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#### Congress will raise the debt ceiling now -

Taylor 9/12/13 (Andrew, Associated Press, GOP Leaders Confounded on Stopgap Spending Bill")

The speaker met Wednesday with Treasury Secretary [Jacob Lew](http://www.ctpost.com/?controllerName=search&action=search&channel=news%2Fpolitics&search=1&inlineLink=1&query=%22Jacob+Lew%22) — an adversary from the 2011 budget and debt negotiations — and presented him with a list of examples in which debt ceiling legislation has been paired with budget cuts. Such examples including budget pacts in 2011, 1997 and 1990.¶ "For decades the White House, the [Congress](http://www.ctpost.com/?controllerName=search&action=search&channel=news%2Fpolitics&search=1&inlineLink=1&query=%22Congress%22) have used the debt limit to find bipartisan solutions on the deficit and the debt. Now these types of changes were signed into law by Presidents Reagan, Bush, Clinton — and President Obama himself two years ago," Boehner said. The administration says is won't negotiate on the debt limit after Republicans used it in 2011 to demand spending cuts.¶ On numerous other occasions, including seven instances during the administration of [George W. Bush](http://www.ctpost.com/?controllerName=search&action=search&channel=news%2Fpolitics&search=1&inlineLink=1&query=%22George+W.+Bush%22), Republicans have delivered support for debt ceiling increases without any spending cuts attached. That's what the administration and Democrats are demanding now, and they're confident that Republicans have less leverage than they think.¶ "If push comes to shove on debt ceiling, I'm virtually certain they blink," Sen. [Chuck Schumer](http://www.ctpost.com/?controllerName=search&action=search&channel=news%2Fpolitics&search=1&inlineLink=1&query=%22Chuck+Schumer%22), D-N.Y., said. "They know they shouldn't be playing havoc with the markets."

#### Political capital is necessary – the budget is the litmus test for Obama

Wolf 9/12/13 (Z. Byron, "Analysis: Is Obama A Winner or Loser on Syria")

The president just seems to be very uncomfortable with being commander in chief of this nation," Corker said, although he added that he hopes the new diplomatic track pans out.¶ "He just can't follow through," said Corker, who was clearly frustrated that the president hadn't made a stronger argument to the nation that when an American president draws a red line, no country should be able to cross it without repercussions.¶ Obama will need senators like Corker to work with him now that Syria has been paused on Capitol Hill. Given Americans' continued focus on the economy, this president may be judged more for how he handles the looming two-headed fiscal dragon of government funding and debt ceiling authority.¶ Those issues will fester over the next two weeks until government funding runs out October 1 and the debt limit is reached [as soon as October 18](http://money.cnn.com/2013/09/10/news/economy/debt-ceiling-bills-coming-due/index.html).¶ On those matters, he's not going to get any help from Putin. He must figure out how to work with Congress.

#### < The plan saps political capital >

#### Failure to raise the debt ceiling has economic ripple effects – investor uncertainty

Masters 13 (Jonathan, Deputy Editor at the Council on Foreign Relations, Backgrounder, jan 2 2013"US Debt Ceiling. Costs and Consequences")

Most economists, including those in the White House and from former administrations, agree that the impact of an outright government default would be severe. Federal Reserve Chairman Ben Bernanke has said a U.S. default could be a ["recovery-ending event"](http://blogs.wsj.com/economics/2011/03/01/bernanke-warns-on-debt-limit-chaos/) that would likely spark another financial crisis. Short of default, officials warn that legislative delays in raising the debt ceiling could also inflict significant harm on the economy.¶ Many analysts say congressional gridlock over the debt limit will likely sow significant uncertainty in the bond markets and place upward pressure on interest rates. Rate increases would not only hike future borrowing costs of the federal government, but would also raise capital costs for struggling U.S. businesses and cash-strapped homebuyers. In addition, rising rates could divert future taxpayer money away from much-needed federal investments in such areas as infrastructure, education, and health care.¶ The protracted and politically acrimonious debt limit showdown in the summer 2011 prompted Standard and Poor's to take the unprecedented step of downgrading the U.S. credit rating from its triple-A status, and analysts fear such brinksmanship in early 2013 could bring about similar moves from other rating agencies.¶ A 2012 study by the non-partisan Government Accountability Office estimated that [delays in raising the debt ceiling](http://www.gao.gov/products/GAO-12-701) in 2011 cost taxpayers approximately $1.3 billion for FY 2011. BPC estimated the ten-year costs of the prolonged fight at roughly $19 billion.¶ The stock market also was thrown into frenzy in the lead-up to and aftermath of the 2011 debt limit debate, with the [Dow Jones Industrial Average](http://www.bizjournals.com/nashville/news/2011/08/08/slideshow-dows-10-worst-days-ever.html) plunging roughly 2,000 points from the final days of July through the first days of August. Indeed, the Dow recorded one of its worst single-day drops in history on August 8, the day after the S&P downgrade, tumbling 635 points.¶ Speaking to the [Economic Club of New York](http://www.reuters.com/article/2012/11/20/idUSW1E8KA00A20121120) in November 2012, Fed Chairman Ben Bernanke warned that congressional inaction with regard to the fiscal cliff, the raising of the debt ceiling, and the longer-term budget situation was creating uncertainty that "appears already to be affecting private spending and investment decisions and may be contributing to an increased sense of caution in financial markets, with adverse effects on the economy."

#### Furthermore, Economic collapse kills millions and sparks great power wars

Duncan ’12 (Richard Duncan, Former IMF consultant, Financial sector specialist for the World Bank, Chief Economist Blackhorse Asset Management, The New Depression: The Breakdown of the Paper Money Economy, Page 12, Ebooks, 2012)

The political battle over America’s future would be bitter, and quite possibly bloody. It cannot be guaranteed that the U.S. Constitution would survive. Foreign affairs would also confront the United States with enormous challenges. During the Great Depression, the United States did not have a global empire. Now it does. The United States maintains hundreds of military bases across dozens of countries around the world. Added to this is a fleet of 11 aircraft carriers and 18 nuclear-armed submarines. The countryspends more than $650 billion a year on its military. If the U.S. economy collapsesinto a New Great Depression,the United States could not afford to maintain its worldwide military presence or to continue in its role as global peacekeeper.Or, at least, it could not finance its military in the same way it does at present. Therefore, either the United States would have to find an alternative funding method for its global military presence or else it would have to radically scale it back. Historically, empires were financed with plunder and territorial expropriation. The estates of the vanquished ruling classes were given to the conquering generals, while the rest of the population was forced to pay imperial taxes. The U.S. model of empire has been unique. It has financed its global military presence by issuing government debt, thereby taxing future generations of Americans to pay for this generation’s global supremacy. That would no longer be possible if the economy collapsed. Cost–benefit analysis would quickly reveal that much of America’s global presence was simply no longer affordable. Many—or even most—of the outposts that did not pay for themselves would have to be abandoned. Priority would be given to those places that were of vital economic interests to the United States. The Middle East oil fields would be at the top of that list. The United States would have to maintain control over them whatever the price**.** In this global depression scenario, the price of oil could collapse to $3 per barrel**.** Oil consumption would fall by half and there would be no speculators left to manipulate prices higher. Oil at that level would impoverish the oil-producing nations, with extremely destabilizing political consequences**.** Maintaining control over the Middle East oil fields would become much more difficult for the United States. It would require a much larger military presence than it does now. On the one hand, it might become necessary for the United States to reinstate the draft (which would possibly meet with violent resistance from draftees, as it did during the Vietnam War). On the other hand, America’s all-volunteer army might find it had more than enough volunteers with the national unemployment rate in excess of 20 percent. The army might have to be employed to keep order at home, given that mass unemployment would inevitably lead to a sharp spike in crime. Only after the Middle East oil was secured would the country know how much more of its global military presence it could afford to maintain. If international trade had broken down, would there be any reason for the United States to keep a military presence in Asia when there was no obvious way to finance that presence?In a global depression, the United States’ allies in Asia would most likely be unwilling or unable to finance America’s military bases there or to pay for the upkeep of the U.S. Pacific fleet**.** Norwould the United States have the strength to force them to pay for U.S. protection**.** Retreat from Asia might become unavoidable. And Europe?What would a cost–benefit analysis conclude about the wisdom of the United States maintaining military bases there? What valued added does Europe provide to the United States? Necessity may mean Europe will have to defend itself**.** Should a New Great Depression put an end to the Pax Americana, the world would become a much more dangerous place**.** When the Great Depression began, Japan was the rising industrial power in Asia. It invaded Manchuria in 1931 and conquered much of the rest of Asia in the early 1940s. Would China, Asia’s new rising power, behave the same way in the event of a new global economic collapse? Possibly. China is the only nuclear power in Asia east of India (other than North Korea, which is largely a Chinese satellite state). However**,** in this disaster scenario, it is not certain that China would survive in its current configuration.Its economy would be in ruins. Most of its factories and banks would be closed. Unemployment could exceed 30 percent**.** There would most likely be starvation both in the cities and in the countryside. The Communist Party could lose its grip on power, in which case the country could break apart**,** as it has numerous times in the past. It was less than 100 years ago that China’s provinces, ruled by warlords, were at war with one another.United or divided, China’s nuclear arsenal would make it Asia’s undisputed superpower if the United States were to withdrawfrom the region. From Korea and Japan in the North to New Zealand in the South to Burma in the West,all of Asia would be at China’s mercy**.** And hunger among China’s population of 1.3 billion people could necessitate territorial expansion into Southeast Asia. In fact, the central government might not be able to prevent mass migration southward, even if it wanted to. In Europe, severe economic hardship would revive the centuries-old struggle between the left and the right**.** During the 1930s, the Fascists movement arose and imposed a police state on most of Western Europe. In the East, the Soviet Union had become a communist police state even earlier. The far right and the far left of the political spectrum converge in totalitarianism**.** It is difficult to judge whether Europe’s democratic institutions would hold up better this time that they did last time. England had an empire during the Great Depression. Now it only has banks. In a severe worldwide depression, the country—or, at least London—could become ungovernable. Frustration over poverty and a lack of jobs would erupt into anti-immigration riots not only in the United Kingdom but also across most of Europe. The extent to which Russia would menace its European neighbors is unclear. On the one hand,Russia would be impoverished by the collapse in oil prices and might be too preoccupied with internal unrest to threaten anyone. On the other hand, it could provoke a war with the goal of maintaining internal order through emergency wartime powers**.** Germany is very nearly demilitarized today when compared with the late 1930s. Lacking a nuclear deterrent of its own, it could be subject to Russian intimidation. While Germany could appeal for protection from England and France, who do have nuclear capabilities, it is uncertain that would buy Germany enough time to remilitarize before it became a victim of Eastern aggression. As for the rest of the world, its prospects in this disaster scenario can be summed up in only a couple of sentences. Global economic output could fall by as much as half, from $60 trillion to $30 trillion.Not all of the world’s seven billion people would survive in a $30 trillion global economy. Starvation would be widespread. Food riots would provoke political upheaval and myriad big and small conflicts around the world. It would be a humanitarian catastrophe so extreme as to be unimaginablefor the current generation, who, at least in the industrialized world, has known only prosperity**.** Nor would there be reason to hope that theNew GreatDepression would end quickly**.** The Great Depression was only ended by an even more calamitous global war that killed approximately 60 million people.

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#### Interpretation- “restrictions” are legal rules that limit activity

**Law.dictionary.com ’13** [<http://dictionary.law.com/Default.aspx?selected=1835>]

restriction¶ n. any limitation on activity, by statute, regulation or contract provision. In multi-unit real estate developments, condominium and cooperative housing projects managed by homeowners' associations or similar organizations, such organizations are usually required by state law to impose restrictions on use. Thus, the restrictions are part of the "covenants, conditions and restrictions" intended to enhance the use of common facilities and property which are recorded and incorporated into the title of each owner.

#### Violation- a drone court isn’t a restriction, but a prerequisite to new ones

#### Vote Neg-

#### They’re effectually and extra topical- they create a new court before Obama is restricted- allows them to claim unfair advantages and proves the resolution is insufficient

#### Limits- explodes the topic by allowing any non-law-based mechanism, which kills predictability- existing legal mechanisms are the only predictable ones

#### Ground- drone court should be negative CP ground- they steal our ability to test reform against existing methods which is core neg ground

#### Bidirectional- the court could refuse to restrict war powers or increase Obama’s abilities- doesn’t guarantee restrictions

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#### . Definitions

#### The only War Power authority is the ability to MAKE MILITARY DECISIONS

Bajesky 13 (2013¶ Mississippi College Law Review¶ 32 Miss. C. L. Rev. 9¶ LENGTH: 33871 words ARTICLE: Dubitable Security Threats and Low Intensity Interventions as the Achilles' Heel of War Powers NAME: Robert Bejesky\* BIO: \* M.A. Political Science (Michigan), M.A. Applied Economics (Michigan), LL.M. International Law (Georgetown). The author has taught international law courses for Cooley Law School and the Department of Political Science at the University of Michigan, American Government and Constitutional Law courses for Alma College, and business law courses at Central Michigan University and the University of Miami.)

A numerical comparison indicates that the Framer's intended for Congress to be the dominant branch in war powers. Congressional war powers include the prerogative to "declare war;" "grant Letters of Marque and Reprisal," which were operations that fall short of "war"; "make Rules for Government and Regulation of the land and naval Forces;" "organize, fund, and maintain the nation's armed forces;" "make Rules concerning Captures on Land and Water," "raise and support Armies," and "provide and maintain a Navy." [n25](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.771738.1261791409&target=results_DocumentContent&returnToKey=20_T17974748742&parent=docview&rand=1376677997032&reloadEntirePage=true#n25) In contrast, the President is endowed with one war power, named as the Commander-in-Chief of the Army and Navy. [n26](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.771738.1261791409&target=results_DocumentContent&returnToKey=20_T17974748742&parent=docview&rand=1376677997032&reloadEntirePage=true#n26)¶ The Commander-in-Chief authority is a core preclusive power, predominantly designating that the President is the head of the military chain of command when Congress activates the power. [n27](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.771738.1261791409&target=results_DocumentContent&returnToKey=20_T17974748742&parent=docview&rand=1376677997032&reloadEntirePage=true#n27) Moreover, peripheral Commander-in-Chief powers are bridled by statutory and treaty restrictions [n28](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.771738.1261791409&target=results_DocumentContent&returnToKey=20_T17974748742&parent=docview&rand=1376677997032&reloadEntirePage=true#n28) because the President "must respect any constitutionally legitimate restraints on the use of force that Congress has enacted." [n29](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.771738.1261791409&target=results_DocumentContent&returnToKey=20_T17974748742&parent=docview&rand=1376677997032&reloadEntirePage=true#n29) However, even if Congress has not activated war powers, the President does possess inherent authority to expeditiously and unilaterally react to defend the nation when confronted with imminent peril. [n30](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.771738.1261791409&target=results_DocumentContent&returnToKey=20_T17974748742&parent=docview&rand=1376677997032&reloadEntirePage=true#n30) Explicating the intention behind granting the President this latitude, Alexander Hamilton explained that "it is impossible to foresee or to define the extent and variety of national exigencies, or the correspondent extent and variety of the means which may be necessary to satisfy them." [n31](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.771738.1261791409&target=results_DocumentContent&returnToKey=20_T17974748742&parent=docview&rand=1376677997032&reloadEntirePage=true#n31) The Framers drew a precise distinction by specifying that the President was empowered "to repel and not to commence war." [n32](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.771738.1261791409&target=results_DocumentContent&returnToKey=20_T17974748742&parent=docview&rand=1376677997032&reloadEntirePage=true#n32)

#### **B. Violation – the affirmative does not prohibit the ability of the President to make a military decision in one of the following areas mentioned in the topic – it merely requires a process or disclosure for the President to go through before exercising his commander and chief power**

Jean Schiedler-Brown 12, Attorney, Jean Schiedler-Brown & Associates, Appellant Brief of Randall Kinchloe v. States Dept of Health, Washington, The Court of Appeals of the State of Washington, Division 1, http://www.courts.wa.gov/content/Briefs/A01/686429%20Appellant%20Randall%20Kincheloe%27s.pdf

3. The ordinary definition of the term "restrictions" also does not include the reporting and monitoring or supervising terms and conditions that are included in the 2001 Stipulation.

Black's Law Dictionary, 'fifth edition,(1979) defines "restriction" as;

A limitation often imposed in a deed or lease respecting the use to which the property may be put. The term "restrict' is also cross referenced with the term "restrain." Restrain is defined as; To limit, confine, abridge, narrow down, restrict, obstruct, impede, hinder, stay, destroy. To prohibit from action; to put compulsion on; to restrict; to hold or press back. To keep in check; to hold back from acting, proceeding, or advancing, either by physical or moral force, or by interposing obstacle, to repress or suppress, to curb.

In contrast, the terms "supervise" and "supervisor" are defined as; To have general oversight over, to superintend or to inspect. See Supervisor. A surveyor or overseer. . . In a broad sense, one having authority over others, to superintend and direct. The term "supervisor" means an individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but required the use of independent judgment.

Comparing the above definitions, it is clear that the definition of "restriction" is very different from the definition of "supervision"-very few of the same words are used to explain or define the different terms. In his 2001 stipulation, Mr. Kincheloe essentially agreed to some supervision conditions, but he did not agree to restrict his license.

#### C. Prefer our interpretation

#### Ground – the negative should be able to say Drone Strikes, Cyber ops, troop invasion and indefinite detention good/bad – This is the core negative topic ground – they get to link turn our disad by saying we still allow authority in one of the areas.

#### Limits – they justify any aff that does transparency or requires a process before implementing a particular war power – this allows them to apply a process to any particular subsection…

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#### Text: The Executive Branch of the United States Federal Government should exercise the power of executive review over damages for those unlawfully injured by targeted killing operations or their heirs.

#### Executive power allows the President to shape, interpret and make laws that determine the scope of other governmental powers and individual rights

Paulsen 94

(Michael Stokes Paulsen, Assoc Prof of Law at Univ of Minnesota, 1994 Georgetown Law Journal, 83 Geo. L.J. 217, L/N)

If the judiciary is the least dangerous branch, then, by these same criteria, the executive is the most dangerous branch. The executive possesses Force, Will, and "Judgment" -- the power to interpret the law. The President has Force: He has the sole duty and prerogative to direct and control the manner in which the laws are executed (the "executive power") n4 and the power to command the military forces of the nation in case of war, insurrection, or emergency. n5 The President has Will: In the Hamiltonian sense of that term, the President has power to make law; to determine the substance of rules "by which the duties and rights of every citizen are to be  [\*220]  regulated." He participates in the legislative process by making recommendations and presenting messages to Congress, as well as by exercising the formidable negative and agenda-shaping positive power of the veto. n6 In the modern administrative state, he has substantial implicit and/or delegated legislative power to prescribe rules -- laws, really -- in the capacious interstices of broad statutory directives. Perhaps most important of all, the President has, as a logical incident of his textually specified powers, the ancillary power of Judgment: the formidable power to interpret the laws he is charged with executing and (sometimes) that he has had a role in making. The power to interpret law -- the power, in *Marbury v. Madison's* famous words, "to say what the law is" n7 -- is a superpower or, if you prefer, a "meta-power," that effectively determines the construction and scope of all other governmental powers and of individual rights. As Benjamin Hoadley, Bishop of Bangor, astutely observed in 1717, "Whoever hath an absolute authority to interpret any written or spoken laws, it is he who is truly the lawgiver, to all intents and purposes, and not the person who first wrote or spoke them." n8

#### Judicial interpretations lack independent enforcement – any argument they make about why Executive review circumvents undermines the solvency for the aff

Paulsen 94 (Michael Stokes Paulsen, Assoc Prof of Law at Univ of Minnesota, 1994 Georgetown Law Journal, 83 Geo. L.J. 217, L/N)

Hamilton's argument goes a bit further still. Not only does he *deny* judicial supremacy, he affirmatively mentions an implicit, structural check on the judiciary which, if taken seriously, exposes the claim of judicial supremacy as ridiculous. The judiciary exercises "neither Force nor Will, but merely judgment; and must *ultimately* depend upon the *aid of the* executive arm *even for the efficacy of its judgments.*" n125 This is an important claim. Judicial judgments are not self-executing. Rather, execution of judgments is an executive function. The judiciary is *dependent* on the acquiescence and support of the executive. Without executive branch enforcement of its judgments, those judgments will be of no "Force." In the unlikely event (in Hamilton's world) of an attempted judicial usurpation of power, executive interposition would supply a check against such abuses having any practical effect. It is true that Hamilton is not quite as explicit about the executive branch serving this potential mediating function as he is about the judiciary being "an intermediate body between the people and the legislature." n126 But there is no reason to believe that his statement of the judiciary's dependency on the executive to enforce its judgment is inadvertent or unintentional. He reiterates much the same point in *The Federalist* No. 81, noting that the "general nature of the judicial power" under the Constitution is such that it can never inconvenience the political system or the rights of the people, due to "its total incapacity to support its usurpations by force." n127 The *Force* of the community, as Hamilton wrote in the papers concerning the Presidency, lies in the executive arm. n128 Moreover, the situation of courts exceeding their powers might reasonably have been expected to be a good deal less likely to occur than legislative departures from the Constitution. Hamilton surely thought it less likely. He characterized "the supposed danger of judiciary encroachments  [\*252]  on the legislative authority" as "a phantom." n129 Given this mindset, Hamilton's comment would seem to say all that needed to be said. To have made an elaborate argument for executive review of judicial usurpations, akin to his explication of judicial review, would seem grossly impolitic, unnecessarily exciting fears on two scores: by transferring to the *executive* branch (already a target of anti-Federalist attacks) all of the criticisms that Brutus levied at the judiciary; and by lending credence to Brutus's charge that there were likely to be judicial abuses in need of checking. The conclusion that the executive may "review" the judiciary is a sound inference from the mutual-checking arrangement of the Constitution generally (defended by both Madison and Hamilton). It also follows from Hamilton's statement that the judiciary must depend upon the executive for enforcement of judgments. Indeed, it is hard to reconcile this passage with the *absence* of executive review. If the judiciary could, in effect, instruct the executive as to how to enforce the law, and the executive were bound to enforce judgments no matter how clearly they violated the Constitution, then the judiciary would not be weak (as Hamilton claimed), but very, very powerful. Its judgments, including its assertions of jurisdiction, n130 would be beyond any check. (The *judges* might be subject to impeachment, but the *judgments* would still stand.) The "real effect of this system" would, as Brutus asserted, be "brought home to the feelings of the people, through the medium of the judicial power." n131 Judges would not only exercise independent judgment, "but by officers subordinate to them . . . execute all their decisions." n132 In short, if there is not some last resort check by some branch on judgments rendered by the judiciary in particular cases, then Brutus was right.

