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## Yemen Adv

#### Status quo drone strikes in Yemen fuel AQAP recruitment and terrorism

Al Muslimi, 1-5-14

[Farea, The National, US drone attacks in Yemen protect no one but Al Qaeda, http://www.thenational.ae/thenationalconversation/comment/us-drone-attacks-in-yemen-protect-no-one-but-al-qaeda#full#ixzz2uw1rjRno] /Wyo-MB

The spontaneous public backlash against Al Qaeda in the Arabian Peninsula (Aqap) was more intense than anything the country has witnessed in decades. Aqap, which has long tried to cultivate an image of fighting on behalf of ordinary Yemenis against foreign aggression, was excoriated on TV, newspapers, radio and social media – all this was even before the group announced responsibility for the attack.¶ But then, on the following night after the government began broadcasting the videos, and as rage against Aqap was reaching a fevered pitch, an unmanned American military drone flying over the Radaa province, some 150 kilometres south-east of Sanaa, fired a missile into Yemen. It struck a vehicle in a wedding procession, killing 12 people and wounding dozens more. Almost instantly, the public discourse shifted, the anger redirected. Al Qaeda had almost destroyed itself but America came to its rescue.¶ In a country that has suffered almost a decade of US drone strikes and watched them obliterate hundreds of innocent lives, it mattered little that the “official” target in Radaa were several militants among the wedding goers. Rather, that drone strike reminded Yemenis, once again, that it is American terror that looms over them – constantly. As one Yemeni activist said: “If you escape Aqap, you don’t escape US drones.”¶ Aqap seized the opportunity. On December 22, the group’s military leader, Qassem Al Rimi, apologised for the hospital attack in a video statement and promised to pay compensation to survivors and victims’ families. The mistake, he claimed, was that the group had attacked the wrong building, that their actual target had been the drone control centre within the ministry of defence compound, jointly run by US and Yemeni military personnel. However implausible this story may be, the apology and promise of compensation are in stark contrast to America’s cold silence for the civilians it killed.¶ American intervention did years worth of public relations on behalf of Aqap. While this is the latest and certainly the most blatant example, it is far from the only instance of the US indirectly assisting Al Qaeda’s PR machine – and even its human resources department. It was actually in the Radaa district that a researcher, who recently visited the area, discovered a local Aqap leader who was complaining about new recruits not carrying out their regular religious prayers – they did not join Al Qaeda for ideological reasons, but because they saw the group as a means to avenge relatives killed in US drone strikes and for other reasons that have nothing to do with ideology.¶ In many parts of Yemen, it is not Aqap that is feared, but America. Not long ago, I visited the area of Khawlan, a 30-minute drive from Sanaa, where a US missile struck a vehicle full of passengers, killing everyone, including a local schoolteacher. He’d been with his cousin, the driver, who had picked up other people as a normal fare ride. How were the cousins to know that these people were on the US kill list? Children were waiting in the classroom for two hours the next morning before the news came that their teacher, Ali, was dead. Now, whenever teachers are late for class, students at the school become terrified that the US may have killed them.¶ US drones also undermine the legitimacy of America’s valuable ally in Yemen, president Abdu Rabu Mansour Hadi. In August, Mr Hadi visited the US, and while meeting with CIA director John Brennan a drone was fired into his hometown of Abyan. The president’s return to Yemen was followed by days of intensive drone strikes across the country. Mr Hadi then publicly defended the drone strikes – all of which made him look like more of an American stooge than a man of his people. Mr Hadi is already in an uphill battle to prove himself to Yemenis, as regional and western powers had selected him as the only name on the ballot to replace former president Ali Abdullah Saleh.¶ There are also economic consequences for drone strikes. For example, the same month that Mr Hadi was in the US, the Yemeni government announced that it qualified 18 international oil companies to bid on 20 onshore exploration blocks, mostly in the provinces of Hadramout and Mareb, which hold more than 85 per cent of the country’s oil reserves.¶ Hadramout and Mareb also happen to be the sites of regular US strikes that targeted not only suspected Islamic militants but also powerful local leaders, including a prominent religious cleric who preached against Al Qaeda and many civilians. This has had locals increasingly protesting against US drones and the central government’s complicity. This also exacerbates pre-existing tensions in Hadramout, where many Yemenis have long sought autonomy from Sanaa.¶ In such an environment, it is unclear how oil companies would mitigate the risk of their staff and operations being held hostage to angry locals after another drone strike.¶ While the US is the largest donor of humanitarian aid to Yemen, Washington has done an excellent job of having itself perceived as the enemy of the Yemeni people while helping Al Qaeda in ways Al Qaeda could never have dreamt of itself.

#### Strikes destabilize Yemen and undermine the alliance and counter terror operations

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.

#### Exclusive executive decision making in drone strikes makes groupthink and targeting errors inevitable

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

The practical, pragmatic justification for the COAACC derives largely from considering¶ social psychological findings regarding the skewed potential associated with limiting unchecked decision-making in a group of individuals. As an initial point, psychologists have long pointed out how individuals frequently fall prey to cognitive illusions that produce systematic errors in judgment.137 People simply do not make decisions by choosing the optimal outcome from available alternatives, but instead employ shortcuts (i.e., heuristics) for convenience.138 Cognitive biases like groupthink can hamper effective policy deliberations and formulations.139 Groupthink largely arises when a group of decision-makers seek conformity and agreement, thereby avoiding alternative points of view that are critical of the consensus position.140 This theory suggests that some groups—particularly those characterized by a strong leader, considerable internal cohesion, internal loyalty, overconfidence, and a shared world view or value system—suffer from a deterioration in their capacity to engage in critical analysis.141 Many factors can affect such judgment, including a lack of crucial information, insufficient timing for decision-making, poor judgment, pure luck, and/or unexpected actions by adversaries.142 Moreover, decision-makers inevitably tend to become influenced by irrelevant information,143 seek out data and assessments that confirm their beliefs and personal hypotheses notwithstanding contradictory evidence,144 and “[i]rrationally avoid choices that represent extremes when a decision involves a trade-off between two incommensurable values.”145 Self-serving biases can also hamper judgment given as it has been shown to induce well-intentioned people to rationalize virtually any behavior, judgment or action after the fact.146 The confirmation and overconfidence bias, both conceptually related to groupthink, also result in large part from neglecting to consider contradictory evidence coupled with an irrational persistence in pursuing ideological positions divorced from concern of alternative viewpoints.147¶ Professor Cass Sunstein has described situations in which groupthink produced poor results precisely because consensus resulted from the failure to consider alternative sources of information.148 The failures of past presidents to consider alternative sources of information, critically question risk assessments, ensure neutral-free ideological sentiment among those deliberating,149 and/or generally ensure properly deliberated national security policy has produced prominent and devastating blunders,150 including the Iraq War of 2003,151 the Bay of Pigs debacle in the 1960’s,152 and the controversial decision to wage war against Vietnam.153¶ Professor Sunstein also has described the related phenomenon of “group polarization,” which includes the tendency to push group members toward a “more extreme position.”154 Given that both groupthink and group polarization can lead to erroneous and ideologically tainted policy positions, the notion of giving the President unchecked authority in determining who is eligible for assassination can only serve to increase the likelihood for committing significant errors.155 The reality is that psychological mistakes, organizational ineptitude, lack of structural coherence and other associated deficiencies are inevitable features in Executive Branch decision-making.

#### Judicial review solves groupthink

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.

#### Plan is key to effective drone use—solves 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.”

#### Global terror threat is high and attacks against the US are immanent

ETN, 9-26-13

[E Turbo News Global Travel News Industry Reporting on information from the State department, US State Department issues worldwide travel warning, http://www.eturbonews.com/38306/us-state-department-issues-worldwide-travel-warning] /Wyo-MB

The US State Department recently released a statement cautioning Americans traveling abroad of potential terror attacks in Europe, Asia, Africa and the Middle East by al-Qaeda and its affiliated groups.¶ According to the report published on US State Government website, The Department of State has issued this Worldwide Caution to update information on the continuing threat of terrorist actions and violence against US citizens and interests throughout the world.¶ U.S. citizens are reminded to maintain a high level of vigilance and to take appropriate steps to increase their security awareness. This replaces the Worldwide Caution dated February 19, 2013, to provide updated information on security threats and terrorist activities worldwide.¶ The Department of State remains concerned about the continued threat of terrorist attacks, demonstrations, and other violent actions against U.S. citizens and interests overseas. Current information suggests that al-Qaeda, its affiliated organizations, and other terrorist groups continue to plan terrorist attacks against US interests in multiple regions, including Europe, Asia, Africa, and the Middle East. These attacks may employ a wide variety of tactics including suicide operations, assassinations, kidnappings, hijackings, and bombings.¶ Extremists may elect to use conventional or non-conventional weapons, and target both official and private interests. Examples of such targets include high-profile sporting events, residential areas, business offices, hotels, clubs, restaurants, places of worship, schools, public areas, shopping malls, and other tourist destinations both in the United States and abroad where US citizens gather in large numbers, including during holidays.¶ In early August 2013, the Department of State instructed certain US embassies and consulates to remain closed or to suspend operations August 4 through August 10 because of security information received. The US government took these precautionary steps out of an abundance of caution and care for our employees and others who may have planned to visit our installations.¶ US citizens are reminded of the potential for terrorists to attack public transportation systems and other tourist infrastructure.¶ Extremists have targeted and attempted attacks on subway and rail systems, aviation, and maritime services. In the past, these types of attacks have occurred in cities such as Moscow, London, Madrid, Glasgow, and New York City.¶ “Extremists may elect to use conventional or nonconventional weapons, and target both official and private interests,” the department said yesterday. Potential targets may include high-profile sports events, residences, businesses, hotels, clubs, restaurants, schools, places of worship, shopping malls and tourist destinations where Americans congregate.¶ Two US officials familiar with the warning said that while it’s a routine renewal of the department’s worldwide caution, it also reflects mounting intelligence that suggests Islamic terrorist groups loosely affiliated with what remains of al-Qaeda’s core leadership in Pakistan may be planning a new series of attacks against Western targets.

#### Yes Nuke terror—their defense is wrong on every level

Zimmerman 09

(Peter D., Department of War Studies, King’s College London, “Do We Really Need to Worry? Some Reflections on the Threat of Nuclear Terrorism,” Fall 2009, <http://www.coedat.nato.int/publications/datr4/01PeterZimmerman.pdf>) /wyo-mm

Mueller chooses another set of criteria by which to judge the plausibility of improvised nuclear devices. He writes down twenty “tasks” in what he calls “the most likely scenario”11 However, this is far too simplistic. He then posits that there is a 50-50 chance of success for each of these “tasks” and that taken together, this means that the odds of success are 1 in 1,048,576. This is truly a small number, and if taken seriously would probably mean that no further significant attention need be paid to nuclear terror scenarios. It is true that if one raises 0.5 to the 20th power, the resulting value is quite small, less than one in a million as desired. The question, however, is not if the value for 0.520 is small; of course it is. But does it bear any relationship to the problem at hand? How did Mueller come to the number twenty for his list of tasks? Some of the items are even compound tasks, one following another, so there could be more than twenty, and by Mueller’s reasoning a still smaller chance of success. Some of them are not tasks proper, but conditions to satisfy (“There must be no inadvertent leaks”. “No locals must sense that something out of the ordinary is going on”.) Still others seem like padding to reach the number 20 (“A detonation team must transport the IND to the target place and set it off… and the untested and much-traveled IND must not prove to be a dud”.). Since Mueller asserts that the probability of a nuclear terrorist starting a project and succeeding is less than one in a million, it is worth noting that 220 is almost exactly 1,000,000 and that 0.520 is, therefore, one in a million. That seems to be the totality of the logic behind the “twenty hurdles” of the Mueller papers and book. There seems to be no analysis to show that 50-50 are appropriate odds for the success of each step, and it is manifestly clear that the twenty hurdles are not statistically independent. Nevertheless, it would seem that twenty hurdles is the smallest plausible number that can provide the one chance in a million which allows Mueller to suggest that those who believe in nuclear terrorism might, with equal logic, believe “in the tooth fairy”.12 In any event, the odds of success for some tasks are nearly 100 percent. For example, it is not difficult to put an IND in a white van and drive it from Montana to Minneapolis, or from outside Boise to inside Boston, so long as the drivers break no traffic laws. I give that task a 90-plus percent probability. Assembling a team of scientists and technicians is likely to be far easier than Mueller supposes. The Manhattan Project was the most exciting, and indeed glamorous, scientific project of the first half of the twentieth century, led by a constellation of great scientists. Many physicists, even today, fantasize about following in their footsteps.13 I give this one an 85-95 percent chance, at least. 14 In any event, Mueller makes elementary mistakes in risk analysis at the conceptual level: He decides on a path to the goal of a nuclear device, and then decides that it is either the only, or the easiest, or the most favorable route. Along the way his analysis is flawed. Mueller suggests that smugglers would be more likely than not to turn in the nuclear gang to the authorities. But as Matt Bunn of Harvard has pointed out14, Al Qaeda and Mexican drug lords routinely manage to move sensitive materials and people across borders, even those of highly developed countries such as the United States. Successful smugglers-for-hire generally do not betray their customers; the penalties for betrayal probably range from a severe beating to barbaric torture followed by a gruesome death. In his articles and presentations on the probability of terrorist use of nuclear weapons, Prof. Mueller frequently lashes out at those who refuse to set the likelihood of such acts at 1 in a million, or less. We are “alarmists”. And we are “imaginative”.15 According to Mueller, my colleague, Jeffrey Lewis, and I indulge in “worst case fantasies”.16 Mueller seems never to have talked with anybody who actually built a nuclear weapon, for his understanding of the components of a simple device makes it seem far more complex than it is. Nor can I share the results of my conversations with weaponeers except to say that they do not consider the construction of certain kinds of nuclear weapons to be beyond the skills of the kind of 20-person group Lewis and I envisioned. Lewis and I carefully assessed the budget for a nuclear terrorist, and arrived at a figure of $10 million. Mueller waves our extensive effort away with the comment that $10 million isn’t enough to corrupt three people. He must live in an expensive district for political bribery. Lewis and I estimated a budget more like a couple of million for actually building the device, including salaries and the procurement of all necessary non-nuclear components and equipment. We do not believe that recruiting the technical staff will require any bribery or corruption. Mueller assumed that he has found the shortest critical path to an improvised nuclear device. He also seems to assume that his list of tasks is so general that it includes all possible critical paths. He’s clearly wrong on the first count, but even if he is right on the second – and I think he is wildly wrong – his compilation is so general that it offers no guidance to law enforcement or the terrorists except to hope for or to guard against betrayals.

