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### Plan

#### Plan: The United States federal government should substantially increase statutory restrictions on the war powers authority of the President of the United States by establishing a federal court with jurisdiction over targeted killing orders.

### Advantage 1- terrorism

#### Expansive use of targeted killing leads to blowback, collateral damage, and operational errors—new guidelines to targeted killing is key

Guiora, 2012

[Amos, Professor of Law, S.J. Quinney College of Law, University of Utah, Targeted killing: when proportionality gets all out of proportion, Case Western Reserve Journal of International Law. 45.1-2 (Fall 2012): p235., Academic onefile] /Wyo-MB

Morality in armed conflict is not a mere mantra: it imposes significant demands on the nation state that must adhere to limits and considerations beyond simply killing "the other side." For better or worse, drone warfare of today will become the norm of tomorrow. Multiply the number of attacks conducted regularly in the present and you have the operational reality of future warfare. It is important to recall that drone policy is effective on two distinct levels: it takes the fight to terrorists directly involved, either in past or future attacks, and serves as a powerful deterrent for those considering involvement in terrorist activity. (53) However, its importance and effectiveness must not hinder critical conversation, particularly with respect to defining imminence and legitimate target. The overly broad definition, "flexible" in the Obama Administration's words, (54) raises profound concerns regarding how imminence is applied. That concern is concrete for the practical import of Brennan's phrasing is a dramatic broadening of the definition of legitimate target. It is also important to recall that operators--military, CIA or private contractors--are responsible for implementing executive branch guidelines and directives. (55) For that very reason, the approach articulated by Brennan on behalf of the administration is troubling. This approach, while theoretically appealing, fails on a number of levels. First, it undermines and does a profound injustice to the military and security personnel tasked with operationalizing defense of the state, particularly commanders and officers. When senior leadership deliberately obfuscates policy to create wiggle room and plausible deniability, junior commanders (those at the tip of the spear, in essence) have no framework to guide their operational choices. (56) The results can be disastrous, as the example of Abu Ghraib shows all too well. (57) Second, it gravely endangers the civilian population. What is done in the collective American name poses danger both to our safety, because of the possibility of blow-back attacks in response to a drone attack that caused significant collateral damage, and to our values, because the policy is loosely articulated and problematically implemented.(58) Third, the approach completely undermines our commitment to law and morality that defines a nation predicated on the rule of law. If everyone who constitutes "them" is automatically a legitimate target, then careful analysis of threats, imminence, proportionality, credibility, reliability, and other factors become meaningless. Self-defense becomes a mantra that justifies all action, regardless of method or procedure.

#### Judicial review solves groupthink; leads to better targeting decisions

Chebab, 2012

[Ahmad, Georgetown University Law Center, Retrieving the Role of Accountability in the Targeted Killings Context: A Proposal for Judicial Review, 3-30-12, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2031572] /Wyo-MB

To check the vices of groupthink and shortcomings of human judgment, the psychology literature emphasizes a focus on accountability mechanisms in which a better reasoned decision- making process can flourish.156 By serving as a constraint on behavior, “accountability functions as a critical norm-enforcement mechanism—the social psychological link between individual decision makers on the one hand and social systems on the other.”157 Such institutional review can channel recognition for the need by government decision-makers to be more self-critical in policy targeted killing designations, more willing to consider alternative points of view, and more willing to anticipate possible objections.158 Findings have also shown that ex ante awareness can lead to more reasoned judgment while also preventing tendentious and ideological inclinations (and political motivations incentivized and exploited by popular hysteria and fear).159 Requiring accounting in a formalized way prior to engaging in a targeted killing—by providing, for example, in camera review, limited declassification of information, explaining threat assessments outside the immediate circle of policy advisors, and securing meaningful judicial review via a COAACC-like tribunal—can promote a more reliable and informed deliberation in the executive branch. With process-based judicial review, the COAACC could effectively reorient the decision to target individuals abroad by examining key procedural aspects—particularly assessing the reliability of the “terrorist” designation—and can further incentivize national security policy-makers to engage in more carefully reasoned choices and evaluate available alternatives than when subject to little to no review.

#### Scenario 1 is global terrorism

#### Effective drones key- need to change our strats to avoid blowback

Masood 13

(Hassan, Monmouth College, “Death from the Heavens: The Politics of the United States’ Drone Campaign in Pakistan’s Tribal Areas,” 2013) /wyo-mm

Those who support the use of drones as an important counter-insurgency tactic nonetheless point out that the current campaign is not always conducted in the most effective manner. The authors of “Sudden Justice” for example, argue that the campaign should be focused on ‘high value targets’ and not be used frequently to take down the lower level operatives. The more you can destroy and disrupt the activities of personnel in the Taliban and al-Qaeda from the top-down instead of the bottom-up, the more of an impact it will have. The leadership qualities, organizational skills, and strategic awareness of various high-level commanders in both the Taliban and al-Qaeda cannot be easily replaced after their deaths at the hands of U.S. drones. Fricker and Plaw use the example of Baitullah Mehsud, a Tehrik-i-Taliban (TTP) leader who was killed by a drone strike on the roof of his uncle’s house on August 5, 2009. His death provoked an internal struggle in his organization that ultimately led to enough confusion and tension within the TTP that the Pakistan Army was able to launch the South Waziristan Offensive, putting the TTP on the defensive. But the lower level Taliban and al-Qaeda members have skills and abilities that are more common and more easily replaced. The amount of time and energy, the article asserts, that the U.S. is spending killing lower-level members (and increasing civilian casualties in the process, as the majority of the time these strikes happen during funeral processions or wedding parties) could instead be used to seriously disrupt the activities of the entire organization by targeting its leaders, much like the death of Osama bin Laden did to al-Qaeda in South/Central Asia in 2011. David Rohde agrees that the drones should be used, as they are an effective and efficient way of disrupting and destroying the extremist power base there, but their usage should be both selective and surgical. There is no consensus among scholars when it comes to evaluating the effectiveness of the use of drones as a counter-insurgency tactic. As Hassan Abbas points out “the truth is we don’t know whether U.S. drone strikes have killed more terrorists or produced more terrorists.”

#### Establishing a court to approve targeted killings restrains the executive, maintains an independent judiciary, solves operational errors with drones that increase terrorism and establishes a strict scrutiny standard for targeted killings

Guiora, 2012

[Amos, Professor of Law, S.J. Quinney College of Law, University of Utah, Targeted killing: when proportionality gets all out of proportion, Case Western Reserve Journal of International Law. 45.1-2 (Fall 2012): p235., Academic onefile] /Wyo-MB

The unitary executive theory aggressively articulated, and implemented, by the Bush Administration has been adopted in toto by the Obama Administration. While the executive clearly prefers to operate in a vacuum, the question whether that most effectively ensures effective operational counterterrorism is an open question. The advantage of institutionalized, process-based input into executive action prior to decision implementation is worthy of discussion in operational counterterrorism.¶ The solution to this search for an actionable guideline is the strict scrutiny standard. What is strict scrutiny, and how is it to be implemented in the context of operational counterterrorism? Why is there a need, if at all, for an additional standard articulating self-defense? The strict scrutiny standard would enable operational engagement of a non-state actor predicated on intelligence information that would meet admissibility standards akin to a court of law. The strict scrutiny test seeks to strike a balance enabling the state to act sooner but subject to significant restrictions.¶ The ability to act sooner is limited, however, by the requirement that intelligence information must be reliable, viable, valid, and corroborated. The strict scrutiny standard proposes that for states to act as early as possible in order to prevent a possible terrorist attack the information must meet admissibility standards similar to the rules of evidence. The intelligence must be reliable, material, and probative.¶ The proposal is predicated on the understanding that while states need to engage in operational counterterrorism, mistakes regarding the correct interpretation and analysis of intelligence information can lead to tragic mistakes. Adopting admissibility standards akin to the criminal law minimizes operational error.¶ Rather than relying on the executive branch making decisions in a "closed world" devoid of oversight and review, the intelligence information justifying the proposed action must be submitted to a court that would ascertain the information's admissibility. The discussion before the court would necessarily be conducted ex parte; however, the process of preparing and submitting available intelligence information to a court would significantly contribute to minimizing operational error that otherwise would occur.¶ The logistics of this proposal are far less daunting than they might seem--the court before which the executive would submit the evidence is the FISA Court. Presently, FISA Court judges weigh the reliability of intelligence information in determining whether to grant government ex parte requests for wire-tapping warrants. Under this proposal, judicial approval is necessary prior to undertaking a counterterrorism operation predicated solely on intelligence information. The standard the court would adopt in determining the information's reliability is the same applied in the traditional criminal law paradigm. The intelligence must be reliable, material, and probative.¶ While the model is different--a defense attorney cannot question state witnesses--the court will assume a dual role. In this dual role capacity the court will cross-examine the representative of the intelligence community and subsequently rule as to the information's admissibility. While some may suggest that the FISA court is largely an exercise in "rubber-stamping," the importance of the proposal is in requiring the government to present the available information to an independent judiciary as a precursor to engaging in operational counterterrorism.