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#### US winning the war on terror- no WMD attacks

Oswald 5/30, Rachel Oswald, staff editor for the National Journal and the Global Security Newswire, “Despite WMD fears, terrorists are focused on conventional attacks,” May 30, 2013, <http://www.nationaljournal.com/nationalsecurity/despite-wmd-fears-terrorists-are-focused-on-conventional-attacks-20130417?page=1&utm_source=feedly>

#### WASHINGTON – The United States has spent billions of dollars to prevent terrorists from obtaining a weapon of mass destruction even as this week’s [bombings in Boston](http://www.nti.org/gsn/article/police-scrutinize-remnants-boston-blasts/) further show that a nuclear weapon or lethal bioagent is not necessary for causing significant harm.¶ Organized group plots against the U.S. homeland since Sept. 11, 2001 have all involved conventional means of attack. Beyond that have been a handful of instances in which individuals used the postal system to deliver disease materials -- notably [this week’s ricin letters](http://www.nti.org/gsn/article/lab-confirms-ricin-letter-sent-senator/) to President Obama and at least one senator and the 2001 anthrax mailings.¶ Terrorism experts offer a range of reasons for why al-Qaida or other violent militants have never met their goal of carrying out a biological, chemical, nuclear or radiological attack on the United States or another nation. These include:¶ -- substantive efforts by the United States and partner nations to secure the most lethal WMD materials;¶ -- improved border security and visa checks that deny entry to possible foreign-born terrorists;¶ -- a lack of imagination and drive on the part of would-be terrorists to pursue the kind of novel but technically difficult attacks that could lead to widespread dispersal of unconventional materials;¶ -- a general haplessness on the part of the native-born U.S. extremists who have pursued WMD attacks, specifically involving weaponized pathogens;¶ -- elimination of most of al-Qaida’s original leadership, notably those members with the most experience orchestrating large-scale attacks abroad; and¶ -- the Arab Spring uprisings have likely drawn down the pool of terrorists with the proper training and focus to organize WMD attacks abroad as they have opted instead to join movements to overthrow governments in places such as Syria and Yemen.¶ “We killed a lot of people. That was one thing,” said Randall Larsen, founding director of the Bipartisan WMD Terrorism Research Center, referring to the deaths in recent years of al-Qaida chief Osama bin Laden and any number of his direct or philosophical adherents.¶ Bin Laden is known to have exhorted his followers to seek weapons of mass destruction for use in attacks against the West. Leading al-Qaida propagandist Anwar al-Awlaki of the group’s Yemen affiliate, who was killed in a 2011 U.S. drone strike, used his Inspire magazine to [encourage sympathizers](http://www.nti.org/gsn/article/al-qaeda-magazine-urges-chemical-biological-strikes-us/) to develop and carry out their own chemical and biological attacks.¶ Al-Qaida also had separate efforts in [Afghanistan](http://www.nti.org/gsn/article/al-qaeda-operatives-discussed-wmd-attacks-while-training-prior-to-911-report-says/) and [Malaysia](http://www.nti.org/gsn/article/us-officials-worried-by-release-of-al-qaeda-bioweapons-operative/) that worked on developing anthrax for use in attacks before they were broken up or abandoned following the September 2001 attacks.¶ In the last decade, the technological means to carry out new kinds of improvised WMD attacks such as those involving [laboratory-engineered pathogens](http://www.nti.org/gsn/article/synthetic-pathogens-might-pose-bioterror-threat-scientists-warn/) has become much more available. However, it can take some time for bad actors to recognize how these new technologies ca

#### Drone court crushes counter-terror- delay

Oliphant, 13 -- National Journal deputy magazine editor; citing Gregory McNeal, a counterterrorism expert at Pepperdine University

[James, “Vetting the Kill List,” 5-30-13, http://www.nationaljournal.com/magazine/vetting-the-kill-list-20130404, accessed 8-16-13, mss]

But even among supporters, no consensus exists on what questions a drone court would actually review or even whether its scrutiny would come before or after a strike. The most problematic scenario involves any sort of preoperational clearance. Possible windows for action open and shut in a matter of hours. The kill lists are constantly being revised and updated. Even many of those who argue for some sort of oversight mechanism, such as University of Texas law professor Robert Chesney, don’t believe a judge should be involved when it comes to “pulling the trigger.” Still, Chesney says such a court could still vet the names on the list in advance to ensure the administration is following its own guidelines for a strike: the target is connected to al-Qaida; he poses some threat of “imminent” harm; and the government is operating within its legal authority. “Whether and when to fire is a totally separate question,” Chesney says. (He notes that there’s a range of disagreement over how the administration classifies an “imminent” threat and whether a judge would be qualified to make that determination.) But even that small degree of oversight, warns Gregory McNeal, a counterterrorism expert at Pepperdine University, risks **throwing sand in the gears** by extending the timeline of an op. And to McNeal, this point leads directly to the larger issue of accountability—or, to use the Washington synonym, blame. Judges, he says, simply aren’t ever going to be equipped to identify and navigate the variables involved in a drone strike. Jeh Johnson, formerly the Obama administration’s top lawyer at the Pentagon, expressed his discomfort with court-based oversight in a speech last month at Fordham University. Questions of feasibility and imminence, he said, “are up-to-the-minute, real-time assessments.” More important, Johnson emphasized, “we want military and national security officials to continually assess and reassess these two questions up until the last minute of the operation.”

#### Drones in Pakistan key to nuclear counter-terror- no alternatives

Curtis, 13 -- member of the professional staff of the Senate Foreign Relations Committee for three years

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But until Islamabad cracks down more aggressively on groups attacking U.S. interests in the region and beyond, drones will remain an essential tool for fighting global terrorism. Numbering over three hundred and fifty since 2004, drone strikes in Pakistan have killed more than two dozen Al Qaeda operatives and hundreds of militants targeting U.S. and coalition forces. President Obama made clear in his May 23 speech at the National Defense University that Washington would continue to use drones in Pakistan’s tribal border areas to support stabilization efforts in neighboring Afghanistan, even as it seeks to increase transparency and tighten targeting of the drone program in the future. Obama also defended the use of drones from a legal and moral standpoint, noting that by preemptively striking at terrorists, many innocent lives had been saved. The most compelling evidence of the efficacy of the drone program came from Osama bin Laden himself, who shortly before his death contemplated moving Al Qaeda operatives from Pakistan into forested areas of Afghanistan in an attempt to escape the drones’ reach, according to Peter Bergen, renowned author of Manhunt: The Ten-Year Search for Bin Laden from 9/11 to Abbottabad. How to Reduce the Need for Drones The continuation of drone strikes signals U.S. frustration with Pakistan’s unwillingness to crack down consistently and comprehensively on groups that find sanctuary in Pakistan’s tribal areas. There continue to be close ties between the Pakistan military and the Taliban-allied Haqqani Network, which attacks U.S. forces in Afghanistan and undermines the overall U.S. and NATO strategy there. The most recent U.S. drone attack inside Pakistani territory occurred last week against militants from the Haqqani Network located in North Waziristan, along the border with Afghanistan. In early June, drone missiles also targeted a group of fighters in Pakistan that were preparing to cross over into Afghanistan. On both occasions, the Pakistani Foreign Ministry condemned the attacks as counterproductive and said they raised serious questions about human rights. No doubt a better alternative to the drones would be Pakistani action against terrorist sanctuaries. But Pakistan has stonewalled repeated U.S. requests for operations against the Haqqani network. In addition to continuing drone strikes as necessary, the U.S. should further condition military aid to Pakistan based on its willingness to crack down on the Haqqani Network. In early June, the House of Representatives approved language in the FY 2014 National Defense Authorization Act that conditions reimbursement of Coalition Support Funds (CSF) pending Pakistani actions against the Haqqani network. Hopefully, the language will be retained in the final bill. The United States provides CSF funds to reimburse Pakistan for the costs associated with stationing some one hundred thousand Pakistani troops along the border with Afghanistan. Pakistan has received over $10 billion in CSF funding over the last decade. One must question the worth of having troops stationed in this region if they refuse to go after one of the most dangerous terrorist groups. Details of the relationship between the Pakistan military and the Haqqani Network are laid out in a recent book, Fountainhead of Jihad: The Haqqani Nexus, 1973–2012 by Vahid Brown and Don Rassler. The book highlights that Pakistan is actively assisting the Haqqani network the same way it has over the last twenty years, through training, tactical field advice, financing and material support. The assistance, the authors note, helps to sustain the Haqqani group and enhance its effectiveness on the battlefield. Drones Help Pakistan It is no secret that the drone strikes often benefit the Pakistani state. On May 29, for example, a drone missile strike killed the number two leader of the Pakistani Taliban (also referred to as the Tehrik-e-Taliban Pakistan or TTP), Waliur Rehman. The TTP has killed hundreds of Pakistani security forces and civilians in terrorist attacks throughout the country since its formation in 2007. Furthermore, the group conducted a string of suicide attacks and targeted assassinations against Pakistani election workers, candidates, and party activists in the run-up to the May elections, declaring a goal of killing democracy. Complicating the picture even further is the fact that Pakistan’s support for the Haqqani network indirectly benefits the Pakistani Taliban. The Haqqanis play a pivotal role in the region by simultaneously maintaining ties with Al Qaeda, Pakistani intelligence and anti-Pakistan groups like the TTP. With such a confused and self-defeating Pakistani strategy, Washington has no choice but to rely on the judicious use of drone strikes. The U.S. will need to keep a close eye on the tribal border areas, where there is a nexus of terrorist groups that threaten not only U.S. interests but also the stability of the Pakistani state. Given that Pakistan is home to more international terrorists than almost any other country and, at the same time, has one of the fastest growing nuclear arsenals, the country will remain of vital strategic interest for Washington for many years to come. Though the drone issue will continue to be a source of tension in the relationship, it is doubtful that it alone would derail ties. The extent to which the United States will continue to rely on drone strikes ultimately depends on Islamabad’s willingness to develop more decisive and comprehensive counterterrorism policies that include targeting groups like the Haqqani Network.

#### Drones work in Yemen now- only a risk plan kills effectiveness

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[Clinton, Navanti Group senior analyst, former U.S. Army Officer and former Special Agent with the FBI, and Frank J. Cilluffo, Director of HSPI "Drones in Yemen: Is the U.S. On Target," HSPI Issue Brief 16, 6-21-12, www.gwumc.edu/hspi/policy/drones.pdf, accessed 8-19-13, mss]

In the past year, drone strikes and Special Operations Forces (SOF) eliminated key AQAP members at a time when the U.S. lacked any viable counterterrorism partner in Yemen. 5 Drones (airstrikes) have eliminated several key AQAP leaders over the past year. On September 30, 2011, U.S. counterterrorism forces killed Anwar al-Awlaki, an important member of AQAP’s external operations branch and a key online radicalizer facilitating the recruitment of Western al Qaeda fighters. Eliminating Awlaki robbed al Qaeda of one of its few notable theologians with the cultural and linguistic fluency to resonate powerfully with Westerners. Additionally, Awlaki had the potential to invigorate al Qaeda’s brand during a particularly dark period for our adversaries after Bin Laden’s death. With Awlaki came the demise of Samir Khan, AQAP’s American propagandist and editor of the online al Qaeda English language magazine Inspire. While Inspire’s effectiveness as an online radicalizing agent is debatable, the magazine’s frequency and quality have been notably diminished since Khan’s death, and the magazine appears to be less effective in rallying future rounds of AQAP foreign fighter recruits. More recently, two current members of AQAP involved in al Qaeda’s bombing of the U.S.S. Cole in 2000, Abdul Mun’im Salim al Fatahani (January 31, 2012) and Fahd alQuso (May 6, 2012), were also killed by airstrikes.6 In addition, several other airstrikes have eliminated key AQAP members with operational linkages to al Qaeda’s senior leaders and training camps. Overall, the past year has clearly demonstrated the capability of U.S. drones and Special Operations Forces to engage AQAP in locations that would otherwise be unreachable, or require a significant military presence.

#### Terrorism causes extinction- retaliation

Ayson 10 - Professor of Strategic Studies and Director of the Centre for Strategic Studies: New Zealand at the Victoria University of Wellington (Robert, July. “After a Terrorist Nuclear Attack: Envisaging Catalytic Effects.” Studies in Conflict & Terrorism, Vol. 33, Issue 7. InformaWorld.)

But these two nuclear worlds—a non-state actor nuclear attack and a catastrophic interstate nuclear exchange—are not necessarily separable. It is just possible that some sort of terrorist attack, and especially an act of nuclear terrorism, could precipitate a chain of events leading to a massive exchange of nuclear weapons between two or more of the states that possess them. In this context, today’s and tomorrow’s terrorist groups might assume the place allotted during the early Cold War years to new state possessors of small nuclear arsenals who were seen as raising the risks of a catalytic nuclear war between the superpowers started by third parties. These risks were considered in the late 1950s and early 1960s as concerns grew about nuclear proliferation, the so-called n+1 problem. It may require a considerable amount of imagination to depict an especially plausible situation where an act of nuclear terrorism could lead to such a massive inter-state nuclear war. For example, in the event of a terrorist nuclear attack on the United States, it might well be wondered just how Russia and/or China could plausibly be brought into the picture, not least because they seem unlikely to be fingered as the most obvious state sponsors or encouragers of terrorist groups. They would seem far too responsible to be involved in supporting that sort of terrorist behavior that could just as easily threaten them as well. Some possibilities, however remote, do suggest themselves. For example, how might the United States react if it was thought or discovered that the fissile material used in the act of nuclear terrorism had come from Russian stocks,40 and if for some reason Moscow denied any responsibility for nuclear laxity? The correct attribution of that nuclear material to a particular country might not be a case of science fiction given the observation by Michael May et al. that while the debris resulting from a nuclear explosion would be “spread over a wide area in tiny fragments, its radioactivity makes it detectable, identifiable and collectable, and a wealth of information can be obtained from its analysis: the efficiency of the explosion, the materials used and, most important … some indication of where the nuclear material came from.”41 Alternatively, if the act of nuclear terrorism came as a complete surprise, and American officials refused to believe that a terrorist group was fully responsible (or responsible at all) suspicion would shift immediately to state possessors. Ruling out Western ally countries like the United Kingdom and France, and probably Israel and India as well, authorities in Washington would be left with a very short list consisting of North Korea, perhaps Iran if its program continues, and possibly Pakistan. But at what stage would Russia and China be definitely ruled out in this high stakes game of nuclear Cluedo? In particular, if the act of nuclear terrorism occurred against a backdrop of existing tension in Washington’s relations with Russia and/or China, and at a time when threats had already been traded between these major powers, would officials and political leaders not be tempted to assume the worst? Of course, the chances of this occurring would only seem to increase if the United States was already involved in some sort of limited armed conflict with Russia and/or China, or if they were confronting each other from a distance in a proxy war, as unlikely as these developments may seem at the present time. The reverse might well apply too: should a nuclear terrorist attack occur in Russia or China during a period of heightened tension or even limited conflict with the United States, could Moscow and Beijing resist the pressures that might rise domestically to consider the United States as a possible perpetrator or encourager of the attack? Washington’s early response to a terrorist nuclear attack on its own soil might also raise the possibility of an unwanted (and nuclear aided) confrontation with Russia and/or China. For example, in the noise and confusion during the immediate aftermath of the terrorist nuclear attack, the U.S. president might be expected to place the country’s armed forces, including its nuclear arsenal, on a higher stage of alert. In such a tense environment, when careful planning runs up against the friction of reality, it is just possible that Moscow and/or China might mistakenly read this as a sign of U.S. intentions to use force (and possibly nuclear force) against them. In that situation, the temptations to preempt such actions might grow, although it must be admitted that any preemption would probably still meet with a devastating response. As part of its initial response to the act of nuclear terrorism (as discussed earlier) Washington might decide to order a significant conventional (or nuclear) retaliatory or disarming attack against the leadership of the terrorist group and/or states seen to support that group. Depending on the identity and especially the location of these targets, Russia and/or China might interpret such action as being far too close for their comfort, and potentially as an infringement on their spheres of influence and even on their sovereignty. One far-fetched but perhaps not impossible scenario might stem from a judgment in Washington that some of the main aiders and abetters of the terrorist action resided somewhere such as Chechnya, perhaps in connection with what Allison claims is the “Chechen insurgents’ … long-standing interest in all things nuclear.”42 American pressure on that part of the world would almost certainly raise alarms in Moscow that might require a degree of advanced consultation from Washington that the latter found itself unable or unwilling to provide. There is also the question of how other nuclear-armed states respond to the act of nuclear terrorism on another member of that special club. It could reasonably be expected that following a nuclear terrorist attack on the United States, bothRussia and China would extend immediate sympathy and support to Washington and would work alongside the United States in the Security Council. But there is just a chance, albeit a slim one, where the support of Russia and/or China is less automatic in some cases than in others. For example, what would happen if the United States wished to discuss its right to retaliate against groups based in their territory? If, for some reason, Washington found the responses of Russia and China deeply underwhelming, (neither “for us or against us”) might it also suspect that they secretly were in cahoots with the group, increasing (again perhaps ever so slightly) the chances of a major exchange. If the terrorist group had some connections to groups in Russia and China, or existed in areas of the world over which Russia and China held sway, and if Washington felt that Moscow or Beijing were placing a curiously modest level of pressure on them, what conclusions might it then draw about their culpabilityn open the doorway to heretofore unseen massively disruptive terrorist attacks, according to Larsen.¶ Passenger airplanes were flying across the United States for decades before any terrorists realized that they would make a highly destructive improvised weapon when flown at high speeds into skyscrapers filled with thousands of people, Larsen noted.¶ A 2012 analysis by terrorism experts at the New America Foundation detailed a number of disrupted unconventional weapon plots against the country that counterintuitively were much more likely to involve home-grown antigovernment groups and lone-wolf actors than Muslim extremists. "In the past decade, there is no evidence that jihadist extremists in the United States have acquired or attempted to acquire material to construct CBRN weapons," according to authors Peter Bergen and Jennifer Rowland.¶ They documented a [number of failed domestic plots](http://homegrown.newamerica.net/), often involving cyanide or ricin. Only former Army microbiologist Bruce Ivins was successful in actually carrying out such an effort, killing five people with anthrax spores in 2001.¶ “Right-wing and left-wing extremist groups and individuals have been far more likely to acquire toxins and to assemble the makings of radiological weapons than al-Qaida sympathizers,” they said

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#### Executive review procedures are key for drone effectiveness- court action fails

WAXMAN 2013 - law professor at Columbia Law School, co-chairs the Roger Hertog Program on Law and National Security (Matthew Waxman, “The Constitutional Power to Threaten War,” August 27, 2013, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2316777)

Because the importance for the United States of threatened force – to coerce or deter adversaries, and to reassure allies – in affecting war and peace grew so substantially after World War II, the constitutional decision-making about using force has been relegated in large degree to a mechanism for implementing grand strategy rather than setting it.192 As a superpower that plays a major role in sustaining global security, threatening war is in some respects a much more policy-significant constitutional power than the power to actually make war.

Moreover, assessing the functional benefits or dangers attendant to unilateral presidential discretion to use force or to formulas for ensuring congressional involvement cannot be separated from the means by which the United States pursues its desired geopolitical ends. Of course those merits are inextricably linked to substantive policy ends associated with its military capacity, such as whether the United States is pursuing an aggressively expansionist agenda, a territorially-defensive one, or something else. But it also depends on how it seeks to wield its military power – as much its potential for armed force as its engagement of the enemy with it – toward those ends.

B. Reframing “War Powers” Scholarship

One might object to the main point of this Article – that constitutional allocations of power to use force cannot meaningfully be assessed either descriptively or normatively in other than very formalistic ways without accounting for the way U.S. military power is used – that it falls victim to its own critique: if the American condition of war and peace is determined by more than just decisions to commence hostilities or resist actual force with force, why stop at threats of war and force? Why not extend the analysis even further, to include the many other presidential powers – like diplomatic communication and recognition, intelligence activities, negotiation, and so on – that could lead also to or affect the course of events in crises? 193

This Article has focused on the way presidents wield U.S. military might not because analysis of those powers can be neatly separated from other ones but to show how even widening the lens a little bit reveals a much more complex interaction of law and strategy then often assumed and opens up new avenues for analysis and possible reform. Military force is also an important place to start because it has always carried special political and diplomatic salience.194 Moreover, many types of non-military moves a President might take to communicate threats, such as imposing economic sanctions or freezing financial assets,195 rest on express statutory delegations from Congress.196

Military threats, by contrast, often rest primarily on the President’s independent constitutional powers, perhaps buttressed by implicit congressional assent, and therefore pose the most fundamental questions of constitutional structure and power allocation in relation to strategy.

A next step, though, would incorporate into this analysis other instruments of statecraft, such as covert intervention or economic and financial actions, recognizing that their legal regulation could similarly affect perceptions about U.S. power abroad as well as the political and institutional incentives a President has to rely on one tool versus another. Moreover, sometimes coercive strategies involve both carrots and sticks – threats as well as positive inducements197 – and Congress’s powers may be dominant with regard to the latter elements of that formula, perhaps in the form of spending on offered benefits or lifting of economic sanctions.198 Further study might focus on such strategies and the way they necessarily require inter-branch coordination, not only in carrying out those elements but in signaling credibly an intention to do so.

At this point, many legal scholars reading this (yet another) Article on constitutional war powers are bound to be disappointed that it proposes neither a specific doctrinal reformulation nor offers an account of optimal legal-power allocation to achieve desired results. One reason for that is that evidence surveyed in Part II is inconclusive with respect to some key questions. Another, however, is that the very quest for optimal allocation of these powers is generally mis-framed, because “optimal” only makes sense in reference to some assumptions about strategy, which are not themselves fixed. By tying notions of optimal legal allocations to strategy I do not simply mean the basic point that we need prior agreement on desired ends (in the same sense that economists talk about optimality by assuming goals of maximizing social welfare), but the linking of means to ends. As the Article tries to show throughout, even if one agrees that the desired ends are peace and security, there are many strategies to achieve it – isolation, preventive war, deterrence, and others – and variations among them, depending on prevailing geopolitical conditions.

A more productive mode of study, then, recognizes the interdependence of the allocation of war-related powers and the setting of grand strategy. Legal powers and institutions enable or constrain strategies, and they also provide the various actors in our constitutional system with levers for shaping those strategies. At the same time, some strategies either reinforce or destabilize legal designs.

C. Threats, Grand Strategy, and Future Executive-Congressional Balances

Having homed in here on threatened war or force, one might take from this analysis yet another observation about the expanding or constitutionally “imperial” power of the U.S. President. That is, beyond the President’s wide latitude to use military force abroad, he can take threatening steps that could provoke or prevent war and even alter unilateral the national interests at stake in a crisis by placing U.S. credibility on the line – the President’s powers of war and peace are therefore even more expansive than generally supposed

It is also important to see this analysis, however, as showing more complex dependency of presidential powers on Congress with respect to setting and sustaining American grand strategy. In that respect, Philip Bobbitt was quite correct when he decried lawyers’ undue emphasis on the Declare War clause and the commencement of armed hostilities as the critical legal events in thinking about constitutional allocations and U.S. security policy:

Wars rarely start as unexpected ambushes; they are usually the culmination of a long period of policy decisions. … If we think of the declaration of war as a commencing act – which it almost never is and which the Framers did not expect it to be – we will not scrutinize those steps that bring us to war, steps that are in the main statutory in nature. Moreover, we will be inclined to pretend … that Congress really has played no role in formulating and funding very specific foreign and security policies.199

Those foreign and security policies to which Bobbitt refers include coercive and deterrent strategies.

Indeed, it is important to remember that the heavy reliance on threatened force especially after World War II has itself been a strategic choice by the United States – not a predestined one – and one that could only be made and continued with sustained congressional support. Since the beginning of the Cold War period, the reliance on deterrence and coercive diplomacy became so deeply engrained in U.S. foreign policy that it is easy to forget that the United States had other strategic options open to it. One option was war: some senior policy-makers during the early phases of the Cold War believed that conflict with the Soviet Union was inevitable, so better to seize the initiative and strike while the United States held some advantages in the balance of strength.200

Another option was isolation: the United States could have retracted it security commitments to its own borders or hemisphere, as it did after World War I, ceding influence to the Soviet bloc or other political forces.201 These may have been very bad alternatives, but they were real ones and they were rejected in favor of a combination of standing threats of force and discrete threats of force – sometimes followed up with demonstrative uses of force – that was only possible with congressional buy-in. That buy-in came in the form of military funding for the standing forces and foreign deployments needed to maintain the credibility of U.S. threats, as well as in Senate support for defense pacts with allies.202 While a strategy of deterrent and coercive force has involved significant unilateral discretion as to how and when specifically to threaten military action in specific crises and incidents, the overall strategy rested on a foundation of executive-congressional collaboration and dialogue that played out over decades.