#### Terrorism causes nuclear war and extinction

Ayson 10

Robert Ayson, Professor of Strategic Studies and Director of the Centre for Strategic Studies: New Zealand at the Victoria University of Wellington, 2010 (“After a Terrorist Nuclear Attack: Envisaging Catalytic Effects,” Studies in Conflict & Terrorism, Volume 33, Issue 7, July, Available Online to Subscribing Institutions via InformaWorld)

A terrorist nuclear attack, and even the use of nuclear weapons in response by the country attacked in the first place, would not necessarily represent the worst of the nuclear worlds imaginable. Indeed, there are reasons to wonder whether nuclear terrorism should ever be regarded as belonging in the category of truly existential threats. A contrast can be drawn here with the global catastrophe that would come from a massive nuclear exchange between two or more of the sovereign states that possess these weapons in significant numbers. Even the worst terrorism that the twenty-first century might bring would fade into insignificance alongside considerations of what a general nuclear war would have wrought in the Cold War period. And it must be admitted that as long as the major nuclear weapons states have hundreds and even thousands of nuclear weapons at their disposal, there is always the possibility of a truly awful nuclear exchange taking place precipitated entirely by state possessors themselves. But these two nuclear worlds—a non-state actor nuclear attack and a catastrophic interstate nuclear exchange—are not necessarily separable. It is just possible that some sort of terrorist attack, and especially an act of nuclear terrorism, could precipitate a chain of events leading to a massive exchange of nuclear weapons between two or more of the states that possess them. In this context, today’s and tomorrow’s terrorist groups might assume the place allotted during the early Cold War years to new state possessors of small nuclear arsenals who were seen as raising the risks of a catalytic nuclear war between the superpowers started by third parties. These risks were considered in the late 1950s and early 1960s as concerns grew about nuclear proliferation, the so-called n+1 problem. t may require a considerable amount of imagination to depict an especially plausible situation where an act of nuclear terrorism could lead to such a massive inter-state nuclear war. For example, in the event of a terrorist nuclear attack on the United States, it might well be wondered just how Russia and/or China could plausibly be brought into the picture, not least because they seem unlikely to be fingered as the most obvious state sponsors or encouragers of terrorist groups. They would seem far too responsible to be involved in supporting that sort of terrorist behavior that could just as easily threaten them as well. Some possibilities, however remote, do suggest themselves. For example, how might the United States react if it was thought or discovered that the fissile material used in the act of nuclear terrorism had come from Russian stocks,40 and if for some reason Moscow denied any responsibility for nuclear laxity? The correct attribution of that nuclear material to a particular country might not be a case of science fiction given the observation by Michael May et al. that while the debris resulting from a nuclear explosion would be “spread over a wide area in tiny fragments, its radioactivity makes it detectable, identifiable and collectable, and a wealth of information can be obtained from its analysis: the efficiency of the explosion, the materials used and, most important … some indication of where the nuclear material came from.”41 Alternatively, if the act of nuclear terrorism came as a complete surprise, and American officials refused to believe that a terrorist group was fully responsible (or responsible at all) suspicion would shift immediately to state possessors. Ruling out Western ally countries like the United Kingdom and France, and probably Israel and India as well, authorities in Washington would be left with a very short list consisting of North Korea, perhaps Iran if its program continues, and possibly Pakistan. But at what stage would Russia and China be definitely ruled out in this high stakes game of nuclear Cluedo? In particular, if the act of nuclear terrorism occurred against a backdrop of existing tension in Washington’s relations with Russia and/or China, and at a time when threats had already been traded between these major powers, would officials and political leaders not be tempted to assume the worst? Of course, the chances of this occurring would only seem to increase if the United States was already involved in some sort of limited armed conflict with Russia and/or China, or if they were confronting each other from a distance in a proxy war, as unlikely as these developments may seem at the present time. The reverse might well apply too: should a nuclear terrorist attack occur in Russia or China during a period of heightened tension or even limited conflict with the United States, could Moscow and Beijing resist the pressures that might rise domestically to consider the United States as a possible perpetrator or encourager of the attack? Washington’s early response to a terrorist nuclear attack on its own soil might also raise the possibility of an unwanted (and nuclear aided) confrontation with Russia and/or China. For example, in the noise and confusion during the immediate aftermath of the terrorist nuclear attack, the U.S. president might be expected to place the country’s armed forces, including its nuclear arsenal, on a higher stage of alert. In such a tense environment, when careful planning runs up against the friction of reality, it is just possible that Moscow and/or China might mistakenly read this as a sign of U.S. intentions to use force (and possibly nuclear force) against them. In that situation, the temptations to preempt such actions might grow, although it must be admitted that any preemption would probably still meet with a devastating response.

## United Nations Adv

#### Lack of judicial protections in targeted killing undermines international law and United Nations right to life protections

Alkarama, 2013

[Swiss-based, independent human rights organisation established in 2004, Yemen/USA: License to Kill; Why the American Drone War on Yemen Violates International Law, 10-17-13, http://en.alkarama.org/yemen/66-reports/1157-yemen-license-to-kill-report] /Wyo-MB

