner blinking, but no one knows where the exit ramp is,” he said. “I don’t think anybody knows where we are or where we’re going. It feels like we’re flying in uncharted territory.”¶ As the government shutdown enters its second week, both Democrats and Republicans have reason to believe the other side might stand down first.¶ Republicans say that they believe that Democrats’ tough rhetoric will soften as the debt-limit deadline — and the potential dent to Obama’s legacy — comes closer.¶ One GOP lawmaker noted to The Hill that people are far more likely to remember who the president is in times of crisis — as in the Great Depression or World War II — than the Speaker of the House.¶ “Obama cannot allow the nation to default because of the impact on our economy and his presidential legacy,” said Ron Bonjean, a GOP strategist who served as an aide to former Speaker Dennis Hastert (R-Ill.). ¶ “He will likely negotiate as long as Republicans would allow for short-term clean extensions of lifting the debt ceiling in order to get a brokered deal.”¶ Republicans also think they’re making some headway with their recent strategy of passing bills that open specific areas of the government, with dozens of House Democrats supporting at least one of those proposals. Obama and Senate Democrats have brushed aside those measures and called on the House GOP to reopen the entire government.¶ Democrats, for their part, believe Boehner is presiding over a divided conference that is losing the public opinion fight over the shutdown.¶ A Washington Post/ABC News poll released Monday found that 7 in 10 disapproved of the congressional GOP’s handling of the shutdown.¶ “They’re at the point where it’s just about checkmate,” one former senior administration official said of the House GOP.¶ “Their approval ratings are in the tank, they’re changing their message from healthcare to spending and they can’t seem to find a logical reason for why they would keep the government shut down,” the source said.¶ The GOP argument has shifted over the last week or so from seeking to roll back the president’s healthcare reform law in the fiscal showdown to seeking broader changes to the tax code and entitlement programs.¶ Even some Tea Party-backed lawmakers — who were sent to Washington in large part because of their opposition to ObamaCare — are willing to fight another day on the healthcare law. But others in the party — and highly influential conservative organizations — are warning not to back off the fight against the healthcare overhaul.¶ The White House believes its efforts to cast the GOP as the party of obstruction are working.¶ “That has completely stiffened the spine of President Obama and congressional Democrats,” the official said.¶ Democrats also believe that Obama has internalized the lessons from the 2011 debt-limit negotiations, in which even a last-second deal could not avert a historic downgrade of the country’s credit.¶ Obama lost political capital in that set of negotiations with Republicans, and is determined not to go down that path again.¶ Obama has openly said that he would be doing a disservice to those who follow him in the Oval Office if he were to continue to hold high-stakes negotiations that could threaten the country’s full faith and credit.¶ At the same time, some GOP lawmakers say that Republicans come under increasing pressure each day Washington doesn’t strike a deal.¶ All that led another former senior administration official to say that, while Obama will ultimately come out the winner in the standoff, an end is nowhere in sight.¶ “I think it’s getting worse,” the former official said. “These guys aren’t backing down. No one is backing down. I don’t think they see any reason to.” ¶ “Negotiations only work if there are two people at the table,” the former official said. “You can’t negotiate with someone who isn’t empowered to negotiate.”

#### (--) History shows political capital is limited and fails

**Cilliza, 10-9** (**Chris Cillizza** is founder and editor of The Fix, a leading blog on state and national politics. He is the author of The Gospel According to the Fix: An Insider’s Guide to a Less than Holy World of Politics and an MSNBC contributor and political analyst. He also regularly appears on NBC and NPR’s The Diane Rehm Show. He joined The Post in 2005 and was named one of the top 50 journalists by Washingtonian in 2009, “The bully pulpit is overrated. Always has been,” <http://www.washingtonpost.com/blogs/the-fix/wp/2013/10/09/the-bully-pulpit-is-overrated-it-always-has-been/>, F.A.B.)

