# 1AC

## same

the united states federal judiciary should apply a clear statement principle to the statutorily defined indefinite detention war power authority of the president of the united states on the grounds that executive indefinite detention violates the suspension clause

adv 1: Afghanistan (collapse !)

adv 2: Abstention (adventurism, china, Russia, middle east)

# 2AC

## at: Obama circumvent

#### Clear statement requirement solves- no circumvention

Landau 9 (Joseph, Associate-in-Law, Columbia Law School. MUSCULAR PROCEDURE: CONDITIONAL DEFERENCE IN THE EXECUTIVE DETENTION CASES Washington Law Review Vol. 84:661, 2009)

The executive detention cases of the past several years have prompted renewed debate over the proper scope of judicial deference to the executive branch’s claimed need to limit individual liberties during times of crisis. Some theorists argue that courts should resolve large policy questions raised by individual challenges to assertions of executive power.1 Others believe that courts should decide as little as possible, asking only whether executive action is grounded within statutory authority.2 However, a number of the post-9/11 national security decisions have accomplished a great deal without following either approach. In these cases, the Supreme Court and a number of lower courts have put procedural devices to surprisingly “muscular” uses. The decisions illustrate a rare but critical assertion of procedural law where the political branches fail to legislate or properly implement substantive law. This is “muscular procedure”—the invocation of a procedural rule to condition deference on coordinate branch integrity. The cases provide a framework for understanding the role of judicial review in the post-9/11 executive detention decisions, with implications for other fields of law as well.3 Many commentators have criticized the Supreme Court’s executive detention decisions as “merely” procedural rulings, pointing out that the Court has generally addressed itself to questions about adjective law or the ground rules of litigation: whether the Court has jurisdiction; whether detainees can access the courts; and whether the government is required to provide discovery, and if so, how much.4 Far fewer decisions have resolved substantive questions such as the scope of executive power and the content of individual liberty—that is, whom the Executive can hold and for how long, and the specific constitutional protections that apply. But regardless of whether a particular decision turns on “process” or “substance”—an age-old distinction that resists clear definition5—courts have affected the law of national security in profound ways by explicitly requiring the political branches to adhere to a judicially imposed standard of transparency and deliberation. In individual cases, rulings about seemingly mundane procedural issues such as discovery and evidentiary standards have accelerated the release of enemy combatant detainees who were held at Guantánamo Bay years after being cleared of any wrongdoing.6 More broadly, procedural devices have been used to smoke out and put in check Congress’s lack of oversight of the executive branch and its misguided interpretations and implementation of authorizing legislation.7 In a number of these cases, courts have resolved the merits of an enemy combatant8 challenge by scrutinizing the Executive’s adherence \ to baseline procedural safeguards—rejecting determinations based on absolute secrecy, innuendo, tentativeness, or multiple levels of hearsay, while affirming executive branch decisions satisfying minimal standards of reliability.9 In the process, the judiciary has rebuffed the President’s extreme interpretations of vague authorizing legislation,10 reexamined inadequately reasoned decisions by various arms of the executive branch in implementing a congressional delegation,11 and stimulated legislative action where Congress has failed to oversee executive decision-making through the legislative process.12 Throughout these decisions, procedure functions as a corrective to decision-making by one (or both) of the political branches that, if left undisturbed, would violate a judicially imposed standard requiring lucid, intelligible procedures.

## at: congress circumvents

#### Empirically denied

Adam Litpak (Writer for the New York Times) August 20, 2012 “In Congress’s Paralysis, a Mightier Supreme Court” http://www.nytimes.com/2012/08/21/us/politics/supreme-court-gains-power-from-paralysis-of-congress.html

The Supreme Court does not always have the last word. Sure, its interpretation of the Constitution is the one that counts, and only a constitutional amendment can change things after the justices have acted in a constitutional case. But much of the court’s work involves the interpretation of laws enacted by Congress. In those cases, the court is, in theory at least, engaged in a dialogue with lawmakers. Lately, though, that conversation has become pretty one-sided, thanks to the legislative paralysis brought on by Congressional polarization. The upshot is that the Supreme Court is becoming even more powerful. Here is the way things are supposed to work. In cases concerning the interpretation of ambiguous federal statutes, the justices give their best sense of what the words of the law mean and how they apply in the case before them. If Congress disagrees, all it needs to do is say so in a new law. The most prominent recent example of this dynamic was Ledbetter v. Goodyear Tire and Rubber Company, the 2007 ruling that said Title VII of the Civil Rights Act of 1964 imposed strict time limits for bringing workplace discrimination suits. In her dissent, Justice Ruth Bader Ginsburg reminded lawmakers that on earlier occasions they had overridden what she called “a cramped interpretation of Title VII.” “Once again,” she wrote, “the ball is in Congress’s court.” Congress responded with the Lilly Ledbetter Fair Pay Act of 2009, which overrode the 2007 decision. This sort of back and forth works only if Congress is not paralyzed. An overlooked consequence of the current polarization and gridlock in Congress, a new study found, has been a huge transfer of power to the Supreme Court. It now almost always has the last word, even in decisions that theoretically invite a Congressional response. “Congress is overriding the Supreme Court much less frequently in the last decade,” Richard L. Hasen, the author of the study, said in an interview. “I didn’t expect to see such a dramatic decline. The number of overrides has fallen to almost none.” The few recent overrides of major decisions, including the one responding to the Ledbetter case, were by partisan majorities. “In the past, when Congress overturned a Supreme Court decision, it was usually on a nonpartisan basis,” said Professor Hasen, who teaches at the University of California, Irvine. In each two-year Congressional term from 1975 to 1990, he found, Congress overrode an average of 12 Supreme Court decisions. The corresponding number fell to 4.8 in the decade ending in 2000 and to just 2.7 in the last dozen years. “Congressional overruling of Supreme Court cases,” Professor Hasen wrote, “slowed down dramatically since 1991 and essentially halted in January 2009.” Tracking legislative overrides is not an exact science, as some fixes may be technical and trivial. And there may be other reasons for the decline, including drops in legislative activity generally and in the Supreme Court’s docket. But scholars who follow the issue say that Professor Hasen has discovered something important. “Particularly since the 2000 elections, there has been a big falloff in overrides,” said William N. Eskridge Jr., a law professor at Yale and the author of a seminal 1991 study on which Professor Hasen built his own. “It gives the Supreme Court significantly more power and Congress significantly less power.” Richard H. Pildes, a law professor at New York University, said the findings were further proof that “the hyperpolarization of Congress is the single most important fact about American governance today.” It is, he said, a phenomenon that has “been building steadily over the last 30 years and is almost certainly likely to be enduring for the foreseeable future.” “The assumption,” he added, “has long been that when the court interprets a federal statute, Congress can always come back in and fix the statute if it disagrees with the court. Now, however, the court’s decisions are likely to be the last word, not the first word, on what a statute means.”