Looking to the future, the importance of threatened force relative to other foreign policy instruments will shift – and so, therefore, will the balance of powers between the President and Congress. United States grand strategy for the coming decades will be shaped by conditions of fiscal austerity, for example, which may mean cutting back on some security commitments or reorienting doctrine for defending them toward greater reliance on less-expensive means (perhaps such as a shift from large-scale military forces to smaller ones, or greater reliance on high-technology, or even revised doctrines of nuclear deterrence).203

One possible geostrategic outlook is that the United States will retain its singular military dominance, and that it will continue to play a global policing role. Another outlook, though, is that U.S. military dominance will be eclipsed by other rising powers and diminished U.S. resources and influence.204 The latter scenario might mean that international relations will be less influenced by credible threats of U.S. intervention, and perhaps more so by the actions of regional powers and political bodies, or by institutions of global governance like the UN Security Council.205 These possibilities could entail a practical rebalancing of powers wielded by each branch, including the power to threaten force and other foreign policy tools.

Were the United States to retreat from underwriting its allies’ security and some elements of global order with strong coercive and deterrent threats, one should expect different patterns of executive-congressional behavior with respect to threatening and using force, because wars and threats of wars will come about in different ways: less often as a breakdown of U.S. hegemonic commitments, for example. Reduced requirements of maintaining credible U.S. threats, and therefore reduced linkage between U.S. actions in one crisis and others, would also likely reduce pressure on the President to protect prerogatives to threaten force and to make good on those threats. A foreign policy strategy of more selective and reserved military engagement would likely be one more accommodating to case-by-case, joint executive-legislative deliberation as to the threat or use of U.S. military might, insofar as U.S. strategy would self-consciously avoid cultivating foreign reliance on U.S. power.

Besides shifting geostrategic visions, ranging from a global policing role to receding commitments, the set of tools available to Presidents for projecting power will evolve, too, as will the nature of security threats, and this will produce readjustments among the relative importance of constitutional powers and inter-branch relations. Transnational terrorist threats, for example, are sometimes thought to be impervious to deterrent threats, whether because they may hold nihilistic agendas or lack tangible assets that can be held at risk.206 Technologies like unmanned drones may make possible the application of military violence with fewer risks and less public visibility than in the past.207 While discussion of these developments as revolutionary is in vogue, they are more evolutionary and incremental; their purported effects are matters of degree. Such developments will, however, retune strategies for brandishing and exercising military capabilities and the politics of using them.

#### Court oversight destroys presidential effectiveness

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>)

Second, the problem might lie in the nature of foreign relations and national security. These areas of action have been notoriously difficult to bring under legal control. Courts have frequently have been asked to adjudicate national security disputes between Congress and the President. Generally speaking, courts have resisted these requests, treating these issues as political questions or nonjusticiable for other reasons.71 The usual explanation for this resistance is that courts are not experts on these issues; that the highly fluid, frequently changing nature of foreign relations and national security makes them unsuitable for slow, rule‐bound, public, and decentralized resolution; and that, accordingly, courts fear that if they intervene, the executive branch will ignore their rulings, provoking a constitutional crisis.72

#### That would uniquely decimate Obama and the military’s ability to calm alliances and deter enemies ---- makes global nuclear war more likely

WAXMAN 2013 - law professor at Columbia Law School, co-chairs the Roger Hertog Program on Law and National Security (Matthew Waxman, “The Constitutional Power to Threaten War,” August 27, 2013, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2316777)

As a prescriptive matter, Part II also shows that examination of threatened force and the credibility requirements for its effectiveness calls into question many orthodoxies of the policy advantages and risks attendant to various allocations of legal war powers, including the existing one and proposed reforms.23 Most functional arguments about war powers focus on fighting wars or hostile engagements, but that is not all – or even predominantly – what the United States does with its military power. Much of the time it seeks to avert such clashes while achieving its foreign policy objectives: to bargain, coerce, deter.24 The President’s flexibility to use force in turn affects decision-making about threatening it, with major implications for securing peace or dragging the United States into conflicts. Moreover, constitutional war power allocations affect potential conflicts not only because they may constrain U.S. actions but because they may send signals and shape other states’ (including adversaries’) expectations of U.S. actions.25 That is, most analysis of war-powers law is inward-looking, focused on audiences internal to the U.S. government and polity, but thinking about threatened force prompts us to look outward, at how war-powers law affects external perceptions among adversaries and allies. Here, extant political science and strategic studies offer few clear conclusions, but they point the way toward more sophisticated and realistic policy assessment of legal doctrine and proposed reform. More generally, as explained in Part III, analysis of threatened force and war powers exposes an under-appreciated relationship between constitutional doctrine and grand strategy. Instead of proposing a functionally optimal allocation of legal powers, as legal scholars are often tempted to do, this Article in the end denies the tenability of any such claim. Having identified new spaces of war and peace powers that legal scholars need to take account of in understanding how those powers are really exercised, this Article also highlights the extent to which any normative account of the proper distribution of authority over this area depends on many matters that cannot be predicted in advance or expected to remain constant.26 Instead of proposing a policy-optimal solution, this Article concludes that the allocation of constitutional war powers is – and should be –geopolitically and strategically contingent; the actual and effective balance between presidential and congressional powers over war and peace in practice necessarily depends on fundamental assumptions and shifting policy choices about how best to secure U.S. interests against potential threats.27 I. Constitutional War Powers and Threats of Force Decisions to go to war or to send military forces into hostilities are immensely consequential, so it is no surprise that debates about constitutional war powers occupy so much space. But one of the most common and important ways that the United States uses its military power is by threatening war or force – and the constitutional dimensions of that activity receive almost no scrutiny or even theoretical investigation. A. War Powers Doctrine and Debates The Constitution grants Congress the powers to create military forces and to “declare war,”28 which the Supreme Court early on made clear includes the power to authorize limited uses of force short of full-blown war.29 The Constitution then vests the President with executive power and designates him commander in chief of the armed forces,30 and it has been well-accepted since the Founding that these powers include unilateral authority to repel invasions if the United States is attacked.31 Although there is nearly universal acceptance of these basic starting points, there is little legal agreement about how the Constitution allocates responsibility for the vast bulk of cases in which the United States has actually resorted to force. The United States has declared war or been invaded only a handful of times in its history, but it has used force – sometimes large-scale force – hundreds of other times.32 Views split over questions like when, if ever, the President may use force to deal with aggression against third parties and how much unilateral discretion the President has to use limited force short of full-blown war. For many lawyers and legal scholars, at least one important methodological tool for resolving such questions is to look at historical practice, and especially the extent to which the political branches acquiesced in common practices.33 Interpretation of that historical practice for constitutional purposes again divides legal scholars, but most would agree at least descriptively on some basic parts of that history. In particular, most scholars assess that from the Founding era through World War II, Presidents and Congresses alike recognized through their behavior and statements that except in certain narrow types of contingencies, congressional authorization was required for large-scale military operations against other states and international actors, even as many Presidents pushed and sometimes crossed those boundaries.34 Whatever constitutional constraints on presidential use of force existed prior to World War II, however, most scholars also note that the President asserted much more extensive unilateral powers to use force during and after the Cold War, and many trace the turning point to the 1950 Korean War.35 Congress did not declare war in that instance, nor did it expressly authorize U.S. participation.36 From that point forward, presidents have asserted broad unilateral authority to use force to address threats to U.S. interests, including threats to U.S. allies, and that neither Congress nor courts pushed back much against this expanding power.37 Concerns about expansive presidential war-making authority spiked during the Vietnam War. In the wind-down of that conflict, Congress passed – over President Nixon’s veto – the War Powers Resolution,38 which stated its purpose as to ensure the constitutional Founders’ original vision that the “collective judgment of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and to the continued use of such forces in hostilities or in such situations.”39 Since then, presidentialists have argued that the President still retains expansive authority to use force abroad to protect American interests,40 and congressionalists argue that this authority is tightly circumscribed.41 These constitutional debates have continued through the first decade of the 21st century. Constitutional scholars split, for example, over President Obama’s power to participate in coalition operations against Libya without congressional authorization in 2011, especially after the War Powers Resolution’s 60-day clock expired.42 Some argue that President Obama’s use of military force without specific congressional authorization in that case reflects the broad constitutional discretion presidents now have to protect American interests, at least short of full-blown “war”, while others argue that it is the latest in a long record of presidential violations of the Constitution and the War Powers Resolution.43 B. Threats of Force and Constitutional Powers These days it is usually taken for granted that – whether or not he can make war unilaterally – the President is constitutionally empowered to threaten the use of force, implicitly or explicitly, through diplomatic means or shows of force. It is never seriously contested whether the President may declare that United States is contemplating military options in response to a crisis, or whether the President may move substantial U.S. military forces to a crisis region or engage in military exercises there. To take the Libya example just mentioned, is there any constitutional limitation on the President’s authority to move U.S. military forces to the Mediterranean region and prepare them very visibly to strike?44 Or his authority to issue an ultimatum to Libyan leaders that they cease their brutal conduct or else face military action? Would it matter whether such threats were explicit versus implicit, whether they were open and public versus secret, or whether they were just a bluff? If not a constitutional obstacle, could it be argued that the War Powers Resolution’s reporting requirements and limits on operations were triggered by a President’s mere ultimatum or threatening military demonstration, insofar as those moves might constitute a “situation where imminent involvement in hostilities is clearly indicated by the circumstances”? These questions simply are not asked (at least not anymore).45 If anything, most lawyers would probably conclude that the President’s constitutional powers to threaten war are not just expansive but largely beyond Congress’s authority to regulate directly. From a constitutional standpoint, to the extent it is considered at all, the President’s power to threaten force is probably regarded to be at least as broad as his power to use it. One way to look at it is that the power to threaten force is a lesser included element of presidential war powers; the power to threaten to use force is simply a secondary question, the answer to which is bounded by the primary issue of the scope of presidential power to actually use it. If one interprets the President’s defensive war powers very broadly, to include dealing with aggression not only directed against U.S. territories but also against third parties,46 then it might seem easy to conclude that the President can also therefore take steps that stop short of actual armed intervention to deter or prevent such aggression. If, however, one interprets the President’s powers narrowly, for example, to include only limited unilateral authority to repel attacks against U.S. territory,47 then one might expect objections to arguably excessive presidential power to include his unilateral threats of armed intervention. Another way of looking at it is that in many cases, threats of war or force might fall within even quite narrow interpretations of the President’s inherent foreign relations powers to conduct diplomacy or his express commander in chief power to control U.S. military forces – or some combination of the two – depending on how a particular threat is communicated. A President’s verbal warning, ultimatum, or declared intention to use military force, for instance, could be seen as merely exercising his role as the “sole organ” of U.S. foreign diplomacy, conveying externally information about U.S. capabilities and intentions.48 A president’s movement of U.S. troops or warships to a crisis region or elevation of their alert level could be seen as merely exercising his dayto- day tactical control over forces under his command.49 Generally it is not seriously contested whether the exercise of these powers alone could so affect the likelihood of hostilities or war as to intrude on Congress’s powers over war and peace.50 We know from historical examples that such unilateral military moves, even those that are ostensibly pure defensive ones, can provoke wars – take, for example, President Polk’s movement of U.S. forces to the contested border with Mexico in 1846, and the resulting skirmishes that led Congress to declare war.51 Coming at the issue from Congress’s Article I powers rather than the President’s Article II powers, the very phrasing of the power “To declare War” puts most naturally all the emphasis on the present tense of U.S. military action, rather than its potentiality. Even as congressionalists advance interpretations of the clause to include not merely declarative authority but primary decision-making authority as to whether or not to wage war or use force abroad, their modern-day interpretations do not include a power to threaten war (except perhaps through the specific act of declaring it). None seriously argues – at least not any more – that the Declare War Clause precludes presidential threats of war. This was not always the case. During the early period of the Republic, there was a powerful view that beyond outright initiation of armed hostilities or declaration of war, more broadly the President also could not unilaterally take actions (putting aside actual military attacks) that would likely or directly risk war,52 provoke a war with another state,53 or change the condition of affairs or relations with another state along the continuum from peace to war.54 To do so, it was often argued, would usurp Congress’s prerogative to control the nation’s state of peace or war.55 During the Quasi-War with France at the end of the 18th century, for example, some members of Congress questioned whether the President, absent congressional authorization, could take actions that visibly signaled an intention to retaliate against French maritime harassment,56 and even some members of President Adams’ cabinet shared doubts.57 Some questions over the President’s power to threaten force arose (eventually) in relation to the Monroe Doctrine, announced in an 1823 presidential address to Congress and which in effect declared to European powers that the United States would oppose any efforts to colonize or reassert control in the Western Hemisphere.58 “Virtually no one questioned [Monroe’s proclamation] at the time. Yet it posed a constitutional difficulty of the first importance.”59 Of course, Monroe did not actually initiate any military hostilities, but his implied threat – without congressional action – risked provoking rather than deterring European aggression and by putting U.S. prestige and credibility on the line it limited Congress’s practical freedom of action if European powers chose to intervene.60 The United States would have had at the time to rely on British naval power to make good on that tacit threat, though a more assertive role for the President in wielding the potential for war or intervention during this period went hand in hand with a more sustained projection of U.S. power beyond its borders, especially in dealing with dangers emanating from Spanish-held Florida territory.61 Monroe’s successor, John Quincy Adams, faced complaints from opposition members of Congress that Monroe’s proclamation had exceeded his constitutional authority and had usurped Congress’s by committing the United States – even in a non-binding way – to resisting European meddling in the hemisphere.62 The question whether the President could unilaterally send militarily-threatening signals was in some respects a mirror image of the issues raised soon after the Constitution was ratified during the 1793 Neutrality Controversy: could President Washington unilaterally declare the United States to be neutral as to the war among European powers. Washington’s politically controversial proclamation declaring the nation “friendly and impartial” in the conflict between France and Great Britain (along with other European states) famously prompted a back-and-forth contest of public letters by Alexander Hamilton and James Madison, writing pseudonymously as “Pacificus” and “Helvidius”, about whether the President had such unilateral power or whether it belonged to Congress.63 Legal historian David Currie points out the irony that the neutrality proclamation was met with stronger and more immediate constitutional scrutiny and criticism than was Monroe’s threat. After all, Washington’s action accorded with the principle that only Congress, representing popular will, should be able to take the country from the baseline state of peace to war, whereas Monroe’s action seemed (at least superficially) to commit it to a war that Congress had not approved.64 Curiously (though for reasons offered below, perhaps not surprisingly) this issue – whether there are constitutional limits on the President’s power to threaten war – has almost vanished completely from legal discussion, and that evaporation occurred even before the dramatic post-war expansion in asserted presidential power to make war. Just prior to World War II, political scientist and presidential powers theorist Edward Corwin remarked that “[o]f course, it may be argued, and has in fact been argued many times, that the President is under constitutional obligation not to incur the risk of war in the prosecution of a diplomatic policy without first consulting Congress and getting its consent.”65 “Nevertheless,” he continued,66 “the supposed principle is clearly a maxim of policy rather than a generalization from consistent practice.” In his 1945 study World Policing and the Constitution, James Grafton Rogers noted: [E]xamples of demonstrations on land and sea made for a variety of purposes and under Presidents of varied temper and in different political climates will suffice to make the point. The Commander-in-Chief under the Constitution can display our military resources and threaten their use whenever he thinks best. The weakness in the diplomatic weapon is the possibility of dissidence at home which may cast doubt on our serious intent. The danger of the weapon is war.67 At least since then, however, the importance to U.S. foreign policy of threatened force has increased dramatically, while legal questions about it have receded further from discussion. In recent decades a few prominent legal scholars have addressed the President’s power to threaten force, though in only brief terms.