FIX: Is the bully pulpit overrated as a persuasion tool? Or is Obama just not that persuasive a figure for Republican Members of Congress? Or Democratic Members of Congress for that matter?¶ Michael: In the world of Frank Capra, a President moves a controversial proposal from sure defeat in Congress to sure victory by giving one spectacular speech. Modern Presidents like to threaten that if the House and Senate don’t follow them, they’ll go over the heads of Congress by appealing directly to the American people. But it’s hard to find many cases in real life during the past century where that’s really happened.¶ FDR in 1938 tried to break a deadlock against his second-term program in Congress by going into various states and campaigning for pro-Roosevelt candidates in Democratic Senate primaries. This effort resoundingly failed. Nevertheless in modern times the strongest Presidents have been those who seem to build an emotional bond with Americans so that they feel they know his heart enough to give him the benefit of the doubt on certain controversial issues.¶ FDR, Ike and Reagan had that, and it no doubt helped them with Congress at key moments. Not even President Obama’s staunchest allies would argue that, despite two election victories, he’s been able to build that kind of support. The other part of this is those who sentimentally argue that Obama’s situation in Congress would be very different if he had the extroversion and persuasive skills of an FDR or LBJ.¶ Maybe at the margins — Presidents can indeed get votes from Congress by generating affection, loyalty and fear. But FDR’s success on the Hill, and Johnson’s in 1965, were mainly thanks to the fact that these two guys enjoyed some of the largest Democratic majorities in Congress of the twentieth century. And some of their weapons of persuasion, such as subtle hints to individual members that Presidents had amazing access to IRS and FBI files and that theirs had better be in order, are thankfully illegal these days.

#### **(--) Obama won’t negotiate on debt ceiling, PERIOD.**

UPI 9/1/13 (United Press international, “Politics 2014: Deficit, debt ceiling debate not for faint of heart,” http://www.upi.com/Top\_News/US/2013/09/01/Politics-2014-Deficit-debt-ceiling-debate-not-for-faint-of-heart/UPI-96001378026060/)

Still, Boehner says he's prepared for a "whale of a fight" with Obama over raising the federal debt ceiling, The New York Times said. At an Idaho fund-raiser for GOP ally Rep. [Mike Simpson](http://www.upi.com/topic/Mike_Simpson/), Boehner said he anticipated using the need to raise the debt ceiling to gain political leverage and demand "cuts and reforms that are greater than the increase in the debt limit." The Obama administration repeatedly said it won't let congressional Republicans use the debt ceiling as leverage to gain concessions from the White House, the Times said. The [Federal Reserve](http://www.upi.com/topic/Federal_Reserve/) has warned that such brinkmanship could hamper the economic recovery. "Let me reiterate what our position is," White House spokesman [Jay Carney](http://www.upi.com/topic/Jay_Carney/) said last week. "And it is unequivocal: **We will not negotiate with Republicans** in Congress over Congress' responsibility to pay the bills that Congress has racked up. Period." The president has tried to reach across the aisle on budget issues, Lew said in the CNBC interview, stressing the sequester must be replaced with balanced policies to reduce the deficit. "With substantial headwinds from federal policy," Lew said the core economy is growing "in the 2 percent range." "As we get to the end of the year, we think that without the headwinds of additional federal cuts, the economy should pick up a notch again," he said.

#### **(--) Economy is strong and resilient this time around**

Katz 8/19/13 (Ian, “Lew Seeks No-Drama Debt Limit as Recovery Endures: Economy,” Bloomberg, http://www.bloomberg.com/news/2013-08-19/lew-seeks-no-drama-debt-limit-rise-as-recovery-endures-economy.html)