#### The court will strike down countervailing congressional opinion every time

Stephen L. Carter (Professor of Law, Yale University) Summer 1986 53 U. Chi. L. Rev. 819

The force with which the American people (and just as important, those who govern them) are socialized into obedience to the rule of law as articulated by the Supreme Court is tremendous. Children are taught obedience to law from early in their school years; as adolescents, they learn in civics that the Supreme Court authoritatively interprets the Constitution; as adults, they are warned that disobedience to the courts is subversive. This general respect for law, even if the law is considered unjust, is probably the most powerful bulwark the American legal and political culture offers against revolution. This socialization and the concomitant responsibilities it surely carries are the most powerful weapons the Court can bring to bear in any struggle with the Congress. Although the public may be angry, the Justices, if they possess sufficient fortitude, will nearly always win -- at least for the near term. But the fact that the Congress is likely to lose its battle to convince the Court (if it is a fact) cannot be the argument against undertaking it. The point is that by enacting a statute that the Supreme Court will likely find patently unconstitutional, the Congress may nevertheless play a role in constitutional dialogue. This is surely what Abraham Lincoln had in mind when, in debate with Stephen Douglas, he declined to assign to the Dred Scott decision n117 the force some claimed for it: We do not propose that when Dred Scott has been decided to be a slave by the court, we, as a mob, will decide him to be free. . . . [W]e nevertheless do oppose that decision as a political rule . . . which shall be binding on the members of Congress or the President to favor no measure that does not actually [\*856] concur with the principles of that decision. . . . We propose so resisting it as to have it reversed if we can, and a new judicial rule established upon this subject. n118 His argument was not for mob justice or revolution. His method, after all, would not succeed unless the Justices changed their minds. Thus the torturous judicial and academic searches for authority to explain and rules to limit the scope of the congressional authority enunciated in Katzenbach v. Morgan may be somewhat misguided. After all, a sufficiently determined Supreme Court might have countered section 4(e) with an opinion boiling down to this: "Look, we told you before that literacy tests do not violate the fourteenth or fifteenth amendments, so quit trying to find a way around our decision." Instead it said in effect: "Well, okay, if you're really sure that literacy tests are so bad, we're content to go along." Oregon v. Mitchell, n119 in which the Justices sustained the nationwide suspension of literacy tests, might be explained the same way. To take a contrary case, in Mississippi University for Women v. Hogan, n120 wherein they rejected a claim that the Congress possessed and had exercised authority under section 5 of the fourteenth amendment to permit the states to operate single-sex nursing schools, the Justices were plainly unpersuaded that sexually segregated schools run by the state were a good thing. Following the same reasoning, in the unlikely event that the Congress were to enact a Human Life Bill, judicial independence would not necessarily be threatened: The Justices could certainly strike the legislation as patently unconstitutional. On the other hand, the Justices might vote to sustain it. Were they to do so, the best explanation would be not that they had yielded their constitutional prerogative, but rather that they had been convinced by the reasoning (or the depth) of the congressional opposition. If all of this is so, then the place of the Morgan power in the dialogue between the Court and its constituents should be plain. I earlier outlined the ideal of symbiotic progress, in which the Congress and the Supreme Court take turns leading the way toward a better future. An exercise of the Morgan power may fit into that progression in a special way, as the Congress's most effective tool for expressing its strong disapproval of a judicial decision accepting [\*857]or rejecting a claim of fundamental right without risking the Court's legitimacy, hence the Constitution's, hence ultimately its own. To be sure, the Congress might try to do the same thing by enacting apparently unconstitutional legislation under the authority granted by any number of constitutional provisions, but proceeding under section 5 reduces the likelihood that the moral authority of the Court will be diminished should the Justices alter their decisions. As clever lawyers, the Justices can always accommodate the congressional action without unduly expanding congressional authority. Justice Brennan tried to do exactly this through his footnote 10 in Morgan. Furthermore, reliance on the special power granted to the Congress under the fourteenth amendment is consistent with the distinction I have drawn here and elsewhere between types of constitutional provisions. When the decision that the Congress calls into question is one regarding governmental structure, flowing therefore from the document's structural provisions, the Court may properly decline to enter the dialogue. By hypothesis, the Justices construe the Constitution's structural clauses under a set of rules chosen to channel their discretion narrowly. But under the open-textured clauses, where there is less to guide the Court in its decisions, it is particularly important that the Congress be able to engage the Court in dialogue without being accused of defiance. The Court may reaffirm its decisions, and in most cases -- including, I suspect, Roe v. Wade -- it presumably will, but it must do so with the knowledge that there exists a congressional consensus adequate to bring about affirmative and contrary legislation. Denying to the Congress the authority to enact the legislation is in a sense to deny to the Justices the knowledge that this contrary consensus exists. Permitting the legislation, even when it might subsequently be overturned, forces the Court to make an informed choice. And in the continuing dialogue, informed choices are the ones that matter most. This understanding of the Morgan power seems entirely consistent with the separation of powers. There is no violation of the rule of United States v. Klein, n121 because the Congress is not requiring the courts to decide cases in a particular way. After all, the Supreme Court still has the power to say "No," thus preventing enforcement of the congressional plan. No matter how many plans are presented, the Court may strike all of them down until the [\*858] Congress gets tired of trying, as Texas apparently did in the "white primary" cases. n122 Or the Justices may instead be the first to tire and may reverse themselves, as they apparently did during the New Deal. n123 But as long as the decision rests with the Justices alone, a judicial change of mind cannot be barred by separation of powers, even when the change is brought on by congressional or public pressure. The doctrine of separation of powers insulates the courts from force, not from persuasion.

## at: rendition

#### Plan’s precedent solves—deference is the legal justification of rendition

Richards 06 [Nelson, JD Cand @ Berkeley, “The Bricker Amendment and Congress’s Failure to Check the Inflation of the Executive’s Foreign Affairs Powers,” 94 Calif. L. Rev. 175, January, LN//uwyo-ajl]

H. Jefferson Powell has posited that the Supreme Court has all but ceded the creation of a foreign affairs and national security legal framework to the OLC. Indeed, he goes so far as to assert that OLC legal opinions, not Supreme Court opinions, are the first sources the executive branch looks to when researching foreign affairs and national security law. Another set of John Yoo's writings support the validity of Powell's claim: the infamous memos declaring enemy combatants outside the protection of the Geneva Conventions. These, combined with the "Torture Memos," the expanding practice of "extraordinary rendition," and the current Administration's blase response to the Supreme Court's ruling that prisoners held at Guantanamo Bay are entitled to judicial access, have brought peculiar focus to the weight and seriousness of the OLC's legal authority. In the realm of foreign affairs, the Court has written off its obligation, claimed in Marbury, as the authoritative interpreter of the Constitution. While it may have reviewed some of the legal premises put forth in the above-mentioned OLC opinions, it has not curbed the OLC's claim to power over foreign affairs. The Court is more than capable of challenging the President. It has the power to send messages to the President, but it has done so only in two narrow contexts: when U.S. citizens are labeled enemy combatants (Hamdi v. Rumsfeld ) and when prisoners are held in U.S. facilities (Rasul v. Bush). The Hamdi and Rasul decisions, which amount to piecemeal restraints on the President's freedom to act, accord with the Court's general failure to check the executive's use of power abroad.