Taylor Reveley noted in his volume on war powers the importance of allocating constitutional responsibility not only for the actual use of force but also “[v]erbal or written threats or assurances about the circumstances in which the United States will take military action …, whether delivered by declarations of American policy, through formal agreements with foreign entities, by the demeanor or words of American officials, or by some other sign of national intent.”68 Beyond recognizing the critical importance of threats and other non-military actions in affecting war and peace, however, Reveley made little effort to address the issue in any detail. Among the few legal scholars attempting to define the limiting doctrinal contours of presidentially threatened force, Louis Henkin wrote in his monumental Foreign Affairs and the Constitution that: Unfortunately, the line between war and lesser uses of force is often elusive, sometimes illusory, and the use of force for foreign policy purposes can almost imperceptibly become a national commitment to war. Even when he does not use military force, the President can incite other nations or otherwise plunge or stumble this country into war, or force the hand of Congress to declare or to acquiesce and cooperate in war. As a matter of constitutional doctrine, however, one can declare with confidence that a President begins to exceed his authority if he willfully or recklessly moves the nation towards war…69 The implication seems to be that the President may not unilaterally threaten force in ways that are dramatically escalatory and could likely lead to war, or perhaps that the President may not unilaterally threaten the use of force that he does not have the authority to initiate unilaterally.70 Jefferson Powell, who generally takes a more expansive view than Henkin of the President’s war powers, argues by contrast that “[t]he ability to warn of, or threaten, the use of military force is an ordinary and essential element in the toolbox of that branch of government empowered to formulate and implement foreign policy.”71 For Powell, the President is constantly taking actions as part of everyday international relations that carry a risk of military escalation, and these are well-accepted as part of the President’s broader authority to manage, if not set, foreign policy. Such brief mentions are in recent times among the rare exceptions to otherwise barren constitutional discussion of presidential powers to threaten force. That the President’s authority to threaten force is so well-accepted these days as to seem self-evident is not just an academic phenomenon. It is also reflected in the legal debates among and inside all three branches of government. In 1989, Michael Reisman observed: Military maneuvers designed to convey commitment to allies or contingent threats to adversaries … are matters of presidential competence. Congress does not appear to view as within its bailiwick many low-profile contemporaneous expressions of gunboat diplomacy, i.e., the physical interposition of some U.S. war-making capacity as communication to an adversary of United States’ intentions and capacities to oppose it.72 This was and remains a correct description but understates the pattern of practice, insofar as even major and high-profile expressions of coercive diplomacy are regarded among all three branches of government as within presidential competence. In Dellums v. Bush – perhaps the most assertive judicial scrutiny of presidential power to use large-scale force abroad since the end of the Cold War – the district court dismissed on ripeness grounds congressmembers’ suit challenging President George H. W. Bush’s intended military operations against Iraq in 1991 and seeking to prevent him from initiating an offensive attack against Iraq without first securing explicit congressional authorization for such action.73 That at the time of the suit the President had openly threatened war – through ultimatums and deployment of several hundred thousand U.S. troops – but had not yet “committed to a definitive course of action” to carry out the threat meant there was no justiciable legal issue, held the court.74 The President’s threat of war did not seem to give the district court legal pause at all; quite the contrary, the mere threat of war was treated by the court as a non-issue entirely.75 There are several reasons why constitutional questions about threatened force have dropped out of legal discussions. First, the more politically salient debate about the President’s unilateral power to use force has probably swallowed up this seemingly secondary issue. As explained below, it is a mistake to view threats as secondary in importance to uses of force, but they do not command the same political attention and their impacts are harder to measure.76 Second, the expansion of American power after World War II, combined with the growth of peacetime military forces and a set of defense alliance commitments (developments that are elaborated below) make at least some threat of force much more common – in the case of defensive alliances and some deterrent policies, virtually constant – and difficult to distinguish from other forms of everyday diplomacy and security policy.77 Besides, for political and diplomatic reasons, presidents rarely threaten war or intervention without at least a little deliberate ambiguity. As historian Marc Trachtenberg puts it: “It often makes sense … to muddy the waters a bit and avoid direct threats.”78 Any legal lines one might try to draw (recall early attempts to restrict the President’s unilateral authority to alter the state of affairs along the peacetime-wartime continuum) have become blurrier and blurrier. In sum, if the constitutional power to threaten war ever posed a serious legal controversy, it does so no more. As the following section explains, however, threats of war and armed force have during most of our history become a greater and greater part of American grand strategy, defined here as long-term policies for using the country’s military and non-military power to achieve national goals. The prominent role of threatened force in U.S. strategy has become the focus of political scientists and other students of security strategy, crises, and responses – but constitutional study has not adjusted accordingly.79 C. Threats of Force and U.S. Grand Strategy While the Korean and Vietnam Wars were generating intense study among lawyers and legal scholars about constitutional authority to wage military actions abroad, during that same period many political scientists and strategists – economists, historians, statesmen, and others who studied international conflict – turned their focus to the role of threatened force as an instrument of foreign policy. The United States was building and sustaining a massive war-fighting apparatus, but its security policy was not oriented primarily around waging or winning wars but around deterring them and using the threat of war – including demonstrative military actions – to advance U.S. security interests. It was the potential of U.S. military might, not its direct application or engagement with the enemy, that would do much of the heavy lifting. U.S. military power would be used to deter the Soviet Union and other hostile states from taking aggressive action. It would be unsheathed to prompt them to back down over disputes. It would reassure allies that they could depend on U.S. help in defending themselves. All this required that U.S. willingness to go to war be credible in the eyes of adversaries and allies alike. Much of the early Cold War study of threatened force concerned nuclear strategy, and especially deterrence or escalation of nuclear war. Works by Albert Wohlstetter, Herman Kahn, and others not only studied but shaped the strategy of nuclear threats, as well as how to use limited applications of force or threats of force to pursue strategic interests in remote parts of the globe without sparking massive conflagrations.80 As the strategic analyst Bernard Brodie wrote in 1946, “Thus far the chief purpose of our military establishment has been to win wars. From now on its chief purpose must be to avert them.”81 Toward that end, U.S. government security and defense planners during this time focused heavily on preserving and improving the credibility of U.S. military threats – while the Soviet Union was doing likewise.82 The Truman administration developed a militarized version of containment strategy against the Soviet empire, emphasizing that stronger military capabilities were necessary to prevent the Soviets from seizing the initiative and to resist its aggressive probes: “it is clear,” according to NSC-68, the government document which encapsulated that strategy, “that a substantial and rapid building up of strength in the free world is necessary to support a firm policy intended to check and to roll back the Kremlin's drive for world domination.”83 The Eisenhower administration’s “New Look” policy and doctrine of “massive retaliation” emphasized making Western collective security both more effective and less costly by placing greater reliance on deterrent threats – including threatened escalation to general or nuclear war. As his Secretary of State John Foster Dulles explained, “[t]here is no local defense which alone will contain the mighty landpower of the Communist world. Local defenses must be reinforced by the further deterrent of massive retaliatory power.”84 As described in Evan Thomas’s recent book, Ike’s Bluff, Eisenhower managed to convince Soviet leaders that he was ready to use nuclear weapons to check their advance in Europe and elsewhere. In part due to concerns that threats of massive retaliation might be insufficiently credible in Soviet eyes (especially with respect to U.S. interests perceived as peripheral), the Kennedy administration in 1961 shifted toward a strategy of “flexible response,” which relied on the development of a wider spectrum of military options that could quickly and efficiently deliver varying degrees of force in response to foreign aggression.85 Throughout these periods, the President often resorted to discrete, limited uses of force to demonstrate U.S. willingness to escalate. For example, in 1961 the Kennedy administration (mostly successfully in the short-run) deployed intervention-ready military force immediately off the coast of the Dominican Republic to compel its government's ouster,86 and that same year it used military exercises and shows of force in ending the Berlin crisis;87 in 1964, the Johnson administration unsuccessfully used air strikes on North Vietnamese targets following the Tonkin Gulf incidents, failing to deter what it viewed as further North Vietnamese aggression.88 The point here is not the shifting details of U.S. strategy after World War II – during this era of dramatic expansion in asserted presidential war powers – but the central role of credible threats of war in it, as well as the interrelationship of plans for using force and credible threats to do so. Also during this period, the United States abandoned its long-standing aversion to “entangling alliances,”89 and committed to a network of mutual defense treaties with dependent allies. Besides the global collective security arrangement enshrined in the UN Charter, the United States committed soon after World War II to mutual defense pacts with, for example, groups of states in Western Europe (the North Atlantic Treaty Organization)90 and Asia (the Southeast Asia Treaty Organization,91 as well as a bilateral defense agreement with the Republic of Korea,92 Japan,93 and the Republic of China,94 among others). These alliance commitments were part of a U.S. effort to “extend” deterrence of Communist bloc aggression far beyond its own borders.95 “Extended deterrence” was also critical to reassuring these U.S. allies that their security needs would be met, in some instances to head off their own dangerous rearmament.96 Among the leading academic works on strategy of the 1960s and 70s were those of Thomas Schelling, who developed the theoretical structure of coercion theory, arguing that rational states routinely use the threat of military force – the manipulation of an adversary’s perceptions of future risks and costs with military threats – as a significant component of their diplomacy.97 Schelling distinguished between deterrence (the use of threats to dissuade an adversary from taking undesired action) and compellence (the use of threats to persuade an adversary to behave a certain way), and he distinguished both forms of coercion from brute force: “[B]rute force succeeds when it is used, whereas the power to hurt is most successful when held in reserve. It is the threat of damage to come that can make someone yield of comply. It is latent violence that can influence someone’s choice.”98 Alexander George, David Hall, and William Simons then led the way in taking a more empirical approach, reviewing case studies to draw insights about the success and failure of U.S. coercive threats, analyzing contextual variables and their effects on parties’ reactions to threats during crises. Among their goals was to generate lessons informed by history for successful strategies that combine diplomatic efforts with threats or demonstrations of force, recognizing that the United States was relying heavily on threatened force in addressing security crises. Coercive diplomacy – if successful – offered ways to do so with minimal actual application of military force.99 One of the most influential studies that followed was Force Without War: U.S. Armed Forces as a Political Instrument, a Brookings Institution study led by Barry Blechman and Stephen Kaplan and published in 1977.100 They studied “political uses of force”, defined as actions by U.S. military forces “as part of a deliberate attempt by the national authorities to influence, or to be prepared to influence, specific behavior of individuals in another nation without engaging in a continued contest of violence.”101 Blechman and Kaplan’s work, including their large data set and collected case studies, was important for showing the many ways that threatened force could support U.S. security policy. Besides deterrence and compellence, threats of force were used to assure allies (thereby, for example, avoiding their own drive toward militarization of policies or crises) and to induce third parties to behave certain ways (such as contributing to diplomatic resolution of crises). The record of success in relying on threatened force has been quite mixed, they showed. Blechman and Kaplan’s work, and that of others who built upon it through the end of the Cold War and the period that has followed,102 helped understand the factors that correlated with successful threats or demonstrations of force without resort or escalation to war, especially the importance of credible signals.103 After the Cold War, the United States continued to rely on coercive force – threatened force to deter or compel behavior by other actors – as a central pillar of its grand strategy. During the 1990s, the United States wielded coercive power with varied results against rogue actors in many cases that, without the overlay of superpower enmities, were considered secondary or peripheral, not vital, interests: Iraq, Somalia, Haiti, Bosnia, and elsewhere. For analysts of U.S. national security policy, a major puzzle was reconciling the fact that the United States possessed overwhelming military superiority in raw terms over any rivals with its difficult time during this era in compelling changes in their behavior.104 As Daniel Byman and I wrote about that decade in our study of threats of force and American foreign policy: U.S. conventional and nuclear forces dwarf those of any adversaries, and the U.S. economy remains the largest and most robust in the world. Because of these overwhelming advantages, the United States can threaten any conceivable adversary with little danger of a major defeat or even significant retaliation. Yet coercion remains difficult. Despite the United States’ lopsided edge in raw strength, regional foes persist in defying the threats and ultimatums brought by the United States and its allies. In confrontations with Somali militants, Serb nationalists, and an Iraqi dictator, the U.S. and allied record or coercion has been mixed over recent years…. Despite its mixed record of success, however, coercion will remain a critical element of U.S. foreign policy.105 One important factor that seemed to undermine the effectiveness of U.S. coercive threats during this period was that many adversaries perceived the United States as still afflicted with “Vietnam Syndrome,” unwilling to make good on its military threats and see military operations through.106 Since the turn of the 21st Century, major U.S. security challenges have included non-state terrorist threats, the proliferation of nuclear and other weapons of mass destruction (WMD), and rapidly changing power balances in East Asia, and the United States has accordingly been reorienting but retaining its strategic reliance on threatened force. The Bush Administration’s “preemption doctrine” was premised on the idea that some dangerous actors – including terrorist organizations and some states seeking WMD arsenals – are undeterrable, so the United States might have to strike them first rather than waiting to be struck.107 On one hand, this was a move away from reliance on threatened force: “[t]he inability to deter a potential attacker, the immediacy of today’s threats, and the magnitude of potential harm that could be caused by our adversaries’ choice of weapons, do not permit” a reactive posture.108 Yet the very enunciation of such a policy – that “[t]o forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act preemptively”109 – was intended to persuade those adversaries to alter their policies that the United States regarded as destabilizing and threatening. Although the Obama administration pulled back from this rhetoric and placed greater emphasis on international institutions, it has continued to rely on threatened force as a key pillar of its strategy with regard to deterring threats (such as aggressive Iranian moves), intervening in humanitarian crises (as in Libya), and reassuring allies.110 With regard to East Asia, for example, the credible threat of U.S. military force is a significant element of U.S. strategy for deterring Chinese and North Korean aggression as well as reassuring other Asian powers of U.S. protection, to avert a destabilizing arms race.111 D. The Disconnect Between Constitutional Discourse and Strategy There is a major disconnect between the decades of work by strategists and many political scientists on American security policy and practice since the Second World War and legal analysis and scholarship of constitutional war powers during that period. Lawyers and strategists have been relying on not only distinct languages but distinct logics of military force – in short, when it comes to using U.S. military power, lawyers think in terms of “going to war” while strategists focus on potential war and processes leading to it. These framings manifest in differing theoretical starting points for considering how exercises of U.S. military might affect war and peace, and they skew the empirical insights and normative prescriptions about Presidential power often drawn from their analyses. 1. Lawyers’ Misframing Lawyers’ focus on actual uses of force – especially engagements with enemy military forces – as constitutionally salient, rather than including threats of force in their understanding of modern presidential powers tilts analysis toward a one-dimensional strategic logic, rather than a more complex and multi-dimensional and dynamic logic in which the credible will to use force is as important as the capacity to do so. As discussed above, early American constitutional thinkers and practitioners generally wanted to slow down with institutional checks decisions to go to war, because they thought that would make war less likely. “To invoke a more contemporary image,” wrote John Hart Ely of their vision, “it takes more than one key to launch a missile: It should take quite a number to start a war.”112 They also viewed the exercise of military power as generally a ratchet of hostilities, whereby as the intensity of authorized or deployed force increased, so generally did the state of hostilities between the United States and other parties move along a continuum from peace to war.113 Echoes of this logic still reverberate in modern congressionalist legal scholarship: the more flexibly the President can use military force, the more likely it is that the United States will find itself in wars; better, therefore, to clog decisions to make war with legislative checks.114 Modern presidentialist legal scholars usually respond that rapid action is a virtue, not a vice, in exercising military force.115 Especially as a superpower with global interests and facing global threats, presidential discretion to take rapid military action – endowed with what Alexander Hamilton called “[d]ecision, activity, secrecy, and dispatch”116 – best protects American interests. In either case the emphasis tends overwhelmingly to be placed on actual military engagements with adversaries. Strategists and many political scientists, by contrast, view some of the most significant use of military power as starting well before armed forces clash – and including important cases in which they never actually do. Coercive diplomacy and strategies of threatened force, they recognize, often involve a set of moves and countermoves by opposing sides and third parties before or even without the violent engagement of opposing forces. It is often the parties’ perceptions of anticipated actions and costs, not the actual carrying through of violence, that have the greatest impact on the course of events and resolution or escalation of crises. Instead of a ratchet of escalating hostilities, the flexing of military muscle can increase as well as decrease actual hostilities, inflame as well as stabilize relations with rivals or enemies. Moreover, those effects are determined not just by U.S. moves but by the responses of other parties to them – or even to anticipated U.S. moves and countermoves.117 Indeed, as Schelling observed, strategies of brinkmanship sometimes operate by “the deliberate creation of a recognizable risk of war, a risk that one does not completely control.”118 This insight – that effective strategies of threatened force involve not only great uncertainty about the adversary’s responses but also sometimes involve intentionally creating risk of inadvertent escalation119 – poses a difficult challenge for any effort to cabin legally the President’s power to threaten force in terms of likelihood of war or some due standard of care.120 2. Lawyers’ Selection Problems Methodologically, a lawyerly focus on actual uses of force – a list of which would then commonly be used to consider which ones were or were not authorized by Congress – vastly undercounts the instances in which presidents wield U.S. military might. It is already recognized by some legal scholars that studying actual uses of force risks ignoring instances in which President contemplated force but refrained from using it, whether because of political, congressional, or other constraints.121 The point here is a different one: that some of the most significant (and, in many instances, successful) presidential decisions to threaten force do not show up in legal studies of presidential war powers that consider actual deployment or engagement of U.S. military forces as the relevant data set. Moreover, some actual uses of force, whether authorized by Congress or not, were preceded by threats of force; in some cases these threats may have failed on their own to resolve the crisis, and in other cases they may have precipitated escalation. To the extent that lawyers are interested in understanding from historical practice what war powers the political branches thought they had and how well that understanding worked, they are excluding important cases. Consider, as an illustration of this difference in methodological starting point, that for the period of 1946-1975 (during which the exercise of unilateral Presidential war powers had its most rapid expansion), the Congressional Research Service compilation of instances in which the United States has utilized military forces abroad in situations of military conflict or potential conflict to protect U.S. citizens or promote U.S. interests – which is often relied upon by legal scholars studying war powers – lists only about two dozen incidents.122 For the same time period, the Blechman and Kaplan study of political uses of force (usually threats) – which is often relied upon by political scientists studying U.S. security strategy – includes dozens more data-point incidents, because they divide up many military crises into several discrete policy decisions, because many crises were resolved with threat-backed diplomacy, and because many uses of force were preceded by overt or implicit threats of force.123 Among the most significant incidents studied by Blechman and Kaplan but not included in the Congressional Research Service compilation at all are the 1958-59 and 1961 crises over Berlin and the 1973 Middle East War, during which U.S. Presidents signaled threats of superpower war, and in the latter case signaled particularly a willingness to resort to nuclear weapons.124 Because the presidents did not in the end carry out these threats, these cases lack the sort of authoritative legal justifications or reactions that accompany actual uses of force. It is therefore difficult to assess how the executive branch and congress understood the scope of the President’s war powers in these cases, but historical inquiry would probably show the executive branch’s interpretation to be very broad, even to include full-scale war and even where the main U.S. interest at stake was the very credibility of U.S. defense commitments undergirding its grand strategy, not simply the interests specific to divided Germany and the Middle East region. Of course, one might argue that because the threatened military actions were never carried out in these cases, it is impossible to know if the President would have sought congressional authorization or how Congress would have reacted to the use of force; nonetheless, it is easy to see that in crises like these a threat by the President to use force, having put U.S. credibility on the line in addition to whatever other foreign policy stakes were at issues, would have put Congress in a bind. 3. Lawyers’ Mis-Assessment Empirically, analysis of and insights gleaned from any particular incident – which might then be used to evaluate the functional merits of presidential powers – looks very different if one focuses predominantly on the actual use of force instead of considering also the role of threatened force. Take for example, the Cuban Missile Crisis – perhaps the Cold War’s most dangerous event. To the rare extent that they consider domestic legal issues of this crisis at all, lawyers interested in the constitutionality of President Kennedy’s actions generally ask only whether he was empowered to initiate the naval quarantine of Cuba, because that is the concrete military action Kennedy took that was readily observable and that resulted in actual engagement with Soviet forces or vessels – as it happens, very minimal engagement.125 To strategists who study the crisis, however, the naval quarantine is not in itself the key presidential action; after all, as Kennedy and his advisers realized, a quarantine alone could not remove the missiles that were already in Cuba. The most consequential presidential actions were threats of military or even nuclear escalation, signaled through various means including putting U.S. strategic bombers on highest alert.126 The quarantine itself was significant not for its direct military effects but because of its communicative impact in showing U.S. resolve. If one is focused, as lawyers often are, on presidential military action that actually engaged the enemy in combat or nearly did, it is easy to dismiss this case as not very constitutionally significant. If one focuses on it, as strategists and political scientists often do, on nuclear brinkmanship, it is arguably the most significant historical exercise of unilateral presidential powers to affect war and peace.127 Considering again the 1991 Gulf War, most legal scholars would dismiss this instance as constitutionally a pretty uninteresting military conflict: the President claimed unilateral authority to use force, but he eventually sought and obtained congressional authorization for what was ultimately – at least in the short-run – a quite successful war. For the most part this case is therefore neither celebrated nor decried much by either side of legal war powers debates,128 though some congressionalist scholars highlight the correlation of congressional authorization for this war and a successful outcome.129 Political scientists look at the case differently, though. They often study this event not as a successful war but as failed coercive diplomacy, in that the United States first threatened war through a set of dramatically escalating steps that ultimately failed to persuade Saddam Hussein to withdraw from Kuwait.130 Some political scientists even see U.S. legal debate about military actions as an important part of this story, assessing that adversaries pay attention to congressional arguments and moves in evaluating U.S. resolve (an issue taken up in greater detail below) and that congressional opposition to Bush’s initial unilateralism in this case undermined the credibility of U.S. threats.131 Whether one sees the Gulf War as a case of (successful) war, as lawyers usually do, or (unsuccessful) threatened war, as political scientists usually do, colors how one evaluates the outcome and the credit one might attach to some factors such as vocal congressional opposition to initially-unilateral presidential moves. Notice also that legal analysis of Presidential authority to use force is sometimes thought to turn partly on the U.S. security interests at stake, as though those interests are purely contextual and exogenous to U.S. decision-making and grand strategy. In justifying President Obama’s 2011 use of force against the Libyan government, for example, the Justice Department’s Office of Legal Counsel concluded that the President had such legal authority “because he could reasonably determine that such use of force was in the national interest,” and it then went on to detail the U.S. security and foreign policy interests.132 The interests at stake in crises like these, however, are altered dramatically if the President threatens force: doing so puts the credibility of U.S. threats at stake, which is important not only with respect to resolving the crisis at hand but with respect to other potential adversaries watching U.S. actions.133 The President’s power to threaten force means that he may unilaterally alter the costs and benefits of actually using force through his prior actions.134 The U.S. security interests in carrying through on threats are partly endogenous to the strategy embarked upon to address crises (consider, for example, that once President George H.W. Bush placed hundred of thousands of U.S. troops in the Persian Gulf region and issued an ultimatum to Saddam Hussein in 1990, the credibility of U.S. threats and assurances to regional allies were put on the line).135 Moreover, interests at stake in any one crisis cannot simply be disaggregated from broader U.S. grand strategy: if the United States generally relies heavily on threats of force to shape the behavior of other actors, then its demonstrated willingness or unwillingness to carry out a threat and the outcomes of that action affect its credibility in the eyes of other adversaries and allies, too.136 It is remarkable, though in the end not surprising, that the executive branch does not generally cite these credibility interests in justifying its unilateral uses of force. It does cite when relevant the U.S. interest in sustaining the credibility of its formal alliance commitments or U.N. Security Council resolutions, as reasons supporting the President’s constitutional authority to use force.137 The executive branch generally refrains from citing the similar interests in sustaining the credibility of the President’s own threats of force, however, probably in part because doing so would so nakedly expose the degree to which the President’s prior unilateral strategic decisions would tie Congress’s hands on the matter. \* \* \* In sum, lawyers’ focus on actual uses of force – usually in terms of armed clashes with an enemy or the placement of troops into hostile environments – does not account for much vaster ways that President’s wield U.S. military power and it skews the claims legal scholars make about the allocation of war powers between the political branches. A more complete account of constitutional war powers should recognize the significant role of threatened force in American foreign policy. II. Democratic Checks on Threatened Force The previous Parts of this Article showed that, especially since the end of World War II, the United States has relied heavily on strategies of threatened force in wielding its military might – for which credible signals are a necessary element – and that the President is not very constrained legally in any formal sense in threatening war. Drawing on recent political science scholarship, this Part takes some of the major questions often asked by students of constitutional war powers with respect to the actual use of force and reframes them in terms of threatened force. First, as a descriptive matter, in the absence of formal legal checks on the President’s power to threaten war, is the President nevertheless informally but significantly constrained by democratic institutions and processes, and what role does Congress play in that constraint? Second, as a normative matter, what are the strategic merits and drawbacks of this arrangement of democratic institutions and constraints with regard to strategies of threatened force? Third, as a prescriptive matter, although it is not really plausible that Congress or courts would ever erect direct legal barriers to the President’s power to threaten war, how might legal reform proposals to more strongly and formally constrain the President’s power to use force indirectly impact his power to threaten it effectively? For reasons discussed below, I do not consider whether Congress could legislatively restrict directly the President’s power to threaten force or war; in short, I set that issue aside because assuming that were constitutionally permissible, even ardent congressionalists have exhibited no interest in doing so, and instead have focused on legally controlling the actual use of force. Political science insights that bear on these questions emerge from several directions. One is from studies of Congress’ influence on use of force decisions, which usually assume that Congress’s formal legislative powers play only a limited role in this area, and the effects of this influence on presidential decision-making about threatened force. Another is international relations literature on international bargaining138 as well as literature on the theory of democratic peace, the notion that democracies rarely, if ever, go to war with one another.139 In attempting to explain the near-absence of military conflicts between democracies, political scientists have examined how particular features of democratic governments – electoral accountability, the institutionalized mobilization of political opponents, and the diffusion of decision-making authority regarding the use of force among executive and legislative branches – affect decision-making about war.140 These and other studies, in turn, have led some political scientists (especially those with a rational choice theory orientation) to focus on how those features affect the credibility of signals about force that governments send to adversaries in crises.141 My purpose in addressing these questions is to begin painting a more complete and detailed picture of the way war powers operate, or could operate, than one sees when looking only at actual wars and use of force. This is not intended to be a comprehensive account but an effort to synthesize some strands of scholarship from other fields regarding threatened force to inform legal discourse about how war powers function in practice and the strategic implications of reform. The answers to these questions also bear on raging debates among legal scholars on the nature of American executive power and its constraint by law. Initially they seem to support the views of those legal scholars who have long believed that in practice law no longer seriously binds the President with respect to war-making.142 That view has been taken even further recently by Eric Posner and Adrian Vermeule, who argue that “[l]aw does little constraint the modern executive” at all, but also observe that “politics and public opinion” operate effectively to cabin executive powers.143 The arguments offered here, however, do more to support the position of those legal scholars who describe a more complex relationship between law and politics, including that law is constitutive of the processes of political struggle.144 That law helps constitute the processes of political struggles is true of any area of public policy, though, and what is special here is the added importance of foreign audiences – including adversaries and allies, alike – observing and reacting to those politics, too. Democratic Constraints on the Power to the Threaten Force Whereas most lawyers usually begin their analysis of the President’s and Congress’s war powers by focusing on their formal legal authorities, political scientists usually take for granted these days that the President is – in practice – the dominant branch with respect to military crises and that Congress wields its formal legislative powers in this area rarely or in only very limited ways. A major school of thought, however, is that congressional members nevertheless wield significant influence over decisions about force, and that this influence extends to threatened force, so that Presidents generally refrain from threats that would provoke strong congressional opposition. Even without any serious prospect for legislatively blocking the President’s threatened actions, Congress under certain conditions can loom large enough to force Presidents to adjust their policies; even when it cannot, congressional members can oblige the President expend lots of political capital. As Jon Pevehouse and William Howell explain: When members of Congress vocally oppose a use of force, they undermine the president’s ability to convince foreign states that he will see a fight through to the end. Sensing hesitation on the part of the United States, allies may be reluctant to contribute to a military campaign, and adversaries are likely to fight harder and longer when conflict erupts— thereby raising the costs of the military campaign, decreasing the president’s ability to negotiate a satisfactory resolution, and increasing the probability that American lives are lost along the way. Facing a limited band of allies willing to participate in a military venture and an enemy emboldened by domestic critics, presidents may choose to curtail, and even abandon, those military operations that do not involve vital strategic interests. 145 This statement also highlights the important point, alluded to earlier, that force and threatened force are not neatly separable categories. Often limited uses of force are intended as signals of resolve to escalate, and most conflicts involve bargaining in which the threat of future violence – rather than what Schelling calls “brute force”146 – is used to try to extract concessions. The formal participation of political opponents in legislative bodies provides them with a forum for registering dissent to presidential policies of force through such mechanisms floor statements, committee oversight hearings, resolution votes, and funding decisions.147 These official actions prevent the President “from monopolizing the nation’s political discourse” on decisions regarding military actions can thereby make it difficult for the President to depart too far from congressional preferences.148 Members of the political opposition in Congress also have access to resources for gathering policy relevant information from the government that informs their policy preferences. Their active participation in specialized legislative committees similarly gives opponent party members access to fact-finding resources and forums for registering informed dissent from decisions within the committee’s purview.149 As a result, legislative institutions within democracies can enable political opponents to have a more immediate and informed impact on executive’s decisions regarding force than can opponents among the general public. Moreover, studies suggest that Congress can actively shape media coverage and public support for a president’s foreign policy engagements.150 In short, these findings among political scientists suggest that, even without having to pass legislation or formally approve of actions, Congress often operates as an important check on threatened force by providing the president’s political opponents with a forum for registering dissent from the executive’s decisions regarding force in ways that attach domestic political costs to contemplated military actions or even the threats to use force. Under this logic, Presidents, anticipating dissent, will be more selective in issuing¶ threats in the first place, making only those commitments that would not incite¶ widespread political opposition should the threat be carried through.151 Political¶ opponents within a legislature also have few electoral incentives to collude in an¶ executive’s bluff, and they are capable of expressing opposition to a threatened use of¶ force in ways that could expose the bluff to a threatened adversary.152 This again narrows¶ the President’s range of viable policy options for brandishing military force. Counter-intuitively, given the President’s seemingly unlimited and unchallenged¶ constitutional power to threaten war, it may in some cases be easier for members of¶ Congress to influence presidential decisions to threaten military action than presidential¶ war decisions once U.S. forces are already engaged in hostilities. It is widely believed¶ that once U.S. armed forces are fighting, congress members’ hands are often tied: policy¶ opposition at that stage risks being portrayed as undermining our troops in the field.153¶ Perhaps, it could be argued, the President takes this phenomenon into account and¶ therefore discounts political opposition to threatened force; he can assume that such¶ opposition will dissipate if he carries it through. Even if that is true, before that point¶ occurs, however, members of Congress may have communicated messages domestically¶ and communicated signals abroad that the President will find difficult to counter.154 The bottom line is that a body of recent political science, while confirming the¶ President’s dominant position in setting policy in this area, also reveals that policymaking¶ with respect to threats of force is significantly shaped by domestic politics and¶ that Congress is institutionally positioned to play a powerful role in influencing those¶ politics, even without exercising its formal legislative powers. Given the centrality of¶ threatened force to U.S. foreign policy strategy and security crises, this suggests that the¶ practical war powers situation is not so imbalanced toward the President as many assume. B. Democratic Institutions and the Credibility of Threats A central question among constitutional war powers scholars is whether robust¶ checks – especially congressional ones – on presidential use of force lead to “sound”¶ policy decision-making. Congressionalists typically argue that legislative control over¶ war decisions promotes more thorough deliberation, including more accurate weighing of¶ consequences and gauging of political support of military action.155 Presidentialists¶ usually counter that the executive branch has better information and therefore better¶ ability to discern the dangers of action or inaction, and that quick and decisive military¶ moves are often required to deal with security crises.156 If we are interested in these sorts of functional arguments, then reframing the¶ inquiry to include threatened force prompts critical questions whether such checks also¶ contribute to or detract from effective deterrence and coercive diplomacy and therefore¶ positively or negatively affect the likelihood of achieving aims without resort to war.¶ Here, recent political science provides some reason for optimism, though the scholarship¶ in this area is neither yet well developed nor conclusive. To be sure, “soundness” of policy with respect to force is heavily laden with¶ normative assumptions about war and the appropriate role for the United States in the¶ broader international security system, so it is difficult to assess the merits and¶ disadvantages of constitutional allocations in the abstract. That said, whatever their¶ specific assumptions about appropriate uses of force in mind, constitutional war powers¶ scholars usually evaluate the policy advantages and dangers of decision-making¶ allocations narrowly in terms of the costs and outcomes of actual military engagements¶ with adversaries. The importance of credibility to strategies of threatened force adds important new¶ dimensions to this debate. On the one hand, one might intuitively expect that robust democratic checks would generally be ill-suited for coercive threats and negotiations –¶ that institutional centralization and secrecy of decision-making might better equip nondemocracies¶ to wield threats of force. As Quincy Wright speculated in 1944, autocracies¶ “can use war efficiently and threats of war even more efficiently” than democracies,157¶ especially the American democracy in which vocal public and congressional opposition¶ may undermine threats.158 Moreover, proponents of democratic checks on war powers¶ usually assume that careful deliberation is a virtue in preventing unnecessary wars, but¶ strategists of deterrence and coercion observe that perceived irrationality is sometimes¶ important in conveying threats: “don’t test me, because I might just be crazy enough to¶ do it!”159 On the other hand, some political scientists have recently called into question this¶ view and concluded that the institutionalization of political contestation and some¶ diffusion of decision-making power in democracies of the kind described in the previous¶ section make threats to use force rare but especially credible and effective in resolving¶ international crises without actual resort to armed conflict. In other words, recent¶ arguments in effect turn some old claims about the strategic disabilities of democracies¶ on their heads: whereas it used to be generally thought that democracies were ineffective¶ in wielding threats because they are poor at keeping secrets and their decision-making is¶ constrained by internal political pressures, a current wave of political science accepts this¶ basic description but argues that these democratic features are really strategic virtues.160 Rationalist models of crisis bargaining between states assume that because war is¶ risky and costly, states will be better off if they can resolve their disputes through¶ bargaining rather than by enduring the costs and uncertainties of armed conflict.161¶ Effective bargaining during such disputes – that which resolves the crisis without a resort¶ to force – depends largely on states’ perceptions of their adversary’s capacity to wage an¶ effective military campaign and its willingness to resort to force to obtain a favorable¶ outcome. A state targeted with a threat of force, for example, will be less willing to resist¶ the adversary’s demands if it believes that the adversary intends to wage and is capable of¶ waging an effective military campaign to achieve its ends. In other words, if a state¶ perceives that the threat from the adversary is credible, that state has less incentive to¶ resist such demands if doing so will escalate into armed conflict. The accuracy of such perceptions, however, is often compromised by¶ informational asymmetries that arise from private information about an adversary’s¶ relative military capabilities and resolve that prevents other states from correctly¶ assessing another states’ intentions, as well as by the incentives states have to¶ misrepresent their willingness to fight – that is, to bluff.162 Informational asymmetries¶ increase the potential for misperception and thereby make war more likely; war,¶ consequentially, can be thought of in these cases as a “bargaining failure.”163 Some political scientists have argued in recent decades – contrary to previously common wisdom – that features and constraints of democracies make them better suited than non-democracies to credibly signal their resolve when they threaten force. To bolster their bargaining position, states will seek to generate credible signals of their resolve by taking actions that can enhance the credibility of such threats, such as mobilizing military forces or making “hand-tying” commitments from which leaders cannot back down without suffering considerable political costs domestically.164 These domestic audience costs, according to some political scientists, are especially high for leaders in democratic states, where they may bear these costs at the polls.165 Given the potentially high domestic political and electoral repercussions democratic leaders face from backing down from a public threat, they have considerable incentives to refrain from bluffing. An adversary that understands these political vulnerabilities is thereby more likely to perceive the threats a democratic leader does issue as highly credible, in turn making it more likely that the adversary will yield.166 Other scholars have recently pointed to the special role of legislative bodies in signaling with regard to threatened force. This is especially interesting from the perspective of constitutional powers debates, because it posits a distinct role for Congress – and, again, one that does not necessarily rely on Congress’s ability to pass binding legislation that formally confines the President. Kenneth Schultz, for instance, argues that the open nature of competition within democratic societies ensures that the interplay of opposing parties in legislative bodies over the use of force is observable not just to their domestic publics but to foreign actors; this inherent transparency within democracies – magnified by legislative processes – provides more information to adversaries regarding the unity of domestic opponents around a government’s military and foreign policy decisions.167 Political opposition parties can undermine the credibility of some threats by the President to use force if they publicly voice their opposition in committee hearings, public statements, or through other institutional mechanisms. Furthermore, legislative processes – such as debates and hearings – make it difficult to conceal or misrepresent preferences about war and peace. Faced with such institutional constraints, Presidents will incline to be more selective about making such threats and avoid being undermined in that way.168 This restraining effect on the ability of governments to issue threats simultaneously makes those threats that the government issues more credible, if an observer assumes that the President would not be issuing it if he anticipated strong political opposition. Especially when members of the opposition party publicly support an executive’s threat to use force during a crisis, their visible support lends additional credibility to the government’s threat by demonstrating that political conditions domestically favor the use of force should it be necessary.169 In some cases, Congress may communicate greater willingness than the president to use force, for instance through non-binding resolutions.170 Such powerful signals of resolve should in theory make adversaries more likely to back down. The credibility-enhancing effects of legislative constraints on threats are subject to dispute. Some studies question the assumptions underpinning theories of audience costs – specifically the idea that democratic leaders suffer domestic political costs to failing to make good on their threats, and therefore that their threats are especially credible171 – and others question whether the empirical data supports claims that democracies have credibility advantages in making threats.172 Other scholars dispute the likelihood that leaders will really be punished politically for backing down, especially if the threat was not explicit and unambiguous or if they have good policy reasons for doing so.173 Additionally, even if transparency in democratic institutions allows domestic dissent from threats of force to be visible to foreign audiences, it is not clear that adversaries would interpret these mechanisms as political scientists expect in their models of strategic interaction, in light of various common problems of misperception in international relations.174 These disputes are not just between competing theoretical models but also over the links between any of the models and real-world political behavior by states. At this point there remains a dearth of good historical evidence as to how foreign leaders interpret political maneuvers within Congress regarding threatened force. Nevertheless, at the very least, strands of recent political science scholarship cast significant doubt on the intuition that democratic checks are inherently disadvantageous to strategies of threatened force. Quite the contrary, they suggest that legislative checks – or, indeed, even the signaling functions that Congress is institutionally situated to play with respect to foreign audiences interpreting U.S. government moves – can be harnessed in some circumstances to support such strategies. C. Legal Reform and Strategies of Threatened Force Among legal scholars of war powers, the ultimate prescriptive question is whether the President should be constrained more formally and strongly than he currently is by legislative checks, especially a more robust and effective mandatory requirement of congressional authorization to use force. Calls for reform usually take the form of narrowing and better enforcement (by all three branches of government) of purported constitutional requirements for congressional authorization of presidential uses of force or revising and enforcing the War Powers Resolutions or other framework legislation requiring express congressional authorization for such actions.175 As applied to strategies of threatened force, generally under these proposals the President would lack authority to make good on them unilaterally (except in whatever narrow circumstances for which he retains his own unilateral authority, such as deterring imminent attacks on the United States). Whereas legal scholars are consumed with the internal effects of war powers law, such as whether and when it constrains U.S. government decision-making, the analysis contained in the previous section shifts attention externally to whether and when U.S. law might influence decision-making by adversaries, allies, and other international actors. In prescriptive terms, if the President’s power to use force is linked to his ability to threaten it effectively, then any consideration of war powers reform on policy outcomes and longterm interests should include the important secondary effects on deterrent and coercive strategies – and how U.S. legal doctrine is perceived and understood abroad.176 Would stronger requirements for congressional authorization to use force reduce a president’s opportunities for bluffing, and if so would this improve U.S. coercive diplomacy by making ensuing threats more credible? Or would it undermine diplomacy by taking some threats off the table as viable policy options? Would stronger formal legislative powers with respect to force have significant marginal effects on the signaling effects of dissent within Congress, beyond those effects already resulting from open political discourse? These are difficult questions, but the analysis and evidence above helps generate some initial hypotheses and avenues for further research and analysis. One might ask at this point why, though, having exposed as a hole in war powers legal discourse the tendency to overlook threatened force, this Article does not take up whether Congress should assert some direct legislative control of threats – perhaps statutorily limiting the President’s authority to make them or establishing procedural conditions like presidential reporting requirements to Congress. This Article puts such a notion aside for several reasons. First, for reasons alluded to briefly above, such limits would be very constitutionally suspect and difficult to enforce.177 Second, even the most ardent war-power congressionalists do not contemplate such direct limits on the President’s power to threaten; they are not a realistic option for reform. Instead, this Article focuses on the more plausible – and much more discussed – possibility of strengthening Congress’s power over the ultimate decision whether to use force, but augments the usual debate over that question with appreciation for the importance of credible threats. A claim previously advanced from a presidentialist perspective is that stronger legislative checks on war powers is harmful to coercive and deterrent strategies, because it establishes easily-visible impediments to the President’s authority to follow through on threats. This was a common policy argument during the War Powers Resolution debates in the early 1970s. Eugene Rostow, an advocate inside and outside the government for executive primacy, remarked during consideration of legislative drafts that any serious restrictions on presidential use of force would mean in practice that “no President could make a credible threat to use force as an instrument of deterrent diplomacy, even to head off explosive confrontations.”178 He continued: In the tense and cautious diplomacy of our present relations with the Soviet Union, as they have developed over the last twenty-five years, the authority of the President to set clear and silent limits in advance is perhaps the *most* important of all the powers in our constitutional armory to prevent confrontations that could carry nuclear implications. … [I]t is the diplomatic power the President needs most under the circumstance of modern life—the power to make a credible threat to use force in order to prevent a confrontation which might escalate.179 In his veto statement on the War Powers Resolution, President Nixon echoed these concerns, arguing that the law would undermine the credibility of U.S. deterrent and coercive threats in the eyes of both adversaries and allies – they would know that presidential authority to use force would expire after 60 days, so absent strong congressional support they could assume U.S. withdrawal at that point.180 In short, those who oppose tying the president’s hands with mandatory congressional authorization requirements to use force sometimes argue that doing so incidentally and dangerously ties his hands in threatening it. A critical assumption here is that presidential flexibility, preserved in legal doctrine, enhances the credibility of presidential threats to escalate.