#### Nuclear terrorism causes extinction

**Morgan 9**Hankuk University of Foreign Studies, Yongin Campus – South Korea (Dennis, Futures, November, “World on fire: two scenarios of the destruction of human civilization and possible extinction of the human race,” Science Direct), accessed 9-16-2011,WYO/JF

In a remarkable website on nuclear war, Carol Moore asks the question “Is Nuclear War Inevitable??” In Section , **Moore points out what most** **terrorists** obviously **already know about the nuclear tensions between powerful countries**. No doubt, **they’ve figured out that the best way to escalate these tensions into nuclear war is to set off a nuclear exchange**. As Moore points out, **all that militant terrorists would have to do is get their hands on one small nuclear bomb and explode it on either Moscow or Israel**. **Because of the Russian “dead hand” system, “where regional nuclear commanders would be given full powers should Moscow be destroyed,”** **it is likely that any attack would be blamed on the United States”**Israeli leaders and Zionist supporters have, likewise, stated for years that if Israel were to suffer a nuclear attack, whether from terrorists or a nation state, it would retaliate with the suicidal “Samson option” against all major Muslim cities in the Middle East. Furthermore, the Israeli Samson option would also include attacks on Russia and even “anti-Semitic” European cities**In that case, of course, Russia would retaliate, and the U.S. would then retaliate against Russia.China would probably be involved as well,** **as thousands, if not tens of thousands, of nuclear warheads, many of them much more powerful than those used at Hiroshima and Nagasaki, would rain upon most of the major cities in the Northern Hemisphere**. Afterwards, for years to come, massive radioactive clouds would drift throughout the Earth in the nuclear fallout, bringing death or else radiation disease that would be genetically transmitted to future generations in a nuclear winter that could last as long as a 100 years, taking a savage toll upon the environment and fragile ecosphere as well. And what many people fail to realize is what a precarious, hair-trigger basis the nuclear web rests on. Any accident, mistaken communication, false signal or “lone wolf’ act of sabotage or treason could, in a matter of a few minutes, unleash the use of nuclear weapons, and once a weapon is used, then the likelihood of a rapid escalation of nuclear attacks is quite high while the likelihood of a limited nuclear war is actually less probable since each country would act under the “use them or lose them” strategy and psychology; restraint by one power would be interpreted as a weakness by the other, which could be exploited as a window of opportunity to “win” the war. In other words, once Pandora's Box is opened, it will spread quickly, as it will be the signal for permission for anyone to use them. Moore compares swift nuclear escalation to a room full of people embarrassed to cough. Once one does, however, “everyone else feels free to do so.**The bottom line is that as long as large nation states use internal and external war to keep their disparate factions glued together and to satisfy elites’ needs for power and plunder, these nations will attempt to obtain, keep, and inevitably use nuclear weapons**. And as long as large nations oppress groups who seek self-determination, some of those groups will look for any means to fight their oppressors”  **In other words, as long as war and aggression are backed up by the implicit threat of nuclear arms, it is only a matter of time before the escalation of violent conflict leads to the actual use of nuclear weapons**, and once even just one is used, it is very likely that many, if not all, will be used, **leading to horrific scenarios of global death and the destruction of much of human civilization while condemning a mutant human remnant, if there is such a remnant, to a life of unimaginable misery and suffering in a nuclear winter.**

#### Scenario 2 is Yemen:

#### Obama has shifted drone strikes to Yemen

Hudson et al 13

Dr. Leila Hudson, Colin Owens, and Matt Callen, is associate director of the School of Middle Eastern & North African Studies at the University of Arizona and director of SISMEC, graduate of the School of Middle Eastern & North African Studies and the School of Government and Public Policy, and PhD candidate at the School of Middle Eastern & North African Studies. “Drone Warfare in Yemen: Fostering Emirates through Counterterrorism?,” Middle East Policy Council, 2013. http://mepc.org/journal/middle-east-policy-archives/drone-warfare-yemen-fostering-emirates-through-counterterrorism

An extensive CT drone campaign requires coordination with the central government of the territories in question. Evidently, Ali Abdallah Saleh's Yemeni government knew of the program and participated in it. Wikileaks revealed the particulars of a 2010 meeting with General David Petraeus, in which former President Saleh said (speaking of air strikes in general), "We'll continue saying the bombs are ours, not yours." Moreover, Saleh lamented mistakes due to the inaccuracy of cruise-missile strikes and preferred that the United States use fixed-wing aircraft (i.e., drones) in the future. Since then, the administration has increased its drone strikes and expanded the targeting parameters within Yemen and the Horn of Africa. Among the many ironies of drone strikes, Saleh's candor showed that old-style authoritarians are not above happily claiming credit for borrowed military power to enhance their "legitimacy."¶ Over the last decade, FATA has been subject to the largest drone campaign to date. The program started off slowly in 2004 under the Bush administration and has been expanded greatly. During Bush's tenure, there were approximately 50 strikes in FATA from 2004 to 2009. In Obama's first two years in office, from 2009 to 2010, the number of strikes in FATA tripled in half as much time. After 2010, the busiest year, drone strikes in FATA have decreased from 70 in 2011 to less than 25 in the first half of 2012. Notwithstanding the decrease in drone usage in FATA, this new and largely preferred program for "disrupting" or "decapitating" U.S. foes is not in decline; it has simply shifted location.¶ In our previous article, we posited that the increasing number of drone strikes in FATA and the decreasing ratio of deaths of so-called "high-value targets" (HVTs) to total deaths was a result of the larger payloads on UAVs and increasingly lax targeting requirements. And, as with the case of Pakistan, new technologies and the recent White House authorization that gave the Central Intelligence Agency (CIA) and the Joint Special Operations Command (JSOC) more options to conduct strikes in Yemen, will likely produce a similar outcome.1 New technology with larger payload capacity and wider targeting parameters through the use of "signature strikes," designed to eliminate groups of people who appear (conveniently and posthumously) to be militants, will likely produce an increase in the lethality and frequency of drone strikes in Yemen.

#### Yemen drone strikes will cause wide spread blowback and strengthen the capacity of AQAP – retaliatory attacks, AQAP recruitment, US policy strategic confusion, undermines Yemeni government credibility to govern, and upsets US-Yemen relations

Hudson et al 13

Dr. Leila Hudson, Colin Owens, and Matt Callen, is associate director of the School of Middle Eastern & North African Studies at the University of Arizona and director of SISMEC, graduate of the School of Middle Eastern & North African Studies and the School of Government and Public Policy, and PhD candidate at the School of Middle Eastern & North African Studies. “Drone Warfare in Yemen: Fostering Emirates through Counterterrorism?,” Middle East Policy Council, 2013. http://mepc.org/journal/middle-east-policy-archives/drone-warfare-yemen-fostering-emirates-through-counterterrorism

Just as likely, as the case of FATA has clearly shown, increased strikes in Yemen will produce distinct forms of blowback. This will manifest itself in terms of increased recruitment for al-Qaeda or affiliated groups and a reduction of the Yemeni leadership's ability to govern, increasing competition from alternative groups.¶ In the case of drone use in FATA, we identified five distinct forms of blowback, all of which are directly applicable to the use of drones in Yemen. The first, purposeful retaliation is typified by the events of the 2009 Khost bombing of CIA Camp Chapman and, more recently, an al-Qaeda attack earlier in 2012 on a liquid-natural-gas pipeline running through Yemen's Shabwa province.2 The motivation behind both of these attacks has been cited as the unremitting presence of, and specific attacks from, U.S.-operated drones. The second form of blowback deals with the increased ability of AQAP to recruit new members, especially those who have had friends or family killed in the attacks. Third, an overreliance on drones creates strategic confusion. While the United States is not waging a counterinsurgency (COIN) campaign next to Yemen — as it is in Afghanistan, Pakistan's western neighbor — the control of the drone program has oscillated between the CIA and JSOC, reducing U.S. accountability and blurring the lines between military and intelligence operations. Taken together, these three factors foster two additional forms of blowback: the continued destabilization of Yemen and an increasingly precarious alliance between the American and Yemeni governments. All told, these distinct forms of blowback combine to heighten Yemen's ungovernability.

#### AQAP has the intent and capacity to shut down Bab al-Mandeb

Thomas 11

(Matthew, MA Nonproliferation and Terrorism Studies, “Al Qaeda in the Land of Faith and Wisdom: The Fall of Saleh and March on Al-Aqsa,” Monterey Institute of International Studies, May 8)