## Drone Shift

#### Doublebind

1. Countries model US drone policy- means prolif is inevitable because drones now
2. Countries don’t model, meaning no link between US drone use and global drone prolif

**Etzioni ‘13** [Amitai, professor of international relations at George Washington University, “The Great Drone Debate,” March-April, <http://usacac.army.mil/CAC2/MilitaryReview/Archives/English/MilitaryReview_20130430_art004.pdf>]

Other critics contend that by the United States using drones, it leads other countries into making and using them. For example, Medea Benjamin, the cofounder of the anti-war activist group CODEPINK and author of a book about drones argues that, “The proliferation of drones should evoke reﬂection on the precedent that the United States is setting by killing anyone it wants, anywhere it wants, on the basis of secret information. Other nations and non-state entities are watching—and are bound to start acting in a similar fashion.”60 Indeed scores of countries are now manufacturing or purchasing drones. There can be little doubt that the fact that drones have served the United States well has helped to popularize them. However, it does not follow that United States should not have employed drones in the hope that such a show of restraint would deter others. First of all, this would have meant that either the United States would have had to allow terrorists in hardto-reach places, say North Waziristan, to either roam and rest freely—or it would have had to use bombs that would have caused much greater collateral damage. Further, the record shows that even when the United States did not develop a particular weapon, others did. Thus, China has taken the lead in the development of anti-ship missiles and seemingly cyber weapons as well. One must keep in mind that the international environment is a hostile one. Countries—and especially non-state actors— most of the time do not play by some set of selfconstraining rules. Rather, they tend to employ whatever weapons they can obtain that will further their interests. The United States correctly does not assume that it can rely on some non-existent implicit gentleman’s agreements that call for the avoidance of new military technology by nation X or terrorist group Y—if the United States refrains from employing that technology.

#### Drone prolif doesn’t escalate or cause terrorism

**Singh ’12** [Joseph Singh is a researcher at the Center for a New American Security, an independent and non-partisan organization that focuses on researching and analyzing national security and defense policies, also a research assistant at the Institute for Near East and Gulf Military Analysis (INEGMA) North America, is a War and Peace Fellow at the Dickey Center, a global research organization, “Betting Against a Drone Arms Race,” 8-13-12, <http://nation.time.com/2012/08/13/betting-against-a-drone-arms-race/>]

Bold predictions of a coming drones arms race are all the rage since the uptake in their deployment under the Obama Administration. Noel Sharkey, for example, argues in an August 3 op-ed for the Guardian that rapidly developing drone technology — coupled with minimal military risk — portends an era in which states will become increasingly aggressive in their use of drones.¶ As drones develop the ability to fly completely autonomously, Sharkey predicts a proliferation of their use that will set dangerous precedents, seemingly inviting hostile nations to use drones against one another. Yet, the narrow applications of current drone technology coupled with what we know about state behavior in the international system lend no credence to these ominous warnings.¶ Indeed, critics seem overly-focused on the domestic implications of drone use.¶ In a June piece for the Financial Times, Michael Ignatieff writes that “virtual technologies make it easier for democracies to wage war because they eliminate the risk of blood sacrifice that once forced democratic peoples to be prudent.”¶ Significant public support for the Obama Administration’s increasing deployment of drones would also seem to legitimate this claim. Yet, there remain equally serious diplomatic and political costs that emanate from beyond a fickle electorate, which will prevent the likes of the increased drone aggression predicted by both Ignatieff and Sharkey.¶ Most recently, the serious diplomatic scuffle instigated by Syria’s downing a Turkish reconnaissance plane in June illustrated the very serious risks of operating any aircraft in foreign territory.¶ States launching drones must still weigh the diplomatic and political costs of their actions, which make the calculation surrounding their use no fundamentally different to any other aerial engagement.¶ This recent bout also illustrated a salient point regarding drone technology: most states maintain at least minimal air defenses that can quickly detect and take down drones, as the U.S. discovered when it employed drones at the onset of the Iraq invasion, while Saddam Hussein’s surface-to-air missiles were still active.¶ What the U.S. also learned, however, was that drones constitute an effective military tool in an extremely narrow strategic context. They are well-suited either in direct support of a broader military campaign, or to conduct targeted killing operations against a technologically unsophisticated enemy.¶ In a nutshell, then, the very contexts in which we have seen drones deployed. Northern Pakistan, along with a few other regions in the world, remain conducive to drone usage given a lack of air defenses, poor media coverage, and difficulties in accessing the region.¶ Non-state actors, on the other hand, have even more reasons to steer clear of drones:¶ – First, they are wildly expensive. At $15 million, the average weaponized drone is less costly than an F-16 fighter jet, yet much pricier than the significantly cheaper, yet equally damaging options terrorist groups could pursue.¶ – Those alternatives would also be relatively more difficult to trace back to an organization than an unmanned aerial vehicle, with all the technical and logistical planning its operation would pose.¶ – Weaponized drones are not easily deployable. Most require runways in order to be launched, which means that any non-state actor would likely require state sponsorship to operate a drone. Such sponsorship is unlikely given the political and diplomatic consequences the sponsoring state would certainly face.¶ – Finally, drones require an extensive team of on-the-ground experts to ensure their successful operation. According to the U.S. Air Force, 168 individuals are needed to operate a Predator drone, including a pilot, maintenance personnel and surveillance analysts.¶ In short, the doomsday drone scenario Ignatieff and Sharkey predict results from an excessive focus on rapidly-evolving military technology.¶ Instead, we must return to what we know about state behavior in an anarchistic international order. Nations will confront the same principles of deterrence, for example, when deciding to launch a targeted killing operation regardless of whether they conduct it through a drone or a covert amphibious assault team.¶ Drones may make waging war more domestically palatable, but they don’t change the very serious risks of retaliation for an attacking state. Any state otherwise deterred from using force abroad will not significantly increase its power projection on account of acquiring drones.¶ What’s more, the very states whose use of drones could threaten U.S. security – countries like China – are not democratic, which means that the possible political ramifications of the low risk of casualties resulting from drone use are irrelevant. For all their military benefits, putting drones into play requires an ability to meet the political and security risks associated with their use.¶ Despite these realities, there remain a host of defensible arguments one could employ to discredit the Obama drone strategy. The legal justification for targeted killings in areas not internationally recognized as war zones is uncertain at best.¶ Further, the short-term gains yielded by targeted killing operations in Pakistan, Somalia and Yemen, while debilitating to Al Qaeda leadership in the short-term, may serve to destroy already tenacious bilateral relations in the region and radicalize local populations.¶ Yet, the past decade’s experience with drones bears no evidence of impending instability in the global strategic landscape. Conflict may not be any less likely in the era of drones, but the nature of 21st Century warfare remains fundamentally unaltered despite their arrival in large numbers.