8. Targeted killings under international law¶ Philip Alston, the UN’s former Special Rapporteur on extrajudicial, summary or arbitrary executions, defines a “targeted killing” as “the intentional, premeditated, and deliberate use of lethal force by a subject of international law, which is to say by the United States or its agents acting under cover of the law, or by an armed group organized in an armed conflict and directed against an individual person that is not in the custody of the aggressor.”203 The legal adviser to the International Committee of the Red Cross and the author of the book Targeted Killing in International Law, Nils Melzer, adds other elements to this definition and specifies that “this force must be intentional (rather than negligent or reckless), premeditated (rather than just voluntary), and deliberate (in the sense that the death of the targeted person is the ultimate goal of the operation, contrary to cases where death may be intentional and premeditated but accidentally results from an operation pursuing another goal entirely).”204 ¶ The legal basis for targeted killing by drones or other means has been debated for several years now. The notion of “targeted killing” is not defined in international law. Different states, particularly the United States and Israel, have created precedents, which, if not strictly condemned, may create substantial changes in international law. For this reason the Special Rapporteur on counter-terrorism and human rights and the Special Rapporteur on extrajudicial, summary or arbitrary executions will attend the UN General Assembly in autumn 2013 to submit a report on drone strikes in several countries which sets out recommendations, among them the necessity to investigate attacks that have led to civilian deaths. They also will examine this practice in light of principles of international law and seek to clarify the situation.¶ The United States created a new legal framework to justify the fight against terrorism from the moment that it entered into conflict in Afghanistan, recognized by the UN as an “armed conflict” against an organized and hierarchical “enemy,” a.k.a. al-Qaeda. But once the organization was largely dismantled, breaking down its structure and centralized organization, autonomous groups sprung up, identifying themselves as being part of al-Qaeda, which does not exist as a hierarchical organization with centralized control over all of these groups anymore. As we discussed in section 4.3, the American administration sought to respond to this problem by creating the category of “associated forces” that has been criticized by many jurists. To add to this legal problem, these new organizations (al-Qaeda in the Islamic Maghreb, AQAP, Boko Haram, al-Shabbab, etc.) act within states with which the US is not at war and often do not threaten the interests of the United States.¶ 8.1 Armed conflict, “Self-Defense” or “Law Enforcement Operation”?¶ The official American argument is essentially characterized by its confusion and the different registers on which it is based. Attorney General Eric Holder was supposed to clarify the legal arguments on which the war against terrorism is based in a speech on 5 March 2012 given at Northwestern University School of Law, but he instead maintained the same vague stance presented by US policymakers and legal advisers. In summary, it is as if the United States is at war with an enemy that cannot be underestimated: “Because the United States is in an armed conflict, we are authorized to take action against enemy belligerents under international law…And international law recognizes the inherent right of national self-defense.”205 This is where the confusion lies – do the United States apply the law of war, or that of legitimate self-defense? This distinction is important: in the first case, it is the law of armed conflicts that applies; in the second, it is the rule of law on legitimate defense. According to Philip Alston, former Special Rapporteur on extrajudicial, summary or arbitrary executions, “these are two radically different legal regimes.”206 ¶ Steven Aftergood, in his analysis of the memorandum207 on the legality of targeted assassination of terrorist suspects prepared by the Congressional Research Service for the members of the American Senate “The U.S. practice of targeted killing raises complex legal issues because it cuts across several overlapping legal domains. To the extent that the U.S. is actually at war with the targeted persons, the “law of armed conflict” would provide the appropriate legal framework, though the relevance of this framework far from a “hot battlefield” is disputed. Outside of armed conflict, the U.S. could be acting under the related but distinct laws of “self-defense.” The use of lethal force in law enforcement operations offers another way of conceiving of and evaluating anti-terrorist strikes”.208¶ According to the domain applied, the ability to use lethal force varies. But American officials refuse to be clear about which legal basis applies in the case of targeted killings. In the case of armed conflict, it is the prerogatives of the soldier on the battle field, while in the case of law enforcement operations, that of the police officer on patrol.“The first can get away with ‘shooting to kill’ at any legitimate military target, while the second can only fire as a last resort, and only as a proportionate response to an imminent threat.”209 It therefore stands that all law enforcement operations must fall under the framework of international human rights law.¶ The United States is not involved in an “armed conflict” with Yemen, but it seems to consider their intervention in the country under the guise of an “armed conflict” due to the presence of suspected members of al-Qaeda that they identify as “combatants” and as representing a threat to US national security. Asked about the targeted killings committed by Americans around the world at a conference at the Woodrow Wilson Center, John Brennan stated: “In this armed conflict, individuals who are part of Al Qaeda or its associated forces are legitimate military targets. We have the authority to target them with lethal force just as we targeted enemy leaders in past conflicts, such as German and Japanese commanders during World War II.”210 The analogy certainly made many commentators shudder…¶ Yemen is an ally of the United States, which has not declared war against it. Consequently, if there is a war there, it is against a non-state actor, and this could perhaps be considered as “non-international armed conflict,”211 to which international humanitarian law applies. In the case of concrete military interventions by the Americans in what is really an internal conflict in Yemen, one must ask if the definition is adequate, given that some of its pre-requisites are unmet, such as the intensity of the violence suffered. Armed groups, namely al-Qaeda, Ansar al-Sharia, and others are fighting the institutions of the Yemeni state, its security forces, and its infrastructure. American nationals and infrastructures have not been hit for several years now in Yemen. It cannot be a question of a confrontation between the American military and Yemeni insurgents. As we explained above, the most important military confrontation between the Yemeni army and insurgents from al-Qaeda, Ansar al-Sharia, and other groups took place in 2011 and 2012, and since June 2012 the areas under insurgent control have been evacuated. Today, the local defense committees put in place and supported by the state control the regions. The United States nonetheless intervened during the entire period from 2009-2012 and continues to carry out targeted killings. It is difficult to argue that they themselves led an armed conflict against al-Qaeda and Ansar al-Sharia in Yemen alone during this entire time.¶ In the absence of armed conflict, intervention is above all for law enforcement operations outside of actively hostile areas, which means that lethal force can only be used in response to a direct and imminent threat. In these cases, international human rights law applies. During a police law enforcement operation, one must arrest the suspect and allow for the possibility to detain, not kill, the suspect in the absence of a direct threat to the agents carrying out their jobs. The use of armed force, which is supposed to be the exception, is disproportionately use in Yemen by the United States. If these conditions are not met – and the drone cannot respect them because it cannot emit warnings before killing individuals – it is an extrajudicial execution. The drone is the ideal instrument to apply the doctrine of “kill rather than capture.”212¶ One must also remember that the CIA, whose agents are civilians, carries out the majority of these operations. If the intervention of the US in Yemen is indeed in the context of an armed conflict, they are liable for prosecution for war crimes.¶ 8.2 Basic principles of armed conflict are not respected¶ In the event that this is actually an armed conflict in which US institutions are involved under the paradigm of international humanitarian law, the United States is bound to respect a number of principles, including military necessity, proportionality of means used, humanity, and the distinction between combatant and civilian. Nonetheless, all of these rules are systematically violated.¶ The first American drone attack took place in 2002, and began again in 2009 when there was no question of internal conflict between the government of Yemen and al-Qaeda. These attacks were in response to the attack on the warship the USS Cole in 2000. The bloodiest attack took place in Al-Ma’jalah on 17 December 2009, when more than fifty civilians were killed (see annex 1 for more information). In this case, there was no necessity to intervene militarily and the suspect could have been apprehended easily. The means used were absolutely disproportional since they were missiles carrying cluster bombs fired from a warship that continued to kill civilians in the following years.¶ This case was by no means the exception, however, and we have outlined several cases of targeted persons who could have been easily arrested. Vehicles transporting suspects, especially motorcycles, could have been stopped by the Yemeni army in order for the passengers to be arrested.¶ On 7 November 2012, Adnan al-Qadhi was assassinated with a companion by a drone strike in the village of al-Sarin close to Sanhan, less than 40km from the capital Sana’a. A former lieutenant-colonel, he was receiving a military pension until his assassination, which means that he was not considered a threat by the authorities. Adnan al-Qadhi was suspected of involvement in the attack on the American embassy in 2008, for which he was sentenced to four years in prison but released due to pressure from military and tribal leaders. He lived freely in his native village and could have been arrested at any time. Yemeni officials claim that the strike was personally authorized by President al-Hadi under the pretext that an attempt to arrest him would have caused too many deaths. The question remains as to why they would want to eliminate him when, according to the same officials, no accusation was made against him and he was not a threat to the United States?213 ¶ “Distinction” is yet another principle that is systematically violated. In a study published by the International Committee of the Red Cross, Nils Melzer explains the difficulty of establishing operational legal standards in international humanitarian law that allow for the identification of different parties involved or not involved in a non-international armed conflict: “For the purposes of the principle of distinction in non-international armed conflicts, all persons who are not members of State armed forces or organized armed groups of a party to the conflict are civilians, and therefore entitled to protection from direct attacks, unless and for such time as they take a direct part in hostilities.”214 This requires a definition for “combatant”: under international humanitarian law, the combatant, if he or she is not a member of the state’s armed forces or militias, is defined by his or her direct participation in hostilities for the duration of his or her participation. In addition, if one is considered a target, one must clearly and directly participate in hostilities. However, the majority of strikes do not take place during hostilities between armed groups and the United States.¶ In any armed conflict, it is essential to do everything possible to protect civilians. Yet numerous strikes have taken place in residential areas or on vehicles in areas that are likely to lead to civilian, particularly children, being harmed, as was the case in al-Shihr (Hadramout) on 24 December 2012 when four men were killed in a strike. They were right outside a stadium where several children were playing. Many children were injured, among them Hamza Hussein Said ben Dahman, aged 16, who remains disabled due to his injuries to this day (see Annex 7 for more information).¶ On 10 June 2011, the house of Nader al-Shaddadi, a suspected local leader of Ansar al-Sharia in the village of Raia (Abyan province), was hit by a strike when he was not home. His mother, father, and sister perished.215 His young niece lived through it, but is now disabled for life. An 11-year old girl, Moti’a Ahmed Haidara, was also killed as she was walking out of the al-Shaddadis’ home.¶ The attack of 2 September 2012 in Radaa, which targeted Abderraouf al-Dhahab, but instead hit a car, killed twelve people who had no ties with armed groups and who were returning from the market at Radaa to their village (see Annex 6 for more information).¶ During the offensive in Abyan, nocturnal raids allegedly carried out by the Yemeni army but in fact launched by American drones or planes caused many deaths. The dead were not identified nor were the charges against them made public, but they were all identified as terrorists, combatants of Ansar al-Sharia or al-Qaeda. This was again the case on 14 July 2011 in the district of Mudia in Abyan. According to local officials contacted by AP, responsibility for the attack must rest with the Americans because Yemeni planes are not equipped to carry out night raids. CNN learned from an official source that more than fifty people died. Officials explained that the number of victims was so high because fighters were living with their families where the bombardments took place.216¶ Regardless of this, the American administration does not give a clear definition of the people it considers to be targets. Confusion also abounds here: does the US eliminate specific individuals whose participation in terrorist acts have been established, or simple combatants? Based on the kill-lists that feature only leaders of terrorist organizations, different American agencies such as JSOC and the CIA, state that they only target identified persons. In practice, US officials admit that they do not always know who figures amongst the “combatants” killed and in the majority of cases, as we have seen, they are not leaders of al-Qaeda.217 Those killed in aerial attack are often unrecognizable and cannot be identified. On several occasions, the announcement of a leader’s death has also been proved to be false. This raises the question of how the American administration can be sure it is eliminating al-Qaeda’s leaders.¶ We now know that American agencies carry out “signature strikes,” and that these also pose a problem to the principle of distinction. The Americans target individuals who behave suspiciously or whose location is suspect (if they are close to an arms depot or an armed group’s barracks, for example), without confirming that they are in fact combatants. In addition to the fact that these are extrajudicial executions, this practice distorts the numbers of civilians versus combatants killed. When a leader of an armed group is found driving in a vehicle with four unidentified individuals, how do we know that they are also combatants? Regardless, they are all considered suspect and counted as combatants. In the attack on Khawlan on 23 January 2013, a vehicle with eight passengers was struck by two Hellfire missiles launched from a drone. The attack targeted Rabie Hamud Lahib, sought by the Yemeni authorities as a member of al-Qaeda. Among the people hit by the strike were two civilians with no connections to armed groups who were driving the vehicle, having been hired by Lahib and his companions to drive them to a neighboring village. Lahib and Naji Ali Saad were identified as the targets of the attack (see Annex 9 for more information).¶ The American administration publicly seeks to minimize the number of civilians killed, and thus considers all men of fighting age as combatants218 as well as any who cannot be clearly identified as civilians, or who are located in the area of an attack. Professor Dapo Akande, the Director of the Oxford Institute for Ethics, Law and Armed Conflict, asks: “If US policy assumes that those who live with or assist combatants are also necessarily combatants, that would be problematic if applied to US combatants and operatives.”219¶ The problem of distinction arises in strikes aimed at residential homes, but also in cases of “double strikes.” After an initial bombardment, the civilian population rushes to rescue survivors and is hit in a second strike a few minutes later. In the case of the attack on Ja’ar on 15 May 2012, the larger number of deaths was caused by a second attack fifteen minutes after the first (see Annex 4 for more information) and not by the strike that targeted the suspects. The second attack therefore had other objectives: to kill those injured in the first strike, but also to terrorize the population and prevent future rescue attempts of survivors after attacks. In the targeted killing in Wusab on 17 April 2013, one of the survivors of the attack could not be saved because of a plane flying over the crowd that was trying to help him. A witness reported to Alkarama: “We saw the car on fire and heard the screams of Ghazi, one of the passengers. I got off the motorcycle to rescue him because he had been thrown several meters. When I approached, a plane flew lower and projected a red light on the ground as if to warn me it was about to launch a bomb. The people in front of me yelled, ‘The plane is coming down, run Salim!’ I left the area and rejoined the crowd. People were petrified with fear at the sight of the plane watching them from a low altitude. I still remember the cries of Ghazi who begged us for help, but we were unable to rescue him. For three hours, we waited for the plane to disappear so that we could rescue Ghazi;” all in vain, for he did not survive (see Annex 10 for more information).¶ 8.3 Is the American intervention legitimate self-defense?¶ The United States claims the war against al-Qaeda and other terrorist groups is necessary self-defense. They refer to article 51 of the United Nations Charter that establishes the natural right to individual or collective self-defense in the case of armed aggression. The former Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston has expressed strong reservations in view of this reference to the Charter: “But even if it were to be accepted that article 51 has not displaced customary law, the reality is that it will only be in very rare circumstances that a non-state actor whose activities do not engage the responsibility of any State will be able to conduct the kind of armed attack that would give rise to the right to use extraterritorial force. […]”220¶ One of the conditions for claiming the right to self-defense is the threat of a direct, imminent armed attack. But in Yemen, no “direct” or “imminent” threat to the United States stems from the armed groups in conflict with the central government, undermining the justification for their military intervention. More than ten years after the attacks of 11 September, the argument of the American government is still founded on the principle of terrorist actions the responsibility of which could be attributed to al-Qaeda, regardless of how strong its ties to the group, and that the act is part of the campaign of violence that began on that day.221 This violent act would therefore constitute an act of aggression as defined by article 51 of the Charter. In the face of this so-called permanent threat, the United States has granted itself a permanent right to self-defense. This also allows them to refrain from having to identify the geographical location of the threat and therefore to claim the right to attack, through its military, any place on earth. But this argument still cannot justify the practice of targeted killings by drones, illustrated by the numerous instances of strikes we have cited that were not a response to an imminent, direct aggression.¶ This conception of self-defense is questionably extended by the United States, which claims that the states where it intervenes are themselves incapable or unwilling to fight terrorism and therefore the US is required to act directly. This argument poses a problem both politically and legally. Is the American intervention on Yemeni soil a violation of state sovereignty? It is unclear whether bilateral military agreements were concluded between the two states, and, if so, what the terms were. Through leaks and comments may by politicians, we can establish that close cooperation has developed between the two countries. But does this cooperation justify coordinated bombings in the south of the country? Do the agreements between the countries, if they exist, allow for targeted killings? And, as pointed out by Philip Alston: “But while consent may permit the use of force, it does not absolve either of the concerned States from their obligations to abide by human rights law and international humanitarian law with respect to the use of lethal force against a specific person.”222¶ In the absence of bilateral military agreements, what criteria determine whether the Yemeni government lacks the will or ability to combat terrorism in its own country? Is it not the UN that retains the authority to decide on such issues that have significant consequences for the civilian population?¶ 8.4 Targeted killings under international humanitarian law¶ Whatever the context of the American military intervention (in a situation of armed conflict, self defense or law enforcement operation), the American military and the CIA use drones and other military aircraft or warships to carry out targeted killings that must be considered and qualified as extrajudicial executions. Under international human rights law, several rights are violated by these extrajudicial executions, the first of which is the right to life. The International Covenant on Civil and Political Rights clearly sets out in Article 6 that “no one shall be arbitrarily deprived of his life”¶ The Human Rights Committee’s General Comment No. 6 calls on states to strictly regulate and limit the cases in which a person can be deprived of life by the authorities. This General Comment emphasizes that the right to life should not be interpreted too restrictively, specifying that “States have the supreme duty to prevent wars, acts of genocide and other acts of mass violence causing arbitrary loss of life.”¶ In the case of civilians killed by American interventions, the violation of the right to life is manifest and no context can justify these extrajudicial executions. We have documented a dozen attacks in the course of which civilians were killed and seriously injured. The majority of them were identified by name and it is beyond doubt that they were civilians.¶ The targeted killing of suspects considered as leaders of al-Qaeda or ordinary fighters cannot be justified by specific circumstance (in a situation of armed conflict, self defense or law enforcement operation) in which it takes place. The United States is not facing an “imminent threat,” the condition of the right to self-defense. The people killed are not implicated in hostilities towards the United States in which American soldiers have to defend themselves; targeted killings are not taking place in the context of imminent or direct attack from armed groups. Instead, suspects are followed by drones, targeted, and assassinated. In other cases, civilians are killed when they are in the company of suspects that have been monitored and targeted. In any case, it is not possible to justify their deaths, therefore qualifying them as extrajudicial executions.¶ Another fundamental right enshrined in the Covenant is violated by extrajudicial executions: the right to defense and a fair trial as set out in article 14. All of the suspects who have been killed never had accusations brought against them, or even specified. Their case is not heard in a fair trial before an independent and impartial court. Assuming that the Yemeni authorities have gathered charges against the assassinated suspects, it is incumbent upon them to bring them before the justice system. For their part, the Americans have made no effort to establish legal proceedings against targeted people, whether they are Yemeni or American nationals. The most widely cited example is that of Anwar al-Awlaqi, who was placed on a kill-list in 2010, in addition to four other Americans killed in drone strikes.¶ 8.5 The extrajudicial execution of American citizens¶ When, in April 2010, the media reported that Anwar al-Awlaqi, an American and Yemeni citizen, had been placed on a CIA kill list223, his father, Nasser al-Awlaqi, brought a case to the US Supreme Court as the assassination of an American citizen without due process would violate the American Constitution. The case was thrown out by the judge, who determined that Nasser lacked legal standing to act on his son’s behalf and that he “did not have the legal power to prevent a political decision by the executive in an armed conflict. He recognized, however, that the case raised serious Constitutional issues.”224¶ After several assassination attempts, Anwar al-Awlaqi was finally killed by an American drone on 30 September 2011. President Obama publicly praised the killing. The New York Times revealed shortly after his death that the Department of Justice had drafted a memorandum justifying the administration’s right to kill him in August 2010.225 He was nonetheless never charged with a crime. The day of his murder, he was in the company of three other men, among them Samir Khan, the editor of a publication, also a US national. Two weeks later, drone strikes killed Anwar’s son, Abderrahman al-Awlaqi, a 16-year-old American citizen.¶ It was not until May 2013 that the American government acknowledged the targeted killing of four American citizens in Yemen and Pakistan. In reality, there were five. But to this day, the memorandum of the Department of Justice that legally justified the execution of Anwar al-Awlaqi is classified “top secret.” The two main reasons for the decision were leaked: that al-Awlaqi participated in terrorist actions and a plot to blow up an airplane in 2009, which was used to satisfy the condition of an “imminent threat”; in the armed conflict against al-Qaeda, he had taken the side of this organization; and finally it would be nearly impossible to arrest and bring him to justice.226¶ The Center for Constitutional Rights (CCR) and the American Civil Liberties Union (ACLU) filed a complaint on 18 July 2012 on behalf of Nasser al-Awlaqi, the father and grandfather of Anwar and Abderrahman al-Awlaqi, and Sarah Khan, the mother of Samir Khan, against the Secretary of Defense Leon Panetta, CIA Director David Petraeus, Admiral William H. McRaven the Commander of US Special Operations Command, and General Joseph Votel, the Commander of the Joint Special Operations Command.227 It accuses them of having violating the Constitution and the fundamental right to life as it is enshrined in international law by authorizing, ordering, and carrying out the drone strikes that killed the three men mentioned above.¶ On 18 July 2013, the federal judge of the State of Columbia Ms. Rosemary M. Collyer strongly disputed the Obama administration’s assertion that the courts cannot judge targeted killings by drones of American citizens abroad. The government asked that the complaint be thrown out since decisions concerning targeted killings should be reserved to the “political” branches of government, the executive and legislative, not the judicial branch. Additionally, this kind of legal action against senior officials of the national security establishment could set a precedent for future cases.228 The judge said she “was “troubled” by the government’s assertion that it could kill American citizens it designated as dangerous, with no role for courts to review the decision.” A second hearing is scheduled and the case remained pending in August 2013, but it is feared that Ms. Collyer will be divested.