# Accountability

#### Pakistan instability is inevitable- drones aren’t decisive

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Speaking from Islamabad, U.S. Secretary of State John Kerry recently hinted at the possibility of ending the use of the drone in Pakistan. Reflecting an earlier speech by President Obama at the National Defense University in Washington, DC, Secretary Kerry stated, “I think the programme will end as we have eliminated most of the threat and continue to eliminate it.” He continued, “I think the President has a very real timeline and we hope it’s going to be very, very soon.”¶ The drone campaign in the Tribal Areas of Pakistan, primarily in Waziristan, has become a flashpoint for the increasingly poor relations between Pakistan and the United States in recent years and a focus of Pakistani politics, with many major candidates in the recent elections campaigning against their use including the new Prime Minister Nawaz Sharif.[1] While the cessation of drone strikes will be a positive step towards improving relations between these two countries, something which will be vital to the Americans as they withdraw from Afghanistan, the use of the drone is but one small part of a much larger problem—the conflict between the central government and tribal periphery. It is this conflict which drives much of the violence being witnessed throughout the country.¶ While the drone strikes exacerbate the violence in this northwestern periphery, ceasing the strikes will do little to resolve it. Only by addressing the structural breakdown between the centre and periphery and the deteriorating law and order situation can Pakistan have any respite from the violence which has plagued the country for almost a decade. This should be the first priority for Nawaz Sharif and the new government in the Tribal Areas.¶ The Tribal Areas of Pakistan are a region of extremes: high mountains, baking deserts, harsh winters, and the fiercest of the Pashtun tribes which populate Afghanistan and northwest Pakistan. Known as the land of riwaj, or tribal custom, the Tribal Areas have been outside of the control of the central government since the era of the Mughal rulers and the British Raj. During the time of British rule, government authority effectively extended only hundred yards on either side of the road.[A1] Tribesmen conducted their lives according to their tribal code of honor and revenge, Pashtunwali, rather than a legal or civil code. The tribes were able to maintain stability and order through the interaction of the three pillars of authority: the council of elders, or jirga, religious leaders acting as mediators, and the central government representative, the Political Agent. It was the often fluid relationship between these three positions which was able to check the violent elements of society before lengthy blood feuds and tribal wars began.[2¶ Over the past decade, it was a combination of factors that led to the instability: drone strikes, Pakistani military actions, and the dreaded suicide bombers. The Pakistani military invasion of 2004 in the Tribal Areas, the largest since the military garrisons were withdrawn by M.A. Jinnah in 1947, under the auspices of catching fleeing militants from Afghanistan sparked the first violent responses from the Tribal Areas. The military invasion was followed shortly by the first drone strikes targeting the leaders of the local Taliban organizations in Waziristan.¶ And the pace of the violence across Pakistan quickened after the 2007 Red Mosque incident in which Pakistani commandos stormed the mosque complex. Students had barricaded themselves inside after detaining individuals for being “un-Islamic” and setting up sharia courts. A large number of them were killed including a number of female students. A string of suicide bombings and other revenge attacks quickly followed with the Pakistani military continuing its operations in the Tribal Areas.[3]¶ The Tehrik-e-Taliban Pakistan (TTP), the fiercest of the Taliban groups, was formed in Waziristan in the wake of the Red Mosque attack. Its first targets were the remnants of the traditional pillars of authority who could challenge their authority, with elders, religious leaders, and political officers being killed by suicide bombers or fleeing the Tribal Areas. It was now the TTP who filled the vacuum left by the destruction of the three pillars, the very structure which traditionally checked such men of violence. The conflict in Waziristan has been characterized by a cycle of strike and counterstrike between the TTP and the Pakistani military.[4]¶ Drone strikes were occurring with increased frequency in this chaotic environment, reaching their peak in 2010. The drone only made the conflict between centre and periphery worse, with increasing reports of innocent people being killed. The TTP views the Pakistan government as complicit in the strikes; a view confirmed recently in an interview with former President Pervez Musharraf. Many of the suicide bombings in Pakistan are in revenge for the drone strikes, according to statements made by the TTP.[5] And all the while it is the innocent tribesmen, many of whom have fled the region as destitute refugees, who suffer the most.¶ Neither the use of the drone or the cessation of the drone strikes is a solution to the violence in the Tribal Areas. The near daily attacks by militant groups in recent months, despite nearly a decade of drone strikes, is proof that the use of the drone is doing little to abate the violence and further proof that the US continues to misunderstand the turmoil in the Tribal Areas. The resentment and anger aroused by the drone and the many innocent deaths that it causes ripples throughout a population already under siege by the actions of its own government and groups of violence from its own tribal population.¶ Yet peace will never come to the Tribal Areas until the underlying cause of the turmoil is addressed –the structural breakdown between center and periphery. In order to check the violence, the local administrative structure working with traditional tribal leaders, through which law and order is maintained, needs to be reconstructed and supported, an argument made in Akbar Ahmed’s latest book The Thistle and the Drone which is based on 40 case studies of tribal societies across the Muslim world. And only when such a structure is in place can Pakistan begin to address the other ills of tribal society, such as the lack of development, womens rights, and education (female literacy rates in the Tribal Areas are essentially zero[6]). To attempt to address these substantive issues without an administrative structure in place first is letting the cart get in front of the horse.¶ As the US increases its use of the drone in Yemen and in other tribal societies, it should learn the lessons from the failed drone campaign in Pakistan. Such use of force only increases the tempo of the violence and does nothing to address the underlying causes, creating more enemies than it can eliminate. Only by working towards long-term, holistic, and political solutions will peace come to these troubled peripheries in the Muslim world.

#### No AQAP impact- attacks fail

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Last week, the US State Department closed and evacuated 19 of its embassies, and issued a worldwide travel alert based on intelligence concerning a terrorist organization based in Yemen. Many Americans are asking what this means. Is an attack on US soil imminent?¶ While nothing is certain, of course, it is unlikely that such an attack would take place in the United States, or even outside of Yemen.¶ The intelligence seems to be reliable. But individual data points can be exaggerated or ignored, depending on the domestic political environment of the time. In this case, the State Department acted due to “increased chatter” that it monitored among terrorist groups. Intelligence officials highlighted one communication in particular, in which Al Qaeda leader Ayman al-Zawahiri gave his blessing to an attack proposed by Nasser al-Wuhayshi. Wuhayshi is the leader of Al Qaeda in the Arabian Peninsula—a sort of “franchise affiliate” based in Yemen, not to be confused with the central Al Qaeda organization.¶ Such information certainly warrants our attention. But talk is cheap, and it is critical that we don’t give terrorist organizations more credit than they are worth. In order to understand what a terrorist organization is truly capable of, we must look at its past behavior. In this case, Al Qaeda in the Arabian Peninsula is a deadly organization within its own borders, but it has not demonstrated that it possesses the means to successfully carry out an attack on US soil. The one known attempt (carried out by the so-called “underwear bomber”) failed due to incompetence — the device did not properly detonate.¶ Let’s look at the data: AQAP has carried out 39 suicide attacks through 2012, with only one taking place outside of Yemen (just across the border in Jeddah, Saudi Arabia). Suicide attacks represent precisely the sort of attack we would fear—they are far more deadly than any other type. Now, AQAP has certainly proven itself capable of killing foreigners within its own borders, and so we should absolutely take the intercepted communication seriously with respect to our embassy in Yemen. But this is a far cry from being able to carry out an attack on foreign soil.¶ Consider 9/11, for instance, which obviously we failed to prevent. This failure was not a tactical one, or even a failure to “connect the dots.” Rather, it was a failure to properly assess the threat. In fact, a memo stating “Bin Laden determined to attack US” made it to the White House by early August, 2001— the intelligence was there, but it was simply not given its due credibility or seriousness. The table to the right illustrates this point.¶ Clearly, Al Qaeda proved itself capable of attacking the United States across multiple borders long before 2001. But AQAP has not demonstrated this capability, and “increased chatter” among its leaders, no matter how heavy, is simply not enough evidence to be overly-concerned, unless the government has not revealed other critical details. Even if Zawahiri were directing the attack—which US intelligence officials confirmed he was not—the main Al Qaeda group (now based in Pakistan) has not carried out a successful major attack on Western soil since the London bombings in 2005. Ayman Al-Zawahiri giving his blessing to AQAP leaders only proves how weak the main Al Qaeda group really is.¶ What does this mean from a policy perspective? Has the Obama administration acted correctly? Even if not, perhaps we should be thankful that it “over-assessed” the threat. Better safe than sorry, right?¶ Not exactly. While we should applaud our government for doing everything it can to keep us safe, we can still expect better. It is not a question of whether we over-prepare, but whether we use our intelligence as wisely and efficiently as possible. This means systematically using tactical intelligence by examining it through the lens of past strategic behavior.¶ Of course there will be some terrorist organizations that are so new that we won’t have much past strategic behavior to study. In those circumstances, we must rely on judgment of short-term tactical intelligence. But most cases are in the “muddy middle” — where there is a group that has existed for at least several years, we need to qualify the tactical intelligence based on the demonstrated attack pattern of the group. We shouldn’t assume every group is capable of a major attack on US soil.¶ Critics might point to Umar Farouk Abdulmutallab’s attempted bombing of a passenger plane over Detroit in 2009 as an example of AQAP’s ability to attack US soil. The attack wasn’t successful, but not on account of American security — the device simply didn’t detonate.¶ Terrorism is not baseball, where a .333 batting average is considered successful, and where there are opportunities for multiple “at-bats.” Globally ambitious terrorist organizations thrive on the element of surprise. A single failed attempt — as in 2009 — prompts a violent response from the target nation to neutralize any future threats. That is exactly what the United States did in that case —by introducing full-body scans to airport security to detect precisely the type of device Abdulmutallab used, and by assassinating AQAP leader Anwar Al-Awlaki via drone strikes.¶ If the attempted 2009 bombing was so easy, AQAP would have sent another bomber in Abdulmutallab’s wake, or maybe three or four with him on the same day. The very fact that the device did not detonate does not breed confidence in AQAP’s ability to carry out a successful attack.¶ It is time for a thorough reassessment of our terrorist alert policies. We should absolutely appreciate our government’s ability to recognize terrorist threats. But a more specific alert policy based on an organization’s past behavior would save time and effort, while preserving peace of mind.

#### No Yemen blowback- on-site studies prove economics outweigh

**Swift ‘12** [Christopher, PhD in Politics and International Studies from the University of Cambridge, term member of the Council on Foreign Relations, a member of the American Society of International Law, Adjunct Professor of National Security Studies at Georgetown University and a Fellow at the University of Virginia Law School’s Center for National Security Law, served in the U.S. Treasury Department’s Office of Foreign Assets Control, where he investigated international transactions involving terrorist syndicates, weapons proliferators, and other sanctioned entities, served as an International Law Fellow at the U.S. Commission on International Religious Freedom, “The Drone Blowback Fallacy,” July 1, <http://christopher-swift.com/publications/the-drone-blowback-fallacy>]

Critics argue that drone strikes create new adversaries and drive al Qaeda’s recruiting. As the Yemeni youth activist Ibrahim Mothana recently wrote in The New York Times, “Drone strikes are causing more and more Yemenis to hate America and join radical militants; they are not driven by ideology but rather by a sense of revenge and despair.” The Washington Post concurs. In May, it reported that the “escalating campaign of U.S. drone strikes [in Yemen] is stirring increasing sympathy for al Qaeda-linked militants and driving tribesmen to join a network linked to terrorist plots against the United States.” The ranks of al Qaeda in the Arabian Peninsula (AQAP) have tripled to 1,000 in the last three years, and the link between its burgeoning membership, U.S. drone strikes, and local resentment seems obvious.¶ Last month, I traveled to Yemen to study how AQAP operates and whether the conventional understanding of the relationship between drones and recruitment is correct. While there, I conducted 40 interviews with tribal leaders, Islamist politicians, Salafist clerics, and other sources. These subjects came from 14 of Yemen’s 21 provinces, most from rural regions. Many faced insurgent infiltration in their own districts. Some of them were actively fighting AQAP. Two had recently visited terrorist strongholds in Jaar and Zinjibar as guests. I conducted each of these in-depth interviews using structured questions and a skilled interpreter. I have withheld my subjects’ names to protect their safety — a necessity occasioned by the fact that some of them had survived assassination attempts and that others had recently received death threats.¶ These men had little in common with the Yemeni youth activists who capture headlines and inspire international acclaim. As a group, they were older, more conservative, and more skeptical of U.S. motives. They were less urban, less wealthy, and substantially less secular. But to my astonishment, none of the individuals I interviewed drew a causal relationship between U.S. drone strikes and al Qaeda recruiting. Indeed, of the 40 men in this cohort, only five believed that U.S. drone strikes were helping al Qaeda more than they were hurting it.¶ Al Qaeda exploits U.S. errors, to be sure. As the Yemen scholar Gregory Johnsen correctly observes, the death of some 40 civilians in the December 2009 cruise missile strike on Majala infuriated ordinary Yemenis and gave AQAP an unexpected propaganda coup. But the fury produced by such tragedies is not systemic, not sustained, and, ultimately, not sufficient. As much as al Qaeda might play up civilian casualties and U.S. intervention in its recruiting videos, the Yemeni tribal leaders I spoke to reported that the factors driving young men into the insurgency are overwhelmingly economic.¶ From al Hudaydah in the west to Hadhramaut in the east, AQAP is building complex webs of dependency within Yemen’s rural population. It gives idle teenagers cars, khat, and rifles — the symbols of Yemeni manhood. It pays salaries (up to $400 per month) that lift families out of poverty. It supports weak and marginalized sheikhs by digging wells, distributing patronage to tribesmen, and punishing local criminals. As the leader of one Yemeni tribal confederation told me, “Al Qaeda attracts those who can’t afford to turn away.”¶ Religious figures echoed these words. Though critical of the U.S. drone campaign, none of the Islamists and Salafists I interviewed believed that drone strikes explain al Qaeda’s burgeoning numbers. “The driving issue is development,” an Islamist parliamentarian from Hadramout province said. “Some districts are so poor that joining al Qaeda represents the best of several bad options.” (Other options include criminality, migration, and even starvation.) A Salafi scholar engaged in hostage negotiations with AQAP agreed. “Those who fight do so because of the injustice in this country,” he explained. “A few in the north are driven by ideology, but in the south it is mostly about poverty and corruption.”¶ Despite Yemenis’ antipathy toward drones, my conversations also revealed a surprising degree of pragmatism. Those living in active conflict zones drew clear distinctions between earlier U.S. operations, such as the Majala bombing, and more recent strikes on senior al Qaeda figures. “Things were very bad in 2009,” a tribal militia commander from Abyan province told me, “but now the drones are seen as helping us.” He explained that Yemenis could “accept [drones] as long as there are no more civilian casualties.” An Islamist member of the separatist al-Harak movement offered a similar assessment. “Ordinary people have become very practical about drones,” he said. “If the United States focuses on the leaders and civilians aren’t killed, then drone strikes will hurt al Qaeda more than they help them.”¶ Some of the men I interviewed admitted that they had changed their minds about drone strikes. Separatists in Aden who openly derided AQAP as a proxy of Yemen’s recently deposed president, Ali Abdullah Saleh, privately acknowledged the utility of the U.S. drone campaign. “Saleh created this crisis in order to steal from America and stay in power,” a former official from the now-defunct People’s Democratic Republic of Yemen told me. “Now it is our crisis, and we need every tool to solve it.”¶ Yemeni journalists, particularly those with firsthand exposure to AQAP, shared this view: “I opposed the drone campaign until I saw what al Qaeda was doing in Jaar and Zinjibar,” an independent reporter in Aden said. “Al Qaeda hates the drones, they’re absolutely terrified of the drones … and that is why we need them.”

nited States. If Sharif chooses to push for greater involvement in these policies, this could lead to tension with the military.