U.S. Treasury Secretary Jacob J. Lew is trying to persuade Congress to raise the $16.7 trillion debt [ceiling](http://www.bloomberg.com/quote/DEBTSBLT:IND) without the drama that contributed to a stock market rout in 2011. A stronger economy this time around may help keep investors calm.¶ In August 2011, when Congress agreed after months of haggling to increase the debt limit on the day the government’s ability to borrow was to run out, [unemployment](http://www.bloomberg.com/quote/USURTOT:IND) was 9 percent. Last month it was 7.4 percent, the lowest since December 2008**.** Consumer [confidence](http://www.bloomberg.com/quote/CONSSENT:IND), sinking back to recession levels two years ago, is now close to a five-year high. The budget [deficit](http://www.bloomberg.com/quote/FDEBTY:IND), $1.3 trillion in 2011, is projected by the [Congressional Budget Office](http://topics.bloomberg.com/congressional-budget-office/) to shrink to $642 billion this year. “The economic backdrop is definitely different this time,” said Joseph Lavorgna, the New York-based chief economist at Deutsche Bank AG. “Two years ago we had a serious fear of recession risk, of a double-dip. We have a much healthier economy, or the sense that things are getting better. The labor market best reflects that.”

#### (--) Impact is empirically denied by last debt ceiling crisis and the last recession.

# Def

#### No deference now--- lots of rulings

Flaherty 2011 (Martin Flaherty, Leitner Professor of International Law, Fordham Law School, “Judicial Foreign Relations Authority After 9/11,” NYLS Law Review, http://www.nylslawreview.com/wordpress/wp-content/uploads/2011/08/Flaherty-56-1.pdf)

For a time the forces of judicial isolationism appeared to have gained traction and ¶ may yet carry the day. It is all the more surprising, then, that the Supreme Court ¶ reasserted the judiciary’s traditional foreign affairs role in the areas in which its ¶ opponents assert deference is most urgent—national security, terrorism, and war. Yet ¶ so far, in every major case arising out of 9/11, the Court has rejected the position ¶ staked out by the executive branch, even when supported by Congress. At critical ¶ points, moreover, each of these rejections involved the Court reclaiming its primacy ¶ in legal interpretation, an area in which advocates of judicial deference have appeared ¶ to make substantial progress. The Court nonetheless rejected deference in statutory ¶ construction in Rasul v. Bush.¶ 16 It took the same tack with regard to treaties in ¶ Hamdan v. Rumsfeld.¶ 17 It further rejected deference in constitutional interpretation in ¶ both Hamdi v. Rumsfeld18 and Boumediene v. Bush.¶ 19 Together, these cases represent a ¶ stunning reassertion of the judiciary’s proper role in foreign relations. Whether ¶ reassertion will mean restoration, however, still remains to be seen.

#### Deference undermines court effectiveness

Pauline 12 (Collins, School of Law, Faculty of Business, University of Southern Queensland, Toowoomba, Queensland, Australia, Civil-military ‘legal’ relations, July 4, <https://eprints.usq.edu.au/21855/4/Collins_ANZSIL_Poster_2012_AV.pdf>, p. 1) ap

The thesis argues the analysis of civil-military relations is constrained by an assumption that the 'civil' in the phrase civil-military means the executive, and possibly legislative arms of government, but rarely the judicial arm of government. In the past courts appear to have voluntarily limited their oversight of military institutions, in a manner that has become known as the doctrine of deference. This deference by the courts towards the military arguably reduces the effectiveness of the court's role within the constitutional framework of the state. The jurisprudence of the civilian courts in the U.K., Australia and the U.S. will be analysed in regard to the doctrine of deference. The thesis will consider the approach of the courts towards the military in the three chosen jurisdictions: what are the differences, if any; the reasons for these; and is there an indication that the courts' position as regards deference is evolving?

#### Heg doesn’t solve war

Barbara Conry (former associate policy analyst, was a public relations consultant at Hensley Segal Rentschler and an expert on security issues in the Middle East, Western Europe, and Central Asia at the CATO Institute) and Charles V. Pena (Senior Fellow at the Independent Institute as well as a senior fellow with the Coalition for a Realistic Foreign Policy, and an adviser on the Straus Military Reform Project at the CATO Institute) 2003 “47. US Security Strategy” CATO Handbook for Congress, http://www.cato.org/pubs/handbook/hb108/hb108-47.pdf