#### Judicial review is key to the execution of international legal norms against deprivation of life—key to accountability and legitimacy

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 attacks undermine United Nations norms—particularly human rights law and the right to life

Heyns, 2013

[Christof, Special Rapporteur on extrajudicial, summary or arbitrary executions in Sixty-eighth General Assembly Third Committee 27th & 28th Meetings (AM & PM), DELEGATES CONSIDER DEADLY USE OF DRONE TECHNOLOGY AS THIRD COMMITTEE, http://www.un.org/News/Press/docs/2013/gashc4078.doc.htm] /Wyo-MB

CHRISTOF HEYNS, Special Rapporteur on extrajudicial, summary or arbitrary executions, introduced his 2013 report (document A/68/382), stressing that its focus was the lethal use of armed drones from the perspective of the right to life. It was widely accepted that drones were not illegal, he said, adding that they were “here to stay” since more States were expected to acquire them. The core questions were about the law, policy and practices around their use, especially in extraterritorial counter-terrorism operations by all States employing or intending to employ such weapons systems. “Global security requires that drones should follow the law,” he declared, adding that “the law should not follow drones”. The right to life could only be secured if all the distinct requirements of international human rights law, international humanitarian law and the law on the inter-State use of force, as applicable, were met.¶ “New law is not needed,” he continued, arguing that the existing international framework should be applied, and attempts to lower the standards for the use of force in its various regimes or in their interplay resisted. Human rights were the “default legal regime”, premised on the protection-of-life principle: life might be taken only in the absence of another way and thus when necessary to protect another life. To be necessary, the danger to life must be imminent, he emphasized, pointing out that the rule against the arbitrary deprivation of life was to be found in customary international law, in the general principles of law and in human rights treaties recognizing the right to life.¶ Noting that drone attacks had been carried out largely against non-State actors in other countries, he questioned whether States were also bound by that rule outside their own respective territories. Since the right to life was recognized as part of international custom and the general principles of law, “the answer must be yes”. That was reinforced by the widely-held view that human rights treaties could in principle also apply extraterritorially. States should not be allowed to take life outside their own borders on a different basis from that upheld within them, he stressed. The prohibition on the use of inter-State force without the consent of the State concerned was an integral part of the protection of life – and the right to life – under Article 2 (4) of the United Nations Charter, he noted.¶ While States may use force in self-defence against an armed attack, its limits must be recognized, he said, adding that the force applied must be necessary and proportionate. Anticipatory self-defence may be justified only against a truly imminent threat, and any purported exercise of the right to self-defence must be reported to the Security Council. Expressing concern over the “drones only” approach reportedly mentioned by a former Secretary of State of the United States, he warned that increased reliance on that technology would lead to reduced emphasis on peaceful ways to resolve disputes. Over-reliance might also lead to long, drawn-out and low-intensity conflicts with few geographical boundaries. International norms protecting the right to life would be significantly undermined if States around the world claimed and exercised the authority to “right wrongs” anywhere in the globe as they perceived them to occur, with drones or any other weapons.

#### Norms key to the United Nations

UN, 2004

[Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies, United Nations rule of law, http://www.un.org/en/ruleoflaw/] /Wyo-MB

Promoting the rule of law at the national and international levels is at the heart of the United Nations’ mission. Establishing respect for the rule of law is fundamental to achieving a durable peace in the aftermath of conflict, to the effective protection of human rights, and to sustained economic progress and development. The principle that everyone – from the individual right up to the State itself – is accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, is a fundamental concept which drives much of the United Nations work.¶ The principle of the rule of law embedded in the Charter of the United Nations encompasses elements relevant to the conduct of State to State relations. The main United Nations organs, including the General Assembly and the Security Council, have essential roles in this regard, which are derived from and require action in accordance with the provisions of the Charter.¶ "For the United Nations, the rule of law refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency."

#### Strong UN is key to solve global conflict

Lei, 2012

[Xue Lei, Research Fellow, Center for Maritime and Polar Studies, Shanghai Institutes for International Studies, 9-24-12, The United Nations and the Future of Global Governance, Editor's note: This roundup is a feature of the Council of Councils initiative, gathering opinions from global experts on major international developments, http://www.cfr.org/international-organizations-and-alliances/united-nations-future-global-governance/p29122] /Wyo-MB

In our rapidly globalized world, the challenges to humankind are myriad and complex. The task for global governance is to focus on the interconnectedness and interdependence of all these challenges and threats. It needs to provide the international community with a roadmap leading to the ultimate goal of sustainable peace and development. And with the rise of emerging powers, the need for a new global architecture has become even more urgent and critical.¶ As the only global institution with comprehensive competency and universal membership, the UN is uniquely positioned to deal with these multiple and complex challenges. On the operational level, the UN has a well-established institutional framework for deliberation, decision-making, and implementation. But more importantly, the UN can confer a unique legitimacy upon mandates and actions on an international level. The UN has always been the forum for countries to have their views heard, regardless of size, influence, or political system. Therefore, the UN should never be absent from discussions on global issues. If anything, it needs to get more involved in various initiatives ranging from the alleviation of poverty to prevention of conflicts around the world.¶ However, the United Nations has long been plagued by concerns about efficiency and effectiveness. Further reform of the institutional framework and working approaches of member agencies is needed, with the aim of helping the UN adapt to a changing world. On the other hand, the rise of emerging powers and the waning of established Western influence have, in effect, made this world more fragmented, crowded, and heterogeneous.¶ The heterogeneity is reflected in the UN's weakened mandate, especially in the security area. The attempts of Western powers to impose their concepts and ideas on the UN have been met with great resistance from the emerging powers, as the debates arising from the 2011 NATO military intervention in Libya demonstrated. Current differences regarding the situation in Syria also show that emerging powers are determined to break the Western domination in the UN Security Council. It also means that countries need to have a more open and candid dialogue, with the aim of forging a new global consensus based on equity, fairness, and inclusion. Only with this new global consensus can the UN fulfill its role of promoting sustainable peace and development.

#### UN is key to solve multiple global extinction scenarios

Spencer, 2011

[Christopher, Former Senior Advisor International Organizations Canadian Department of Foreign Affairs and International Trade, Global Issues of the Twenty-First Century and United Nations Challenges A GUIDE TO FACTS AND VIEWS ON MAJOR OR FUTURE TRENDS, http://www.global-challenges.org/002global-issues.html] /Wyo-MB

GLOBAL ISSUES AND UN RELEVANCE¶ (A) Employing Human Resources Better:¶ Behind most sources of global instability lie two inter-related factors. First, in many places and ways, humanity already exceeds the carrying capacity of both its biosphere and institutions. Its rapidly increasing capabilities have enabled it to expand its global impact and numbers much faster, and to conduct activities more destabilizing, than either the ecosystem or existing social arrangements can handle. Second, the global order, while knowledge-based, wastes most of the vast pool of human intelligence that might remedy or constrain these human numbers and profligate activities. Only a tiny handful of the humans now alive will ever approach their full potential. Billions live marginal lives; 30% of the world's labour force are not productively employed; 1.5 billion are condemned to the strait-jacket of illiteracy. Moreover, 80 million are added annually to human numbers - and to growing pressures on institutions and resources. Any alleviation of expanding human pressures and wasted human capacities - through responsible development and fertility, accelerated education and competence - is the most truly global challenge facing the international community, and UN.¶ (B) Ending Misuse of Non-Human Resources:¶ Humanity's fixed global heritage is being destroyed or exploited at an accelerating rate, a process ultimately unsustainable. This applies to both renewable and non-renewable resources; to those claimed by individuals or organizations and those seen as humanity's common heritage and/or as valueless externalities. From now on, all exploitable reserves must be at least roughly calculated, valued, and used on a broadly sustainable basis. If these difficult aims are to have meaning and some hope of success, global accords and close cooperation are essential; the UN is already taking the lead.¶ © Cleaning Up Our Mess:¶ Since the scientific revolution, and particularly since the population and technological explosions, certain human activities have done such dangerous and costly damage to the biosphere that Homo sapiens has no choice but to try to make corrections. At minimum, widespread and/or transboundary biospheric disruptions (e.g. air pollution; soil erosion, pollution and depletion; desertification; water misuse; deforestation) must be controlled or reversed. The scale and wide-spread nature of most of these problems, and the limited financial and technical ability of many of those worst affected, require that most can best or only be addressed collectively on a worldwide basis (Earth Summit, Rio 1992).¶ (D) Dealing with Biospheric Disruption:¶ We confront or create serious physical phenomena of global impact, many caused by forces that can only be indirectly influenced, or even understood. These may or may not be avoidable, but many can now at least be predicted, or reduced in force or effect. Examples may be climatic (global warming, ozone depletion); geological (earthquakes, volcanic eruptions, tsunami); meteorological (floods, storms, droughts); or space-originated (asteroids). Almost any human counter-action can only or best be undertaken collectively by the global community.¶ (E) Meeting New Security Threats:¶ The end of the Cold War did not ease, but rather probably intensified, human insecurity. The UN recognizes that dangers to international peace and security now equate less with inter-state military violence, and more with other threats, varied and multiple, to local, regional or global survival. The priority reaction to these altered threats must be changes and flexibility in human response. Human perceptions, priorities and institutions must adapt to situations. The necessary process of reaction is so grave, urgent and universal that it must be addressed collectively, as at the UN World Summits.¶ (F) Confronting Violence:¶ Since the end of the Cold War, while conflict between states has become rare, intra-state violence has increased. Self-determination, ethnic and religious differences have replaced resource gain and even ideology as reasons for inter-human combat. The proliferation and lethality of new weapons alone demands the reduction and eventual elimination of mass conflict. There is a continuum of things the UN can and must do. Through prevention and mediation, varied military or other sanctions, peacekeeping, and other intervention or assistance designed to stabilize or defuse situations, the UN must act as it was designed to do - further the building of global peace. A shrinking world makes peacemaking everywhere enlightened self-interest for all.¶ (G) Dealing with Disaster:¶ Almost all the challenges identified raise the possibility of catastrophe, however prescient the UN's efforts. World interdependence increases chances that local events have global effects; the colossal and ever-growing scale of human intrusions on the biosphere make catastrophes both more likely and serious; and the omnipresent media, combined with the appalling discrepancies in wealth, make assistance politically unavoidable. Geography, resources and technology alone make UN-coordinated action preferable.¶ (H) Promoting Disarmament:¶ The end of the Cold War brought new hope for peace dividends, but left a world awash in arms, surplus arms-making capacity, and unemployed arms professionals. Traffic increased in both scale and recipients, as prices fell. Control over the development, manufacture and deployment of lethal weapons and substances, particularly nuclear, biological and chemical, has become no longer the preserve of the superpowers and their allies. UN concern and activity has grown, but will be constrained by: continued weapons research, driven by fear, greed and curiosity; global diffusion of both weapons and relevant knowledge; the increasing difficulty of verification; and the vulnerability of complex modern society to disruption. All demand global reaction.¶ (I) Reducing Hazardous Frustration:¶ With the proliferation of weapons comes the profusion of those who could and might use them. The desperation of unemployment, the anger of those masses who perceive themselves deprived in a grossly unequal but more-informed world, and the boldness of ethnic and religious certainties, sows contagious seeds of terrorism, fanaticism and martyrdom. Arming and financing extremists are inter alia the growing numbers and wealth of drug dealers and other international criminals, and new thousands of well-trained and armed international mercenaries and activists. Miniaturization, the diffusion of lethal knowledge and components, and multi-use equipment and substances, impede surveillance, while the vulnerability of energy- and information-dependent society makes it more susceptible to focussed attack and blackmail. Counter-action must therefore involve all governments to eliminate sanctuary and safe transit. Counter-intelligence must become as airtight and coordinated as possible. Only global coverage is truly effective.¶ (J) Countering Medical Challenges:¶ Two trends cause increasing health concerns. First is the rapid and relentless escalation in the global movement of both people and things. Every conscious transfer also carries the threat of transmitting human, plant or animal disease, and inevitably raises the likelihood of pandemics. Second, the very widespread (over)use of antibiotics etc. has produced more resistant mutations, and a global race to keep ahead. All this calls for tighter global biological preventive and control measures. Fortunately many can be integrated to a degree with other security screening, and control of toxic goods movements. Again, any impervious system demands all-inclusive global coverage.¶ (K) Building a Global Rule of Law:¶ Every (binding) interstate agreement constrains sovereignty, and every resolution passed in a universal forum contributes to creating global standards/norms. The general trend is thus for the body of international practice, precedent and law to grow at an unequalled rate. The reason is practical. A world whose international inter-connections grow exponentially must establish and maintain relevant rules, controls and principles. The development of international law and tribunals must keep pace with interdependence. If global, the UN is involved.¶ (L) Developing Global Rights:¶ The formation and acceptance of universal human rights and democratic norms raises questions. While some governments argue that human rights are culturally based, in practice the body of those globally accepted is expanding. In any event, any universal code must be developed through the gradual build-up of norms. The process of formulation and acceptance is constantly underway in various UN fora, and has been for many years. Movement, though slow, is clearly forward and increasingly intrusive within states.¶ (M) Managing Mass Migrations:¶ Humans now move in unprecedented numbers, not simply because there are more people, but because both the need and opportunity have grown: both push and pull forces are powerful. The UN officially recognizes well over 20 million refugees forced unwillingly out of their own country. Globally, about one person in a hundred is either a refugee or displaced, i.e. forced unwillingly to move within their country. Other mass migrations are more ambiguous, particularly the uncontrolled flows in poorer countries from country to city. When either or both the migrant and the place of immigration is unwilling, problems are bound to arise beyond mere acculturation. These truly global issues can best be dealt with at the global level.¶ (N) Maintaining Global Financial Order:¶ One major aspect of globalization is the interdependence of national finances. This reflects the vast, expanding scale and global nature of: international trade (goods; services; technology), investment (short-term; direct), migration (personal assets; remittances), and the related or speculative financial transfers (now worth about $1.5 trillion daily). This reality limits all governments' control over national fiscal policies, exchange rates, economic success, and debts, and can threaten national stability - increasingly through external financial developments. Resulting world-wide issues include: the need for/terms of global financial rules and assistance; the nature, control and value of (national) currencies; the optimum rules for foreign trade, investment and migration; the damping of irrational confidence, price, stock-exchange frenzies; the elimination of tax havens and money laundering. All involve the UN system (particularly the IMF-World Bank).¶ (O) Optimizing International Trade:¶ As the volume and value of international trade grows, it raises new problems of negotiation, regulation and adjustment. The World Trade Organization will have a key role in dealing with the rapidly growing trade in services, chronic problems with agriculture, the issues of international investment and corruption, environmental and labour standards, and the taxing of international trade between parts of supra-national corporations. Many economic agreements are already global. They will inevitably grow in number and complexity as trade blocs form.¶ (P) Dealing with Failure and Anarchy:¶ The collapse of major institutions, both national and international, including numerous failed states, is foreseen as a delicate predicament for the international community. The UN may be the only acceptable resident physician in many cases. Two problems inevitably arise: the degree of global control and help that is tolerable yet sufficient, and the enormous cost and possibly time-scale involved. For many reasons, however, a political-security black hole can no longer be left unattended by an interdependent community.¶ (Q) Accommodating Non-State Power:¶ The influence, wealth and activities of many non-state trans-national organizations (NGO's, corporations, ideological movements, media, etc.) is approaching or exceeding that of sovereign states. The international rules in regard to such bodies remain very limited. One reason is that they may have no genuine nationality and/or can play one state off against another. Somehow such organizations must be persuaded to respect a minimal system of supranational norms, or jurisdiction if necessary. Only the UN system has any hope of accomplishing this.¶ ® Optimizing Global Knowledge:¶ In a knowledge-driven world, the maximum and most rapid exploitation of accurate information and essential technology should be facilitated, if only to the general welfare. Assisting in raising global access to information is a challenge so big and beneficial that it falls on the UN. Third World states can be assisted electronically in gaining entry to the most essential pools of knowledge, particularly to exploit modern technology for rapid and general education. The distortions and instability that accompany the global revolution can thus be absorbed as quickly and painlessly as possible, and the Third World make a major contribution to global sustainable development.¶ (S) Alleviating Global Distress:¶ The avoidable frustration, hopelessness and anguish of billions of humans, brought about by absolute privation, and extreme and growing income divergence, both within and between states, must be addressed - if only for enlightened self-interest in global stability. The international community through the United Nations has a unique capacity, and so responsibility. We must try; there is no rational excuse.