#### No Indo-Pak War

Wright ‘13 (Thomas Wright is a fellow at the Brookings Institution in the Managing Global Order project. Previously, he was executive director of studies at the Chicago Council on Global Affairs, a lecturer at the Harris School of Public Policy at the University of Chicago, and senior researcher for the Princeton Project on National Security, "Don’t Expect Worsening of India, Pakistan Ties," <http://blogs.wsj.com/indiarealtime/2013/01/16/dont-expect-worsening-of-india-pakistan-ties/>, January 16, 2013)

There’s no end for now to the hostile rhetoric between India and Pakistan. But that doesn’t necessarily presage anything more drastic. Pakistan claims another of its soldiers died Tuesday night in firing across the Line of Control in Kashmir, the divided Himalayan region claimed by both nations. Indian army chief, Gen. Bikram Singh, on Wednesday, said Pakistan had opened fire and India retaliated. “If any of their people have died, it would have been in retaliation to their firing,” Gen. Singh said. ”When they fire, we also fire.” It was the latest in tit-for-tat recriminations over deaths in Kashmir that began last week. Pakistan claimed one of its soldiers died on Jan. 6. Two days later, India said Pakistani forces killed two of its soldiers and mutilated the bodies. Tuesday night, Indian Prime Minister Manmohan Singh said the mutilations meant it could not be “business as usual” between the countries. That has worried some that peace talks, which have been in train for two years, could be about to break down. Mr. Singh’s comments built on a drumbeat of anger from India. Gen. Singh, Monday called the mutilations “unpardonable” and said India withheld the right to retaliate to Pakistan aggression when and where it chooses. Pakistan Foreign Minister Hina Rabbani Khar, who is in the U.S., Tuesday termed the Indian army chief’s comments as “very hostile.” There are some other worrying signs. India said Tuesday it was delaying the start of a visa-on-arrival program meant to make it easier for some Indians and Pakistanis to visit each other’s countries. The visa program, like talks on opening up bilateral trade, is supposed to pave the way toward broader peace talks that would encompass thornier issues, like how to solve the Kashmir problem. Also Tuesday, nine Pakistani hockey players who had come to participate in a tournament in India were sent home due to fears of protests and violence against them. Still, there’s little benefit for either side to escalate what is now still sporadic firing over the Line of Control, the de facto border in Kashmir. Pakistan is embroiled in its own political meltdown sparked by the Supreme Court’s decision Tuesday to order the arrest of Prime Minister Raja Pervez Ashraf on allegations of corruption. Tens of thousands of protesters Tuesday took to the streets in Islamabad, and remain there today, demanding immediate elections and a greater role for the army and Supreme Court in politics. Pakistan’s military continues to play an important political role, dominating defense and foreign policy. But it has so far shown little sign of mounting a full-blown coup despite persistent rumors of military intervention. Pakistan’s government must hold national elections by May, meaning the next few months are likely to be choppy ones in Pakistan politics. In such an environment, the military is unlikely to want to dial up tensions with India. On the Indian side, despite Mr. Singh’s unusually strident tone Tuesday, there also will be pause before taking matters to the next level. Mr. Singh has put immense personal political capital into trying to improve ties with Pakistan since he came to power in 2004. Last year, he hosted Pakistan President Asif Ali Zardari in New Delhi and promised a return visit. Such a trip is clearly off the table for now. But India still has put too much into peace talks to throw away the progress made so far on visas, trade and other issues. Even Gen. Singh, India’s army chief, Monday said he did not believe the latest flare-up would lead to a broader escalation in violence and an official end to a 2003 ceasefire agreement in Kashmir. The clashes so far, he noted, have been limited to specific areas of the Line of Control.

#### No Middle East war- leaders weak

Cook ‘7 (Steven, CFR senior fellow for Mid East Studies. BA in international studies from Vassar College, an MA in international relations from the Johns Hopkins School of Advanced International Studies, and both an MA and PhD in political science from the University of Pennsylvania, Ray Takeyh, CFR fellow, and Suzanne Maloney, Brookings fellow, Why the Iraq war won't engulf the Mideast, <http://www.iht.com/bin/print.php?id=6383265>, June 28, 2007)

Underlying this anxiety was a scenario in which Iraq's sectarian and ethnic violence spills over into neighboring countries, producing conflicts between the major Arab states and Iran as well as Turkey and the Kurdistan Regional Government. These wars then destabilize the entire region well beyond the current conflict zone, involving heavyweights like Egypt. This is scary stuff indeed, but with the exception of the conflict between Turkey and the Kurds, the scenario is far from an accurate reflection of the way Middle Eastern leaders view the situation in Iraq and calculate their interests there. It is abundantly clear that major outside powers like Saudi Arabia, Iran and Turkey are heavily involved in Iraq. These countries have so much at stake in the future of Iraq that it is natural they would seek to influence political developments in the country. Yet, the Saudis, Iranians, Jordanians, Syrians, and others are very unlikely to go to war either to protect their own sect or ethnic group or to prevent one country from gaining the upper hand in Iraq. The reasons are fairly straightforward. First, Middle Eastern leaders, like politicians everywhere, are primarily interested in one thing: self-preservation. Committing forces to Iraq is an inherently risky proposition, which, if the conflict went badly, could threaten domestic political stability. Moreover, most Arab armies are geared toward regime protection rather than projecting power and thus have little capability for sending troops to Iraq. Second, there is cause for concern about the so-called blowback scenario in which jihadis returning from Iraq destabilize their home countries, plunging the region into conflict. Middle Eastern leaders are preparing for this possibility. Unlike in the 1990s, when Arab fighters in the Afghan jihad against the Soviet Union returned to Algeria, Egypt and Saudi Arabia and became a source of instability, Arab security services are being vigilant about who is coming in and going from their countries. In the last month, the Saudi government has arrested approximately 200 people suspected of ties with militants. Riyadh is also building a 700 kilometer wall along part of its frontier with Iraq in order to keep militants out of the kingdom. Finally, there is no precedent for Arab leaders to commit forces to conflicts in which they are not directly involved. The Iraqis and the Saudis did send small contingents to fight the Israelis in 1948 and 1967, but they were either ineffective or never made it. In the 1970s and 1980s, Arab countries other than Syria, which had a compelling interest in establishing its hegemony over Lebanon, never committed forces either to protect the Lebanese from the Israelis or from other Lebanese. The civil war in Lebanon was regarded as someone else's fight. Indeed, this is the way many leaders view the current situation in Iraq. To Cairo, Amman and Riyadh, the situation in Iraq is worrisome, but in the end it is an Iraqi and American fight. As far as Iranian mullahs are concerned, they have long preferred to press their interests through proxies as opposed to direct engagement. At a time when Tehran has access and influence over powerful Shiite militias, a massive cross-border incursion is both unlikely and unnecessary. So Iraqis will remain locked in a sectarian and ethnic struggle that outside powers may abet, but will remain within the borders of Iraq. The Middle East is a region both prone and accustomed to civil wars. But given its experience with ambiguous conflicts, the region has also developed an intuitive ability to contain its civil strife and prevent local conflicts from enveloping the entire Middle East.

# Norms

#### Prolif is inevitable- no one models US restraint

**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 is slow and the impact is small

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

Based on current trends, it is unlikely that most states will have, within ten years, the complete system architecture required to carry out¶ distant drone strikes that would be harmful to U.S. national interests.¶ However, those candidates able to obtain this technology will most¶ likely be states with the financial resources to purchase or the industrial¶ base to manufacture tactical short-range armed drones with limited¶ firepower that lack the precision of U.S. laser-guided munitions; the¶ intelligence collection and military command-and-control capabilities needed to deploy drones via line-of-sight communications; and crossborder¶ adversaries who currently face attacks or the threat of attacks¶ by manned aircraft, such as Israel into Lebanon, Egypt, or Syria; Russia¶ into Georgia or Azerbaijan; Turkey into Iraq; and Saudi Arabia into¶ Yemen. When compared to distant U.S. drone strikes, these contingencies¶ do not require system-wide infrastructure and host-state support.¶ Given the costs to conduct manned-aircraft strikes with minimal threat¶ to pilots, it is questionable whether states will undertake the significant¶ investment required for armed drones in the near term.

#### Stability will survive without US hegemony

Fettweis ‘10 (Chris Fettweis, Professor of national security affairs @ U.S. Naval War College, Georgetown University Press, “Dangerous times?: the international politics of great power peace” Google Books)

Simply stated, the hegemonic stability theory proposes that international peace is only possible when there is one country strong enough to make and enforce a set of rules. At the height of Pax Romana between 27 BC and 180 AD, for example, Rome was able to bring unprecedented peace and security to the Mediterranean. The Pax Britannica of the nineteenth century brought a level of stability to the high seas. Perhaps the current era is peaceful because the United States has established a de facto Pax Americana where no power is strong enough to challenge its dominance, and because it has established a set of rules that a generally in the interests of all countries to follow. Without a benevolent hegemony, some strategists fear, instability may break out around the globe. Unchecked conflicts could cause humanitarian disaster and, in today’s interconnected world economic turmoil that would ripple throughout global financial markets. If the United States were to abandon its commitments abroad, argued Art, the world would “become a more dangerous place” and, sooner or later, that would “rebound to America’s detriment.” If the massive spending that the United States engages in actually produces stability in the international political and economic systems, then perhaps internationalism is worthwhile. There are good theoretical and empirical reasons, however, the belief that U.S. hegemony is not the primary cause of the current era of stability. First of all, the hegemonic stability argument overstates the role that the United States plays in the system. No country is strong enough to police the world on its own. The only way there can be stability in the community of great powers is if self-policing occurs, ifs states have decided that their interest are served by peace. If no pacific normative shift had occurred among the great powers that was filtering down through the system, then no amount of international constabulary work by the United States could maintain stability. Likewise, if it is true that such a shift has occurred, then most of what the hegemon spends to bring stability would be wasted. The 5 percent of the world’s population that live in the United States simple could not force peace upon an unwilling 95. At the risk of beating the metaphor to death, the United States may be patrolling a neighborhood that has already rid itself of crime. Stability and unipolarity may be simply coincidental. In order for U.S. hegemony to be the reason for global stability, the rest of the world would have to expect reward for good behavior and fear punishment for bad. Since the end of the Cold War, the United States has not always proven to be especially eager to engage in humanitarian interventions abroad. Even rather incontrovertible evidence of genocide has not been sufficient to inspire action. Hegemonic stability can only take credit for influence those decisions that would have ended in war without the presence, whether physical or psychological, of the United States. Ethiopia and Eritrea are hardly the only states that could go to war without the slightest threat of U.S. intervention. Since most of the world today is free to fight without U.S. involvement, something else must be at work. Stability exists in many places where no hegemony is present. Second, the limited empirical evidence we have suggests that there is little connection between the relative level of U.S. activism and international stability. During the 1990s the United States cut back on its defense spending fairly substantially, By 1998 the United States was spending $100 billion less on defense in real terms than it had in 1990. To internationalists, defense hawks, and other believers in hegemonic stability this irresponsible "peace dividend" endangered both national and global security "No serious analyst of American military capabilities," argued Kristol and Kagan, "doubts that the defense budget has been cut much too far to meet Americas responsibilities to itself and to world peace."" If the pacific trends were due not to U.S. hegemony but a strengthening norm against interstate war, however, one would not have expected an increase in global instability and violence. The verdict from the past two decades is fairly plain: The world grew more peaceful while the United States cut its forces. No state seemed to believe that its security was endangered by a less-capable Pentagon, or at least none took any action that would suggest such a belief. No militaries were enhanced to address power vacuums; no security dilemmas drove mistrust and arms races; no regional balancing occurred once the stabilizing presence of the U.S. military was diminished. The rest of the world acted as if the threat ofinternational war was not a pressing concern, despite the reduction in U.S. capabilities. The incidence and magnitude of global conflict declined while the United States cut its military spending under President Clinton, and it kept declining as the Bush Administration ramped spending back up. No complex statistical analysis should be necessary to reach the conclusion that the two are unrelated. It is also worth noting for our purposes that the United States was no less safe.

#### No China threat

Eland ‘13 (Ivan Eland, Senior Fellow and Director of the Center on Peace & Liberty at The Independent Institute, Ph.D. in Public Policy from George Washington University. He has been Director of Defense Policy Studies at the Cato Institute, and he spent 15 years working for Congress on national security issues, including stints as an investigator for the House Foreign Affairs Committee and Principal Defense Analyst at the Congressional Budget Office. He also has served as Evaluator-in-Charge (national security and intelligence) for the U.S. General Accounting Office (now the Government Accountability Office), “Threat From China Is Being Hyped”, http://original.antiwar.com/eland/2013/06/04/threat-from-china-is-being-hyped/, June 5, 2013)

Articles in the American media usually portray China as a potential adversary, and recent press coverage is no exception. Stories have appeared about China’s military hacking into the computer systems of the American government and business and Chinese oil companies’ reaping of unfair gains in Iraq on the backs of dead American soldiers. Yet the threat from China in the popular American mind instilled by such articles is overblown. Undoubtedly, the U.S. military and intelligence services also attempt to hack into Chinese computer systems; this unseemly fact is glossed over by the usually nationalist American media. Even if Chinese military espionage is taken in isolation, it indicates that the Chinese realize a technological gap exists between China and the West and that they are having trouble developing technologies themselves. Similarly, the same conclusions could be reached about the much-ballyhooed Chinese purchase of Russian military equipment. In contrast, the United States develops its own military technologies, and they are the best in the world. Although Chinese defense spending has been growing at a double digit annual pace for a while now, China’s military started from only a low base. Chinese yearly defense spending is still only a fifth of that of the United States and the results of that annual disparity have [has] accumulated over many years in a vastly superior U.S. military force. Also, much of China’s recent increases in defense spending have been spent increasing military pay to keep people from defecting to the white-hot civilian economy and converting a Maoist people’s land army into one more designed to project power from China’s coasts using air and sea power. Both of these requirements have constrained the purchase of new weaponry. Even so, China has made gains in its ability to project power, recently obtaining a small, old Ukrainian aircraft carrier. Yet carrier operations take a long time to master, and China is still very limited in its power projection capability. Also, China’s imitation of the United States in emphasis on carrier forces could be ill advised. In any naval war, carriers may very well prove vulnerable to submarines using cruise missiles and torpedoes. To the extent that pursuing carriers has an opportunity cost for the Chinese in forgoing more of those potent sea-denial forces, it may lessen China’s ability to defend itself against U.S. carriers. China’s sea-denial forces make up any real threat to the all-in U.S. force of 11 large deck carriers. But of course this threat is to the American Empire, not the United States itself. The U.S. carrier-heavy force is deployed far forward in East Asia to contain China and protect allies, such as Japan, Taiwan, South Korea, and Australia. Those wealthy allies should be doing more to provide their own security but will never do so as long as the United States provides the first line of defense. Japan already has a stronger navy than China and could do much more if it spent more of its large GDP on defense. As for Taiwan, being an easily defended island nation (amphibious assaults are notoriously difficult), it doesn’t need to match China dollar for dollar on defense spending but merely needs to adopt a porcupine strategy by being able to deter the same by inflicting unacceptable damage on the attacker. Finally, an American retraction of its defense perimeter to Hawaii and Guam would undoubtedly motivate these four nations, plus others in the region such as the Philippines and Vietnam, to band together in an alliance to be the first line of defense against China. Because China’s ability to project military power is so limited, the fears that China is expanding in Africa and the Middle East are fanciful. For example, recent press articles have implied that Chinese state-owned oil companies have exploited the American invasion of Iraq to win oil contracts from the Iraqi government. Because they don’t have to satisfy private shareholders, those companies can accept low profit margins on oil contracts that Western companies, such as Exxon, cannot. To some neoconservatives, such as Victor Davis Hanson, such failure of America to economically exploit its military empire is praiseworthy; to other imperialists, it is merely foolish. In any event, such Chinese commercial penetration is little threat to the United States and may actually be of some help. Because a worldwide oil market exists and any new petroleum being produced anywhere lowers the price for everyone, Chinese state-owned companies may be indirectly subsidizing U.S. oil consumers by bringing to market oil deposits that would be uneconomical for private firms to find and pump. Of course, implicitly, a worldwide oil market would also obviate the need for the military forces of the United States, China, or any other nation to “secure” oil. In my award-winning book No War for Oil: U.S. Dependency and the Middle East, I explain why it is cheaper to just pay higher prices caused by any disruption of Middle Eastern oil than to pay for forward-deployed military forces to attempt to prevent this rare occurrence. In conclusion, the Chinese “threat” is being dragged out and hyped to attempt to forestall cuts in U.S. security budgets, not because it severely undermines American security.

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#### Restrictions on authority are distinct from conditions

William Conner 78, former federal judge for the United States District Court for the Southern District of New York United States District Court, S. D. New York, CORPORACION VENEZOLANA de FOMENTO v. VINTERO SALES, http://www.leagle.com/decision/19781560452FSupp1108\_11379

Plaintiff next contends that Merban was charged with notice of the restrictions on the authority of plaintiff's officers to execute the guarantees. Properly interpreted, the "conditions" that had been imposed by plaintiff's Board of Directors and by the Venezuelan Cabinet were not "restrictions" or "limitations" upon the authority of plaintiff's agents but rather conditions precedent to the granting of authority. Essentially, then, plaintiff's argument is that Merban should have known that plaintiff's officers were not authorized to act except upon the fulfillment of the specified conditions.

#### Increase means from a baseline

Rogers 5 Judge, STATE OF NEW YORK, ET AL., PETITIONERS v. U.S. ENVIRONMENTAL PROTECTION AGENCY, RESPONDENT, NSR MANUFACTURERS ROUNDTABLE, ET AL., INTERVENORS, 2005 U.S. App. LEXIS 12378, \*\*; 60 ERC (BNA) 1791, 6/24, lexis

 [\*\*48]  Statutory Interpretation. [HN16](http://www.lexis.com/research/retrieve?_m=1fe428155fdfc9074f3623f0dae9d78a&docnum=14&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlz-zSkAW&_md5=0ebd338d6a7793de8561db53b915effd&focBudTerms=term%20increase&focBudSel=all#clscc16)While the CAA defines a "modification" as any physical or operational change that "increases" emissions, it is silent on how to calculate such "increases" in emissions. [42 U.S.C. § 7411(a)(4)](http://www.lexis.com/research/buttonTFLink?_m=8541fbf7a7f5554ca588059b132acd17&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b367%20U.S.%20App.%20D.C.%203%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=103&_butInline=1&_butinfo=42%20U.S.C.%207411&_fmtstr=FULL&docnum=14&_startdoc=1&wchp=dGLbVlz-zSkAW&_md5=1f89a0e47b1996a5400e8d865d8da08a). According to government petitioners, the lack of a statutory definition does not render the term "increases" ambiguous, but merely compels the court to give the term its "ordinary meaning." See [Engine Mfrs.Ass'nv.S.Coast AirQualityMgmt.Dist., 541 U.S. 246, 124 S. Ct. 1756, 1761, 158 L. Ed. 2d 529(2004)](http://www.lexis.com/research/buttonTFLink?_m=8541fbf7a7f5554ca588059b132acd17&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b367%20U.S.%20App.%20D.C.%203%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=104&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b541%20U.S.%20246%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=14&_startdoc=1&wchp=dGLbVlz-zSkAW&_md5=48f016ea3eabfdb898b67b348b11662c); [Bluewater Network, 370 F.3d at 13](http://www.lexis.com/research/buttonTFLink?_m=8541fbf7a7f5554ca588059b132acd17&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b367%20U.S.%20App.%20D.C.%203%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=105&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b370%20F.3d%201%2cat%2013%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=14&_startdoc=1&wchp=dGLbVlz-zSkAW&_md5=78fdfe9d48c7b91d7659b90c0198707e); [Am. Fed'n of Gov't Employees v. Glickman, 342 U.S. App. D.C. 7, 215 F.3d 7, 10 [\*23]  (D.C. Cir. 2000)](http://www.lexis.com/research/buttonTFLink?_m=8541fbf7a7f5554ca588059b132acd17&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b367%20U.S.%20App.%20D.C.%203%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=106&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b342%20U.S.%20App.%20D.C.%207%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=14&_startdoc=1&wchp=dGLbVlz-zSkAW&_md5=fb18ff0b92931ac00621d88dae997e67). Relying on two "real world" analogies, government petitioners contend that the ordinary meaning of "increases" requires the baseline to be calculated from a period immediately preceding the change. They maintain, for example, that in determining whether a high-pressure weather system "increases" the local temperature, the relevant baseline is the temperature immediately preceding the arrival of the weather system, not the temperature five or ten years ago. Similarly,  [\*\*49]  in determining whether a new engine "increases" the value of a car, the relevant baseline is the value of the car immediately preceding the replacement of the engine, not the value of the car five or ten years ago when the engine was in perfect condition.

#### More ev

**Law.dictionary.com ’13** [http://dictionary.law.com/Default.aspx?selected=391]

covenants, conditions and restrictions:

n. commonly called "CC and Rs," these are written rules, limitations and restrictions on use, mutually agreed to by all owners of homes in a subdivision or condominium complex. CC and Rs may limit size and placement of homes, exterior colors, pets, ages of residents, use of barbecues and other conduct to protect the quiet enjoyment of the various residents. CC and Rs are enforced by the homeowners association or by individual owners who can bring lawsuits against violators and are permanent or "run with the land" so future owners are bound to the same rules. Most state laws require that a copy of the CC and Rs be recorded with the County Recorder and be provided to any prospective purchaser.

instrument fully in mind.