#### Drones are locked in

**Ratnesar 5-23**-13 [Romesh Ratnesar is deputy editor of Bloomberg Businessweek and a Bernard L. Schwartz Fellow at the New America Foundation, “Five Reasons Why Drones Are Here to Stay,” <http://www.businessweek.com/articles/2013-05-23/five-reasons-why-drones-are-here-to-stay>]

In his much-lauded speech on counterterrorism at the National Defense University, President Obama sought to draw limits on U.S. use of unmanned aerial vehicles, or drones, to target terrorists. The administration has announced plans to shift responsibility for the drone program from the CIA to the Pentagon and require that drones be used only against those who pose an imminent threat to the country. In his speech, Obama signaled an openness to the creation of a special court that would oversee future drone operations. He suggested that the number of drone strikes will drop in the “Afghan war theater”—which includes the tribal areas of Pakistan, where the vast majority of strikes have taken place (as illustrated in this comprehensive map by my colleagues at Bloomberg Businessweek.) According to Obama, the withdrawal of U.S. troops in 2014 and “the progress we have made against core al Qaeda will reduce the need for unmanned strikes.”¶ There’s some reason to believe, then, that the drone campaign will slow down considerably during Obama’s second term. But it’s far too soon to herald the end of the drone war. Fiscal constraints, strategic realities, and tactical considerations—some of which Obama highlighted during his speech—mean that drones will remain a central feature of U.S. counterterrorism policies for years to come. Here are five reasons why flying robots are here to stay:¶ 1. They’re Cheap. The U.S. has around 8,000 drones in its arsenal, most of which are used for surveillance and spying. That amounts to around one-third of all military aircraft. Yet drones cost a small fraction of manned fighter jets, which still consume more than 90 percent of all Pentagon spending on air power. The most powerful drone currently used by the CIA and the military in anti-terrorist operations is the MQ-9 Reaper; it costs around $12 million per drone. A conservative estimate of the cost of an F-22, the Air Force’s most advanced war plane, is 10 times that amount. An analysis by the American Security Project concluded that, even after accounting for the dozens of personnel needed to operate drones, plus their crash rate, “the drones most widely used in U.S. operations have a slight cost advantage over fighter jets.”¶ 2. They Work. As Obama said at NDU, “dozens of highly skilled al Qaeda commanders, trainers, bomb makers, and operatives have been taken off the battlefield” by drones. Estimates of the numbers killed by U.S. drone strikes vary; according to the Bureau of Investigative Journalism, the strikes have killed 3,136 people, including 555 civilians. Though tragic, the ratio of civilian deaths caused by drones—about 17 percent—compares favorably with alternative forms of warfare. In conventional military conflicts, civilian deaths typically account for anywhere between 30 percent and 80 percent of all fatalities. By those standards, U.S. drones strikes have been remarkably precise—and their accuracy has improved with time. According to the New America Foundation, in the 48 drones strikes conducted in Pakistan last year, fewer than 2 percent of those killed were civilians.¶ 3. They’re Necessary. Despite their comparatively low cost and relative accuracy, killing terrorists from the sky is still less desirable than capturing them on the ground. The trouble is that al-Qaeda continues to thrive in places where government institutions and security forces are weak, embattled—or, in the case of Syria, just as unappealing as the extremists. As upheaval continues to spread across the greater Middle East, the U.S. will have even fewer local allies to count on. But after almost 12 years of bloody counterinsurgency in Afghanistan and Iraq, neither the president nor the Pentagon have any desire to send U.S. troops into such seething, jihadist-infested hotspots as Yemen, Mali, or Syria. In badlands like these, drones will continue to be the least worst option.¶ 4. They’re Popular. What was perhaps most curious about Obama’s drones speech was that it was politically unnecessary. A poll taken in February found that 56 percent of Americans support drone attacks against suspected terrorists. The consensus cuts across party lines: The policy is backed by 68 percent of Republicans, 58 percent of Democrats and 50 percent of independents. The fact that drones are already being used less often—there have been 25 lethal strikes through the first five months of 2013, compared to 114 in all of 2012—coupled with their improved precision, means that public support is likely to remain strong. 5. They’re Spreading. Americans like to think they enjoy a monopoly on drone technology. They don’t. According to the Brookings Institution’s P.W. Singer, a leading authority on drones, at least 75 militaries around the world have used drones, and more than two dozen possess versions that “are armed or of a model that has been armed in the past.” The global market for drones, including those used for civilian purposes, is expected to grow massively in coming decades. It’s almost certain that states other than the U.S. will attempt to carry out lethal drone attacks against their enemies. For that reason, Obama should take the lead in establishing an international protocol governing the acceptable use of drones. Convincing other countries to sign on to such a convention might require the U.S. to further curtail its drone use. But don’t expect to get rid of them altogether.

#### No trade/off- stats wrong

Robert Chesney 11, Charles I. Francis Professor in Law at the UT School of Law as well as a non-resident Senior Fellow at Brookings, "Examining the Evidence of a Detention-Drone Strike Tradeoff", October 17, www.lawfareblog.com/2011/10/examining-the-evidence-of-a-detention-drone-strike-tradeoff/

Yesterday Jack linked to this piece by Noah Feldman, which among other things advances the argument that the Obama administration has resorted to drone strikes at least in part in order to avoid having to grapple with the legal and political problems associated with military detention:¶ Guantanamo is still open, in part because Congress put obstacles in the way. Instead of detaining new terror suspects there, however, Obama vastly expanded the tactic of targeting them, with eight times more drone strikes in his first year than in all of Bush’s time in office.¶ Is there truly a detention-drone strike tradeoff, such that the Obama administration favors killing rather than capturing? As an initial matter, the numbers quoted above aren’t correct according to the New America Foundation database of drone strikes in Pakistan, 2008 saw a total of 33 strikes, while in 2009 there were 53 (51 subsequent to President Obama’s inauguration). Of course, you can recapture something close to the same point conveyed in the quote by looking instead to the full number of strikes conducted under Bush and Obama, respectively. There were relatively few drone strikes prior to 2008, after all, while the numbers jump to 118 for 2010 and at least 60 this year (plus an emerging Yemen drone strike campaign). But what does all this really prove?¶ Not much, I think. Most if not all of the difference in drone strike rates can be accounted for by specific policy decisions relating to the quantity of drones available for these missions, the locations in Pakistan where drones have been permitted to operate, and most notably whether drone strikes were conditioned on obtaining Pakistani permission. Here is how I summarize the matter in my forthcoming article on the legal consequences of the convergence of military and intelligence activities:¶ According to an analysis published by the New America Foundation, two more drone strikes in Pakistan’s FATA region followed in 2005, with at least two more in 2006, four more in 2007, and four more in the first half of 2008.[1] The pattern was halting at best. Yet that soon changed. U.S. policy up to that point had been to obtain Pakistan’s consent for strikes,[2] and toward that end to provide the Pakistani government with advance notification of them.[3] But intelligence suggested that on some occasions “the Pakistanis would delay planned strikes in order to warn al Qaeda and the Afghan Taliban, whose fighters would then disperse.”[4] A former official explained that in this environment, it was rare to get permission and not have the target slip away: “If you had to ask for permission, you got one of three answers: either ‘No,’ or ‘We’re thinking about it,’ or ‘Oops, where did the target go?”[5]¶ Declaring that he’d “had enough,” Bush in the summer of 2008 “ordered stepped-up Predator drone strikes on al Qaeda leaders and specific camps,” and specified that Pakistani officials going forward should receive only “‘concurrent notification’…meaning they learned of a strike as it was underway or, just to be sure, a few minutes after.”[6] Pakistani permission no longer was required.[7] ¶ The results were dramatic. The CIA conducted dozens of strikes in Pakistan over the remainder of 2008, vastly exceeding the number of strikes over the prior four years combined.[8] That pace continued in 2009, which eventually saw a total of 53 strikes.[9] And then, in 2010, the rate more than doubled, with 188 attacks (followed by 56 more as of late August 2011).[10] The further acceleration in 2010 appears to stem at least in part from a meeting in October 2009 during which President Obama granted a CIA request both for more drones and for permission to extend drone operations into areas of Pakistan’s FATA that previously had been off limits or at least discouraged.[11] ¶ There is an additional reason to doubt that the number of drone strikes tells us much about a potential detention/targeting tradeoff: most of these strikes involved circumstances in which there was no feasible option for capturing the target. These strikes are concentrated in the FATA region, after all. ¶ Having said all that: it does not follow that there is no detention-targeting tradeoff at work. I’m just saying that drone strikes in the FATA typically should not be understood in that way (though there might be limited exceptions where a capture raid could have been feasible). Where else to look, then, for evidence of a detention/targeting tradeoff?¶ Bear in mind that it is not as if we can simply assume that the same number of targets emerge in the same locations and circumstances each year, enabling an apples-to-apples comparison. But set that aside.¶ First, consider locations that (i) are outside Afghanistan (since we obviously still do conduct detention ops for new captures there) and (ii) entail host-state government control over the relevant territory plus a willingness either to enable us to conduct our own ops on their territory or to simply effectuate captures themselves and then turn the person(s) over to us. This is how most GTMO detainees captured outside Afghanistan ended up at GTMO. Think Bosnia with respect to the Boumediene petitioners, Pakistan’s non-FATA regions, and a variety of African and Asian states where such conditions obtained in years past. In such locations, we seem to be using neither drones nor detention. Rather, we either are relying on host-state intervention or we are limiting ourselves to surveillance. Very hard to know how much of each might be going on, of course. If it is occurring often, moreover, it might reflect a decline in host-state willingness to cooperate with us (in light of increased domestic and diplomatic pressure from being seen to be responsible for funneling someone into our hands, and the backdrop understanding that, in the age of wikileaks, we simply can’t promise credibly that such cooperation will be kept secret). In any event, this tradeoff is not about detention versus targeting, but something much more complex and difficult to measure.