#### Siding with rule of law and right to life is key to international and human rights law

The Messenger, 2013

[Staff writer, 8-13-13, UN chief urges US to follow international law on drone strikes, Lexis] /Wyo-MB

United Nations Secretary-General Ban Ki-moon has insisted that US drones must operate within the long-standing international humanitarian law.¶ "As I have often and consistently said, the use of armed drones like any other weapon should be subject to long-standing international law, including international humanitarian law," Ban said in a speech at the National University of Science and Technology in Islamabad.¶ Ban was addressing the controversial issue of drones during his visit to Pakistan, where the US drone operations are a major thorn in relations with Washington.¶ The UN chief also said every effort should be made to avoid mistakes and civilian casualties. "This is a very clear position of the United Nations. Every effort should be made to avoid mistakes and civilian casualties."¶ The remarks come as the United States claims the drone strikes are legal and only target al-Qaeda and pro-Taliban militants.¶ But Islamabad has repeatedly condemned the attacks, saying they violate Pakistan's sovereignty.¶ According to Britain's Bureau of Investigative Journalism, the US has carried out nearly 400 drone strikes in Pakistan since 2004, killing up to 3500 people, including hundreds of civilians.¶ Meanwhile, Pakistani medics reported that the missiles fired by US drones have contaminated the environment with unknown chemicals. They say most of those wounded by US drone airstrikes in North Waziristan are hospitalized for various skin, eye and respiratory diseases caused by chemicals.¶ The US often carries out such attacks on Pakistan's tribal regions, claiming that the militants are their target. But locals say civilians are the main victims of the non-UN-sanctioned US strikes.¶ The issue of civilian casualties has strained the relations between Islamabad and Washington with the Pakistani government repeatedly objecting to the attacks.¶ The aerial attacks, initiated by former US president George W. Bush, have been escalated under President Barack Obama.¶ The United Nations says the US-operated drone strikes in Pakistan pose a growing challenge to the international rule of law.¶ Philip Alston, the UN special envoy on extrajudicial killings, said in a report in late October 2010 that the attacks were undermining the rules designed to protect the right of life.

#### Human rights law solves global war

William W. Burke-White 4, Lecturer in Public and International Affairs and Senior Special Assistant to the Dean, Woodrow Wilson School of Public and International Affairs, Princeton University, Spring 2004, Harvard Human Rights Journal, 17 Harv. Hum. Rts. J. 249, p. 279-280

This Article presents a strategic--as opposed to ideological or normative--argument that the promotion of human rights should be given a more prominent place in U.S. foreign policy. It does so by suggesting a correlation between the domestic human rights practices of states and their propensity to engage in aggressive international conduct. Among the chief threats to U.S. national security are acts of aggression by other states. Aggressive acts of war may directly endanger the United States, as did the Japanese bombing of Pearl Harbor in 1941, or they may require U.S. military action overseas, as in Kuwait fifty years later. Evidence from the post-Cold War period [\*250] indicates that states that systematically abuse their own citizens' human rights are also those most likely to engage in aggression. To the degree that improvements in various states' human rights records decrease the likelihood of aggressive war, a foreign policy informed by human rights can significantly enhance U.S. and global security.¶ Since 1990, a state's domestic human rights policy appears to be a telling indicator of that state's propensity to engage in international aggression. A central element of U.S. foreign policy has long been the preservation of peace and the prevention of such acts of aggression. n2 If the correlation discussed herein is accurate, it provides U.S. policymakers with a powerful new tool to enhance national security through the promotion of human rights. A strategic linkage between national security and human rights would result in a number of important policy modifications. First, it changes the prioritization of those countries U.S. policymakers have identified as presenting the greatest concern. Second, it alters some of the policy prescriptions for such states. Third, it offers states a means of signaling benign international intent through the improvement of their domestic human rights records. Fourth, it provides a way for a current government to prevent future governments from aggressive international behavior through the institutionalization of human rights protections. Fifth, it addresses the particular threat of human rights abusing states obtaining weapons of mass destruction (WMD). Finally, it offers a mechanism for U.S.-U.N. cooperation on human rights issues.

#### The plan uniquely bolsters legal safeguards and human rights leadership

Ghitis, 12 [“On human rights, U.S. must lead — or no one will”, Frida,a world affairs columnist at the World Politics Review, author and consultant. She started her career at CNN, where she worked initially as a show producer, http://www.miamiherald.com/2012/08/06/2930361/on-human-rights-us-must-lead-or.html]

Now, in an unexpected turn of events, Washington’s harshest critics are asking the United States to take an even greater role in world affairs, but to do it for the sake of protecting human rights across the globe. Whoever wins the presidential elections, President Obama or Mitt Romney, human-rights activists, including Amnesty International and the ACLU, are imploring him to move decisively to the forefront of world affairs and take a firm stand in order to prevent genocide, human rights abuses and terrorism. The goal is morally defensible — what could be more important than preventing genocide — but it is also one with strategic benefits for the United States. It turns out the alternative to American leadership is no leadership at all, or not much of one. Often that means conflicts that spiral out of control with disastrous consequences, as we have seen time and time again. America’s relative power has declined significantly, especially in the last half-decade of economic weakness. The powers whose rise has paralleled the American decline, such as China, have shown no inclination to lift a finger in defense of human rights or for the prevention of conflicts that could devastate civilian populations. As far as China, and still Russia, are concerned, conflicts are a problem only in that they interfere with trade or with strategic alliances. But the greatest threat, in their view, is a world that gives itself the right to tell other countries to respect freedoms, because they might later come calling in places like Tibet. As the United States’ ability to shape events diminished, it sought to rely more on international organizations and multilateral partnerships. But time and time again it has become clear that, as Bill Clinton’s Secretary of State Madeleine Albright put it back in the days of the war in Bosnia, America is “the indispensable nation.” Back then, Albright was arguing that the United States should step in and stop the slaughter in the Balkans. The massacres ended rather quickly after U.S. fighter planes started slicing across the sky. In many quarters, American military power is viewed with suspicion. And that’s understandable. But even on the left, among those who care deeply about the suffering of human beings of all nationalities regardless of who their tormentors are, the view that the United States is indispensable is growing. They don’t want to see American soldiers marching across the globe, but they want to see America prevent and solve conflicts and lead the international community to a consensus that human-rights matter. Amnesty International and the ACLU joined in a group of 22 well-known organizations and individuals who recently released a detailed study of the human-rights challenges facing the world — and the American president. They listed the top 10, along with a plaintive appeal that whoever sits in the Oval Office next year should embrace America’s leadership position. They didn’t call for the United States to act alone and didn’t necessarily call for military intervention of any kind, but they noted that “U.S. leadership is critical to effectively address international human-rights issues.” They recommended 10 policies, beginning with the need to “Prioritize U.S. leadership on international norms and universality of human rights.” Not everyone will agree with their second policy recommendation, that America “Act to prevent genocide and mass atrocities,” or the next one, that Washington “Pursue policies that protect people from the threat of terrorism . . . ” Ideally, American actions to prevent genocide and human-rights abuses would not require military action. Making them a priority would enlist international support and help countries everywhere internalize rules of behavior, and send a message that violating them could have consequences. For that, however, there really must be consequences. That includes international condemnation, economic sanctions and, as a final resort, the use of force. The authors of the human-rights paper correctly argue that a policy with a strong focus on human rights makes sense strategically. It’s an argument others, including Albright, have made many times before. When the United States stands for the dignity of individuals against the worst abuses of tyrants, it strengthens its moral core and it becomes a magnet for international support. Doing this is not always easy. It can create enormous practical dilemmas. Still, both Romney and Obama would do well to listen to this group’s advice.

## Plan Text

#### 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 counterterrorism oversight court with jurisdiction over targeted killing orders using unpiloted aerial vehicles.

## Solvency

#### The creation of a federal counterterror oversight court solves all problems with the targeted killing program and all disads to judicial review

Plaw, 2007

[Avery, Assistant Professor of Political Science at the University of Massachusetts at Dartmouth. He has taught at Concordia University and was also a Visiting Scholar at New York University. His primary research and teaching interests are in contemporary political theory and the history of moral and political thought, and he has published widely on these subjects. "Terminating terror: the legality, ethics and effectiveness of targeting terrorists." Theoria 114 (2007): Academic OneFile. Web. 3 Oct. 2013] /Wyo-MB

This final section offers a briefcase that there is room for a principled compromise between critics and advocates of targeting terrorists. The argument is by example--a short illustration of one promising possibility. It will not satisfy everyone, but I suggest that it has the potential to resolve the most compelling concerns on both sides.¶ The most telling issues raised by critics of targeting fall into three 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 demand 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 doubtless 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 argue, as indeed they have in regard 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. He suggests the possibility of setting up a national court to address counterterrorism issues loosely based on the model on the Foreign Intelligence Surveillance Court (FISC), which considers surveillance and physical search requests from the Department of Justice and U.S. intelligence agencies related to foreign intelligence operations in the U.S. (Ignatieff 2004:134). Developing Ignatieff's suggestion, the new court could be called the 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 warranted such a designation. It could also be assigned the responsibility to automatically review any actions that resulted in civilian casualties, and could be given the power to publicly censure operations that inadequately protected 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 violated humanitarian law, in particular, by engaging in perfidy or employing disproportionate force.¶ In at least three key respects, however, the design of the FCOC should differ from the model of the FISC. As the FISC is charged with assessing surveillance requests from government agencies, its writs and rulings remain permanently sealed from civilian review. But in the interests of resolving the second issue of openness, the findings of the FCOC should be made public, including the names of those judged to be combatants, as well as any reprimand from the court regarding targeting operations.¶ In the second place, the FISC foregoes adversarial legal proceedings because potential subjects of surveillance can obviously not participate. It has been much criticized on this count. The FCOC should not follow this precedent which, in the views of many jurists and scholars, flies in the face of the core of the Western legal tradition. Evidently, the trials of terrorists who cannot otherwise be brought to justice will be conducted in absentia. This does not, however, necessitate the abandonment of adversarial procedure. In addition to the seven judges appointed to the court, an independent counsel should be appointed by the President of the National Bar Association to represent the interests of the accused before the court. Evidently, appropriate precautions will need to be taken to ensure the secrecy of court proceedings. But the independent counsel should also not be barred from offering general assessments of the performance of the court. Obviously this is an imperfect resolution to an intractable problem, but it should contribute significantly to ensuring the fairness of the FCOC.¶ Finally, the FCOC must be distinguished from the FISC in a third crucial sense. The recent 'domestic surveillance' scandal in the United States involving the Executive Branch's circumvention of the FISC approval process suggests safeguards would need to be built into the FCOC mandate. In the case of the FISC, President Bush issued an Executive Order which authorized the National Security Agency to carry out surveillance of any Americans suspected of links with al Qaeda without FISC approval (Risen and Lichtblau 2005). The scandal and legal consequences that ensued for the administration once this information became public in 2005 have significantly reduced the likelihood of a similar course being taken in the future. Nonetheless, the possibility should be explicitly precluded by specifying in the enabling legislation that no targeting action can be considered legally authorized without approval of the court. In response to the argument that immediate action may sometimes be required in emergency situations, the presiding justice could be permitted to issue a provisional approval based on prima facie evidence, but only subject to full subsequent review by the court.¶ Some critics and advocates of targeting will no doubt be dissatisfied with this resolution. Critics will worry that the FCOC would essentially be a rubber stamp (while robbing them of their best rhetorical point--that targetings are extra-judicial). But there is no compelling reason to believe that courts, especially high-level federal courts, must always approve government policies. After all, supreme courts in both Israel and the United States have both recently issued sharp rebukes of government counter-terrorist policies (e.g., 03-333/4 on the U.S. legal status of detainees, and 3799/02 on the IDF use of human shields).¶ On the other hand, some advocates will certainly worry that a requirement of FCOC approval will hinder the efficiency of targeting and that publishing lists of targets will render them more difficult to find. On the former point, however, there is little evidence that the incorporation of reasonable judicial procedures, such as those of the FISC, need render related policy ineffective. After all, as the 9/11 commission observed, the intelligence community succeeded in gathering the data necessary to anticipate the September 11 attack (National Commission on Terrorist Attacks upon the United States 2004: 254-77). The failure was in the domains of analysis and response. What is evident, however, is that carrying out extensive and dangerous counter-terrorist programs without judicial oversight generates widespread public skepticism and opposition (which tends to undermine the effectiveness of the programs) and leads to enormous legal difficulties in the long run--as exemplified by the American torture/rendition program.¶ On the second point, while it is true that targets may 'go to ground' if tipped off, the fact is that all or virtually all potential targets are already on most wanted lists (often with hefty price tags connected to information leading to them). In essence, they have already gone to ground--that is in part why targeting is required in the first place. Moreover, a retreat into even deeper obscurity is likely to further disrupt their ability to organize and carry out attacks. Finally, the Israeli experience suggests that targets will break cover eventually, and a little patience seems like a small price to pay for ensuring the justice of state-administered killing.¶ These answers will not fully satisfy either all critics or all advocates. But the burden of this section has been only to show that compromises are possible that address their most legitimate concerns. I think that the suggestion of an FCOC shows that a plausible and principled compromise is possible. In this light, the pertinent question becomes not whether terrorist targeting as currently practiced is uniformly legal, moral and practical or the reverse, but how institutions can best be designed to assure that terrorist targetings carried out in the future are uniformly legitimate and effective.