# Terror – 2NC

### 2NC

#### 2. Precedent- drone court snowballs

Boot, 13 – CFR senior fellow

[Max, Jeane J. Kirkpatrick Senior Fellow in National Security Studies at the Council on Foreign Relations, "A Drone Court is a Terrible Idea," Commentary, 2-11-13, www.commentarymagazine.com/2013/02/11/a-drone-court-is-a-terrible-idea-fisa-terroris/, accessed 8-15-13, mss]

Nevertheless creating such a court would be a very bad idea because it would constitute a dangerous infringement on the president’s authority as commander-in-chief. To be sure, there are few cases of drone strikes involving American citizens such as Anwar al-Awlaki and it would probably not be any great burden in the war on terror to have those instances reviewed by a court. The danger is that this would be the establishment of a dangerous precedent, with judges soon being called upon to approve all drone strikes, whether the targets are American citizens or not. There is already a fair amount of bureaucracy to vet such strikes and minimize collateral damage, which sometimes results in the suspects making an escape before approval to fire a Hellfire missile can be obtained. Introducing judges into the mix would make such operations intolerably slow and unwieldy. If judges were given power to review military or CIA strikes taking place outside the country, where would this trend end? With troops having to read detainees on a foreign battlefield their Miranda rights? With judges having to approve in advance all military plans—including armored offensives and artillery barrages—to make sure they don’t infringe on someone’s civil rights? Such scenarios are not as[outlandish] ~~crazy~~ as they sound. Civil liberties lawyers have already been trying to get the U.S. courts to assume oversight of detainees held in Afghanistan—one federal judge even ruled that these detainees had a right to a hearing before being overruled by the Court of Appeals for the District of Columbia.

[Matt note: paraphrased for ableist language]

#### 3. Targeting revision- drone court deters it

Johnson, 13 -- Former Pentagon General Counsel

[Jeh, American civil, criminal trial lawyer, and General Counsel of the Department of Defense from 2009 to 2012 during the first Obama Administration, "A “Drone Court”: Some Pros and Cons," Lawfare, 3-18-13, www.lawfareblog.com/2013/03/jeh-johnson-speech-on-a-drone-court-some-pros-and-cons/, accessed 8-15-13, mss]

Next, if the court’s jurisdiction is limited to U.S. citizens, there is the question of exactly what the court is to decide. If one accepts the criteria for targeting a U.S. citizen set forth in the Attorney General’s speech a year ago, it has several parts: (1) the target is a senior operational leader of al Qaeda or associated forces who is actively engaged in planning to kill Americans, (2) the individual poses an imminent threat to the United States, (3) capture is not feasible; and (4) the operation would be conducted in a manner consistent with applicable law of war principles.[10] Starting with the last of these criteria: this one is implicit in every military operation, This includes consideration of, for example, the type of weapon used, and the elimination or minimization of collateral damage. Often, these matters are, and should be, left to the discretion of the military commander in direct control of the operation, along with the time, place and manner of the operation. Even if the overall approval of the operation comes from the President or Secretary of Defense, this particular aspect of it is not something that we should normally seek to micromanage from Washington; likewise, there is also not much to be gained by having a federal judge try to review these details in advance. Next, there are the questions of feasibility of capture and imminence. These really are up-to-the-minute, real time assessments of the type I believe Judge Bates was referring to when he said that courts are “institutionally ill-equipped ‘to assess the nature of battlefield decisions.’”[11] Indeed, I have seen feasibility of capture of a particular objective change several times in one night. Nor are these questions ones of a legal nature, by the way. Judges are accustomed to making legal determinations based on a defined, settled set of facts – a picture that has already been painted; not a moving target, which is what we are literally talking about here. These are not one-time-only judgments and we want military and national security officials to continually assess and reassess these two questions up until the last minute before an operation. **If these** types of **continual reassessments must be submitted to** a member of **the Article III branch** of government for evaluation, I believe **we compromise our** government’s **ability to conduct** these **operations effectively**. The costs will outweigh the benefits. In that event, I believe **we will** also **discourage** the type of **continual reevaluation** I’m referring to.

#### 4. Blame-dodging- plan creates political incentives that deter strikes in the first place

Oliphant, 13 -- National Journal deputy magazine editor

[James, “Vetting the Kill List,” 5-30-13, http://www.nationaljournal.com/magazine/vetting-the-kill-list-20130404, accessed 8-16-13, mss]

Given that reality, **shifting** the **responsibility** of a sign-off to a set of federal judges, who are unelected and serve for life, would allow the White House to escape the consequences of its actions, or more crucially, perhaps its failure to act if a target slips out of harm’s way and then masterminds an attack. Military decisions are, at heart, political ones, McNeal says, and they are rightly made by the branch of government whose top official, the president, faces voters. (A case in point: Republicans suffered at the ballot box in 2006 and 2008 as a result of the public’s displeasure with the Iraq war.) “If you’re a politician,” McNeal says of a drone court, “this is great. Because you aren’t on the hook for anything.” By and large, federal judges don’t want to be in this position. They worry about damaging the integrity of the bench. Retired Judge James Robertson, who served on the U.S. Appeals Court in Washington, argued in The Washington Post that the Constitution forbids the judiciary from issuing advisory opinions. “Federal courts rule on specific disputes between adversary parties,” he wrote. “They do not make or approve policy; that job is reserved to Congress and the executive.” The FISA court is a different animal, because approving surveillance is related to Fourth Amendment protections on search warrants. Still, Americans don’t have to grant the White House complete latitude to operate its targeted-killing program. Another idea that has marshaled some support is an inspector general empowered to review operations after the fact. If administration officials know that someone else ultimately will be auditing their decisions, Chesney says, that may be enough of a check on their conduct. Or as Ronald Reagan once put it: “Trust, but verify.”

### 2NC

### 2NC

#### Drones in Yemen shift focus away from attacks on the US- no blowback

Wolff, 13 -- University of Birmingham international security professor

[Stefan, Ph.D. from the London School of Economics and Political Science, "Drone Warfare: effective or counter-productive?" 4-28-13, www.stefanwolff.com/notebook/drone-warfare-effective-or-counter-productive, accessed 8-28-13, mss]

The picture is more mixed in Yemen. Here, drone strikes against Ansar al-Shari’a, the military wing of al-Qaeda in the Arabian Peninsula (AQAP) have effectively supported a campaign by Yemeni security forces in coalition with local tribal militias and routed AQAP from significant areas in the south that it had taken over in the course of 2011 and early 2012, forcing the terrorist group to retreat to remaining safe areas in the eastern mountains of Yemen, and denying it control of territory deemed essential for recruitment and as a launch pad for operations in Yemen and overseas. For the time being, this has resulted in the group limiting its external operations (traditionally aimed at aviation targets) and focusing on more traditional guerilla tactics of only local reach. The relative effectiveness of the counter-terrorist campaign has also, at least temporarily, led to a reduction in the level of collusion between elements in the Yemeni regime and AQAP and tribal acquiescence to its presence and operations. While there can be no question that there has been some blowback in terms of public opinion, there is no clear evidence that the drones campaign in Yemen has either strengthened the southern insurgency (which is motivated by secessionist demands), nor that it has increased the pool of potential recruits for AQAP.

# Solvency- 2nc

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

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

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

# Norms- 2nc

### 2NC- Inevitable

#### No reverse modeling- norms can’t solve

**Saunders 5-4**-13 [Paul J. Saunders is executive director of The Center for the National Interest and associate publisher of The National Interest. He served in the State Department from 2003 to 2005, “We Won't Always Drone Alone,” <http://nationalinterest.org/commentary/we-wont-always-drone-alone-8177>]

A broader and deeper challenge is how others—outside the United States—will use drones, whether armed or unarmed, and what lessons they will draw from Washington’s approach. Thus far, the principal lesson may well be that drones can be extremely effective in killing your opponents, wherever they are, without risking your own troops and without sending soldiers or law enforcement personnel across another country’s borders. It seems less likely that others will adopt U.S.-style legal standards and oversight procedures, or that they will always ask other governments before sending drones into their airspace.¶ Based on their actions, it is almost as if Obama administration officials believe that the United States and its allies will have a long-term monopoly on drones. How else can one explain their exuberant confidence in launching drone attacks? However, the administration’s dramatic expansion in drone strikes—and their apparent effectiveness—will only further shorten Washington’s reign as the drone capital of the world by increasing the incentives to others eager to develop, refine or buy the technology.¶ Have Obama administration officials given any thought to what the world might look like when armed drones are more widespread and when Americans or U.S. allies and partners could become targets? To an outsider, there is little evidence of this kind of thinking in the administration’s use of drones.¶ This is a serious problem. According to an unclassified July 2012 report by the Government Accountability Office, at least 76 countries already have acquired unmanned aerial vehicles, known as UAVs or drones; the report also states that “countries of concern” are attempting to acquire advanced UAVs from foreign suppliers as well as seeking illegal access to U.S. technology. And a 2012 special report by the United Kingdom’s Guardian newspaper indicated that China has 10 or more models, though not all are armed. Other sources identify additional varieties in China. At least 50 countries are trying to build 900 different types of drones, the GAO writes.¶ More generally, the administration’s expanding use of drones is a powerful endorsement of not only the technology, but of the practice of targeted killing as an instrument of foreign and security policy. Having provided this powerful impetus, the United States should not be surprised if others—with differing legal standards and more creative efforts at self-justification—seize upon it once they have the necessary capabilities. According to the GAO, this is already happening—in government-speak, “while only a limited number of countries have fielded lethal or weaponized UAVs, this threat is anticipated to grow.” From this perspective, it is ironic that a president so critical of his predecessor’s unilateralism would practice it himself—particularly in a manner that other governments will find much easier to emulate than the Bush administration’s larger-scale use of force. How does the Obama administration plan to respond if and when China or Russia uses armed UAVs to attack groups they define as terrorists?

### 2NC Heg

#### No potential conflicts for hotspots to escilate

Fettweis ‘11 (Christopher J. Fettweis, Department of Political Science, Tulane University, Free Riding or Restraint? Examining European Grand Strategy, Comparative Strategy, 30:316–332, EBSCO, September 26, 2011)

Assertions that without the combination of U.S. capabilities, presence and commitments instability would return to Europe and the Pacific Rim are usually rendered in rather vague language. If the United States were to decrease its commitments abroad, argued Robert Art, “the world will become a more dangerous place and, sooner or later, that will redound to America’s detriment.”53 From where would this danger arise? Who precisely would do the fighting, and over what issues? Without the United States, would Europe really descend into Hobbesian anarchy? Would the Japanese attack mainland China again, to see if they could fare better this time around? Would the Germans and French have another go at it? In other words, where exactly is hegemony is keeping the peace? With one exception, these questions are rarely addressed. That exception is in the Pacific Rim. Some analysts fear that a de facto surrender of U.S. hegemony would lead to a rise of Chinese influence. Bradley Thayer worries that Chinese would become “the language of diplomacy, trade and commerce, transportation and navigation, the internet, world sport, and global culture,” and that Beijing would come to “dominate science and technology, in all its forms” to the extent that soon the world would witness a Chinese astronaut who not only travels to the Moon, but “plants the communist flag on Mars, and perhaps other planets in the future.”54 Indeed China is the only other major power that has increased its military spending since the end of the Cold War, even if it still is only about 2 percent of its GDP. Such levels of effort do not suggest a desire to compete with, much less supplant, the United States. The much-ballyhooed, decade-long military buildup has brought Chinese spending up to somewhere between one-tenth and one-fifth of the U.S. level. It is hardly clear that a restrained United States would invite Chinese regional, must less global, political expansion. Fortunately one need not ponder for too long the horrible specter of a red flag on Venus, since on the planet Earth, where war is no longer the dominant form of conflict resolution, the threats posed by even a rising China would not be terribly dire. The dangers contained in the terrestrial security environment are less severe than ever before. Believers in the pacifying power of hegemony ought to keep in mind a rather basic tenet: When it comes to policymaking, specific threats are more significant than vague, unnamed dangers. Without specific risks, it is just as plausible to interpret U.S. presence as redundant, as overseeing a peace that has already arrived. Strategy should not be based upon vague images emerging from the dark reaches of the neoconservative imagination. Overestimating Our Importance One of the most basic insights of cognitive psychology provides the final reason to doubt the power of hegemonic stability: Rarely are our actions as consequential upon their behavior as we perceive them to be. A great deal of experimental evidence exists to support the notion that people (and therefore states) tend to overrate the degree to which their behavior is responsible for the actions of others. Robert Jervis has argued that two processes account for this overestimation, both of which would seem to be especially relevant in the U.S. case.55 First, believing that we are responsible for their actions gratifies our national ego (which is not small to begin with; the United States is exceptional in its exceptionalism). The hubris of the United States, long appreciated and noted, has only grown with the collapse of the Soviet Union.56 U.S. policymakers famously have comparatively little knowledge of—or interest in—events that occur outside of their own borders. If there is any state vulnerable to the overestimation of its importance due to the fundamental misunderstanding of the motivation of others, it would have to be the United States. Second, policymakers in the United States are far more familiar with our actions than they are with the decision-making processes of our allies. Try as we might, it is not possible to fully understand the threats, challenges, and opportunities that our allies see from their perspective. The European great powers have domestic politics as complex as ours, and they also have competent, capable strategists to chart their way forward. They react to many international forces, of which U.S. behavior is only one. Therefore, for any actor trying to make sense of the action of others, Jervis notes, “in the absence of strong evidence to the contrary, the most obvious and parsimonious explanation is that he was responsible.”57 It is natural, therefore, for U.S. policymakers and strategists to believe that the behavior of our allies (and rivals) is shaped largely by what Washington does. Presumably Americans are at least as susceptible to the overestimation of their ability as any other people, and perhaps more so. At the very least, political psychologists tell us, we are probably not as important to them as we think. The importance of U.S. hegemony in contributing to international stability is therefore almost certainly overrated. In the end, one can never be sure why our major allies have not gone to, and do not even plan for, war. Like deterrence, the hegemonic stability theory rests on faith; it can only be falsified, never proven. It does not seem likely, however, that hegemony could fully account for twenty years of strategic decisions made in allied capitals if the international system were not already a remarkably peaceful place. Perhaps these states have no intention of fighting one another to begin with, and our commitments are redundant. European great powers may well have chosen strategic restraint because they feel that their security is all but assured, with or without the United States.

### 2NC- No impact

#### Prolif doesn’t cause wars- restraint wins out

**Goure ’12** [ Daniel Goure, PhD in international relations and Russian studies from the Johns Hopkins University, is a vice president of the Lexington Institute, was a member of the Defense Department’s Transition Team, served as director of the Office of Strategic Competitiveness for the Secretary of Defense and was a senior analyst with the Center for Naval Analyses, Science Applications International Corporation, SRS Technologies, R&D Associates and System Planning Corporation, has been a consultant for the Departments of State, Defense, and Energy, has been an adjunct professor in graduate programs at the Center for Peace and Security Studies at Georgetown University, and an adjunct professor at National Defense University, “Drones and the Changing Nature of Warfare: Hold the Presses!” <http://www.cato-unbound.org/2012/01/13/daniel-goure/drones-changing-nature-warfare-hold-presses>]

Despite the proliferation of drones, particularly by the United States, at best it can be argued that the proliferation of unmanned aerial systems (UASs) is changing tactics, particularly with respect to operations on land. The predominant mission of drones today is to collect information, primarily electro-optical data in the form of pictures and full motion video. The overwhelming majority of drone flying hours are conducted by systems such as Aerovironment’s Wasp, Puma, and Raven; Insitu’s ScanEagle; and Textron’s Shadow for the purpose of providing overwatch for maneuvering Army and Marine Corps units. Even the vaunted Predator, a variant of which, the MQ-9 Reaper, is the platform employed for armed strikes, is predominantly employed for intelligence, surveillance, and reconnaissance missions. The larger systems such as Northrop Grumman’s Global Hawk and Lockheed Martin’s stealthy RQ-170 Sentinel are intended solely to gather intelligence.¶ Armed drones serve a niche function. They are useful in situations where real-time tactical intelligence is required in order to launch a weapon and the operating environment is extremely benign. Because they can loiter in the area of a suspected target, waiting for positive identification and the proper time to strike with the least possibility of inflicting collateral damage, they are far less lethal than any other aerial weapons system.¶ Attempts to connect an increased tendency to use force are supported neither by the evidence nor by logic. The frequency and intensity of conflicts has declined even as the ability to conduct remote combat has increased exponentially. There were only a handful of drones available to the U.S. military when Operations Enduring Freedom and Iraqi Freedom began. The lack of unmanned systems appears to have posed no obstacle to the decision to initiate either operation.¶ It is difficult to accord any serious influence over the conduct of air operations in past or current conflicts to the presence of armed drones. In the era before drones, the U.S. imposed ten year long no-fly zones over northern and southern Iraq. In addition, the number of drone sorties in total is but a tiny fraction of all aerial sorties. Armed drone sorties constitute only a small fraction of total drone missions. Cortright notes that since 2009 there have been 239 drone strikes into Pakistan. However, for the month of January 2011, Coalition forces in Afghanistan flew 387 sorties in which guns were fired or munitions expended.[2] These statistics suggest a clear preference on the part of the military for manned aerial systems and not drones in the conduct of tactical air operations. Cortright also reports that 145 drone strikes were conducted during Operation Odyssey Dawn—the liberation of Libya. Actually this is an incorrect statement. While drones were used over Libya, these were not armed flights, hence they were sorties and not strikes. But this is good example of the breathless quality of much of the analysis today of the implications of drones for warfare. Look at the numbers. The U.S. alone conducted some 3,500 sorties during Operation Odyssey Dawn. So drones amounted to 4% of the total. By the way, the United States and United Kingdom also launched 228 Tomahawk cruise missiles during this operation, 112 on the first night of the conflict. If we are to accord to weapon systems influence over the decision to use force, then in the case of Libya, precedence must be given based simply on the number of sorties conducted to cruise missiles, aerial refueling tankers, tactical fighters, and even cargo planes before we come to the little-used drone.¶ The availability of unmanned aerial systems in no way makes conflict more likely or more brutal. Quite the opposite, in fact, seems to be the case. The presumption that were it not for the availability of drones, the U.S. would refrain from conducting military operations against terrorists based in Pakistan is highly dubious. We have an example of an alternative military option: Operation Enduring Freedom. As Joshua Goldstein pointed out in a recent article, the use of armed drones in Pakistan may have prevented the use of far bloodier means. “Armed drones now attack targets that in the past would have required an invasion with thousands of heavily armed troops, displacing huge numbers of civilians and destroying valuable property along the way.”[3] According to Robert Woodward’s reporting on President Obama’s decision to deploy additional forces to Afghanistan in 2009, a number of senior advisors proposed a lower-cost, smaller deployment based on increased use of special operations forces and unmanned aerial vehicles.

# Accountability- 2nc

### 2NC- Alt causes

#### Can’t solve Pakistan stability-

**Economics**

**Northam 12**, Jackie, Foreign Affairs correspondent for NPR news, “Faltering Economy Threatens Pakistan's Stability,” October 4th, http://www.npr.org/2012/10/04/162232742/faltering-economy-threatens-pakistans-stability

If you want to gain a good insight into Pakistan's economic situation, just look at a few of the country's newspaper headlines on any given day. The language says it all: prices soar, stocks plunge, budget deficit swells, foreign investment evaporates — and the list goes on. Now, analysts are increasingly worried that the faltering economy could join Pakistan's pervasive insurgency and repeated political upheavals as another serious threat to the country's stability. A recent report issued at the World Economic Forum says Pakistan ranks in the bottom 20 out of the world's economies. Nadeem Ul Haque, deputy chairman of the state Planning Commission, says nobody really wants to talk about economic reform, or draw up new fiscal policies. "The debate is always so charged with religion and geopolitics and war on terror, just talking about economics takes second place — in fact fifth place, in fact seventh place, 10th place," Haque says. "Nobody really wants to talk about economics." And while the government avoids making difficult economic policy decisions, key industries in Pakistan are taking a hit. A Target For Extremist Recruitment At the Sitara textile mill in the eastern city of Faisalabad, huge panels of cotton are imprinted with pictures of Spider-Man and Justin Bieber. They will be turned into duvet covers and sent to the U.S., says the plant's general manager, Ashfaq Ahmad. He says his mill is the only one in Pakistan that has two machines for doing flatbed printing — but only one of them is running. The other is closed, he says, because of a gas shutdown. Ahmad says serious gas and electricity shortages mean that this and other plants in Faisalabad can only operate four days a week. Power outages can last up to six hours a day. Rehan Naseem Bharara, vice president of Faisalabad's Chamber of Commerce, says many textile factories have shut down, and another just recently reduced staff. "They had about 13,000 people in their factory three years back, but now only 3,400 people are working," Bharara says. He says the cutbacks have had a huge impact on the community, especially the jobless, who become an "easy target for ... people who promote terrorism in this country." Western analysts say the decaying economy is as much of a threat to Pakistan's stability as the Taliban because widespread poverty and unemployment could lead to more political instability and an increase in extremism.

### 2NC/ 1AR- IndoPak War

#### It would never escalate to nuclear weapons

Economic Times ‘11 (“No chance of Indo-Pak nuclear war despite 'sabre rattling': Pak nuclear scientist A Q Khan,” http://articles.economictimes.indiatimes.com/2011-05-17/news/29552014\_1\_nuclear-blackmail-nuclear-secrets-india-and-pakistan, May 17, 2011)

NEW YORK: Pakistan's disgraced nuclear scientist A Q Khan has said that despite "sabre rattling" between Islamabad and New Delhi, there is no chance of a nuclear war between the two neighbours. Khan, who has been accused of selling nuclear secrets to Iran, Libya and Syria, wrote in Newsweek magazine that nuclear weapons in both countries had prevented war for the last 40 years. "India doesn't need more than five weapons to hurt us badly, and we wouldn't need more than 10 to return the favour," he said. "That is why there has been no war between us for the past 40 years." "India and Pakistan understand the old principle that ensured peace in the Cold War: mutually assured destruction," he said. "The two (India and Pakistan) can't afford a nuclear war, and despite our sabre rattling, there is no chance of a nuclear war that would send us both back to the Stone Age," he said. He claimed that Pakistan had to invest in a nuclear programme "to ward off nuclear blackmail from India". "I would like to make it clear that it was an Indian nuclear explosion in May 1974 that prompted our nuclear program, motivating me to return to Pakistan to help create a credible nuclear deterrent and save my country from Indian nuclear blackmail," he said. "We are forced to maintain this deterrence until our differences with India are resolved. That would lead to a new era of peace for both countries," Khan wrote. "I hope I live to see Pakistan and India living harmoniously in the same way as the once bitter enemies Germany and France live today," he said. Khan blasted various governments in Pakistan as well as "successive incompetent and ignorant rulers" for not engaging in basic development of the country, and raising the people's standard of living. "We are far worse off now than we were 20, or even 40, years ago when we were subjected to embargoes," he said.

# at: no PC

#### It’s all relative – Republicans still look worse

Mardell 9/18/13 (Mark, North America Editor, BBC News, "Obama Presidency: Decline in the Fall?")

It won't be long before there is a new kid on the White House block, and that changes calculations.¶ As for the coming budget battles in Congress, while Mr Obama's position looks weak, the Republicans look weaker - and as close as 2016 is, the mid-term elections of 2014 are even closer.¶ It is unsurprising that, to some, this feels like a turning point.¶ But while fall always turns to winter, it doesn't always spell decline.