Another rationale for attempting to manage global security is that a world without U.S. hegemony would soon degenerate into a tangle of chaos and instability, in which weapons proliferation, genocide, terrorism, and other offensive activities would be rampant. Prophets of such a development hint that if the United States fails to exercise robust political and military leadership today, the world is condemned to repeat the biggest mistakes of the 20th century—or perhaps do something even worse. Such thinking is seriously flawed. First, instability in the international system is nothing new, and most episodes do not affect U.S. vital interests. Furthermore, to assert that U.S. global leadership can stave off otherwise inevitable global chaos vastly overstates the power of any single country to influence world events. Indeed, many of the problems that plague the world today, such as civil wars and ethnic strife, are largely impervious to external solutions. There is little to back up an assertion that only Washington’s management of international security can save the world from political, economic, or military conflagration.

# Warfighting

#### 1. Case outweighs – nuclear deterrence obviates the need for presidential warfighting by promoting international stability – that’s 1AC Freedman

#### 2. No link A. ex post review ratifies the legality of targeted killings after they occur – they don’t make the decision for the executive

Taylor, Feb. 2013

[Paul, is a 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. Having obtained a joint-degree in law and international relations, he has studied international security, causes of war, national security law, and international law. Additionally, Paul is a veteran of the Army’s 82nd Airborne Division, with deployments to both Afghanistan and to Iraq, and has worked at the International Criminal Tribunal for Rwanda and Global Action to Prevent War. He has also participated in habeas litigation for Guantanamo Bay detainees and investigated various government policies and practices., “"Former DOD Lawyer Frowns on Drone Court," transparentpolicy.org/2013/03/former-dod-lawyer-frowns-on-drone-court//, accessed: 8-22-13, SpS]

Mr. Johnson raised other several issues with the concept of a national security court for targeted killing decisions, as well. Interestingly, all of these concerns would be eliminated or greatly mitigated by removing the assumption that the court would authorize the killings, rather than ratify them afterward.

First, Johnson notes, as others have, that judges would be loath to issue the equivalent of death warrants, first of all on purely moral grounds, but also on more political grounds. Courts enjoy the highest approval ratings of the three branches of government, yet accepting the responsibility to determine which individuals may live or die, without that individual having an opportunity to appear before the court would simply shift some of the public opprobrium from the Executive to the Judiciary. However, if the court exercised ex post review, it instead would be in its ordinary position of approving or disapproving the Executive’s decisions, not making its decisions for it.

#### B. This is the goldilocks of oversight – allows the executive to act in exigent circumstances – the plan simply ensures that the action is legal

Taylor, Feb. 2013

[Paul, is a 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. Having obtained a joint-degree in law and international relations, he has studied international security, causes of war, national security law, and international law. Additionally, Paul is a veteran of the Army’s 82nd Airborne Division, with deployments to both Afghanistan and to Iraq, and has worked at the International Criminal Tribunal for Rwanda and Global Action to Prevent War. He has also participated in habeas litigation for Guantanamo Bay detainees and investigated various government policies and practices., “"Former DOD Lawyer Frowns on Drone Court," transparentpolicy.org/2013/03/former-dod-lawyer-frowns-on-drone-court//, accessed: 8-22-13, SpS]

Johnson also notes that any requirement for ex ante review of a national security issue will require an exception for exigent circumstances. Johnson asks, “is it therefore worth it?” Without coming to a conclusion on this question, ex post review would obviate the concern. No exigent circumstances can occur after the the deed is done.

#### 3. Case turns the disad – deterrence – drones collapses command and control over nukes – makes warfighting impossible through nuclear error –

Philippens, 2013

[Henry, Independent Analyst, Royal United Services Institute, "Drones and Deterrence: How Robotics will Impact Strategic Stability," www.rusi.org/downloads/assets/UK\_PONI\_paper\_-\_H\_Philippens\_-\_v2\_FINAL.pdf, accessed: 8-24-13, SpS]