# 2AC

## topicality

#### 1. We meet—extend Plaw from 1ac solvency—plan establishes a restriction on targeted killing that limits the presidents legal authority to use force

#### 2. Counter interpretation:

#### “Statutory restrictions” can mandate judicial review, but are *enacted* by congress

Mortenson 11 (Julian Davis Assistant Professor, University of Michigan Law School, “Review: Executive Power and the Discipline of History Crisis and Command: The History of Executive Power from George Washington to George W. Bush John Yoo. Kaplan, 2009. Pp vii, 524,” Winter 2011, University of Chicago Law Review 78 U. Chi. L. Rev. 377)

At least two of Yoo's main examples of presidential power are actually instances of presidential deference to statutory restrictions during times of great national peril. The earliest is Washington's military suppression of the Whiskey Rebellion (III, pp 66-72), a domestic disturbance that Americans viewed as implicating adventurism by European powers and threatening to dismember the new nation. n60 The Calling Forth Act of 1792 n61 allowed the President to mobilize state militias under federal control, but included a series of mandatory procedural checks--including judicial [\*399] approval--that restricted his ability to do so. n62 Far from defying these comprehensive restrictions at a moment of grave crisis, Washington satisfied their every requirement in scrupulous detail. He issued a proclamation ordering the Whiskey Rebels to disperse. n63 When they refused to do so, he submitted a statement to Justice James Wilson of the Supreme Court describing the situation in Pennsylvania and requesting statutory certification. n64 Only when Wilson issued a letter precisely reciting the requisite statutory language (after first requiring the President to come back with authentication of underlying reports and verification of their handwriting n65) did Washington muster the troops. n66 Washington's compliance with statutory restrictions on his use of force continued even after his forces were in the field. Because Congress was not in session when he issued the call-up order, Washington was authorized by statute to mobilize militias from other states besides Pennsylvania--but only "until the expiration of thirty days after the commencement of the ensuing [congressional] session." n67 When it became clear that the Pennsylvania campaign would take longer than that, Washington went back to Congress to petition for extension of the statutory time limit that would otherwise have required him to [\*400] disband his troops. n68 Far from serving as an archetypal example of presidential defiance, the Whiskey Rebellion demonstrates exactly the opposite. FDR's efforts to supply the United Kingdom's war effort before Pearl Harbor teach a similar lesson. During the run-up to America's entry into the war, Congress passed a series of Neutrality Acts that supplemented longstanding statutory restrictions on providing assistance to foreign belligerents. Despite these restrictions, FDR sent a range of military assistance to the future Allies. n69 Yoo makes two important claims about the administration's actions during this period. First, he claims the administration asserted that "[a]ny statutory effort by Congress to prevent the President from transferring military equipment to help American national security would be of 'questionable constitutionality'" (III, p 300). Second, he suggests that American military assistance in fact violated the neutrality statutes (III, pp 295-301, 310, 327-28).

#### In the area of means a certain scope

Elizabeth Miura 12, China Presentation, prezi.com/tccgenlw25so/chin165a-final-presentation/

"in the area of" refers to a certain scope

#### 3. We meet our counter interpretation, drone courts are legal restrictions on the targeted killing activities of the president

#### 4. Prefer our interpretation

#### Topic Education— drone courts are heart of topic in targeted killing, it is the largest policy proposal for resolving presidential authority

#### Predictable ground—best to include largest cases in the literature because they are a locus for negative and affirmative research and preparation

#### And, their interpretation is terrible and arbitrary Restrictions and regulations can both be prohibitions or limitations—no brightline to their interp

Supreme Court of Delaware 83 (THE MAYOR AND COUNCIL OF NEW CASTLE, a municipal corporation of the State of Delaware, Plaintiff Below, Appellant, v. ROLLINS OUTDOOR ADVERTISING, INC., Defendant Below, Appellee, No. 155, 1983, 475 A.2d 355; 1984 Del. LEXIS 324, November 21, 1983, Submitted, April 2, 1984, Decided)

The term "restrict" is defined as: To restrain within bounds; to limit; [\*\*9] to confine. Id. at 1182. The Supreme Court of the United States has recognized that HN5the term "regulate" necessarily entails a possible prohibition of some kind. That Court has stated: "It is an oft-repeated truism that every regulation necessarily speaks as a prohibition." Goldblatt v. Hempstead, 369 U.S. 590, 592, 8 L. Ed. 2d 130, 82 S. Ct. 987 (1962). The Supreme Court of Massachusetts in reviewing a statute containing language similar to that found in 22 Del.C. § 301 (which empowered municipalities to "regulate and restrict" outdoor advertising on public ways, in public places, and on private property within public view) held that the statute in question authorized a town to provide, through amortization, for the elimination of nonconforming off-site signs five years from the time the ordinance was enacted. The court held that the Massachusetts enabling act: Conferred on the Legislature plenary power to regulate and restrict outdoor advertising . . . . Although the word "prohibit" was omitted from [the enabling act], it was recognized that the unlimited and unqualified power to regulate and restrict can be, for practical purposes, the power to prohibit [\*\*10] "because under such power the thing may be so far restricted that there is nothing left of of it." (Citations omitted.) The court continued its discussions of the two terms by stating: The distinction between regulation and outright prohibition is often considered to be a narrow one: "that regulation may take the character of prohibition, in proper cases, is well established by the decisions of this court" . . . quoting from United States v. Hill, 248 U.S. 420, 425, 63 L. Ed. 337, 39 S. Ct. 143 (1919). John Donnelly and Sons, Inc. v. Outdoor Advertising Board, Mass. Supr., 369 Mass. 206, 339 N.E.2d 709 (1975). We hold that, through Article II, Section 25 of the Delaware Constitution and 22 Del.C. § 301, the General Assembly has authorized New Castle to terminate nonconforming off-site signs upon reasonable notice, that is, by what has come to be known as amortization. We hold that the power to "regulate and restrict" as such term applies to zoning matters includes the power, upon reasonable notice, to prohibit some of those uses already in existence.

#### 5. Prefer reasonability over competing interpretations if the aff doesn’t make debate impossible than you can’t vote against us

## 2AC – Executive Reform CP

#### 1st, Counterplan can’t solve UN- need judicial review mechanisms that create a fair trial and legal proceedings to prevent unilateral action that makes human rights violations inevitable- that’s Alkarama

#### 2nd, can’t solve terror—extend Chebab—review from the executive doesn’t break free from groupthink that makes targeting errors inevitable—impact is blowback and terror

#### 2nd, Perm do both

#### Perm—Shields the Link to politics—Congress purposefully doesn’t act on legislation or waits for executive action so that they can blame the president

Buchanan 2013

[Neil Buchanan, Law Professor, February 21, 2013, Spending Priorities, the Separation of Powers, and the Rule of Law, http://www.dorfonlaw.org/2013/02/spending-priorities-separation-of.html, uwyo//amp]

The debt ceiling is keeping us busy, here at Dorf on Law. Later today, both Professor Dorf and I will be speaking at Columbia Law School, at the invitation of the Law Review editors who worked on our two articles in 2012. Over the weekend, we also finalized a new article, which Professor Dorf briefly described here yesterday. In it, we extend our ongoing analysis of the constitutional issues surrounding the debt ceiling. The short-hand versions of the two main sections of the article are: (1) Yes, there really is a trilemma, and (2) No, the debt ceiling is still not binding, even if everyone knows that they are creating a trilemma when they pass the spending and taxing laws. The latter point is important because already-existing trilemmas (such as the one that Congress and the President faced last month, before the Republicans capitulated by passing their "Debt Ceiling Amnesia Act") do not exist when there are no appropriated funds for the President to spend. (Strictly speaking, there would be a trilemma if even the minimal level of emergency spending required by law during a government shutdown could only be financed by borrowing in excess of the debt ceiling. But given that most of the tax code is enacted on a continuing basis -- that is, unlike spending, tax provisions generally do not expire on a particular date -- there will generally be enough money coming in to finance emergency operations without having to borrow.) Every spending/taxing agreement, therefore, potentially necessitates issuing enough net new debt to require an increase in the debt ceiling. When that happens, one could invoke something like the "last in time" rule, but we conclude that the problem should not be resolved by relying upon a legal canon that is generally used for rationalizing inconsistent laws. Rather, the more fundamental question is how to preserve the separation of powers. As we point out, Congress might actually want to give away its legislative powers, thus putting the political blame on the President for unpopular cuts (a point that Professor Scott Bauries at the University of Kentucky College of Law calls "learned legislative helplessness") -- but their desire to pass the buck is actually all the more reason not to let them do so. With great power comes great responsibility.

#### 3rd, counterplan links to politics

Schier 9

[Steven, Professor of Poliitcal Science at Carleton,"Understanding the Obama Presidency," The Forum: Vol. 7: Iss. 1, Berkely Electronic Press, http://www.bepress.com/forum/vol7/iss1/art10]

 In additional to formal powers, a president’s informal power is situationally derived and highly variable. Informal power is a function of the “political capital” presidents amass and deplete as they operate in office. Paul Light defines several components of political capital: party support of the president in Congress, public approval of the presidential conduct of his job, the President’s electoral margin and patronage appointments (Light 1983, 15). Richard Neustadt’s concept of a president’s “professional reputation” likewise figures into his political capital. Neustadt defines this as the “impressions in the Washington community about the skill and will with which he puts [his formal powers] to use” (Neustadt 1990, 185). In the wake of 9/11, George W. Bush’s political capital surged, and both the public and Washington elites granted him a broad ability to prosecute the war on terror. By the later stages of Bush’s troubled second term, beset by a lengthy and unpopular occupation of Iraq and an aggressive Democratic Congress, he found that his political capital had shrunk. Obama’s informal powers will prove variable, not stable, as is always the case for presidents. Nevertheless, he entered office with a formidable store of political capital. His solid electoral victory means he initially will receive high public support and strong backing from fellow Congressional partisans, a combination that will allow him much leeway in his presidential appointments and with his policy agenda. Obama probably enjoys the prospect of a happier honeymoon during his first year than did George W. Bush, who entered office amidst continuing controversy over the 2000 election outcome. Presidents usually employ power to disrupt the political order they inherit in order to reshape it according to their own agendas. Stephen Skowronek argues that “presidents disrupt systems, reshape political landscapes, and pass to successors leadership challenges that are different from the ones just faced” (Skowronek 1997, 6). Given their limited time in office and the hostile political alignments often present in Washington policymaking networks and among the electorate, presidents must force political change if they are to enact their agendas. In recent decades, Washington power structures have become more entrenched and elaborate (Drucker 1995) while presidential powers – through increased use of executive orders and legislative delegation (Howell 2003) –have also grown. The presidency has more powers in the early 21st century but also faces more entrenched coalitions of interests, lawmakers, and bureaucrats whose agendas often differ from that of the president. This is an invitation for an energetic president – and that seems to describe Barack Obama – to engage in major ongoing battles to impose his preferences.