#### Benefits of ending detention outweigh risk of drones

John Bellinger 13, partner in the international and national security law practices at Arnold & Porter LLP in DC, Adjunct Senior Fellow in International and National Security Law at the CFR, "Peter Baker on Mounting Criticisms of Obama Administration CT Policies", February 10, www.lawfareblog.com/2013/02/peter-baker-on-mounting-criticisms-of-obama-administration-ct-policies/

One of Baker’s more interesting observations — and one of the first times I have seen this in print, although it is a subject of some discussion among Bush Administration officials — is that civil liberties groups have taken it easy on the Obama Administration:¶ For four years, Mr. Obama has benefited at least in part from the reluctance of Mr. Bush’s most virulent critics to criticize a Democratic president. Some liberals acknowledged in recent days that they were willing to accept policies they once would have deplored as long as they were in Mr. Obama’s hands, not Mr. Bush’s.¶ “We trust the president,” former Gov. Jennifer Granholm of Michigan said on Current TV. “And if this was Bush, I think that we would all be more up in arms because we wouldn’t trust that he would strike in a very targeted way and try to minimize damage rather than contain collateral damage.”¶ Presumably for the same reason, European governments, who were unrelenting in their criticism of Guantanamo and other Bush Administration counterterrorism policies, have simply looked the other way as most of those same policies have continued (or, in the case of drones, dramatically increased). One does wonder whether the Nobel Prize Committee is suffering from at least a modicum of buyer’s remorse.¶ As the Obama Administration begins its second term, the big question now is whether the domestic and international criticism will snowball and, if so, how the Administration will respond.

## Warfighting

#### Detention causes terrorism

Combs 12 (Casey- writer for the Diplomatic Courier and freelance associate for the Foreign Policy Association, citing Martin Sheinin, professor of international law and UN Special Rapporteur on human rights and counterterrorism from 2005 to 2011, January 12, “US Counterterrorism Law May “Backfire”: UN”, http://foreignpolicyblogs.com/2012/01/12/new-us-counterterrorism-law-may-backfire-un/)

When the “global war on terror” was waged following 9/11, he said, the possibility of indefinite detention was extended to terrorism, “far beyond genuine situations of international or even non-international armed conflict. And it extends indefinite detention to persons who are not combatants. For instance, persons who are held to have provided substantial support to terrorism would be subject to indefinite detention.” Against that background, Mr. Sheinan suggested several ways in which violating human rights in the course of countering terrorism can “backfire.” Rights violations can “add to causes of terrorism,” he said, “both by perpetuating ‘root causes’ that involve the alienation of communities and by providing ‘triggering causes’ through which bitter individuals make the morally inexcusable decision to turn to methods of terrorism.” Further, “these kinds of legal provisions are always open for bad faith copying by repressive governments that will use them for their own political purposes.” Though such copying was found to be less common than expected, “repressive governments may do so for their own political purposes.” “It is hard to see any practical advantage gained through the NDAA. It is just another form of what I call symbolic legislation, enacted because the legislators want to be seen as being ‘tough’ or as ‘doing something.’ The law is written as just affirming existing powers and practices and hence not providing any meaningful new tools in the combat of terrorism,” he concluded. With Washington simultaneously fostering democratic transitions across the Middle East and North Africa and gambling on military exits from Iraq and Afghanistan, such “backfires” may well hamper development of the rule of law and respect for human rights when they are needed most.

#### The abstention advantage outweighs and solves the disadvantage

POSNER 2011 - Kirkland & Ellis Professor, University of Chicago Law School (Eric A. Posner, “Deference To The Executive In The United States After September 11: Congress, The Courts, And The Office Of Legal Counsel”, <http://www.harvard-jlpp.com/wp-content/uploads/2012/01/PosnerFinal.pdf>)

The larger and more striking point of the example is that, even during emergencies, when the stakes are high and time is of the essence, agents should follow rules rather than improvise. In this way, agents should be constrained.^^ This argument has potentially radical implications. Recall that the conventional objection to deference is that the risk of executive abuse exceeds the benefits of giving the executive a free hand to counter al Qaeda. Professor Holmes argues—although at fimes he hedges—that in fact the benefits of giving the President a free hand are zero: A constrained executive, like a constrained medical technician, is more effective than an unconstrained executive. If the benefits of lack of constraint are zero, then the deference thesis is clearly wrong. Constraints both prevent executive abuses such as violations of civil liberties and ensure that counterterrorism policy is most effective.

Suspension clause ruling avoids the link, prevents snowballing and maintains review

Garrett 12 (Brandon, Roy L. and Rosamund Woodruff Morgan Professor of Law, University of Virginia School of Law. HABEAS CORPUS AND DUE PROCESSCORNELL LAW REVIEW [Vol. 98:47] page lexis)

Congress and the Executive have largely accommodated, in the wake of Boumediene, a system in which judicial review plays a central role in detention cases, even if judges remain deferential both to congressional authorization for detention and executive procedures for screening and release of detainees.57 The Suspension Clause may facilitate this equilibrium better than a due process approach, which would focus more on procedure and less on substance. A judge asking whether the Due Process Clause was violated focuses on the minimal adequacy of general procedures, which may not necessarily require a judicial process. A judge asking whether the Suspension Clause was violated asks a different question: whether the process preserves an adequate and effective role for federal judges to independently review authorization of each individual detainee. The specific question for the judge is whether a person is in fact detained lawfully, which is a fundamental question of substance. Despite connections between habeas corpus and due process, the habeas judge’s preoccupation with authorization instead of procedure suggests important reasons for the concepts to remain separate. Habeas corpus and due process can share an inverse relationship,58 meaning that the Suspension Clause can continue to do its work standing alone.