Command, Control and Vulnerability

The past few paragraphs have described how over the next few decades there will be a convergence of technologies leading to an increased reliance on robotics, electronics and cyber in warfare. Yet increased dependence will be accompanied by increased uncertainty about the measure of control a commander will have on its assets. Drones (possibly carrying nuclear weapons), integrated air and missiles defence systems, nuclear missile launch facilities and their corresponding C3 systems all could be compromised at some point.[30] As one military analyst infers, ‘Hints that air-launched cyber attacks could shut down industrial (and nuclear) operations could explain why the Air Force has been flying stealthy RQ-170 drones near Iran. The NGJ [Next Generation Jammer] could expand on that apparent capability.’[31]

Another astute commentator has noted that this new era of cyberwar introduces many as-yet unanswered questions of strategic uncertainty: Given Stuxnet’s [a malicious code designed to infiltrate Iranian uranium enrichment centrifuges] ability to cover its tracks, the variables it introduces into all computer-controlled systems are inherently ‘unknown unknowns.’ That means the very decision to launch must now include a much broader calculus of just what will happen once the launch is executed. There was always a “margin of error” calculus inherent to strategic nuclear launch, but Stuxnet has increased it to such an order of magnitude that it becomes a category difference. Before, we might have launched and missed Moscow. Today, we might launch and hit NY or Washington, or nothing at all. The Mutual Assured Destruction formula of nuclear deterrence is inoperative if the assured part is removed from the equation.[32]

Whether this is a precise description of current situation or not, the need to integrate cyber threats into strategic issues is poignant. Anything using computerized systems will be vulnerable to intrusions. The trust held in systems, and a user’s ability to remain in command and control may therefore be significantly degraded.

The advent of fully autonomous weapon systems will exacerbate this issue of command and control uncertainty. These systems are being pursued for a variety of reasons. One factor is that machines can act far quicker than humans. Similar systems already defend ships from aircraft and missiles and defend troops against incoming mortars, by swiftly recognising incoming munitions and automatically neutralising them. The US Air Force estimates that ‘by 2030 machine capabilities will have increased to the point that humans will have become the weakest component in a wide array of systems and processes.’[33] A US Colonel has been quoted as saying that ‘the trend towards the future will be robots reacting to robot attack, especially when operating at technologic speed [...]. As the loop gets shorter and shorter, there won’t be any time in it for humans.’ [34] Singer argues that ‘the concept of keeping the humans in the loop is already being eroded by both policy makers and the technology itself.’[35] The proliferation of these technologies will reach a point when only weapons systems able to operate at an exceedingly fast pace will be able to defend against similarly fast systems. Machines will start making decisions at speeds incomprehensible to humans. Decision-making processes may evolve from the current situation (in which robots can select targets and deliver force only with human command), to a situation in which a human oversees the selection and striking of targets with the capability to override, and finally to fully autonomous systems that keep humans out of the loop, selecting targets and delivering force without any human input or interaction.[36] When humans let go of the reins of this technology, especially when drones carry out strategic and nuclear roles, the implications for crisis stability could be grave as the speed at which a crisis may be played out might exceed the possibility of humans to influence it or intervene. Once a crisis develops to a stage when drones are deployed, their autonomous decisions may create a runaway escalatory situation, seriously affecting risk calculation.

Central to this issue is the way operational parameters are programmed into these systems. The greatest concern for human rights organisations is whether fully autonomous drones will be able to follow ‘the rules of distinction, proportionality, and military necessity’ and other rules ‘beyond those found in treaties, such as the Martens Clause which requires that means of warfare be evaluated according to the “principles of humanity” and the “dictates of public conscience”’.[37] At some point an intelligent machine might carry out a mission unconstrained by regard to human suffering or principles of proportionality.[38]

Finally, besides malicious deliberate attacks on electronic systems, a further problem is posed by malfunctions simply due to faulty algorithms and coding, which poses a problem for accountability. Who would be accountable for such malfunctions that may have devastating consequences? The programmer, the pilot or operator of the drone, or the person who authorised its use (be it a military commander of civilian leader)? All of these issues may have far-reaching and unforeseen consequences that will come to the fore when drones are tasked with strategic mission during which the retention of strict command and control is key.