#### 4th, Counterplan can’t solve—extend Chebab, Judicial review is key to solve targeting errors and send a signal of international legitimacy—independent judges are best suited

#### Judicial review is essential to judicial independence

Gerber, 2007

[Scott D. Gerber is an associate professor at Ohio Northern University College of Law and a senior research scholar in law and politics at the Social Philosophy and Policy Center, The Political Theory of an Independent Judiciary, 116 YALE L.J. POCKET PART 223 (2007), http://thepocketpart.org/2007/01/09/gerber.html] /Wyo-MB

Judicial review fits into the political theory of an independent judiciary in at least two ways. First, judicial review is a core component of the Constitution’s system of checks and balances, a system in which each branch of the federal government is endowed with, in the words of The Federalist No. 48, “a constitutional control over the others.” The President has, among other checks, a veto over congressional bills and the power to nominate federal judges. Congress has, among other checks, the power to override presidential vetoes and to control the size and jurisdiction of the federal courts, as well as the power to impeach all federal officials. Without the power of judicial review, what check—what “constitutional control”—would the federal judiciary have on the President or Congress? The answer is none. As a consequence, judicial review is an inevitable component of the Constitution’s commitment to checks and balances.¶ Judicial review also fits into the political theory of an independent judiciary in another, equally straightforward, fashion: judicial review is the ultimate expression of judicial independence, because without judicial independence no court could safely void an act of a coordinate political branch. Bluntly stated, the risk to a judge who exercises judicial review when he or she is not independent of the executive and the legislature is either removal from the bench or a reduction in salary. John Adams knew this, and so did the Framers who met in Philadelphia during the summer of 1787 when they wrote Adams’s theory of judicial independence into Article III of the Constitution.

#### Judicial independence is critical to democratic consolidation

Herron and Randazzo, 2003

[Erik, University of Kansas and Kirk, University of Kentucky, The Relationship Between Independence and Judicial Review in Post-Communist Courts, THE JOURNAL OF POLITICS, Vol. 65, No. 2, May 2003, Pp. 422–438, http://people.cas.sc.edu/randazzo/herron\_randazzo\_2003\_jop.pdf] /Wyo-MB

Although independent judiciaries are important actors in democratic consolidation, how expressions of judicial independence evolve in transitional societies¶ remains unclear. Ideally, courts review legislation and government decisions¶ under the rubric of constitutionality. That is, the judiciary is able to declare laws¶ and actions unconstitutional and serve as a check against excesses by other¶ branches of government. A strong judiciary in newly independent countries helps¶ the state break with its authoritarian past and develop a constitutional culture that¶ teaches state actors that the legal system cannot be transgressed for political gain¶ (Brewer-Carias 1989; Larkins 1996). However, the development of an independent judiciary can be constrained by a weak institutional legacy, limited training¶ and support for judges, and the strength of other political actors. If the judiciary¶ does not have the authority to make independent decisions, democratic progress may falter, potentially returning the country to “the darkness and chaos of a totalitarian and dictatorial regime” (Mohan 1982, 110).1

#### Solves global wars,

Epstien et al, 2007

[Susan B. Epstein, Nina M. Serafino, and Francis T. Miko Specialists in Foreign Policy Foreign Affairs, Defense, and Trade Division Congressional research service, Democracy Promotion: Cornerstone of U.S. Foreign Policy?, 12-26-7, http://www.au.af.mil/au/awc/awcgate/crs/rl34296.pdf] /Wyo-MB

A common rationale offered by proponents of democracy promotion, including¶ former Secretary of State Madeleine Albright and current Secretary of State¶ Condoleezza Rice, is that democracies do not go to war with one another. This is¶ sometimes referred to as the democratic peace theory. Experts point to European¶ countries, the United States, Canada, and Mexico as present-day examples.¶ According to President Clinton’s National Security Strategy of Engagement and¶ Enlargement: “Democracies create free markets that offer economic opportunity,¶ make for more reliable trading partners, and are far less likely to wage war on one¶ another.”22¶ Some have refined this democracy peace theory by distinguishing between¶ mature democracies and those in transition, suggesting that mature democracies do¶ not fight wars with each other, but that countries transitioning toward democracy are¶ more prone to being attacked (because of weak governmental institutions) or being¶ aggressive toward others. States that made transitions from an autocracy toward¶ early stages of democracy and were involved in hostilities soon after include France¶ in the mid-1800s under Napoleon III, Prussia/Germany under Bismarck (1870-1890),¶ Chile shortly before the War of the Pacific in 1879, Serbia’s multiparty constitutional¶ monarchy before the Balkan Wars of the late 20th Century, and Pakistan’s military guided pseudo-democracy before its wars with India in 1965 and 1971.23¶ The George W. Bush Administration asserts that democracy promotion is a¶ long-term antidote to terrorism. The Administration’s Strategy for Winning the War¶ on Terror asserts that inequality in political participation and access to wealth¶ resources in a country, lack of freedom of speech, and poor education all breed¶ volatility. By promoting basic human rights, freedoms of speech, religion, assembly,¶ association and press, and by maintaining order within their borders and providing¶ an independent justice system, effective democracies can defeat terrorism in the long¶ run, according to the Bush White House.24¶ Another reason given to encourage democracies (although debated by some¶ experts) is the belief that democracies promote economic prosperity. From this¶ perspective, as the rule of law leads to a more stable society and as equal economic¶ opportunity for all helps to spur economic activity, economic growth, particularly of¶ per capita income, is likely to follow. In addition, a democracy under this scenario¶ may be more likely to be viewed by other countries as a good trading partner and by¶ outside investors as a more stable environment for investment, according to some¶ experts. Moreover, countries that have developed as stable democracies are viewed¶ as being more likely to honor treaties, according to some experts.25

#### And, Executive reform fails

not neutral decision-maker, secrecy and speed undermine effective decision making

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

U.S. citizens, there must be a degree of inter-branch process when such individuals are targeted by the government to ensure that (1) these individuals truly pose a direct and imminent threat to the United States and (2) targeting is truly the last resort.¶ The preceding case law suggests that domestic legal protections for U.S. citizens necessitate a higher procedural threshold.102 Justice O’Connor acknowledged the danger inherent in exclusively intra-branch process in Hamdi when she asserted that the Executive is not a neutral decision-maker as the “even purportedly fair adjudicators are disqualified by their interest in the controversy.”103 In rejecting the government’s argument that a “separation of powers” analysis mandates a heavily circumscribed role for the courts in these circumstances, Justice O’Connor concluded that in times of conflict, the Constitution “most assuredly envisions a role¶ for all three branches when individual liberties are at stake.”104 Applying this reasoning to the entirely intra-executive process currently being afforded to American citizens like al-Awlaki would suggest that in the realm of targeted killing, where the deprivation is one’s life, the absence of any “neutral decision-maker” outside the executive branch is a clear violation of due process guaranteed by the Constitution. On a policy level, the danger of intra-executive process is similarly alarming. As Judge James Baker, in describing the nature of covert actions put it:¶ Because this process is internal to the executive branch, it is subject to executive-branch exception or amendment, with general or case-specific approval by the president. This is risky because in this area, as in other areas of national security practice, the twin necessities of secrecy and speed may pull as they do against the competing interests of deliberate review, dissent, and accountable decision-making.105

#### Can’t solve UN- preserving the right to life norms is key internal link to setting a precedent- breaking down that norms justifies any rule-breaking and violence because it doesn’t preserve the most basic human right, controls every other factor

It’s a question of who is modeling the UN- even if the CP functions in the US, it doesn’t set a good precedent for countries with centralized gvts like Africa

## Ops DA

#### Plaw- takes out the impact- because terorrists have already gone to ground- and your link is about drone courts in the abstract- not FCOC-

little evidence that the incorporation of reasonable judicial procedures, such as those of the FISC, need render related policy ineffective. After all, as the 9/11 commission observed, the intelligence community succeeded in gathering the data necessary to anticipate the September 11 attack (National Commission on Terrorist Attacks upon the United States 2004: 254-77). The failure was in the domains of analysis and response. What is evident, however, is that carrying out extensive and dangerous counter-terrorist programs without judicial oversight generates widespread public skepticism and opposition (which tends to undermine the effectiveness of the programs) and leads to enormous legal difficulties in the long run--as exemplified by the American torture/rendition program.¶ On the second point, while it is true that targets may 'go to ground' if tipped off, the fact is that all or virtually all potential targets are already on most wanted lists (often with hefty price tags connected to information leading to them). In essence, they have already gone to ground--that is in part why targeting is required in the first place. Moreover, a retreat into even deeper obscurity is likely to further disrupt their ability to organize and carry out attacks. Finally, the Israeli experience suggests that targets will break cover eventually, and a little patience seems like a small price to pay for ensuring the justice of state-administered killing.¶ These answers will not fully satisfy either all critics or all advocates. But the burden of this section has been only to show that compromises are possible that address their most legitimate concerns. I think that the suggestion of an FCOC shows that a plausible and principled compromise is possible. In this light, the pertinent question becomes not whether terrorist targeting as currently practiced is uniformly legal, moral and practical or the reverse, but how institutions can best be designed to assure that terrorist targetings carried out in the future are uniformly legitimate and effective.

#### Terrorism doesn’t require rapid decision-making

**Holmes, 9 -** Walter E. Meyer Professor of Law, New York University School of Law (Stephen, 97 Calif. L. Rev. 301, “In Case of Emergency: Misunderstanding Tradeoffs in the War on Terror”, lexis)

 [\*310] Emergency-room emergencies are urgent even when they are perfectly familiar. Terrorists with access to weapons of mass destruction ("WMD"), by contrast, present a novel threat that is destined to endure for decades, if not longer. Such a threat is not an "emergency" in the sense of a sudden event, such as a house on fire, requiring genuinely split-second decision making, with no opportunity for serious consultation or debate. n20 Managing the risks of nuclear terrorism requires sustained policies, not short-term measures. This is feasible precisely because, in such an enduring crisis, national-security personnel have ample time to think and rethink, to plan ahead and revise their plans. In depicting today's terrorist threat as "an emergency," executive-discretion advocates almost always blur together urgency and novelty. This is a consequential intellectual fallacy. But it also provides an opportunity for critics of executive discretion in times of crisis. If classical emergencies, in the house-on-fire or emergency-room sense, turn out to invite and require rule-governed responses, then the justification for dispensing with rules in the war on terror seems that much more tenuous and open to question.

#### Weakness perception now-

#### Crimea crisis, Syria enforcement failure, and gutting of defense budget all wreck Obama’s presidential powers

Thiessen 3/3

[Marc A., fellow at the American Enterprise Institute. Thiessen served as a chief speechwriter to President George W. Bush and Secretary of Defense Donald Rumsfeld, and before that as a senior aide to Senate Foreign Relations Committee Chairman Jesse Helms. “Obama’s weakness emboldens Putin,” 03.03.2014. <http://www.washingtonpost.com/opinions/marc-thiessen-obamas-weakness-emboldens-putin/2014/03/03/28def926-a2e2-11e3-84d4-e59b1709222c\_story.html>//wyo-hdm]

When President Obama declared Friday that “[there will be costs](http://www.washingtonpost.com/blogs/post-politics/wp/2014/02/28/there-will-be-costs-text-of-obamas-statement-on-ukraine/)” for any Russian intervention in Ukraine, you could hear the laughter emanating from the Kremlin — followed by the sound of Russian military vehicles roaring into Crimea and seizing control of the peninsula.¶ “Costs?” Vladi­mir Putin must have thought. Just like the “costs” Obama imposed on the Assad regime in Syria? Just last year none other than Putin helped Obama get out of his pledge to impose costs on Bashar al-Assad’s government for crossing his “red line” and using chemical weapons on its people.¶ In August 2012, Obama issued a similar warning to Syrian officials, warning that Assad would face consequences if “we start seeing a whole bunch of chemical weapons moving around or being utilized.” Assad responded by moving and using his chemical weapons — not once but 14 times beginning in December 2012, just four months after Obama declared his red line.¶ Obama did nothing.¶ Then Obama began backing away from his declaration, saying, “I didn’t set a red line. The world set a red line.” But when he went to the world and asked them to join him in enforcing “their” red line, the British Parliament voted no and NATO declined to help. Soon, the administration was lowering expectations. A U.S. official was telling the Los Angeles Times that any U.S. strike would be “just muscular enough not to get mocked.” Secretary of State John Kerry declared that any strike would be “unbelievably small” and would not really constitute “war.” Then Obama decided he needed to go to Congress and get approval for his “unbelievably small” strike. And when it became clear that he did have the votes, in stepped Putin to rescue Obama from an embarrassing defeat by offering a deal to have Syria disarm.¶ Obama jumped on the Russian-engineered face-saving way out. As soon as the deal was announced, Syrian officials promptly declared it “a victory for Syria, achieved thanks to our Russian friends.” To rub salt in the wound, Putin lectured the president in a New York Times op-ed about the dangers of American exceptionalism.¶ It was one of the most embarrassing and emasculating episodes in the history of U.S. foreign policy.¶ In the wake of this debacle, Obama is now warning Putin — the man who saved him from his promise to impose costs on Assad — that he’s going to impose costs on Putin for his intervention in Ukraine? Did he really expect Putin to take him seriously?¶ Putin believes Obama does not have the intestinal fortitude to stand up to him in Ukraine. He thinks Obama will talk tough and then look for a way out — just like he did with Assad. He also knows that without American leadership to stiffen their spines, our European allies (who depend on Russian natural-gas imports) will not impose any real or lasting consequences on Russia either. Putin calculates that he can do what he wants in Ukraine, and the whole unpleasantness will blow over in a few months.¶ Kerry fumed on CBS’s “Face the Nation” this weekend: “Russia is in violation of its obligations under the U.N. charter, under the Helsinki Final Act. It’s in violation of its obligations under the 1994 Budapest agreement.” But KGB thugs like Putin are not deterred by pieces of parchment. They are deterred when the United States projects strength and resolve.¶ Today, America is projecting weakness. Obama’s failure to enforce his red line in Syria projected weakness. His constant talk of withdrawal and ending wars so we can focus on “nation-building here at home” projects weakness. His decision to gut the U.S. defense budget and reduce the Army to pre-World War II levels projects weakness.¶ When your adversaries believe you are weak, they are emboldened to act — and prone to miscalculate. Putin believes there will be no real costs for his intervention in Ukraine because there were no costs in Syria. He knows the Obama Doctrine is to do just enough “not to get mocked.” If he is proved right, it will have consequences far beyond the Crimean Peninsula. A failure to impose costs on Russia will further embolden adversaries from Beijng to Pyongyang to Tehran — all of whom are measuring Obama’s resolve in Ukraine, just as Putin measured Obama’s resolve in Syria and found it lacking.¶ The lesson of history is clear: Weakness is provocative. And symbolic gestures and strongly worded statements are not going to get Russian troops out of Ukraine.