AQAP is well aware of the positive implications of Yemen’s strategic location in the Gulf of Aden. One of the world’s five energy chokepoints, the Bab al-Mandeb strait or Gate of Tears adjoining Yemen, is a strategic link between the Indian Ocean and the Mediterranean Sea, via the Red Sea and the Suez Canal. “An estimated 3.2 million bbl/d flowed through this waterway in 2009 (vs. 4 million bbl/d in 2008) toward Europe, the United States, and Asia.” Bab al-Mandeb has also proven vulnerable to terrorist and pirate attacks, as demonstrated by the previous bombings of the USS Cole in 2000 and Limburg French oil tanker in 2002. Yemen’s sparse oil resources, which are concentrated in the southern half of the country, are projected to be completely gone in the very near future. This is unfortunate for AQAP, which coincidentally maintains a power base in the southern half of Yemen. AQAP has made its intentions to exploit Yemen’s strategic position quite clear. If AQAP can overcome other tribal rulers and secessionists and dominate the state, it intends to cut off the oil lifeline from its Western enemies, and any remnants of Saleh’s government should it by way of some miracle hold on to poser. As Emir al-Wuhayshi explains: The interest that is shown towards AQAP is because of the strategic importance of the Arabian Peninsula. This is the place of the revelation, the birthplace of Islām, the land of the two holy Mosques and the blood of the saĥāba runs through the veins of its sons. Because of the greed of the Americans, they have vital interests in the Arabian Peninsula. The passage ways of commerce pass through its waters and oil is stolen from it. So this place is a vein of life for the Americans. AQAP recruits from both within the region and internationally. Yemen’s political destabilization is advantageous to AQAP, as the group appeals to potential recruits disillusioned and frustrated with Saleh’s regime. Also, in order to maintain ties with the wealthy Saudi counterparts, AQAP consistently seeks recruits from within the Kingdom. AQAP’s recruiting method “uses a combination of theological and socioeconomic issues” that call for the entire Muslim community to wage jihad, but uses messages “with specific appeals targeting Yemenis and Saudis.” The organization’s international objectives of attacking the U.S. and Western interests in general are supported by targeting individuals within the U.S. homeland, such as the Fort Hood shooter Major Nidal Hassan and Christmas Day bomber Umar Farouk Abdulmutallab. The fiery clerical leader of AQAP, Anwar al-Awlaki, having been born and raised for the majority of his life in the U.S. is familiar with the Western culture and lifestyle. As a result, he has been able to use this familiarity with Western society to AQAP’s advantage in recruiting and radicalizing American Muslims. The media arm of AQAP, Sada al-Malahim (echo of epics), continues to urge Muslims to take up jihad and attack infidels wherever they may be. One interesting section in the second issue of Inspire magazine even suggested American Muslims purchase a large pick-up truck to mow down, or run over, as many infidels as possible. Indeed, the magazine proves to be a valuable propaganda tool in enticing others to join AQAP’s ranks and take up the black banner of Islam in waging armed jihad. AQAP maintains ties with several terrorist groups both locally and internationally. There is documented evidence of collaboration between AQAP and other al-Qaeda affiliates. The alliance between AQAP and the Somali terrorist group Ḥarakat al-Shabab al-Mujahidin, better known as al-Shabab, personifies a combination of interests to uniting as one force in the Gulf of Aden. At one point, al-Qaeda even called for creating a united jihadist maritime force. The established tie between AQAP and al-Shabab represents a considerable threat to Western interests in the region, particularly in the Gulf of Aden. AQAP has, also, sought to cooperate with al-Qaeda in the Islamic Maghreb (AQIM) in a recently foiled plot in France. Indeed, AQAP coordinated with another al Qaeda affiliate AQIM, to dispatch a cell of North Africans across the Mediterranean Sea by boat from North Africa to carry out an attack France. AQAP’s operational funding comes mainly from contributions through its wealthy Saudi members and associates. By strengthening ties with members and sympathizers from Saudi Arabia, AQAP is able to channel funds from wealthy donators. Money has even been reported to come to AQAP by way of fellow mujahidin in Iraq. Also, AQAP relies on Zakat or alms giving for funding. Zakat is similar to tithing in the Christian world and is one of the pillars of Islam. Several charities and front groups associated with AQAP present a façade of good-will for Islam and for the group. Funds are solicited for the stated intent of building mosques and schools but are often diverted to support AQAP and other terrorist organizations. Some of the organizations through which AQAP is able to radicalize, recruit, and finance include: al-Iman University; al-Haramain Foundation; al-Islah charity; al-Hikmah al-Yamania Charity; al-Manhal Charitable Society; Charitable Society for Social Welfare; the Commission on Scientific Signs in the Quran and Sunnah. The use of Hawala, an informal value transfer system, is a preferable AQAP financial management mechanism which operates outside of the formal banking system and leaves no paper trail. The Hawala system has come under more scrutiny since 9/11, and been a consistent problem in combatting terrorism financing for al-Qaeda and its affiliates. Another source of AQAP funding is the black market in the failed state of Somalia. In consort with al-Shabab, the al Qaeda affiliate in Somalia, AQAP is involved in the lucrative drug, arms, and human trafficking trade in the region. Arms trafficking is big business in Yemen and the inability of the Saleh regime to control it is indicative of just how weak the regime is presently. A recent plot (March 2011) to smuggle 16,000 pistols from Turkey to Yemen is a case in point. The shipment was intercepted by Dubai police but many believe other shipments are getting through and are a harbinger of more disruption and violence. In such a destabilizing scenario AQAP stands to gain in its quest for political power in Yemen. However, to hold power the AQAP must convince, cajole, and perhaps defeat Yemen’s other powerful tribes that value tribal allegiance above all else. Dealing with the tribes is unavoidable for AQAP and inevitable in the case of a political revolution which becomes increasingly likely given the number of governments to fall in the region these past few months. The following quote from Faris Sanabani, creator and publisher of the English language Observer in Yemen, accurately depicts AQAP’s gravitas in Yemen, Al Qaida in Yemen is more than an organisation, it is a melting pot for whomever has an issue and wants to go violent. So if you have an issue that you can’t deal with, if you feel you are the victims of injustice, if you’re broke, al Qaida increasingly seems to be an option. As Yemenis struggle to cope with the lack of basic services such as access to food and water, employment, and education, they are finding more in common with AQAP and those tribal authorities opposed to Saleh’s regime. If this situation continues to persist, Yemen—particularly the southern half of the nation—will become almost entirely devoid of government control. Also, AQAP’s resilience against increased U.S. operations targeting training camps in southern Yemen has bolstered the group’s image among those who have suffered because of American airstrikes and likewise increased AQAP’s recruiting opportunities among those disenfranchised by U.S. attacks. As a result, AQAP is on the road to establishing a firm base in the highly martial tribal provinces, and subsequently should be able to expand operations into other areas in the region like Saudi Arabia, as well as, overseas in Europe and the U.S. AQAP’s previous declaration to attack Western interests and cut off America’s oil lifeline were not idle threats as demonstrated by past attacks on oil wells and pipelines in the region. In addition, given AQAP’s strategic position in territory near the Bab al-Mandeb strait and increased cooperation with al-Shabab in Somalia, it is highly plausible that AQAP could conduct future attacks on oil shipments in the Gulf of Aden, much like the previous attack against the French Limburg. AQAP’s relationship with Saudi donors in terms of recruiting and financing is key to its calls to overthrow the apostate Saudi regime, and the August 2009 failed assassination attempt against Prince Muhammad bin Nayif suggests that AQAP related attacks might continue and possibly intensify within the Saudi Kingdom. AQAP is smart. It has studied and learned from the “Anbar awakening” and other al-Qaeda in Iraq failures which resulted in the alienation of the local population. AQAP avoids making similar mistakes and is proving an ability to adapt to Yemen’s dynamic socio-political circumstance. Indeed, AQAP has proven more successful than other al-Qaeda affiliates by “pursuing a shrewd strategy” of focusing exclusively on attacking U.S., Yemeni and the Saudi governments, while avoiding attacks against the local populace. Ultimately, the group’s success has been in large part to the group’s patient foresight and restraint in not overextending itself in waging global jihad. What effects would a failed state in Yemen have on AQAP? What are the regional and international consequences? What is the appropriate U.S. response to a potential failed state in Yemen? These questions are increasingly relevant demanding a deeper examination of the conditions of a failed state and positive correlations with non-state actors, such as terrorist organizations. The risk of Yemen becoming a failed state grows daily and will undoubtedly prove advantageous to AQAP’s future modus operandi. As David Carment observes, If Yemen continues on its current trajectory it will become a failed state in the next several months. Yemen's implosion would have a significant impact on Saudi Arabia, itself feeling the direct effects of upheaval on its border with Yemen. Failure would also give al-Qaida unprecedented operational space in the south. The impending fall of Yemeni President Ali Abdullah Saleh coincides with an era of unprecedented political upheaval in the Middle East. Yemen as a failed state would exacerbate cross-border issues with Saudi Arabia, allowing smugglers, refugees, illegal workers, and terrorists to move even more freely between the two countries. The lack of border security may lead to an increase in AQAP agents infiltrating into Saudi Arabia and subsequent rise in terrorist attacks within the Kingdom. Furthermore, AQAP’s relationship with al-Shabab in neighboring Somalia will certainly become heightened should Yemen become a failed state. The proximity of two failed states with increased terrorist collaboration and prevalence of transnational organized crime, located in the strategic Gulf of Aden is a potential doomsday scenario in which the region, already struggling to recover from rampant political revolutions could follow Yemen into chaos.

#### Closing the strait collapses the economy

UPI 10

(“Al-Qaida threatens to close key oil artery,” Feb. 24, 2010. UPI. http://www.upi.com/Top\_News/Special/2010/02/24/Al-Qaida-threatens-to-close-key-oil-artery/UPI-27151267027462/#ixzz1XPTj8CWP. CR)

SANAA, Yemen, Feb. 24 (UPI) -- Amid the growing war jitters infecting much of the Middle East and fears Iran may seek to close the Gulf's Strait of Hormuz, a key oil artery, there are growing concerns that jihadists in Yemen plan to block another maritime choke point to disrupt oil supplies. Said al-Shihri, the deputy commander of al-Qaida in the Arabian Peninsula, recently outlined a radical strategy: joining forces with Islamist militants in Somalia, across the Gulf of Aden from Yemen, to take control of the Bab el-Mandab, a narrow waterway between Yemen and Eritrea that links the Indian Ocean with the Mediterranean via the Red Sea. For that to be anywhere near effective, AQAP would need freedom of access in southern Yemen, where it has bases and where the central government in Sanaa is grappling with a growing secessionist movement. This goes a long way to explaining AQAP's recent statements voicing support for southern secessionists, who are led by old-style socialists who once formed a separate state until the union with the north in 1990. AQAP recently described supporting the southern cause as a religious duty for all Muslims. AQAP leader Nasser al-Wahishi declared, "We are obligated to support them." Al-Shihri, a former Guantanamo detainee from Saudi Arabia, said in a 12-minute audiotape released Feb. 8 that controlling the Bab al-Mandeb -- Arabic for "Gate of Tears" because of the navigational hazards ancient seafarers faced there -- would "bring it back under the protection of Islam." He urged Somali jihadists, who have links to al-Qaida, to join with AQAP to "create a great victory and international power for us … "Then the strait will be closed and the grip of will be tightened around the throat of the Jews, because the U.S. supports them through (the strait), by means of the Red Sea in particular." That is in line with Osama bin Laden's recent call for an economic jihad to bleed the West. Following an offer by the al-Shebab militants in Somalia, who are fighting a U.S.-backed transitional federal government, to join forces with AQAP, al-Shihri declared they would wage war on the Americans on two fronts. The Red Sea, which is linked to the Mediterranean at its northern end via the Suez Canal, is one of the most critical maritime routes in the world. Thirty percent of world trade runs through the Bab al-Mandeb. Since the 1973 Arab-Israeli war, it has become a vital security issue for the countries along its littoral and to the major powers who depend on its for swift military deployments, as in the 1990-91 Gulf War and the 2003 U.S.-led invasion of Iraq. A major new operational theater in the conflict against Islamist extremism in that region would cause considerable problems for the United States, Egypt and Israel, as well as for Saudi Arabia and the Arab states of the Gulf. They depend on access to the Red Sea to transport oil and gas exports to the West. A jihadist breakthrough in the strait would also open the way for Iranian expansion into the region and into Africa, where it is making a major effort to secure allies and markets.