# XO

#### 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

#### 3. Links to the net benefit

#### 4. Doesn’t Solves International Law Sylvester 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

# Plan Flaw

All we have to do is prove that something results by an aff ballot. A war powers restriction comes out of striking down the President’s TK policy, he’s no longer allowed to do illegal drone strikes after the ex-post review. Seems that this arg is a “the plan does nothing” argument. All of our solvency evidence is predicated off of SC incorporation of I/L.

# Tism

Plan doesn’t totally ban drones, doesn’t undermine prez flex

Det norm solves

#### 1NC\_\_says drones good because\_\_\_\_ 1. No link – the plan doesn’t eliminate drones, it regulates them – 1AC Vladeck argues that an after-the-fact review process removes judges from the pressures of in-the-moment decision making which makes it impossible to disrupt drone operations

#### 2. Turn - Plan makes drones more effective - accuracy

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]

Judicial control of targeted killing could increase the accuracy of target selection, reducing the danger of mistaken or illegal destruction of lives, limbs, and property. Independent judges who double-check targeting decisions could catch errors and cause executive officials to avoid making them in the first place.

More broadly, judicial control of targeted killing could serve the interests of all people—targets and non-targets—in blocking the executive from exercising an unaccountable, secret power to kill.191 If possible, we should avoid a world in which the CIA or other executive officials have unreviewable power to decide who gets to live and who dies in the name of a shadow war that might never end. Everyone has a cognizable interest in stopping a slide into tyranny.

#### (--) Al Qaeda has been decimated—fears of terrorism are merely delusional paranoia:

Michael Meurer, 9/15/2013 (former Senior Advisor to the California Democratic Party, “Cantaloupe vs. al-Qaeda: What's More Dangerous?” <http://truth-out.org/opinion/item/18715-cantaloupe-vs-al-qaeda>, Accessed 9/15/2013, rwg)

Inflating the risk of terrorism is a $14 trillion business¶ With only a few thousand al-Qaeda members worldwide, and an ideological leadership core now reduced to 300 to 400 individuals, few of whom operate outside the Muslim world, it is not far-fetched to suggest that delusional paranoia is driving US policy and budgeting in the "War on Terror." Excluding September 11, 2001, fewer than 500 Americans have been killed by terrorism in the past 40 years.¶ In a recent interview with the Wall Street Journal, Michael Morell, deputy director of the CIA, listed the top three security threats to the US as Syria, Iran and North Korea, in that order.¶ Michael Cohen, a political and foreign policy fellow at the non-partisan Century Foundation, noted that "What is most striking about Morell's warnings is, in fact, the stunning hollowness of the threats he describes. If Syria, North Korea and Iran are truly what threaten us, we have little to fear from the world outside our borders." Cohen adds that ". . . when the US fights a major war these days, it is generally because they've started it - with consistently disastrous results."¶ Food-borne illnesses have killed tens of thousands of Americans and hospitalized nearly 1.5 million since Sept. 11, 2001. However, a 24/7 propaganda marketing campaign by America's extravagantly funded terror-war-surveillance machine ensures that spending on these two threats is in inverse proportion to the comparative risks.¶ Chris Hellman of the National Priorities Project estimated total 2011 national security spending of $1.22 trillion, with $751 billion in spending on the bloated Department of Homeland Security (DHS) between 2002 and 2013. The NSA budget is secret, although estimates range as high as $52.6 billion per year.¶ Extrapolating from these figures, we have had an obscene expenditure of at least $12 to $14 trillion on national security in the past 12 years. This spending orgy has produced a massive and illegal surveillance state, two enormously destructive and destabilizing wars in Iraq and Afghanistan, and the large scale militarization of domestic policing, with training courtesy of Israeli special forces. In spite of the obvious erosion of constitutional rights and freedoms that has accompanied the new panopticon terror-war-surveillance state, the entire $14 trillion apparatus failed to prevent two deranged murderers from carrying out the Boston Marathon bombings, in spite of multiple detailed warnings from Soviet intelligence beforehand.