#### Alt causes to deference solving conflict

Stephen Holmes 9, Walter E. Meyer Professor of Law, New York University School of Law, “The Brennan Center Jorde Symposium on Constitutional Law: In Case of Emergency: Misunderstanding Tradeoffs in the War on Terror”, April, California Law Review, 97 Calif. L. Rev. 301, Lexis

Even if the promoters of unfettered executive power were justified in associating legal rules with ineffectiveness during emergencies, their single-minded obsession with circumventing America's allegedly "super-legalistic culture" n33 would need explaining. Let us stipulate, for the sake of argument, that civil liberties, due process, treaty obligations, and constitutional checks and balances make national-security crises somewhat harder to manage. If so, they would still rank quite low among the many factors that render the terrorist threat a serious one. None of them rivals in importance the extraordinary vulnerabilities created by technological advances, especially the proliferation of compact weapons of extraordinary destructiveness, in the context of globalized communication, transportation, and banking. None of them compares to a shadowy, dispersed, and elusive enemy that cannot be effectively deterred. And none of them is as constraining as the scarcity of linguistically and culturally knowledgeable personnel and other vital national-security assets, including satellite coverage of battle zones, which the government must allocate in some rational way in response to an obscure, evolving, multidimensional, and basically immeasurable threat.¶ The curious belief that laws written for normal times are especially important obstacles to defeating the terrorist enemy is based less on evidence and argument than on a hydraulic reading of the liberty-security relationship. One particular implication of the hydraulic model probably explains the psychological appeal of a metaphor that is patently inadequate descriptively: if the main thing preventing us from defeating the enemy is "too much law," then the pathway to national security is easy to find; all we need to do is to discard [\*318] the quaint legalisms that needlessly tie the executive's hands. That this comforting inference is the fruit of wishful thinking is the least that might be said.

## apoc rhetoric k

#### Deconstructing law fails to regulate detention

Jenks and Talbot-Jensen 11 (INDEFINITE DETENTION UNDER THE LAWS OF WAR Chris Jenks\* & Eric Talbot Jensen\*\* Lieutenant Colonel, U.S. Army Judge Advocate General's Corps. Presently serving as the Chief of the International Law Branch, Office of The Judge Advocate General, Washington D.C. The views expressed in this Article are those of the author and not The Judge Advocate General's Corps, the U.S. Army, or the Department of Defense. \*\* Visiting Assistant Professor, Fordham Law School. The authors wish to thank Sue Ann Johnson for her exceptional research and editing skills, and the organizers and attendees at both the 3rd Annual National Security Law Jtinior Faculty Workshop at the University of Texas School of Law, where we first discussed the ideas for this article, and the Stanford Law and Policy Review National Defense Symposium, where we first presented the finished product. STANFORD LAW & POLICY REVIEW [Vol. 22:1] Page Lexis)

Those who would deconstruct the law of war as applied to detention stemming from armed conflict with non state actors may achieve victory, but in an academic, and, practically speaking, pyrrhic sense. Arguing that the Geneva Conventions for Prisoners and Civilians do not, on their face, apply to members of al-Qaeda or the Taliban may be correct, and in more than one way. But in so arguing, the deconstructionist approach removes a large portion of intemationally recognized and accepted provisions for regulating detention associated with armed conflict—^the Geneva Conventions—^while leaving the underlying question of how to govern detention unanswered. At some point, even the deconstmctionist must shift to positivism and propose an altemative, an altemative we submit would inevitably resemble that which is already extant in the law of war. Moreover, while there has been discussion about the strained application of the Geneva Conventions and Additional Protocols to states combating transnational terrorism, attempts at a new convention have gained little traction. Our approach is more an attempt at pragmatism than radicalism—there are individuals currently detained, purportedly indefinitely and under the law of war. Yet despite years of such detention, two administrations have provided little if any information on what exactly such detention means, how and by what it is govemed, and if and how it ends. Conflating aspects of intemationally recognized law of war conventions allows for a transparent process that could be promulgated now. Whether for the up to fifty or so individuals currently detained at Guantanamo or for those who may be detained in the future, we posit that the law of war provides a legitimate model for indefinite detention. And, as the Walsh Report recognized,^' the longer detainees are held, the more concern for their individual situations must be given. We therefore analyze the complete protections provided by the law of war and advocate that all of them, over time and to varying degrees, be applied to the detainees in Guantanamo. In this way, detention under the laws of war can provide a humane system of indefinite detention that strikes the right balance between the security of the nation and the rights of individuals

**Foreclosing representations of the nuclear apocalypse prevents rational action to prevent nuclear war**

**Saint-Amour**, professor of English at Pomona College, **2000** (Paul, Diacritics, 30.4, projectmuse)

The call for papers that initiated both the 1984 colloquium on nuclear criticism and the subsequent *Diacritics* issue invited, among other varieties, "the sort [of criticism] that reads other critical or canonical texts for the purpose of uncovering the unknown shapes of our unconscious nuclear fears" ["Nuclear" 3]. This essay has undertaken such a reading, though without appealing directly to the notion of "unconscious fears"—by appealing, rather, to the notion of a mass trauma brought about by the conspicuously increasing vulnerability of civilian populations to incineration in total war since 1900. The "nuclear condition" in which I have seen this trauma culminating is the doctrine of Mutually Assured Destruction (MAD), whereby the Cold War superpowers held one another's civilians hostage with nuclear arsenals large enough to survive a first-strike and devastatingly retaliate against the aggressor's cities. The MAD doctrine held out the possibility of an "apocalypse without revelation" to which the first examples of nuclear criticism responded. Since 1989, the focus of the nuclear debate has shifted to the growth of the "nuclear club"; the rise of nuclear programs in so-called rogue states such as Libya, Iraq, Iran, Syria, and North Korea; the trimming, detargeting, and retargeting of superpower nuclear arsenals; the theft of fissionable materials from Russian and other former Soviet states' storage facilities; the aging of the remaining arsenals and the growing danger of accidental launches; the prospect of a brain drain of both Eastern bloc and US nuclear scientists and workers; the destabilizing influence of US "Star Wars II" missile shield development; the US withdrawal from the 1972 Anti-Ballistic Missile Treaty and revised deterrence posture; and the possibility of nuclear terrorism. Since September 11, 2001, the phrase "ground zero" has been revived, but in the context of an explicitly non-nuclear catastrophe. Yet despite the apparent waning of images of nuclear holocaust in the global imaginary, a nuclear condition still exists, and **[End Page 80]** one that retains the fundamental logic of Mutually Assured Destruction beneath these shifts in focus and terminology. But because a full nuclear exchange seems less imminent in the current climate, it is easy to ignore the persistence of arsenals and defense policies that continue to hold such an exchange open as a possible, even foundational, scenario. Meanwhile, many supposedly nonrogue states continue to accept a severe degree of civilian "collateral damage" in conventional military action. And while international humanitarian law prohibits the use of nuclear weapons in most scenarios, it leaves open a loophole case—one of desperate self-defense—in which nuclear weapons use might still be considered legal, and nuclear states continue to maintain overkill-sized arsenals, in the name of such a slim eventuality. [13](http://muse.jhu.edu/journals/diacritics/v030/30.4saint-amour.html#FOOT13#FOOT13) Nuclear criticism, or whatever undertaking succeeds that problematic but prematurely decommissioned enterprise, will need not only to investigate the cultural prehistories of the nuclear epoch but to meditate on the reasons for the near-invisibility of present nuclear politics and nuclear stockpiles, the dangers these stockpiles entail, and the costs they exact—to begin the future anterior work of determining what *this* nuclear condition will have been when it is really over.