#### Economic decline causes protectionism and war – their defense doesn’t assume accompanying shifts in global power.

Royal 10 – Jedediah Royal, Director of Cooperative Threat Reduction at the U.S. Department of Defense, 2010, “Economic Integration, Economic Signaling and the Problem of Economic Crises,” in Economics of War and Peace: Economic, Legal and Political Perspectives, ed. Goldsmith and Brauer, p. 213-215

Less intuitive is how periods of economic decline may increase the likelihood of external conflict. Political science literature has contributed a moderate degree of attention to the impact of economic decline and the security and defense behavior of interdependent states. Research in this vein has been considered at systemic, dyadic and national levels. Several notable contributions follow. First, on the systemic level, Pollins (2008) advances Modelski and Thompson’s (1996) work on leadership cycle theory, finding that rhythms in the global economy are associated with the rise and fall of a pre-eminent power and the often bloody transition from one pre-eminent leader to the next. As such, exogenous shocks such as economic crisis could usher in a redistribution of relative power (see also Gilpin, 1981) that leads to uncertainty about power balances, increasing the risk of miscalculation (Fearon, 1995). Alternatively, even a relatively certain redistribution of power could lead to a permissive environment for conflict as a rising power may seek to challenge a declining power (Werner, 1999). Seperately, Pollins (1996) also shows that global economic cycles combined with parallel leadership cycles impact the likelihood of conflict among major, medium and small powers, although he suggests that the causes and connections between global economic conditions and security conditions remain unknown. Second, on a dyadic level, Copeland’s (1996, 2000) theory of trade expectations suggests that ‘future expectation of trade’ is a significant variable in understanding economic conditions and security behavious of states. He argues that interdependent states are likely to gain pacific benefits from trade so long as they have an optimistic view of future trade relations, However, if the expectations of future trade decline, particularly for difficult to replace items such as energy resources, the likelihood for conflict increases, as states will be inclined to use force to gain access to those resources. Crisis could potentially be the trigger for decreased trade expectations either on its own or because it triggers protectionist moves by interdependent states. Third, others have considered the link between economic decline and external armed conflict at a national level. Blomberg and Hess (2002) find a strong correlation between internal conflict and external conflict, particularly during periods of economic downturn. They write, The linkages between internal and external conflict and prosperity are strong and mutually reinforcing. Economic conflict tends to spawn internal conflict, which in turn returns the favor. Moreover, the presence of a recession tends to amplify the extent to which international and external conflict self-reinforce each other. (Blomberg & Hess, 2002. P. 89) Economic decline has been linked with an increase in the likelihood of terrorism (Blomberg, Hess, & Weerapana, 2004), which has the capacity to spill across borders and lead to external tensions. Furthermore, crises generally reduce the popularity of a sitting government. ‘**D**iversionary theory’ suggests that, when facing unpopularity arising from economic decline, sitting governments have increase incentives to fabricate external military conflicts to create a ‘rally around the flag’ effect. Wang (1996), DeRouen (1995), and Blomberg, Hess, and Thacker (2006) find supporting evidence showing that economic decline and use of force are at least indirectly correlated. Gelpi (1997), Miller (1999), and Kisangani and Pickering (2009) suggest that the tendency towards diversionary tactics are greater for democratic states than autocratic states, due to the fact that democratic leaders are generally more susceptible to being removed from office due to lack of domestic support. DeRouen (2000) has provided evidence showing that periods of weak economic performance in the United States, and thus weak Presidential popularity, are statistically linked to an increase in the use of force. In summary, recent economic scholarship positively correlated economic integration with an increase in the frequency of economic crises, whereas political science scholarship links economic decline with external conflict at systemic, dyadic and national levels. This implied connection between integration, crisis and armed conflict has not featured prominently in the economic-security debate and deserves more attention.

### Advantage 2: Drone Proliferation

#### The global drone arms race is underway

Boyle 2013

[MICHAEL J. BOYLE, Ph.D- Michael Boyle is an Assistant Professor of Political Science at La Salle University in Philadelphia. “The costs and consequences of drone warfare,” International Affairs, January 1, 2013, http://web.ebscohost.com/ehost/pdfviewer/pdfviewer?sid=946befe6-cb0f-406e-8eeb-8cf208339510%40sessionmgr10&vid=1&hid=25//wyo-ng]

A global arms race for drone technology is already under way. According to one estimate, global spending on drones is likely to be more than US$94 billion by 2021.126 One factor that is facilitating the spread of drones (particularly non-lethal drones) is their cost relative to other military purchases. The top-of-the line Predator or Reaper model costs approximately US$10.5 million each, compared to the US$150 million price tag of a single F-22 fighter jet.127 At that price, drone technology is already within the reach of most developed militaries, many of which will seek to buy drones from the US or another supplier. With demand growing, a number of states, including China and Israel, have begun the aggressive selling of drones, including attack drones, and Russia may also be moving into this market.128 Because of concerns that export restrictions are harming US competitiveness in the drones market, the Pentagon has granted approval for drone exports to 66 governments and is currently being lobbied to authorize sales to even more.129 The Obama administration has already authorized the sale of drones to the UK and Italy, but Pakistan, the UAE and Saudi Arabia have been refused drone technology by congressional restrictions.130 It is only a matter of time before another supplier steps in to offer the drone technology to countries prohibited by export controls from buying US drones. According to a study by the Teal Group, the US will account for 62 per cent of research and development spending and 55 per cent of procurement spending on drones by 2022.131 As the market expands, with new buyers and sellers, America’s ability to control the sale of drone technology will be diminished. It is likely that the US will retain a substantial qualitative advantage in drone technology for some time, but even that will fade as more suppliers offer drones that can match US capabilities

#### Drone courts limit executive behavior and are key to solve transparency in drone strikes

Wexler 13 (BLUE)

(Lesley, Professor of Law, University of Illinois College of Law, “The Role of the Judicial Branch during the Long War: Drone Courts, Damage Suits, and FOIA Requests,” 2013, Social Science Research Network/) /wyo-mm

This chapter suggests the judiciary may play an important role in the debate over the executive branch’s decisions regarding IHL even if it declines to speak to the substance of such cases. First, advocates may use courts as a visible platform in which to make their arguments and spur conversations about alternative, non-judicially mandated transparency and accountability measures. As they did with the trio of detention cases, advocates can leverage underlying constitutional concerns about the treatment of citizens to stimulate interest in the larger IHL issues. Second, litigants may use courts to publicize and pursue Freedom of Information (FOIA) requests and thus enhance transparency. Even if courts decline to grant FOIA requests, the lawsuits can generate media attention about what remains undisclosed. Third, and most robustly, Congress may pass legislation that would facilitate either prospective review of kill lists through a so-called drone court or remove procedural barriers to retrospective damage suits for those unlawfully killed by a drone strike. Even the threat of such judicial role may influence executive branch behavior.

#### The plan solves international norms- US can shape and limit drone prolif and provide the ability to apply diplomatic pressure

Zenko, 2013

[Micah, Council of Foreign Relations, Reforming U.S. Drone Strike Policies, January 2013, Council Special Report No. 65, Online] /Wyo-MB

History shows that how states adopt and use new military capabilities is often influenced by how other states have—or have not—used them in the past. Furthermore, norms can deter states from acquiring new technologies.72 Norms—sometimes but not always codified as legal regimes—have dissuaded states from deploying blinding lasers and landmines, as well as chemical, biological, and nuclear weapons. A well-articulated and internationally supported normative framework, bolstered by a strong U.S. example, can shape armed drone proliferation and employment in the coming decades. Such norms would not hinder U.S. freedom of action; rather, they would internationalize already-necessary domestic policy reforms and, of course, they would be acceptable only insofar as the limitations placed reciprocally on U.S. drones furthered U.S. objectives. And even if hostile states do not accept norms regulating drone use, the existence of an international normative framework, and U.S. compliance with that framework, would pre- serve Washington’s ability to apply diplomatic pressure. Models for developing such a framework would be based in existing international laws that emphasize the principles of necessity, proportionality, and distinction—to which the United States claims to adhere for its drone strikes—and should be informed by comparable efforts in the realms of cyber and space.

#### Scenario 1 is global conflict

#### Failure to implement clear international standards for drone use makes global warfare from drone proliferation inevitable

Roberts, 2013

 [Kristin, national journal, When the Whole World Has Drones, 3-22-13, http://www.nationaljournal.com/magazine/when-the-whole-world-has-drones-20130321] /Wyo-MB

**The proliferation of drone technology has moved well beyond the control of the United States government and its closest allies. The aircraft are too easy to obtain,** with barriers to entry on the production side crumbling too quickly to place limits on **the spread of** a **technology** that **promises to transform warfare on a global scale. Already, more than 75 countries have remote piloted aircraft. More than 50 nations are building a total of nearly a thousand** types. At its last display at a trade show in Beijing, China showed off 25 different un~~manned~~ aerial vehicles. Not toys or models, but real flying machines.¶ It’s a classic and common phase in the life cycle of a military innovation: An advanced country and its weapons developers create a tool, and then others learn how to make their own. But **what makes this case rare, and dangerous, is the powerful combination of efficiency and lethality spreading in an environment lacking internationally accepted guidelines on legitimate use. This technology is snowballing through a global arena where the main precedent for its application is the one set by the United States; it’s a precedent Washington does not want anyone following.¶ America**, the world’s leading democracy and a country built on a legal and moral framework unlike any other, **has adopted a war-making process that too often bypasses its traditional, regimented, and rigorously overseen military in favor of a secret program never publicly discussed, based on legal advice never properly vetted.** **The Obama administration** has used its executive power to refuse or outright ignore requests by congressional overseers, and it **has resisted monitoring by federal courts**.¶ To implement this covert program, **the administration has adopted a tool that lowers the threshold for lethal force by reducing the cost and risk of combat**. This still-expanding counterterrorism **use of drones to kill people**, including its own citizens, **outside of** traditionally defined battlefields and **established protocols for warfare, has given friends and foes a green light to employ these aircraft in extraterritorial operations that could not only affect relations between the nation-states involved but also destabilize entire regions and potentially upset geopolitical order**.¶ Hyperbole? **Consider** this: **Iran**, with the approval of Damascus, **carries out a lethal strike on anti-Syrian forces inside Syria; Russia picks off militants** tampering with oil and gas lines **in Ukraine or Georgia; Turkey arms a U.S.-provided Predator to kill Kurdish militants in northern Iraq** who it believes are planning attacks along the border. **Label the targets as terrorists, and in each case, Tehran, Moscow, and Ankara may point toward Washington and say, we learned it by watching you**. In Pakistan, Yemen, and Afghanistan.¶ **This is the unintended consequence of American drone warfare**. For all of the attention paid to the drone program in recent weeks—about Americans on the target list (there are none at this writing) and the executive branch’s legal authority to kill by drone outside war zones (thin, by officials’ own private admission)—what goes undiscussed is **Washington’s deliberate failure to establish clear and demonstrable rules for itself that would at minimum create a globally relevant standard for delineating between legitimate and rogue uses of one of the most awesome military robotics capabilities of this generation**.