#### Syria makes Obama look like a winner

Forde 9/11/13 (Kaelyn, AlJazeera, "Obama Pays High Political Price for Fumbling on Syria")

Some of the president’s allies said he had shown strength but that a diplomatic solution would be in the administration’s best interest.¶ “The president is going to be fine. He has stood strong, he got (Osama) bin Laden and he has not wavered one bit,” Rep. Elijah Cummings, D-Md., told Al Jazeera America. “If this deal goes through, and I think it will, because I think the president will make it go through … he will look like a hero.”¶ Sabato too said that it would be premature to predict doom for the rest of the Obama term.¶ “It’s too soon to say, and people are always too quick to extrapolate the rest of the year, the rest of the term,” he said. "He has three and a half years left, and a million things could happen between now and then."

# at: obama wont push

#### Obama gets the blame – recent speech signifies shift in drones policy

Schmitt and Wesiman 5/23/13 (Eric, Pulitzer Prize Winning Journalist and Staff Writer at the New York Times and Jonathan, Congressional Correspondent for the New York Times, New York Times, "Obama Seeks to Narrow Terror Fight")

Declaring that “America is at a crossroads,” the president called for redefining what has been a global war into a more targeted assault on terrorist groups threatening the United States. As part of a realignment of counterterrorism policy, he said he would curtail the use of drones, recommit to closing the prison at Guantánamo Bay, Cuba, and seek new limits on his own war power.¶ In a much-anticipated speech at the National Defense University, Mr. Obama sought to turn the page on the era that began on Sept. 11, 2001, when the imperative of preventing terrorist attacks became both the priority and the preoccupation. Instead, the president suggested that the United States had returned to the state of affairs that existed before Al Qaeda toppled the World Trade Center, when terrorism was a persistent but not existential danger. With Al Qaeda’s core now “on the path to defeat,” he argued, the nation must adapt.¶ “Our systematic effort to dismantle terrorist organizations must continue,” Mr. Obama said. “But this war, like all wars, must end. That’s what history advises. It’s what our democracy demands.”¶ The president’s speech reignited a debate over how to respond to the threat of terrorism that has polarized the capital for years. Republicans contended that Mr. Obama was declaring victory prematurely and underestimating an enduring danger, while liberals complained that he had not gone far enough in ending what they see as the excesses of the Bush era.¶ The precise ramifications of his shift were less clear than the lines of argument, however, because the new policy guidance he signed remains classified, and other changes he embraced require Congressional approval. Mr. Obama, for instance, did not directly mention in his speech that his new order would shift responsibility for drones more toward the military and away from the Central Intelligence Agency.¶ But the combination of his words and deeds foreshadowed the course he hopes to take in the remaining three and a half years of his presidency so that he leaves his successor a profoundly different national security landscape than the one he inherited in 2009. While President George W. Bush saw the fight against terrorism as the defining mission of his presidency, Mr. Obama has always viewed it as one priority among many at a time of wrenching economic and domestic challenges.

#### Obama gets the blame he’s asked Congress to limit his drones flexibility – any change would be controversial

Hunt 6/3/13 (Albert, Editor and Bloomberg View Columnist, Host of the Talkshow Politial Capital "Is Obama Willing to Fight for Right Terror Policy")

Obama did something almost unheard of for a modern U.S. president: He called on Congress to limit his authority under the wide-ranging Authorization for Use of Military Force enacted in 2001.¶ The speech was a big deal. Still, it probably will have less effect than either the White House or its critics claim. This reflects the political polarization that dominates even national security issues in Washington and the inability to rally a conflict-weary public behind any global issue.¶ The reactions over the past 10 days have been predictable. Many Republicans and conservatives accused the president of capitulation and of emboldening America's enemies. The left said the change of policy was too little, too late.¶ There were more measured voices that, on balance, were positive: Colin Powell, the secretary of state in the George W. Bush administration, and Harold Koh, the former dean of Yale Law School and State Department legal counsel in the first Obama administration, who privately advocated for a more transparent and less belligerent anti-terrorist policy.¶ Obama employed some sleight of hand. He chastised those who argue that U.S. military forces on the ground would cause fewer casualties and less ill will than drones. Nobody really makes that argument. And he vowed never to deploy armed drones on U.S. soil.¶ No serious person believes the administration might launch a drone attack on a tea party gathering in Des Moines. Sen. Rand Paul's rants about this nonexistent danger were a distraction, yet they also brought attention to the real issues and probably forced the president to deal with the matter sooner.¶ The three cornerstones of Obama's message — ending the formal war on terrorism, a more transparent and much more limited use of drones and closing Guantanamo — all present complications that limit the scope for major change.¶ Obama said he wants to "engage" Congress on changing the authorization to use military force that critics believe is too much of a blank check. Yet the Democratic strategist John Podesta and others have cautioned that this Congress might make matters worse instead of carefully circumscribing the limits of presidential power. Revealingly, Obama declared that he "will not sign a law designed to expand this mandate further."

# at: pc fails

#### A strong Obama is critical to prevent quid pro quos on the budget deal – the plan would derail

CNN Money 9/12/13 ("The Never-Ending Charade of Debt Ceiling Fights")

So, you're saying they only have a few weeks to work this out? Yup.¶ House Republicans say they will demand spending cuts and fiscal reforms in exchange for their support of a debt ceiling increase. The White House, meanwhile, has said it won't negotiate quid pro quos.¶ The question is when will Republicans or the White House -- or both - bend in the standoff? If recent history is any guide it likely will be just in the nick of time.¶ And there's no telling how creative the deal they cut will be.¶ But any bad blood created along the way almost certainly would poison other budget negotiations. 

#### Obama’s capital is key to prevent concessions to the GOP

Reuters 9/11/13 (Delay in Syria Vote frees Obama to Shift to Hefty Domestic Agenda")

Among Obama's most immediate challenges are two looming budget fights. By September 30, Congress and the president must agree on legislation to keep federal agencies funded or face a government shutdown.¶ Two weeks later, Congress must raise the limit on the country's ability to borrow or risk a possible debt default that could cause chaos in financial [markets](http://www.reuters.com/finance/markets?lc=int_mb_1001).¶ On the first budget showdown, Obama may be at a strategic advantage because of divisions among opposition Republicans about whether to use the spending bill to provoke a fight over Obama's signature health care law, known as Obamacare.¶ House Republican leaders are trying to rally the party around a temporary spending measure that would keep the government funded until December 15 but are facing resistance within their own caucus from some conservatives who want to cut off funding for Obamacare, even if it means a government shutdown.¶ The debt limit fight could end up going down to the wire and unnerving financial [markets](http://www.reuters.com/finance/markets?lc=int_mb_1001). Republicans want to use that standoff to extract concessions from the Democratic president, such as spending cuts and a delay in the health law. But Obama has said he has no intention of negotiating over the borrowing limit.

**Political capital theory is true**

-this evidence cites longitudinal statistical analysis

-PC leads to deal-cutting, adds to presidential attractiveness and results in vote-switching

Beckman 10 – Professor of Political Science

Matthew N. Beckman, Professor of Political Science @ UC-Irvine, 2010, “Pushing the Agenda: Presidential Leadership in U.S. Lawmaking, 1953-2004,” pg. 61-62

For cases where the president wants to lobby but has limited political capital to draw on (0 < C < C1), looking back, Figure 2.11 affirms the intuitive: the president's legislative options are limited. Lacking enough capital to induce leaders to accept any sort of "deal" that is better than he could get from lobbying pivotal voters, the president and his staffers' only viable strategy is the vote-centered one. But, of course, even executing the vote-centered strategy does not yield much influence; the president simply does not have enough "juice" to substantially alter members' preferences or, in turn, the outcome. The president's prospects improve substantially, though, when he allocates even modest levels of political capital (C, < C < c,.) to lobbying for a particular initiative. At this point - specifically, at C1 \_ an agenda-centered-strategy becomes viable. That is, with a medium investment of political capital, now the president has enough resources to get opposing leaders to cut a "deal" with the White House that is better than he could get from just lobbying pivotal voters. In fact, even with this rather modest infusion of political capital, C, to 4, an agenda-centered lobbying strategy allows a president to exert even more influence than would be possible with a massive investment (up to Gj) in voce-centered lobbying. And granting the president even more political capital to invest in an issue (c,. < C) only adds to an agenda-centered strategy's attractiveness and effectiveness compared to the more familiar vote-centered strategy. Overall, the predicted impact of the president's agenda-centered lobbying is real, and potentially substantial, but also highly conditional. In contrast to a vote-centered strategy, which can be employed whenever a president is willing and able to invest lobbying resources in advocating an issue, the White House's agenda-centered strategy only applies with (I) a far-off status quo, and (2) a medium to large supply of political capital. Absent these prerequisites, the president's fate turns on pivotal voters and his ability to influence them via vote- centered lobbying. But often these strategic stars do align - that is, the president is flush with political capital when seeking to change a distant status quo - and when they do, an agenda-centered strat- egy affords presidents not just a second path for exerting influence but also a better path. Indeed, under these favorable conditions, the president gets far more policy bang for his lobbying buck from an agenda-centered strategy than a vote-centered one - without having to prevail in an all-out floor fight for pivotal voters' support.

**Political capital theory is true – newest data proves that presidents have significant legislative influence**

-conventional wisdom underestimates political capital theory

Beckman 10 – Professor of Political Science

Matthew N. Beckman, Professor of Political Science @ UC-Irvine, 2010, “Pushing the Agenda: Presidential Leadership in U.S. Lawmaking, 1953-2004,” pg. 2-3

Developing presidential coalition building as a generalizable class of strategies is itself instructive, a way of bringing clarity to presidential– congressional dynamics that have previously appeared idiosyncratic, if not irrational. However, the study’s biggest payoff comes not from identifying presidents’ legislative strategies but rather from discerning their substantive effects. In realizing how presidents target congressional processes upstream (how bills get to the ﬂoor, if they do) to inﬂuence downstream policy outcomes (what passes or does not), we see that standard tests of presidential inﬂuence have missed most of it. Using original data and new analyses that account for the interrelationship between prevoting and voting stages of the legislative process, I ﬁnd that presidents’ legislative inﬂuence is real, often substantial, and, to date, greatly underestimated.

**Political capital true**

-presidential offensive swings Congressional voting patterns

Beckman 10 – Professor of Political Science

Matthew N. Beckman, Professor of Political Science @ UC-Irvine, 2010, “Pushing the Agenda: Presidential Leadership in U.S. Lawmaking, 1953-2004,” pg. 60

As has been the case throughout, when the president either lacks political capital or chooses not to use it, his only available option is getting some issue onto the congressional calendar. The president merely proposes his preferred policy, which leading allies and oppo- nents then counter with proposals of their own. Although the president and each congressional leader wants to pass a bill as close to his or her ideal as possible, all end up settling on the pivotal voter's preference, So when unsupported by a White House lobbying offensive, the president's proposals will surrender to whatever outcome the House median and Senate filibuster pivot prefer.

# link debate

#### your link turn is awful- cites one house member

#### The GOP Will spin the plan as soft on terror – that’ll cause congressional backlash

Voorhees 5/23/13 (Josh, Editor of Slatest Magazine, Former Greenwire and Politico Reporter, "Slatest PM: GOP Senator Says Obama's Speech Will "Be Viewed by the Terrorists As a Victory")

No Love From the Right: [Washington Post](http://www.washingtonpost.com/politics/obama-outlines-new-rules-for-drones/2013/05/23/1b5918e6-c3cb-11e2-914f-a7aba60512a7_story.html?hpid=z1): "Obama’s speech drew a quick response from Republicans, who have accused the president of downplaying the threat of terrorism. 'The president’s speech today will be viewed by terrorists as a victory,' said Sen. Saxby Chambliss (Ga.), the ranking Republican on the Senate Intelligence Committee. 'Rather than continuing successful counterterrorism activities, we are changing course with no clear operational benefit.' Chambliss was also critical of Obama’s plans to try to close Guantanamo, signaling the obstacles that the president will face in Congress."

#### Republicans hate the plan – they’ll spin it as soft on terror

Banerjee 5/26/13 (Neela, LA Times DC Energy and Environment Correspondent, McClatchy Newspapers, The State Newspaper, "Republicans Criticize Obama's shift on Drone Use")

WASHINGTON, DC — Republicans criticized President Barack Obama on Sunday for what they described as a retreat in the war against terrorism when they said the world’s crises demand a more aggressive, vigilant United States.¶ In a speech Thursday at the National Defense University in Washington, Obama said he would narrow the use of drone attacks against suspected terrorists and seek to close the prison at Guantanamo Bay, Cuba.¶ Sen. Lindsey Graham, R-SC, who serves on the Senate Armed Services Committee, said on “Fox News Sunday” that he had “never been more worried about national security” and called the president “tone deaf” on the issue.¶ “I see a big difference between the president saying the war’s at an end and whether or not you’ve won the war,” said Sen. Tom Coburn, R-Okla. “We have still tremendous threats out there, that are building – not declining, building – and to not recognize that, I think, is dangerous in the long run and dangerous for the world.”¶ Democrats such as Sen. Charles Schumer of New York defended the President’s anti-terrorism policy, contending that the revised approach would address concerns about the lack of transparency in the deployment of drones without sacrificing security.

#### Debates about drones cost capital – they cause massive fracturing in the GOP

Rothman 3/7/13 (Noah, Editor at Mediaite, "Lindsey Graham Slams Rand Paul, GOP'ers Cheering Him: Paul's Position On Drones Not a 'Republican View')

Joining Sen. John McCain (R-AZ) objection to Sen. Rand Paul’s (R-KY) filibuster of President Barack Obama’s nominee to become the next CIA director, Sen. Lindsey Graham (R-SC) slammed Paul and the members of his party who cheered his filibuster. Graham said that Paul’s position on drones is not a “Republican view,” and he is “disappointed” in his fellow Republicans for supporting Paul’s opposition towards Obama administration’s drone policy. ¶ “To my Republican colleagues, I don’t remember any of you coming down here suggesting that President [George W.] Bush was going to kill anybody with a drone,” Graham said. He added that even Democrats never accused Bush of wanting to assassinate Americans with a drone.¶ “What is it, all of the sudden, that this drone program has gotten every Republican all spun up?” Graham asked. He said that many are “astonished” that Obama has continued President Bush’s war on terror. “I’m not astonished, I congratulate him for having the good judgment to understand we’re at war,” Graham added.¶ “To my party, I’m a bit disappointed that you no longer apparently think we’re at war,” he observed. “Not Senator Paul, he’s a man to himself. He has a view that I don’t think is a Republican view – I think it’s a legitimately held libertarian view.”¶

#### The plan would take on all of the republican leadership

Rayfield 2/11/13 (Jillian, Assistant News Editor for Salon, Focusing on Politics, Salon Online, "Congress Takes Sides on Drones")

Unconditional Defenders: House Intelligence Committee Chairman Mike Rogers, R-Mich., called the use of drones “a lawful act of national self-defense” in an initial statement last week, and argued on Sunday that the program already has enough oversight. “Monthly I have my committee go to the CIA to review them. I as chairman review every single airstrike we use in the war on terror, both on the civilian and the military side when it comes to terrorist strikes,” he said. “There’s plenty of oversight here.”¶ During a [press conference](http://livewire.talkingpointsmemo.com/entry/boehner-onboard-with-revealed-obama-drone-memo) on Feb. 6, House Speaker John Boehner agreed with Rogers’ initial statement that the use of drones is legal and necessary. “That’s all,” Boehner said.¶ “The process of being targeted I think is legal, quite frankly laborious and should reside in the commander in chief to determine who an enemy combatant is and what kind of force to use,” said Sen. Lindsey Graham, R-S.C., who [went so far](http://www.politico.com/blogs/on-congress/2013/02/graham-defends-obama-on-drones-156263.html) as to call the drone program one of the “highlights” of Obama’s presidency so far.¶ “If you take up arms against America and you fight in a terrorist training camp or on the front lines in Pakistan or Afghanistan or Yemen, you shouldn’t be surprised if America reaches out and exacts justice against you,” said Rep. Tom Cotton, R-Ark.¶ Rep. Peter King, R-N.Y., dismissed the “liberal hand-wringing” over the program. “I fully support targeted operations that have been carried out,” he said in a recent [appearance](http://www.mediaite.com/tv/gop-rep-peter-king-dismisses-concerns-about-drone-warfare-so-much-liberal-hand-wringing/) on MSNBC. “I think the president has done the right thing.”¶ Sen. John McCain, R-Ariz., said an oversight panel would be “an encroachment on the powers of the president of the United States.” He added that he does take issue with the program being in “the hands of the Central Intelligence Agency,” when it should reside within the Department of Defense. “Since when is the intelligence agency supposed to be an air force of drones that goes around killing people? I believe that it’s a job for the Department of Defense.”

#### Drones debates spark a GOP civil war –

Kapur 3/7/13 (Sahil, Senior Congressional Reporter and Supreme Court correspondent at TPM Online, "Rand Paul's Drone Filibuster Sparks GOP Civil War")

Sen. Rand Paul’s (R-KY) epic [13-hour filibuster](http://livewire.talkingpointsmemo.com/entry/rand-pauls-filibuster-enters-11th-hour) of John Brennan for CIA director finally came to an [amicable](http://livewire.talkingpointsmemo.com/entry/carney-affirms-limits-to-governments-authority-to-use?ref=fpa) [resolution](http://livewire.talkingpointsmemo.com/entry/senate-to-vote-on-brennan-nomination) Thursday, but not before sparking a battle within the Republican Party hierarchy — the latest in a series of internal struggles the party has faced since the election.¶ On Paul’s side is the right-wing apparatus and their darlings in Congress — notably Sens. Mike Lee (R-UT) and Ted Cruz (R-TX), who joined the filibuster. They were delighted by Paul’s highly public confrontation with the White House and cheered him on until the very end.¶ On the other side are the GOP foreign policy hawks, led by Sens. John McCain (R-AZ) and Lindsey Graham (R-SC), who are Washington’s chief guardians of broad executive power when it comes to dealing with the country’s enemies.¶ They were furious with Paul’s attacks on President Obama’s drone policy.¶ “To somehow allege or infer that the President of the United States is going to kill somebody like Jane Fonda, or somebody who disagrees with the policies, is a stretch of imagination which is, frankly, ridiculous,” McCain said Thursday morning on the Senate floor.¶ He read from a scathing [Wall Street Journal editorial](http://online.wsj.com/article/SB10001424127887324128504578344700320290068.html) declaring that “if Mr. Paul wants to be taken seriously he needs to do more than pull political stunts that fire up impressionable libertarian kids in their college dorms. He needs to know what he’s talking about.”¶

# uniqueness

#### Debt ceiling will clear the house now- vote counts and Obama push. Republicans currently on the retreat because the administration is destroying them in negotiations, but continued PC is key

you read our evidence back to us- obama won’t negotiate on HC or external spending cuts- but PC is key

#### The House will pass a clean debt ceiling

National Review Online 9/19/13 ("The Corner, Lowry: House Will Pass Clean Debt Limit Raise")

The effort to use the debt ceiling as leverage to defund Obamacare will come to naught, National Review editor Rich Lowry said tonight.¶ During an appearance on Special Report’s All-Star Panel, Lowry predicted that the House would eventually pass a “clean” debt limit raise despite drama in the Senate related to the effort to defund Obamacare.¶ “It goes to the Senate, there’ll be some theatrics, Harry Reid will strip out the defunding from the [continuing resolution], it’ll go back to the House and probably end up passed in a clean version,” Lowry said.

#### A clean debt ceiling will pass now – statements prove

Bloomberg 9/19/13 ("Murray Sees Republican Yielding on Debt-Limit Cap (Transcript)")

HUNT: So what happens in the days to come? They’re going to - you know, with their - with their - with their base -¶ MURRAY: I am confident that they will come together with some mishmash policy of everything in the bag they’ve ever promised to the [Tea Party](http://topics.bloomberg.com/tea-party/), attach it to the debt ceiling, and try and send it over. Now, they haven’t been able to get the votes for anything yet -¶ HUNT: And when they do that -¶ MURRAY: - but we’ll see.¶ HUNT: When they do that, what’ll happen?¶ MURRAY: What will happen is that the Senate Democrats will say we are going to pass a clean debt ceiling. We have a responsibility as people who’ve been elected to govern to do the right thing.¶ HUNT: So no deals on the debt ceiling?¶ MURRAY: I see no deals on the debt ceiling.¶ HUNT: OK. So eventually Republicans are going to have to capitulate.¶ MURRAY: They did last time

#### Obama pushing and looks strong

Los Angeles Times 9/20/13 (Kathleen Hennessy, "Obama Fires Up Case for Raising the Debt Limit")

WASHINGTON – After weeks of dealing with hairy foreign policy issues and grave conflicts overseas, President [Obama](http://www.latimes.com/topic/politics/government/barack-obama-PEPLT007408.topic) appeared ready to get back to more familiar political territory – a fiscal fight with House [Republicans](http://www.latimes.com/topic/politics/parties-movements/republican-party-ORGOV0000004.topic).¶ Obama, looking feisty and loose for the first time in weeks, served up some new lines and a harsh assessment of his Republican opposition on Capitol Hill on Friday at a Ford plant in Liberty, Mo.¶ “They're not focused on you. They're focused on politics. They're focused on trying to mess with me,” the president said from the plant near Kansas City.¶ The speech was billed as another installment of Obama’s push to ensure the long-term stability of the middle class. But the remarks served a more immediate purpose. [The White House](http://www.latimes.com/topic/politics/government/executive-branch/white-house-PLCUL000110.topic) is beginning to ramp up its rhetoric as it tries to pound Republicans into keeping the government open, raising the debt ceiling and leaving funding for his [healthcare law](http://www.latimes.com/topic/health/healthcare-laws/affordable-care-act-%28obamacare%29-EVGAP00039.topic) intact. ¶ Obama spoke hours after the House passed legislation that would extend government funding until Dec. 15, avoiding a shutdown at the end of the month. But the measure also cut spending for the Affordable Care Act, leaving it no chance of passing the Democratic-controlled [Senate](http://www.latimes.com/topic/politics/government/u.s.-senate-ORGOV0000134.topic). The Senate is expected to strip out the health law provision and send the bill back to the House, bringing the legislative haggling dangerously close to the deadline.¶ But the spending bill isn’t the only clock ticking for [Congress](http://www.latimes.com/topic/politics/government/u.s.-congress-ORGOV0000131.topic). The government is set to reach the limit it can borrow in mid-October, which could force it to default on obligations if Congress and the White House can’t agree on legislation raising the limit.¶ Obama explained the predicament in an extended truck metaphor on Friday.¶ “I go into a Ford dealership, drive off with a new F-150. Unless I paid cash, I've still got to pay for it each month. I can't just say, you know, I'm not going to make my car payment this month,” Obama said. “That's what Congress is threatening to do, just saying, ‘I'm not going to pay the bills.’ ... So if we don't raise the debt ceiling, we’re deadbeats. If we fail to increase the debt limit, we would send our economy into a tailspin.”¶ Obama has made similar analogies before and polling shows Americans largely agree that not raising the limit would be harmful to the economy. Even so, Americans are split over whether Congress should raise the limit.¶ A recent [Washington Post](http://www.latimes.com/topic/arts-culture/mass-media/news-media/the-washington-post-ORCRP016752.topic) poll found roughly two-thirds of Republicans were opposed to raising the debt limit, while independent were split 46% opposed and 48% in favor. (Roughly two-thirds of Democrats supported an increase.)¶ This is the third major standoff over raising the debt ceiling. In the last two, the White House and congressional leaders have negotiated over spending cuts and tax increases to strike a deal. The White House now says it will no longer negotiate, leaving Congress to either send the president legislation raising the limit or default.¶ It’s not yet clear how the White House plans to hold to that threat, but Obama outlined his public case on Friday.¶ “I am not going to allow anyone to harm this country's reputation. I'm not going to allow them to inflict economic pain on millions of our own people just so they can make an ideological point,” he said. “But I need you to help. I need you to help tell Congress, pay our bills on time. Pass a budget on time. Stop governing from crisis to crisis. Put our focus back on where it should be, on you, the American people. … I mean, I don't know, it's like they do this every six months. Isn't it?”

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