#### (--) Less than a one in 3 billion chance of nuclear terrorism—too many obstacles:

Schneidmiller 9(Chris, Experts Debate Threat of Nuclear, Biological Terrorism, 13 January 2009, http://www.globalsecuritynewswire.org/gsn/nw\_20090113\_7105.php)

There is an "almost vanishingly small" likelihood that terrorists would ever be able to acquire and detonate a nuclear weapon, one expert said here yesterday (see GSN, Dec. 2, 2008). In even the most likely scenario of nuclear terrorism, there are 20 barriers between extremists and a successful nuclear strike on a major city, said John Mueller, a political science professor at Ohio State University. The process itself is seemingly straightforward but exceedingly difficult -- buy or steal highly enriched uranium, manufacture a weapon, take the bomb to the target site and blow it up. Meanwhile, variables strewn across the path to an attack would increase the complexity of the effort, Mueller argued. Terrorists would have to bribe officials in a state nuclear program to acquire the material, while avoiding a sting by authorities or a scam by the sellers. The material itself could also turn out to be bad. "Once the purloined material is purloined, [police are] going to be chasing after you. They are also going to put on a high reward, extremely high reward, on getting the weapon back or getting the fissile material back," Mueller said during a panel discussion at a two-day Cato Institute conference on counterterrorism issues facing the incoming Obama administration. Smuggling the material out of a country would mean relying on criminals who "are very good at extortion" and might have to be killed to avoid a double-cross, Mueller said. The terrorists would then have to find scientists and engineers willing to give up their normal lives to manufacture a bomb, which would require an expensive and sophisticated machine shop. Finally, further technological expertise would be needed to sneak the weapon across national borders to its destination point and conduct a successful detonation, Mueller said. Every obstacle is "difficult but not impossible" to overcome, Mueller said, putting the chance of success at no less than one in three for each. The likelihood of successfully passing through each obstacle, in sequence, would be roughly one in 3 1/2 billion, he said, but for argument's sake dropped it to 3 1/2 million. "It's a total gamble. This is a very expensive and difficult thing to do," said Mueller, who addresses the issue at greater length in an upcoming book, *Atomic Obsession*. "So unlike buying a ticket to the lottery ... you're basically putting everything, including your life, at stake for a gamble that's maybe one in 3 1/2 million or 3 1/2 billion." Other scenarios are even less probable, Mueller said. A nuclear-armed state is "exceedingly unlikely" to hand a weapon to a terrorist group, he argued: "States just simply won't give it to somebody they can't control." Terrorists are also not likely to be able to steal a whole weapon, Mueller asserted, dismissing the idea of "loose nukes." Even Pakistan, which today is perhaps the nation of greatest concern regarding nuclear security, keeps its bombs in two segments that are stored at different locations, he said (see *GSN*, Jan. 12). Fear of an "extremely improbable event" such as nuclear terrorism produces support for a wide range of homeland security activities, Mueller said. He argued that there has been a major and costly overreaction to the terrorism threat -- noting that the Sept. 11 attacks helped to precipitate the invasion of Iraq, which has led to far more deaths than the original event. Panel moderator Benjamin Friedman, a research fellow at the Cato Institute, said academic and governmental discussions of acts of nuclear or biological terrorism have tended to focus on "worst-case assumptions about terrorists' ability to use these weapons to kill us." There is need for consideration for what is probable rather than simply what is possible, he said. Friedman took issue with the finding late last year of an experts' report that an act of WMD terrorism would "more likely than not" occur in the next half decade unless the international community takes greater action. "I would say that the report, if you read it, actually offers no analysis to justify that claim**,** which seems to have been made to change policy by generating alarm in headlines." One panel speaker offered a partial rebuttal to Mueller's presentation. Jim Walsh, principal research scientist for the Security Studies Program at the Massachusetts Institute of Technology, said he agreed that nations would almost certainly not give a nuclear weapon to a nonstate group, that most terrorist organizations have no interest in seeking out the bomb, and that it would be difficult to build a weapon or use one that has been stolen.