#### Drone use erodes norms for war and causes global conflict that leads to extinction

Falk, 2012

Perhaps, the most important difference between the torture and drone debates has to do with future implications. Although there are some loopholes involving extraordinary rendition and secret CIA operated overseas black sites, torture has been credibly prohibited by President Obama. Beyond this, the repudiation of torture has been understood in a manner that conforms to the general international consensus rather than the narrowed conception insisted upon by the Bush-era legalists. In contrast, **drones seem destined to be central to operational planning for future military undertakings of the United States,** with sharply escalating appropriations to support both the purchase of increasing numbers and varieties of drone. The government is engaging in a major research program designed **to make drones available for an expanding range of military missions and to serve as the foundation of a revolutionary transformation of the way America will fight future wars.** **Some of these revolutionary features are** already evident: casualty-free military missions; subversion of territorial sovereignty; absence of transparency and accountability; further **weakening of political constraints on recourse to war**.¶ **Future war scenarios involve attacks by drones swarms, interactive squadrons of drones re-targeting while in a combat zone without human participation, and covert attacks using mini-drones. A further serious concern is the almost certain access to drone technology by private sectors actors.** These musings are not science fiction, but well financed undertakings at or beyond the development stage. It is in these settings of fhere, especially, where the analogy to nuclear weapons seems most pertinent, and discouraging. **Given the amount invested and the anticipated profitability and utility of drones, it may already be too late to interrupt their development, deployment, and expanding sphere of use.** Unlike nuclear weaponry, already some 50 countries reportedly possess drones, mainly adapted to surveillance**. As with nuclear weaponry, the United States, and other leading political actors, will not agree to comprehensive prohibitions on the use of drones for lethal purposes**.¶ If this line of reasoning is generally correct, **there are two likely futures for attack drones: an unregulated dispersion of the weaponry to public and private actors with likely strategic roles undermining traditional international law limits on war making and public order**; **or a new non-proliferation regime for drones that permits all states to possess and use surveillance drones within sovereign space and allows some states to make discretionary use of drones globally and for attack purposes until a set on constraining regulations can be agreed upon by a list of designated states.** That is, drone military technology will perpetuate the two-tier concept of world order that has taken shape in relation to nuclear weapons, and reflects the consensus that both nuclear disarmament and unrestricted proliferation of nuclear weaponry are unacceptable. In this regard, a **counter-proliferation regime for drones is a lesser evil, but still an evil.**¶ **The technological momentum that has built up in relation to drones is probably too strong to be challenged politically. The military applications are too attractive, the technology is of a cutting edge fantasy quality, the political appeal of war fighting that involves minimum human risk is too great.** At the same time, **for much of the world this kind of unfolding future delivers a somber message of a terrifying unfolding vulnerability**. At present, **there seems to be no way to insulate societies** **from** either intrusive and perpetual surveillance or **the prospect of targeted killing and devastation conducted from a remote location.** It may be contended that such an indictment of drones exaggerates their novelty. Has not the world lived for decades with weapons of mass destruction possessed by a small number of non-accountable governments and deliverable anywhere on the planet in a matter of minutes? This is superficially true, and frightening enough, but **the catastrophic quality of nuclear weaponry and its release of atmospheric radioactivity operates as an inhibitor of uncertain reliability, while with drone their comparative inexpensiveness and non-apocalyptic character makes it much easier to drift mindlessly until an unanticipated day of reckoning occurs by which time all possibilities of control will have been long lost.**¶ **As with nuclear weaponry, climate change, and respect for the carrying capacity of the earth, we who are alive at present may be the last who have even the possibility of upholding the life prospects of future generations**. **It seems late, but still not too late to act responsibly, but we will not be able to make such claims very much longer**. Part of the challenge is undoubtedly structural. For most purposes, **global governance depends on cooperation among sovereign states, but in matters of war and peace the world order system remains resolutely vertical and under the control of geopolitical actors, perhaps as few as one, who are unwilling to restrict their military activities** to the confines of territorial boundaries, but insist on their prerogative to manage coercively the planet as a whole. **When it comes to drones the fate of humanity is squeezed between the impotence of state-centric logic and the grandiose schemes of the geopolitical mentality.**

#### Scenario 2 is South China Sea

#### Chinese drone acquisition threatens U.S. interests in the Asia-Pacific and causes aggression – only reforming our drone policy checks them

CBS 5-3 (China emerges as new force in drone warfare, Associated Press, 3 May 2013, http://www.cbsnews.com/8301-202\_162-57582699/china-emerges-as-new-force-in-drone-warfare/, da 8-3-13) PC

China's move into large-scale drone deployment displays its military's growing sophistication and could challenge U.S. military dominance in the Asia-Pacific. It also could elevate the threat to neighbors with territorial disputes with Beijing, including Vietnam, Japan, India and the Philippines. China says its drones are capable of carrying bombs and missiles as well as conducting reconnaissance, potentially turning them into offensive weapons in a border conflict.¶ China's increased use of drones also adds to concerns about the lack of internationally recognized standards for drone attacks. The United States has widely employed drones as a means of eliminating terror suspects in Pakistan and the Arabian Peninsula.¶ "China is following the precedent set by the U.S. The thinking is that, `If the U.S. can do it, so can we. They're a big country with security interests and so are we'," said Siemon Wezeman, a senior fellow at the arms transfers program at the Stockholm International Peace Research Institute in Sweden, or SIPRI.¶ "The justification for an attack would be that Beijing too has a responsibility for the safety of its citizens. There needs to be agreement on what the limits are," he said.

#### Chinese Drone proliferation collapses Japan China relations, and increases instability between China and the U.S. in the South China Sea

Narayani Basu, 13

Writes for the IPCS, Institute of Peace and Conflict Stories “China: The Dawn of the Drones” <http://www.ipcs.org/article/military/china-the-dawn-of-the-drones-3948.html>, accessed 9/2/13,WYO/JF

¶ The primary role of China’s growing drone programme is to help Beijing control and monitor disputed territories in the Asia-Pacific region. Put simply, drones help China deter countries from intervening in the area by helping to detect and target potential violators of the areas they are trying to deny. Indeed, Beijing’s deployment of drones near the disputed Senkaku/Diaoyu Islands impacted Sino-Japanese relations [recently](http://www.guardian.co.uk/world/2013/jan/08/china-japan-drone-race), prompting Tokyo to place its own defence programme under review, with the aim of introducing its own drones to patrol the disputed waters by 2015. For China then, drones could act as the ideal surveillance tool in the event of a crisis - a proxy weapon to deter assertive behaviour over territories China considers its own - such as the South China Sea and the Senkaku Islands. China’s move into large-scale drone deployment is a significant indication of its military’s growing sophistication. It could not only challenge American dominance in the Asia-Pacific, but could also elevate the threat to any neighbours with which China has territorial disputes, such as Vietnam, Japan, India or the Philippines. Within China, drones are already patrolling the borders, and a navy drone was deployed to the western province of Sichuan to provide aerial surveillance, in the aftermath of last month’s deadly earthquake. However, on a wider geopolitical canvas, Chinese drones could be the tipping point for giving the Chinese an edge in possible future disputes in Asia with the US, as American foreign policy continues its rebalancing trends within the Asia-Pacific. Indeed, China has already made it clear that the drones are capable of carrying bombs and missiles as well as conducting reconnaissance missions, potentially turning them into offensive weapons in the event of a border conflict. The thought of armed UAVs patrolling the skies over disputed territories like the Paracel and the Spratly Islands is enough to cause anxiety among ASEAN members, besides greatly enhancing China’s ocean surveillance. On the other hand, it is equally important to remember that Chinese drones are not yet as sophisticated as their US counterparts in terms of range, hardware, and engines. Official makers COSIC admit that progress is needed in half a dozen major areas, from airframe designs to digital linkups. Secondly, the Chinese drones on display at the Zhuhai Airshow are prototypes and not finished products. Nor have Chinese drones ever been put to military use. In the light of these facts, it is perhaps safe to say that the Chinese agenda for impact is twofold: to maintain surveillance over key territories in dispute, and to stoke fears of a UAV race between the US and China, which has already manifested itself - as evidenced by the DSB report - in the top echelons of the Pentagon.

#### CONFLICT IN THE SCS ESCALATES TO FULL-SCALE NUCLEAR WAR

STRAITS TIMES 1995

[staff, “Choose Your Own Style of Democracy”, May 21, p. ln// wyo-tjc]

In his speech, Dr Mahathir also painted three scenarios for Asia.