**Refusing to confront the possibility of nuclear war fosters complacency and thwarts efforts to stop apocalypse**

**Schell, 1982** (Jonathan, Journalist and Peace Activist, “The Fate of the Earth,” p. 231)

Two paths lie before us. One leads to death, the other to life. If we choose the first path – if we **numbly refuse to acknowledge** the nearness of extinction, all the while increasing our preparations to bring it about – then **we will in effect become the allies of death** and in everything we do our attachment to life will **weaken**: our vision, blinded to the abyss that has opened at our feet, will dim and grow confused; our will, discouraged by the thought of trying to build on such a precarious foundation anything that is meant to last, will slacken, and we will sink into stupefaction as though we were gradually weaning ourselves from life in preparing from the end.

**Imagining specific scenarios is vital to preventing nuclear omnicide**

**Harvard Nuclear Study Group, 1983** (“Living With Nuclear Weapons,” p. 47)

The question is grisly, but nonetheless it must be asked. Nuclear war [sic] **cannot be avoided simply by refusing to think about it**. Indeed the task of reducing the likelihood of nuclear war should begin with an effort to **understand how it might start.** When strategists in Washington or Moscow study the possible origins of nuclear war, they discuss “scenarios,” imagined sequences of future events that could trigger the use of nuclear weaponry. Scenarios are, of course, speculative exercises. They often leave out the political developments that might lead to the use of force in order to focus on military dangers. That nuclear war scenarios are even more speculative than most is something for which we can be thankful, for it reflects humanity’s fortunate lack of experience with atomic warfare since 1945. But imaginary as they are, nuclear scenarios can help identify problems not understood or dangers not yet prevented because they have not been foreseen.

#### Pragmatic reasoning is correct- prior questions cause policy failure

Kratochwil, IR Prof @ Columbia, 8 [Friedrich Kratochwil is Assistant Professor of International Relations at Columbia University, Pragmatism in International Relations “Ten points to ponder about pragmatism” p11-25]

Firstly, a pragmatic approach does not begin with objects or “things” (ontology), or with reason and method (epistemology), but with “acting” ( *prattein*), thereby preventing some false starts. Since, as historical beings placed in a specific situations, we do not have the luxury of deferring decisions until we have found the “truth”, we have to act and must do so always under time pressures and in the face of incomplete information. Precisely because the social world is characterised by strategic interactions, what a situation “is”, is hardly ever clear *ex ante*, because it is being “produced” by the actors and their interactions, and the multiple possibilities are rife with incentives for (dis)information. This puts a premium on quick diagnostic and cognitive shortcuts informing actors about the relevant features of the situation, and on leaving an alternative open (“plan B”) in case of unexpected difficulties.

Instead of relying on certainty and universal validity gained through abstraction and controlled experiments, we know that completeness and attentiveness to detail, rather than to generality, matter.

#### we’re obvi not the usfg but debating the courts is an effective political strategy- no state bad args

Serrano and Minami, ‘03 (Susan, Project Director, Equal Justice Society; J.D. 1998, William S. Richardson School of Law, University of Hawai', partner, Minami, Lew & Timaki, Asian Law Journal, Korematsu v. United States: A "Constant Caution" in a Time of Crisis, p. Lexis)

Today, a broadly conceived political identity is critical to the defense of civil liberties. In 1942, Japanese Americans stood virtually alone, without allies, and suffered the banishment of their entire race. Forty years later, Japanese Americans, supported by Americans of all colors, were able to extract an apology and redress from a powerful nation. That lesson of the need for political empowerment was made even more obvious after September 11, 2001, when Arab and Muslim American communities, politically isolated and besieged by hostility fueled by ignorance, became targets of violence and discrimination. In the aftermath of September 11, Japanese Americans knew from history that the United States, which turned on them in 1942, could repeat itself in 2001. Therefore, on September 12, 2001, the Japanese American Citizens' League, the oldest Asian American civil rights organization in the country, immediately issued a press release warning against racial discrimination against Arab and Muslim Americans and supporting their  [**[\*49]**](http://www.lexis.com/research/retrieve?_m=bee887063044547ab12532f483726d11&docnum=3&_fmtstr=FULL&_startdoc=1&wchp=dGLbVtz-zSkAk&_md5=f0e31afba24c7755402ea0ead0b3cfb6&focBudTerms=%2522serrano%2522%20and%20%2522minami%2522%20and%20%2522korematsu%2522&focBudSel=all)  civil rights.n60 Other Japanese American individuals and groups have offered their friendship, political support, and solidarity with Arab and Muslim Americans. Japanese Americans also knew from their Redress experience that political power was the strongest antidote. The coram nobis legal teams understood the political dimensions of their cases and adopted a course of litigation that would discredit the Wartime Cases by undermining the legal argument that the Supreme Court had legitimized the World War II exclusion and detention. This impaired (though did not overturn) the value of Korematsu, Hirabayashi, and Yasui as legal precedents for mass imprisonments of any definable racial group without due process. The even larger vision of these cases, however, was the long-term education of the American public. Many still believed (and continue to believe) that there were valid reasons for incarcerating Japanese Americans en masse: the coram nobis cases strongly refuted that notion and boldly illuminated the essentially political nature of the judicial system. In doing so, the coram nobis cases have contributed to the public's education about the frailty of civil rights and the evanescence of justice in our courts. As such, these cases highlight the need for continuing political activism and constant vigilance to protect our civil rights. In today's climate of fear and uncertainty, we must engage ourselves to assure that the vast national security regime does not overwhelm the civil liberties of vulnerable groups. This means exercising our political power, making our dissents heard, publicizing injustices done to our communities as well as to others, and enlisting allies from diverse communities. Concretely, this may mean joining others' struggles in the courts, Congress, schools and union halls; organizing protests against secret arrests, incarcerations, and deportations; building coalitions with other racial communities; writing op-ed essays or letters to politicians; launching media campaigns; donating money; and writing essays and articles.n61 Through these various ways, "our task is to compel our institutions, particularly the courts, to be vigilant, to "protect all.'" n62 The lesson of the Wartime Cases and coram nobis cases taken together is not that the government may target an entire ethnic group in the name of national security; the cases teach us instead that civil rights and liberties are best protected by strongly affirming their place in our national character, especially in times of national crisis. As Fred Korematsu avowed nearly twenty years ago, we must not let our governmental  **[[\*50]](http://www.lexis.com/research/retrieve?_m=bee887063044547ab12532f483726d11&docnum=3&_fmtstr=FULL&_startdoc=1&wchp=dGLbVtz-zSkAk&_md5=f0e31afba24c7755402ea0ead0b3cfb6&focBudTerms=%2522serrano%2522%20and%20%2522minami%2522%20and%20%2522korematsu%2522&focBudSel=all)**  institutions mistreat another racial group in such a manner again. To do this, we must "collectively [turn] the lessons learned, the political and economic capital gained, the alliances forged and the spirit renewed, into many small and some grand advances against continuing harmful discrimination across America."n63 We must become, as Professor Yamamoto has argued, "present-day social actors, agents of justice, because real, hard injustices are occurring all around us every day to Asian Americans and other racial communities and beyond." n64