**In the first -the worst possible scenario -Asian countries would go to war against each other, he said. It might start with clashes** between Asian countries **over the Spratly Islands** because of China's insistence that the South China Sea belonged to it along with all the islands, reefs and seabed minerals. **In this scenario, the United States would offer to help** and would be welcomed by Asean, he said. The Pacific Fleet begins to patrol the South China Sea. **Clashes occur between the Chinese navy and the US Navy. China declares war on the US and a full-scale war breaks out with both sides resorting to nuclear weapons.**

#### Extinction

Lieven 12 Anatol, Professor in the War Studies Department – King’s College (London), Senior Fellow – New America Foundation (Washington), “Avoiding US-China War,” New York Times, 6-12, http://www.nytimes.com/2012/06/13/opinion/avoiding-a-us-china-war.html

Relations between the United States and China are on a course that **may one day lead to war**. This month, Defense Secretary Leon Panetta announced that by 2020, 60 percent of the U.S. Navy will be deployed in the Pacific. Last November, in Australia, President Obama announced the establishment of a U.S. military base in that country, and threw down an ideological gauntlet to China with his statement that the United States will “continue to speak candidly to Beijing about the importance of upholding international norms and respecting the universal human rights of the Chinese people.” The dangers inherent in present developments in American, Chinese and regional policies are set out in “The China Choice: Why America Should Share Power,” an important forthcoming book by the Australian international affairs expert Hugh White. As he writes, “Washington and Beijing are already sliding toward rivalry by default.” To escape this, White makes a strong argument for a “concert of powers” in Asia, as the best — and perhaps only — way that this looming confrontation can be avoided. The economic basis of such a U.S.-China agreement is indeed already in place. The danger of conflict does not stem from a Chinese desire for global leadership. Outside East Asia, Beijing is sticking to a very cautious policy, centered on commercial advantage without military components, in part because Chinese leaders realize that it would take decades and colossal naval expenditure to allow them to mount a global challenge to the United States, and that even then they would almost certainly fail. In East Asia, things are very different. For most of its history, China has dominated the region. When it becomes the largest economy on earth, it will certainly seek to do so. While China cannot build up naval forces to challenge the United States in distant oceans, it would be very surprising if in future it will not be able to generate missile and air forces sufficient to deny the U.S. Navy access to the seas around China. Moreover, China is engaged in territorial disputes with other states in the region over island groups — disputes in which Chinese popular nationalist sentiments have become heavily engaged. With communism dead, the Chinese administration has relied very heavily — and successfully — on nationalism as an ideological support for its rule. The problem is that if clashes erupt over these islands, Beijing may find itself in a position where it cannot compromise **without severe damage** to its domestic legitimacy — very much the position of the European great powers in 1914. In these disputes, Chinese nationalism collides with other nationalisms — particularly that of Vietnam, which embodies strong historical resentments. The hostility to China of Vietnam and most of the other regional states is at once America’s greatest asset and greatest danger. It means that most of China’s neighbors want the United States to remain militarily present in the region. As White argues, even if the United States were to withdraw, it is highly unlikely that these countries would submit meekly to Chinese hegemony. But if the United States were to commit itself to a military alliance with these countries against China, Washington would risk embroiling America in their territorial disputes. In the event of a military clash between Vietnam and China, Washington would be faced with the choice of either holding aloof and seeing its credibility as an ally destroyed, or fighting China. Neither the United States nor China would “win” the resulting war outright, but they would certainly inflict **catastrophic damage** on each other and on the world economy. If the conflict escalated into a **nuclear exchange**, **modern civilization would be wrecked**. Even a prolonged period of military and strategic rivalry with an economically mighty China will gravely weaken America’s global position. Indeed, U.S. overstretch is already apparent — for example in Washington’s neglect of the crumbling states of Central America.

### Solvency

#### Drone courts solve—provides credibility and judicial independence to counterterror policy

Plaw, 2006

[Avery, associate professor of political science at the University of Massachusetts, Dartmouth, Fighting Terror Ethically and Legally: The Case of Targeting Terrorists, (A working paper prepared for the CPSA Conference, June 2006), http://www.cpsa-acsp.ca/papers-2006/Plaw.pdf] /Wyo-MB

The most telling issues raised by critics of targeting fall into three broad categories: (1.) ¶ the imperative need to establish that targets are combatants; (2.) the need in attacking ¶ combatants to respect the established laws of war; and (3.) the overwhelming imperative ¶ to avoid civilian casualties. The first issue seems to involve an authoritative judicial ¶ determination that could only be answered by a competent court. The second issue ¶ requires the openly avowed and consistent implementation of targeting according to ¶ standards accepted in international law - a requirement whose fulfillment would best be ¶ assured through judicial oversight. The third issue calls for independent evaluation of ¶ operations to assure that standards of civilian protection are robustly upheld, a role that ¶ could be effectively performed by a court. ¶ The first issue then must, and the second and third can, be resolved by the introduction of ¶ credible judicial oversight. But what kind of court could be expected to maintain secrecy ¶ around sensitive intelligence and yet render authoritative determinations as to, for ¶ example, individuals’ combat status? An independent international court would no doubt ¶ be ideal, but even apart from all the technical and administrative difficulties such a ¶ solution would entail and the secrecy concerns it would evoke, it seems clear that the ¶ United States and Israel would refuse to have their national security subject to the ¶ authority of a foreign body, however judicious. They would plausibly argue, as indeed ¶ they have in regards to the ICC, that the final authority in this supremely important ¶ domain must derive ultimately from the will of their own people, whose lives and ¶ community are at stake. On the other hand, critics of targeting would certainly demand an ¶ independent, competent and internationally credible body. All the more so since the ¶ court’s proceedings, for obvious reasons, could not be open to public scrutiny. ¶ On this difficult question Michael Ignatieff offers a helpful idea. At the end of a ¶ discussion of a number of troubling legal issues raised by the war on terror, he suggests ¶ the possibility of setting up national courts loosely based on the model on the Foreign ¶ Intelligence Surveillance Court (FISC), which considers surveillance and physical search ¶ orders from the Department of Justice and US intelligence agencies related to foreign ¶ intelligence operations. (Ignatieff 2004: 134) Developing Ignatieff’s suggestion, I ¶ propose a Federal Counterterrorism Oversight Court (FCOC). The institutional features of the FCOC could be designed to assure credibility and ¶ independence on one side, and secure and efficient contribution to national policy on the ¶ other. For example, like the FISC, the FCOC could be composed of seven federal court ¶ judges selected by the Chief Justice of the Supreme Court and serving staggered seven ¶ years terms. Like the FISC, the FCOC could hold its proceedings in camera, ensuring the ¶ secrecy of sensitive intelligence information. The FCOC could then consider requests ¶ from military and intelligence organizations to designate suspected terrorists as enemy ¶ combatants, assessing whether the intelligence presented was credible and damning ¶ enough to warrant such a designation. It could also be assigned the responsibility to ¶ automatically review any actions that resulted in civilian casualties, and be given the ¶ power to publicly censure operations and government organizations which failed to ¶ adequately protect civilians, as well as to suspend, or even to terminate, targeting ¶ operations. Finally, it could also be authorized to review charges brought by other ¶ governments or private persons that targeting operations permitted by its decisions ¶ violated the laws of war, in particular, by engaging in perfidy or employing unnecessary ¶ or disproportionate force.

#### And, Courts key—only checks on unilateral executive power can provide legitimacy to the United States and credibility to our counterterror policies, finally, the selection process for drone courts solves all disads to judges

Chebab, 2012

[Ahmad, Georgetown University Law Center, Retrieving the Role of Accountability in the Targeted Killings Context: A Proposal for Judicial Review, 3-30-12, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2031572] /Wyo-MB

Rather, balancing the needs of security against the imperatives of liberty is a traditional¶ role for judges to play as recognized by the founders in the Fourth Amendment.110 Two scholars of national security law have highlighted the value of judicial inclusion in this process:¶ Judicial control of targeted killing could increase the accuracy of target selection, reducing the danger of mistaken or illegal destruction of lives, limbs, and property. Independent judges who double-check targeting decisions could catch errors and cause executive officials to avoid making them in the first place.”111¶ Judges are also both knowledgeable in the vagaries of the law and accustomed to dealing with sensitive security considerations

.112 These qualifications make them ideal candidates to ensure that the executive exercises constitutional and international legal restraint when targeting individuals abroad. Reforming the decision-making process to allow for judicial oversight would accomplish numerous other important goals as well. Aside from providing a valuable check on executive power to take away the most fundamental of freedoms guaranteed by our Constitution—the right to life—judicial oversight would reinforce the separation of powers framework of American government and increase democratic legitimacy by placing these determinations on more predictable and accountable legal grounds. For those fearful of judicial encroachment on executive war-making powers, there is a strong argument that this will actually strengthen the President and empower him to take decisive action without worrying about the judicial consequences. As Justice Kennedy put it, “the exercise of [executive] powers is vindicated, not eroded, when confirmed by the judicial branch.”113 Moreover, though it may be technically legal under international and domestic law, the targeted killing program has become a black spot on American credibility around the globe. The introduction of significant checks on unilateral executive power to target known terrorists can help reform that image and reinstate American moral legitimacy in its use of force against global terrorism.114

#### Drone prolif

#### Chinese Proliferation leads to East Asian Conflict

[Robert Beckhusen](https://medium.com/%40rbeckhusen), 13

Defense writer “China’s Coming Drone Swarm” <https://medium.com/war-is-boring/c69ae1d12aff>, accessed 9/2/13,WYO/JF

Beijing is building so many Unmanned Aerial Vehicles, so fast — and is hush-hush about so many — that it can be hard to keep track. Many of them resemble copies of U.S. UAVs and prototypes. Many more are simply non-flying models wheeled out at international trade shows and never flown. The risk, according to several analysts, is that Beijing’s drones are taking off so rapidly that they could disrupt the balance of power in Asia, particularly in contested regions where drones can work quietly and collect vast amounts of data.¶ The ramped-up UAV development could also allow China to easily carry out targeted killings inside and outside its own borders. And with an ever increasing number of deadly drones proliferating, the risk of a conflict — perhaps even an inadvertent conflict — could escalate.¶ “It is difficult to gauge the precise nature of Chinese drone development because of Beijing’s lack of transparency,” Austin Strange, a researcher at the U.S. Naval Institute and the co-author of a new report in [World Affairs](http://www.foreignaffairs.com/articles/139405/andrew-erickson-and-austin-strange/china-has-drones-now-what) about Beijing’s drones (alas, behind a paywall), tells Medium. “However, it is clear that China, like the U.S., has and is developing UAVs for a variety of direct and indirect military uses including [intelligence, surveillance and reconnaissance], targeted payload strikes and electronic warfare.”¶ The boom in drones shouldn’t signal some kind of arms race between China and other states, Strange says. It’s not surprising China — and other non-Western states like Russia — is boosting drone development. But it could “further alter the security balance in East Asia,” Strange adds.

#### Draws in the U.S.

Kyoto News International, 13

“U.S. won't tolerate changed status quo in Senkakus, S. China Sea”

<http://www.globalpost.com/dispatch/news/kyodo-news-international/130601/us-wont-tolerate-changed-status-quo-senkakus-s-china-s>, accessed 9/2/13,WYO/JF

The United States warned Saturday it will not tolerate attempts by any country to change the status quo in the Japanese-administered Senkaku Islands in the East China Sea and islands claimed by some Southeast Asian countries and Taiwan in the South China Sea.¶ "The United States stands firmly against any coercive attempts to alter the status quo," Defense Secretary Chuck Hagel said in a speech at the Asia Security Summit in Singapore, an apparent reference to China's recent assertiveness over the Senkakus and disputed islands in the South China Sea such as the Spratlys.

#### Extinction

Lieven 12 Anatol, Professor in the War Studies Department – King’s College (London), Senior Fellow – New America Foundation (Washington), “Avoiding US-China War,” New York Times, 6-12, http://www.nytimes.com/2012/06/13/opinion/avoiding-a-us-china-war.html

Relations between the United States and China are on a course that **may one day lead to war**. This month, Defense Secretary Leon Panetta announced that by 2020, 60 percent of the U.S. Navy will be deployed in the Pacific. Last November, in Australia, President Obama announced the establishment of a U.S. military base in that country, and threw down an ideological gauntlet to China with his statement that the United States will “continue to speak candidly to Beijing about the importance of upholding international norms and respecting the universal human rights of the Chinese people.” The dangers inherent in present developments in American, Chinese and regional policies are set out in “The China Choice: Why America Should Share Power,” an important forthcoming book by the Australian international affairs expert Hugh White. As he writes, “Washington and Beijing are already sliding toward rivalry by default.” To escape this, White makes a strong argument for a “concert of powers” in Asia, as the best — and perhaps only — way that this looming confrontation can be avoided. The economic basis of such a U.S.-China agreement is indeed already in place. The danger of conflict does not stem from a Chinese desire for global leadership. Outside East Asia, Beijing is sticking to a very cautious policy, centered on commercial advantage without military components, in part because Chinese leaders realize that it would take decades and colossal naval expenditure to allow them to mount a global challenge to the United States, and that even then they would almost certainly fail. In East Asia, things are very different. For most of its history, China has dominated the region. When it becomes the largest economy on earth, it will certainly seek to do so. While China cannot build up naval forces to challenge the United States in distant oceans, it would be very surprising if in future it will not be able to generate missile and air forces sufficient to deny the U.S. Navy access to the seas around China. Moreover, China is engaged in territorial disputes with other states in the region over island groups — disputes in which Chinese popular nationalist sentiments have become heavily engaged. With communism dead, the Chinese administration has relied very heavily — and successfully — on nationalism as an ideological support for its rule. The problem is that if clashes erupt over these islands, Beijing may find itself in a position where it cannot compromise **without severe damage** to its domestic legitimacy — very much the position of the European great powers in 1914. In these disputes, Chinese nationalism collides with other nationalisms — particularly that of Vietnam, which embodies strong historical resentments. The hostility to China of Vietnam and most of the other regional states is at once America’s greatest asset and greatest danger. It means that most of China’s neighbors want the United States to remain militarily present in the region. As White argues, even if the United States were to withdraw, it is highly unlikely that these countries would submit meekly to Chinese hegemony. But if the United States were to commit itself to a military alliance with these countries against China, Washington would risk embroiling America in their territorial disputes. In the event of a military clash between Vietnam and China, Washington would be faced with the choice of either holding aloof and seeing its credibility as an ally destroyed, or fighting China. Neither the United States nor China would “win” the resulting war outright, but they would certainly inflict **catastrophic damage** on each other and on the world economy. If the conflict escalated into a **nuclear exchange**, **modern civilization would be wrecked**. Even a prolonged period of military and strategic rivalry with an economically mighty China will gravely weaken America’s global position. Indeed, U.S. overstretch is already apparent — for example in Washington’s neglect of the crumbling states of Central America.

# 2AC

### DA

#### 1st, Debates on drone courts now—legislation being written and proposed—thumps the disad

Wolverton, 3-12-13

[Joe, professor of American Government at Chattanooga State and was a practicing attorney until 2009, Federal Courts Rubber Stamp Federal Spying, http://tenthamendmentcenter.com/2013/05/12/federal-courts-rubber-stamp-federal-spying/comment-page-1/#.UfqaW2T70bh] /Wyo-MB

Although certainly not one to recognize checks on the executive, the White House indicated several months ago that it would entertain any legislative proposal for the establishment of such a tribunal. An Obama administration official told Reuters early this year, “The White House has been discussing various ways there could be independent review of counterterrorism actions for more than a year.”¶ In a press release issued in February, Senator King announced that he had sent a letter to Senators Feinstein and Saxby Chambliss (R-Ga.), chairwoman and vice-chairman of the Intelligence Committee, to consider a bill creating the new court.¶ King wrote, “As the Committee begins preparing the Intelligence Authorization Act for Fiscal Year 2014, I ask that you work with me to contemplate legislative solutions, such as the creation of an outside judicial process similar to the FISA court, that might provide an independent perspective in the distinctive case of a U.S. citizen who is a senior operational leader of al Qaeda.”¶ According to comments made by “congressional aides” cited in Reuters, “discussions are at a preliminary stage.” They also reportedly said that several similar proposals made by legal experts were being kicked around on Capitol Hill.¶

#### 2nd, Link turn drone courts popular in congress—particularly with Feinstein and King

Hosenball, 2-8-2013

[Mark, Reuters news service, Support grows for U.S. "drone court" to review lethal strikes, http://www.reuters.com/article/2013/02/09/us-usa-drones-idUSBRE91800B20130209] /Wyo-MB

During a fresh round of debate this week over President Barack Obama's claim that he can unilaterally order lethal strikes by unmanned aircraft against U.S. citizens, some lawmakers proposed a middle ground: a special federal "drone court" that would approve suspected militants for targeting.¶ While the idea of a judicial review of such operations may be gaining political currency, multiple U.S. officials said on Friday that imminent action by the U.S. Congress or the White House to create one is unlikely. The idea is being actively considered, however, according to a White House official.¶ At Thursday's confirmation hearing for CIA director nominee John Brennan, senators discussed establishing a secret court or tribunal to rule on the validity of cases that U.S. intelligence agencies draw up for killing suspected militants using drones.¶ The court could be modeled on an existing court which examines applications for electronic eavesdropping on suspected spies or terrorists.¶ Senator Dianne Feinstein, Democratic chairwoman of the Senate Intelligence Committee, said Thursday that she planned to "review proposals for ... legislation to ensure that drone strikes are carried out in a manner consistent with our values, and the proposal to create an analogue of the Foreign Intelligence Surveillance Court to review the conduct of such strikes."¶ Senator Angus King, a Maine independent, said during the hearing that he envisioned a scenario in which executive branch officials would go before a drone court "in a confidential and top-secret way, make the case that this American citizen is an enemy combatant, and at least that would be ... some check on the activities of the executive."

#### Feinstein key to agenda- can wrangle in both parties

Tate 13

(Curits, Mcclatchy Newspapers, “Sen. Dianne Feinstein presses her decades-long crusade on guns,” March 10, 2013, <http://www.mcclatchydc.com/2013/03/10/185261/sen-dianne-feinstein-presses-her.html#.Uhp4YpKThSQ>) /wyo-mm

Feinstein is a veteran lawmaker who knows how to work behind the scenes and across the aisle, which is how much of the real business of Capitol Hill gets done. “She’s developed a chain of colleagues she can call on,” Kennedy said. “She knows very well how to use her position on other committees.” Feinstein is an influential member. She ranks 14th in Senate seniority. Besides her seat on the Judiciary Committee, she serves on the powerful Appropriations Committee and chairs the Intelligence Committee. Her political roots took hold at a time before bitter partisanship began to color every debate, and even relationships on Capitol Hill. One of her closest friends has been Kay Bailey Hutchison, a Texas Republican who left the Senate in January. And Feinstein has warm relations with many more lawmakers, in an era fraught with political polarization. Sen. Jeff Sessions, R-Ala., a staunch conservative who serves alongside the liberal-leaning Feinstein on the Judiciary Committee, said that while they disagreed on many issues, including the assault weapons ban, he admired her ability to forge compromise. “I’d say on the 16 years I’ve been on it, she’s been one of the more effective Democratic senators at reaching across the aisle on key issues,” he said. “She battles for what she believes in, but she’s also very able at finding common ground and solving problems.”

#### Government shut down is just a stunt – hurts GOP too much

Laura Matthews, “Government Shutdown 2013: Republicans ‘Can’t Afford To,’ Says AFL-CIO,” International Business Times, 8/31/2013.

With budget battles set to heat up in the fall and time running out for lawmakers to hash out a debt and deficit solution, some in the labor sector aren’t breaking a sweat over recent failed talks between the White House and Republicans -- some of whom have threatened a government shutdown should they not get their own way.¶ Republicans’ talk of a government shutdown is essentially hogwash. That’s the view expressed by AFL-CIO President Richard Trumka in an interview on Bloomberg TV’s “Political Capital with Al Hunt,” to air this weekend.¶ “There is no crisis here, and I don’t think the Republicans are going to shut down the government,” Trumka said in a transcript. “They can’t afford to. Some of their best political people, their best donors are going to get hurt in the process. It hurts the economy. And I don’t think they’re going to do it.”¶ That’s not to say Trumka doesn’t expect the Republicans to play games before cooler heads prevail.¶ “I’m just saying they’re not going to shut down the government over either one of those,” he said on the program. “They’ll talk through things, and [John] Boehner’s already offered a short-term extension, and we’ll see what happens.”