# 1AR

## at: drone shift

#### Drone prolif won’t be weaponized- cost concerns

**Simmons and Aegerter 5-28**-13 [Keir Simmons is a correspondent in NBC News' London bureau; Gil Aegerter is an NBC News staff writer in Redmond, Wash, “The race is on: Manufacturer sets sights on market for armed drones,” <http://investigations.nbcnews.com/_news/2013/05/28/18472665-the-race-is-on-manufacturer-sets-sights-on-market-for-armed-drones?lite>]

While armed drones appear certain to be added to more countries’ arsenals in the near future, analysts say they expect the military sector will remain a relatively small piece of the overall drone market for some time to come. A big reason for that is the restrained growth in defense budgets worldwide and cuts by the U.S. military in spending on drones, which also affect research and development.¶ “There is short-term pressure on the industry. … It’s a combination of budgetary pressure and the withdrawals from Iraq and Afghanistan,” Finnegan said. “Longer term, the U.S. remains heavily committed to advanced UAV technology.”¶ And sales to smaller nations are likely to be slow due to the fact that even with prices falling, armed drones remain prohibitively expensive, Denel’s Ntsihele said, recounting conversations with prospective buyers.¶ "When they get to know the product, they get shocked,” he said.

#### No drone rollback

**RT 2-3**-13 [“US Won’t Scale Back Drone Warfare, Says Panetta,” <http://www.eurasiareview.com/03022013-us-wont-scale-back-drone-warfare-says-panetta/>]

The US is engaged in a global war on terror, and drone strikes are an effective tool to eliminate Al-Qaeda militants planning terror attacks on America, US Secretary of Defense Leon Panetta told AFP, adding that drone operations should stay covert.¶ The US will not curtail its extrajudicial assassinations in Pakistan, Somalia and Yemen, Panetta said in a farewell interview: “We are in a war. We’re in a war on terrorism and we’ve been in that war since 9/11.”¶ “The whole purpose of our operations were aimed at those who attacked this country and killed 3,000 innocent people in New York [on 9/11] as well as 200 people here at the Pentagon,” he said.¶ US Air Force Drone¶ US Air Force Drone¶ Over a decade has passed since the beginning of the global war on terror; in that time, two countries were occupied by the US, and the mastermind of the 9/11 attacks, Osama Bin Ladenm was shot dead by American marines. Still, the war on terror must continue, Panetta said.¶ “I think it depends on the nature of the threat that we’re confronting,” he explained.¶ Since terror threats continue to originate in Muslim countries – from Afghanistan in 2001 to Yemen in 2013 – it is unlikely the US will scale back its drone program in the foreseeable future.¶ Though US drones assassinate Al-Qaeda operatives in these countries without a court verdict or any form of due process, Panetta said that those governments are “pursuing the same goal” as the US. He said that the Yemeni government, for example, is strongly in favor of the US drone program.¶ But in October 2012, Pakistani Interior Minister Rehman Malik claimed that the majority of the people killed by American drones in Pakistan are civilians.¶ A US study in September 2012 revealed that only 2 percent of those killed in drone strike in Pakistan are actually top militants.¶ “I think we had a responsibility to use whatever technology we could to be able to go after those who not only conducted that attack but were planning to continue to attack this country,” Panetta said.¶ The departing US Secretary of Defense also rejected the idea that overseas drone operations should be turned over from CIA control to the US military, which would require open reporting on every operation: “When you got those kind of operations where, because of the nature of the country you’re in or the nature of the situation you’re dealing with, it’s got to be covert.”¶ An avid supporter of drone warfare, Panetta was largely responsible for the dramatic increase in drone attacks in Pakistan when he served as head of the CIA from 2009 to 2011. As the CIA director, he likely knew that the Hellfire missiles shot from drones have killed hundreds – if not thousands – of civilians, including children.¶ But the drone program has only expanded in recent years. At the start of 2013, the CIA escalated its use of drones in Pakistan, launching seven deadly strikes during the first 10 days of 2013 and killing at least 40 people, 11 of whom may have been civilians.

#### Chinese drone use will be restrained- aggression modeling is hype

**Anderson ‘13** [Brian, former Legal Assistant at ZS Associates, editor for Motherboard, “Just a Little Heads Up: China Can Also Kill People with Drones,” March, <http://motherboard.vice.com/blog/china-can-also-kill-people-with-drones>]

When the US decides to engage weaponized drones in its shadow wars throughout Pakistan, Yemen, Somalia, or wherever else, it does so by bringing those government's to the table, by seeking their support (or at the least, their begrudging, behind-closed-doors approval) of its targetted killing plans. Failing that, it goes ahead with the strikes anyway by claiming that, say, Pakistan's government won't play ball or is simply too inept, militarily, to smash threats. ¶ China could've done the same with a drone hit on Naw Kham, the Myanmese drug lord suspected of being behind the 2011 river attacks. It could have either sought the support of Naypyidaw or "credibly claimed," as J. Dana Stuster points out at Foreign Policy, that Myanmar, to borrow language from the Obama administration memo, was "unwilling or unable to suppress the threat posed by the individual being targeted."¶ So too could it have pulled the imminency card. Kham is a ruthless drug trafficker by all accounts. As Liu Yuejin, director of the public security ministry's anti-drug bureau, told the Global Times, Kham was at-large somewhere in the opium-producing Golden Triangle at the time of China's mulling over whether to use an unmanned aerial vehicle to pulverize the region with 20kg of TNT. For as much sleep China already loses over shoring up its homeland security, it could've easily undergirded a lethal strike with the white paper's nebulous and much-criticized definition of an "imminent threat of violent attack" on domestic soil. ¶ True, China presumably would've drawn the rebuke of the West had it actually gone through with drone-striking Kham, though it's not like the People's Republic has ever really cared much for marching to anything but its own drum when it comes to, well, just about anything. With Beidou and the Wing Loon, China's global-positioning service and Reaper-style hunter-killer drone, respectively, growing sharper and sharper, the opportunity was there for the taking. ¶ But the only thing to stop China was China itself. The plan to use the killer drone to track and kill Kham was axed "because we were ordered to catch him alive," Liu told the Global Times. Kham, who was captured last April, now faces the death penalty. ¶ If anything, pulling the plug suggests that China still would rather take pains to capture bad guys alive than kill them outright. Beijing may just end up killing Kham in the end, of course, after who knows what sort of interrogations or jailtime handlings.¶ But the initial restraint is pretty remarkable. Whereas the US probably would've gone the other way--indeed, it's doing so more and more, insisting that its drone strikes abroad are permissible because nine times out of 10 capture simply is not feasible--Chinese authorities trekked out into the bush outside the country's borders to find the man. To think: for all the well-warranted criticism China gets for human rights abuses and agressive behaviors along its borders, it comes out here looking cleaner than the U.S., turning down the quick-and-painless drone option in favor of capturing a suspect and bringing him before the courts, justice served, thank you very much. It could've taken a page from the Obama's administration drone memos, but it didn't.