### K

**Racism not the root cause of all violence**

**Mertus 99**

 (Professor Julie Mertus is the co-director of Ethics, Peace and Global Affairs. She has written widely on human rights and gender, conflict, the Balkans, U.S. foreign policy and U.N. institutions. She is the author or editor of ten books, including Bait and Switch: Human Rights and U.S. Foreign Policy, named "human rights book of the year" by the American Political Science Association) and, most recently Human Rights Matters: Local Politics and National Human Rights Institutions and The United Nations and Human Rights. Before entering academia, she worked as a researcher, writer and lawyer for several human rights and humanitarian organizations., J.D., Yale Law School; B.S. Cornell University, International Council on Human Rights Policy, “THE ROLE OF RACISM AS A CAUSE OF OR FACTOR IN WARS AND CIVIL CONFLICT”, http://www.ichrp.org/files/papers/167/112\_-\_The\_Role\_of\_Racism\_as\_a\_Cause\_of\_or\_Factor\_in\_Wars\_and\_Civil\_Conflict\_Mertus\_\_Julie\_\_1999.pdf)

**This paper examines the role of racism as a cause of or factor in wars and civil conflicts.** “Racism” as understood here is defined broadly to encompass acts and processes of dehumanisation. The conflicts in **Rwanda and Kosovo serve as case studies; the former illustrates a case where the racist nature of the conflict has been clear to most observers, and the latter represents a case where racism plays an important yet overlooked role. Racism did not cause either conflict. Rather, the conflicts were the outcome of political manipulation and enlargement of already existing group classification schemes and social polarisation, a history of real and imagined oppression and deprivation, the absence of the rule of law and democratic structures, and state monopoly over the provision of information. Under such conditions, political élites could use racist ideology as a method of gaining power and, when necessary, waging war.**

# Con con

### 2AC – AT: Constitutional Amendment CPSecond, can’t solve blowback- drones key to winning the war on terror-

Crandall, 2012

[Carla, Law Clerk to the Honorable Laura Denvir Stith, Supreme Court of Missouri and the author was previously employed by the National Geospatial-Intelligence Agency, READY . . . FIRE . . . AIM! A CASE FOR APPLYING AMERICAN DUE PROCESS PRINCIPLES BEFORE ENGAGING IN DRONE STRIKES, April, 2012 Florida Journal of International Law 24 Fla. J. Int'l L. 55, Lexis] /Wyo-MB

As important as these developments were to the burgeoning of drones, it was not until the U.S. government had a sustained requirement for their deployment that their full force became evident. That requirement came after the attacks of September 11th with the commencement of the global war on terror. Since the very first night of the U.S. invasion in Afghanistan, n27 drones have been used for a wide array of terrorism-related missions. For example, though their primary mission has remained reconnaissance, they have also been used for battle-damage assessments, relaying target information to on-ground operators, and spotting hazards to U.S. forces like roadside improvised [\*61] explosive devices. n28 The most contentious aspect of drone operations, however, has been their role in targeted killings.¶ 1. Killing via Drone¶ News articles are littered with reports of drone strikes against alleged terrorists around the globe-from Afghanistan and Iraq, to Yemen and Pakistan. n29 Though the classified nature of the drone program makes precise estimates difficult, one study indicates that in Pakistan alone, drones operated by the United States killed over one-thousand people between 2006 and 2009. n30 Among these were numerous senior al-Qaeda leaders, and other high-value targets. In fact, "[c]ounterterrorism officials credit drones with having killed more than a dozen senior Al Qaeda leaders and their allies in the past year, eliminating more than half of the C.I.A.'s twenty most wanted 'high value' targets." n31¶ Drones have played such a significant part in the war on terror largely because conventional military force has proven ineffective at combating the asymmetrical threats posed by small pockets of al-Qaeda terrorists. n32 Moreover, given that the war's battlefields have often been located in urban environments, using drones has arguably limited collateral damage that might otherwise have occurred with more conventional weapons systems. n33 Further, at least from the U.S. government's perspective, the results have been remarkable. During the early stages of the war, for example, General Tommy Franks, who was then commanding all U.S. troops in the Middle East, stated that drones [\*62] were his "most capable sensor[s] in hunting down and killing Al Qaeda and Taliban leadership and [that they proved] absolutely critical to [the U.S.] fight." n34 Moreover, as the lethality of drones became more evident to insurgents, their utility increased simply because strikes began to "serve as a deterrent to potential combatants and sow paranoia and distrust among terrorists groups." n35 Even those militants who remained true to their cause were forced to "operate far more cautiously, which divert[ed] their energy from planning new attacks." n36¶

#### And can’t solve drone prolif, amendments undermine court legitimacy

Sullivan 96

(Kathleen, Professor of Law at Stanford University, January, "Constitutional Constancy: Why Congress Should Cure Itself of Amendment Fever", 17 Cardozo L. Rev. 691, Lexis)

Increasing the frequency of constitutional amendment would undermine the respect and legitimacy the Court now enjoys in this interpretive role. This danger is especially acute in the case of proposed constitutional amendments that would literally overturn Supreme Court decisions, such as amendments that would declare a fetus a person with a right to life, permit punishment of flag-burning, or authorize school prayer. Such amendments suggest that if you don't like a Court decision, you mobilize to overturn it.¶ Justice Jackson once quipped that the Court's word is not final because it is infallible, but is infallible because it is final. That finality, though, has many salutary social benefits. For example, it allows us to treat abortion clinic bombers as terrorists rather than protesters. If every controversial Supreme Court decision resulted in plebiscitary overruling in the form of a constitutional amend- [\*703] ment, surely the finality of its word would be undermined, and with it the social benefits of peaceful conflict resolution. The fact that we have amended the Constitution only four times in order to overrule the Supreme Court is worth remembering.

#### And no solvency- Courts would roll back the amendment

Sullivan 96

(Kathleen, Professor of Law at Stanford University, January, "Constitutional Constancy: Why Congress Should Cure Itself of Amendment Fever", 17 Cardozo L. Rev. 691, Lexis)

As a second illustration of the problem of amendments inconsistent with the Constitution, consider the flag-desecration amendment that will go to the states for ratification if the Senate approves it this fall. The First Amendment forbids Congress from abridging the freedom of speech. The flag amendment would permit Congress and the states to prohibit "desecration" of the flag. Now it's hard to see the flag as anything but a symbol. And it's hard to see its "desecration" as anything but a form of symbolic expression too. If "flag desecration" is not to be construed absurdly as applying to people who get mustard on their flag napkins on the Fourth of July, then it will apply only to symbolic protestors who desecrate flags in order to express anti-patriotic sentiments. And if that's the case, then flag-desecration laws passed under the authority of the amendment would quite literally abridge the freedom of (symbolic) speech. For just these reasons, the Supreme Court struck down as unconstitutional both a Texas flag-desecration law and Congress's Flag Protection Act of 1992. If the flag-desecration amendment were to pass, it would not only overrule these two decisions of the Court, but would also for the first time ever amend the original Bill of Rights. In effect it would hold that "Congress may not abridge the freedom of speech, except for flag-burning." Once embedded in the Constitution, the amendment might lead to other arguments by analogy: if flag-burning is not protected speech, why protect wearing a jacket that says "Fuck the Draft"? Or a rap recording with a refrain "Kill the Pigs"? Chief Justice Rehnquist, in dissent from the Court's flag-burning decisions, called flag-burning the "inarticulate" equivalent of a "grunt or roar." But much of the offensive speech the Court has long protected is hardly more articulate or elegant. It is possible that courts would treat flag desecration as sui generis, confining the amendment to its terms. But it is also possible that the amendment would have unintended spillover effects on other speech contexts, altering the habits of mind that had led courts presumptively to strike down all abridgements of speech. The proposed religious equality amendment would likewise amend the Bill of Rights if enacted. This amendment would bar government from prohibiting "prayer or other religious expression in circumstances in which expression of a nonreligious character would be permitted," treating this as discrimination against reli- [\*700] gion. To be sure, the original First Amendment protects the free exercise of religion. But it also bars government from establishing religion. The Establishment Clause is unique; there is no issue other than religion on which government is barred from taking an official position. Thus, the original Constitution required religion to be treated differently from activities "of a nonreligious character." The amendment would rewrite the First Amendment by requiring them to be treated the same. Proponents of the amendment suggest it would simply allow student-initiated, not government-mandated prayer. But as with the flag-desecration amendment, courts would be free to extend the force of this amendment further than its proponents publicly contemplate. Perhaps a properly enacted constitutional amendment cannot literally be unconstitutional. This would appear to be a contradiction in terms - although, to be sure, a few scholars have argued that some amendments would be so beyond the pale (imagine an amendment requiring racial apartheid) that the Court would have the power to strike them down. But it is clear that amendments can cause tension with the original document, and may exert a gravitational force extending beyond their specific subject matter. This is at least an additional argument for keeping amendments to an essential minimum.

# 1AR

Manfredi 1998

(Christopher P., Professor of Political Science at McGill University. “Why Do Formal Amendments Fail?: An Institutional Design Analysis” World Politics - Volume 50, Number 3, April 1998, pp. 377-400) (project muse)

Perhaps because of the rigidity of its amending process, the U.S. Constitution is also characterized by interpretive fluidity. This characteristic stems not only from the broad, indeterminate language in which most constitutional provisions are written but also from the willingness of courts to exercise the power of judicial review in order to derive more policy-specific rules from those provisions.

**MARKED**

Although the U.S. Supreme Court established the constitutionality of judicial review in 1803, 34 the interpretive fluidity of the U.S. Constitution has been most evident since 1954. Indeed, between 1889 and 1953 the Court overturned on average about one act of Congress and seven state laws every year. By contrast, since 1954 the judicial nullification rate has approximately doubled to almost two acts of Congress and twelve state laws per year. 35 Especially throughout the 1960s, litigants took advantage of judicial openness toward the Constitution's interpretive fluidity to persuade U.S. courts to participate actively in shaping and administering policy in areas such as zoning and land-use planning, housing, social welfare, transportation, education, and the operation of complex institutions like prisons and mental health facilities. 36 While this may make the document's rigid amending process less burdensome on the constitutional order, the ability and willingness of courts to extend formal rules in unexpected directions heightens redistributive indeterminacy. Finally, both the rigid amending process and the interpretive fluidity of the U.S. Constitution generate a high degree of institutional inclusiveness. On the one hand, interpretive fluidity provides society-based actors with a wide range of opportunities to institutionalize specific policy preferences by manipulating and transforming formal constitutional rules through litigation. Interpretive fluidity promotes institutional [End Page 395] inclusiveness by allowing society-based actors to alter the policy impact of constitutional rules without the constraints imposed by the formal amending process. On the other hand, the requirement that ratification succeed in eighty-seven legislative chambers unconstrained by strict party discipline provides numerous points of influence for social actors wary of the policy consequences of proposed amendments. The institutional inclusiveness of U.S. constitutional politics thus provides both incentives to oppose constitutional change and the means of carrying out that opposition successfully.