#### congressional authorization vindicates Presidential decisions and enables him to act faster

Cronogue 12

(Graham Cronogue, JD from Duke University School of Law, 2012, “A New AUMF: Defining Combatants in the War on Terror,” Duke Journal of Comparative and International Law, <http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1294&context=djcil>)

Though the President’s inherent authority to act in times of emergency and war can arguably make congressional authorization of force unnecessary, it is extremely important for the conflict against al-Qaeda and its allies. First, as seen above, the existence of a state of war or national emergency is not entirely clear and might not authorize offensive war anyway. Next, assuming that a state of war did exist, specific congressional authorization would further legitimate and guide the executive branch in the prosecution of this conflict by setting out exactly what Congress authorizes and what it does not. Finally, Congress should specifically set out what the President can and cannot do to limit his discretionary authority and prevent adding to the gloss on executive power. Even during a state of war, a congressional authorization for conflict that clearly sets out the acceptable targets and means would further legitimate the President’s actions and help guide his decision making during this new form of warfare. Under Justice Jackson’s framework from Youngstown, presidential authority is at its height when the Executive is acting pursuant to an implicit or explicit congressional authorization.74 In this zone, the President can act quickly and decisively because s/he knows the full extent of [her or] his power.75 In contrast, the constitutionality of presidential action merely supported by a president’s inherent authority exists in the “zone of twilight.”76 Without a congressional grant of power, the President’s war actions are often of questionable constitutionality because Congress has not specifically delegated any of its own war powers to the executive.77 This problem forces the President to make complex judgments regarding the extent and scope of his inherent authority. The resulting uncertainty creates unwelcome issues of constitutionality that might hinder the President’s ability to prosecute this conflict effectively. In timesensitive and dangerous situations, where the President needs to make splitsecond decisions that could fundamentally impact American lives and safety, s/he should not have to guess at the scope of his [or her] authority. Instead, Congress should provide a clear, unambiguous grant of power, which would mitigate many questions of authorization. Allowing the President to understand the extent of his authority will enable him to act quickly, decisively but also constitutionally.

## Ptx

#### Plan popular in congress

Jakes 13

(Laura Jakes, writer for the Associate Press. “Congress Considers Putting Limits on Drone Strikes” 2-6-13 http://www.military.com/daily-news/2013/02/06/congress-considers-putting-limits-on-drone-strikes.html//wyoccd)

WASHINGTON -- Uncomfortable with the Obama administration's use of deadly drones, a growing number in Congress is looking to limit America's authority to kill suspected terrorists, even U.S. citizens. The Democratic-led outcry was emboldened by the revelation in a newly surfaced Justice Department memo that shows drones can strike against a wider range of threats, with less evidence, than previously believed.¶ The drone program, which has been used from Pakistan across the Middle East and into North Africa to find and kill an unknown number of suspected terrorists, is expected to be a top topic of debate when the Senate Intelligence Committee grills John Brennan, the White House's pick for CIA chief, at a hearing Thursday.¶ The White House on Tuesday defended its lethal drone program by citing the very laws that some in Congress once believed were appropriate in the years immediately after the Sept. 11 attacks but now think may be too broad.¶ "It has to be in the agenda of this Congress to reconsider the scope of action of drones and use of deadly force by the United States around the world because the original authorization of use of force, I think, is being strained to its limits," Sen. Chris Coons, D-Del., said in a recent interview.¶ Rep. Steny Hoyer of Maryland, the No. 2 Democrat in the House, said Tuesday that "it deserves a serious look at how we make the decisions in government to take out, kill, eliminate, whatever word you want to use, not just American citizens but other citizens as well."¶ Hoyer added: "We ought to carefully review our policies as a country."¶ The Senate Foreign Relations Committee likely will hold hearings on U.S. drone policy, an aide said Tuesday, and Chairman Robert Menendez, D-N.J., and the panel's top Republican, Sen. Bob Corker of Tennessee, both have quietly expressed concerns about the deadly operations. And earlier this week, a group of 11 Democratic and Republican senators urged President Barack Obama to release a classified Justice Department legal opinion justifying when U.S. counterterror missions, including drone strikes, can be used to kill American citizens abroad.¶ Without those documents, it's impossible for Congress and the public to decide "whether this authority has been properly defined, and whether the president's power to deliberately kill Americans is subject to appropriate limitations and safeguards," the senators wrote.

#### Political capital theory not true—and if the plan causes a fight it means Obama will get to pass more legislation—winning wins

Hirsh, 2013

[Michael, national journal chief correspondent, There’s No Such Thing as Political Capital, 3-30-13, http://www.nationaljournal.com/magazine/there-s-no-such-thing-as-political-capital-20130207] /Wyo-MB

But the abrupt emergence of the immigration and gun-control issues illustrates how suddenly shifts in mood can occur and how political interests can align in new ways just as suddenly. Indeed, the pseudo-concept of political capital masks a larger truth about Washington that is kindergarten simple: You just don’t know what you can do until you try. Or as Ornstein himself once wrote years ago, “Winning wins.” In theory, and in practice, depending on Obama’s handling of any particular issue, even in a polarized time, he could still deliver on a lot of his second-term goals, depending on his skill and the breaks. Unforeseen catalysts can appear, like Newtown. Epiphanies can dawn, such as when many Republican Party leaders suddenly woke up in panic to the huge disparity in the Hispanic vote.¶ Some political scientists who study the elusive calculus of how to pass legislation and run successful presidencies say that political capital is, at best, an empty concept, and that almost nothing in the academic literature successfully quantifies or even defines it. “It can refer to a very abstract thing, like a president’s popularity, but there’s no mechanism there. That makes it kind of useless,” says Richard Bensel, a government professor at Cornell University. Even Ornstein concedes that the calculus is far more complex than the term suggests. Winning on one issue often changes the calculation for the next issue; there is never any known amount of capital. “The idea here is, if an issue comes up where the conventional wisdom is that president is not going to get what he wants, and he gets it, then each time that happens, it changes the calculus of the other actors” Ornstein says. “If they think he’s going to win, they may change positions to get on the winning side. It’s a bandwagon effect.”

#### They say t’here’s a 50% chance that it will pass- they have no ev that other extremeities will happen- there are mltpl versions of the bill-

#### K debates and restrictions coming now—defense bill

Bennett 2-19

[JOHN T., Congressional & National Security reporter, “McCain Vows New Fight Over Control of US Armed Drone Program”, *Defense News: Gannett Government Media*, 19 Feb 2014 <http://www.defensenews.com/article/20140219/DEFREG02/302190025/McCain-Vows-New-Fight-Over-Control-US-Armed-Drone-Program//wyo> CTL]

A senior US lawmaker intends to renew his fight to require the Obama administration to fully shift its armed drone program from the CIA to the Defense Department. Sen. John McCain, R-Ariz., a senior Armed Services Committee member, told Defense News on Wednesday, just before Congress left for a weeklong recess, that he will push the issue when the panel crafts its 2015 Pentagon policy bill in coming months. “We’re going to have that debate,” McCain said in a brief interview. “There is no doubt about it.” McCain’s comments come weeks after he expressed disgust with language reportedly inserted into the classified portion of a Pentagon-funding section of an omnibus spending bill blocking the shift of the drone program from the CIA to the military. The administration of President Barack Obama last year signaled it wanted to move most — or all — of the program from the spy agency to the military. But that plan hit a number of legal and operational snags, and was not fully completed before Congress passed the omnibus. But McCain says the fight isn’t over. “I would like to make sure they are cooperating with other countries,” McCain said, referring to concerns among some lawmakers and analysts that the Obama administration avoids getting clearance from leaders of countries before flying drones into their airspace. “Mostly, I want to see it moved over to DoD. That’s my primary goal,” McCain said. Many analysts say that other than possibly taking up a new immigration reform measure, Congress likely is finished with major legislation this year. The mid-term election cycle is in full swing, and both parties seem content to battle it out back home after five years of bitter partisan fights here. But Congress is expected, as it has for 52 consecutive years, to pass a defense authorization bill. And McCain’s intentions will revive a battle between two powerful camps on Capitol Hill. Lawmakers on both sides of the debate have strong opinions about whether it is the job of the military or intelligence community to kill al-Qaida leaders and operatives. And behind the issue of whether the CIA should be firing missiles from remotely piloted aircraft is a simmering congressional turf war between the chambers’ Armed Services and Intelligence committees.

#### Midterms thump the agenda—items will only be symbolic—no legislation will pass

Crittenden, 3-26-14

[Michael, Wall street journal, Senate Democrats Try to Change Subject From Obamacare, http://blogs.wsj.com/washwire/2014/03/26/senate-democrats-try-to-change-subject-from-obamacare/] /Wyo-MB

Senate Majority Leader Harry Reid (D., Nev.) and other top Democrats on Wednesday offered a broad outline of issues they intend on bringing up for votes in the coming months. The checklist includes a number of Democratic touchstones, including a push to raise the minimum wage, paycheck fairness legislation, and efforts to encourage affordable college tuition and childcare. These issues, not healthcare, will make the difference in November, Democrats insisted.¶ “Concerns of the middle class can trump the Republican attacks on the Affordable Care Act because what Americans really care about is making their lives better,” Sen. Charles Schumer (D., N.Y.) told reporters. He said Democrats plan to dedicate a separate week to each issue, a list that also includes measures dealing with infrastructure spending, manufacturing, and job training.¶ The partisan gridlock in Congress means the agenda is more aspirational than likely to produce legislation that ends up on the president’s desk, meant to highlight Democratic priorities and draw a distinction with Republicans. It comes as both parties are ramping up their political messaging less than eight months before November’s critical mid-term elections. House Speaker John Boehner (R., Ohio) told reporters Wednesday that House Republicans plan a similar push on issues such as healthcare and energy policy in the coming months.

#### No war

Massie 12

(Allan Massie is a Scottish writer who has published nearly 30 books, including a sequence of novels set in ancient Rome. His non-fiction works range from a study of Byron's travels to a celebration of Scottish rugby. He has been a political columnist for The Scotsman, The Sunday Times and The Daily Telegraph and writes a literary column for The Spectator., 7/17/2012, "Nuclear Iran, revolution in Europe: it's fun to make your flesh creep, but Armageddon isn't really nigh", blogs.telegraph.co.uk/culture/allanmassie/100065078/nuclear-iran-revolution-in-europe-its-fun-to-make-your-flesh-creep-but-armageddon-isnt-really-nigh/)

Then we had our expert Finance blogger Thomas Pascoe in similar thank-God-it’s-Friday "I wants to make your flesh creep" Fat Boy mode. We are too complacent, he says. We are faced with “impending events that would have precipitated a revolution in almost any other place at almost any other time in history- either the collapse of the currency or the complete secession of budgetary control to a supra-natural body in the EU.” (When I read that I said “Golly”, until I realised that he probably meant to write supranational rather than supra-natural, delightfully flesh-creeping though the idea of a spectral supra-natural body taking control of national budgets may be.) Either of these may lead, he would have us think, to some form of fascist revolution. This is because in the nations enduring austerity, and indeed suffering from austerity, "the populations at large feel no culpability for the debts their leaders have amassed.” Well, I suppose he’s right there. How much culpability do you, dear reader, feel for the size of the UK’s national debt? Do you beat your breast moaning “I blame myself”, or wring your hands in shame? No? I thought not. So why should the Greeks, the Spaniards and the others “feel culpability”? In Fat Boy mode, Thomas Pascoe says that either the EU will take complete control of all national budgets or that countries will default on their debts. Either way, populist politicians will emerge to stir up the masses, and we’ll be back to the Thirties. “Europe,” it seems, “ is one demagogue away from causing an earthquake in global finance such that the current problems seem a tremor in comparison. If Silvio Berlusconi – the only truly populist politician the Continent has produced in half a century – had been twenty years younger, I fancy it might have been him…” Well, if the playboy “Mussolini in a blue blazer” is the nearest to a fascist demagogue you can come up with, there isn’t much to worry about. And indeed there isn’t, because politics now matters less than football and entertainment – both things which bind the young people of Europe together, and make revolutionary fervour somewhat unlikely. So, at the risk of being accused of complacency, I’ll suggest, first, that if a country was going to fall out of the euro, it would have done so by now; second, that the eurozone will muddle through, because the will to do so is there; and third, that while some supranational body charged with supervising national budgets will be set up, it will prove far less rigid and far more elastic in its exercise of control than many suppose or indeed hope or, alternatively, fear. This is because the EU remains a union of nation-states, and national governments will insist on retaining a great degree of autonomy. Flesh-creeping is fun and lively journalism, but Armageddon is not on the menu today, next week, next year, or in the next decade. We have come through worse and far more dangerous times, and goodwill and common sense will let us survive present difficulties and discontents. The notion that “we are one charismatic leader away from a complete reordering of the Continent” is Fat Boy stuff.

#### Drone debates happening now—Feinstein had gotten the FAA to cover drones

Pasternack 3/18

[Pasternack, Alan: Editor-At-Large. "Small Drones Are a Bigger Privacy Threat Than the NSA, Says Senate Intel Chair." Motherboard. Motherboard, 18 mar 2014. Web. 20 Mar 2014. <http://motherboard.vice.com/read/small-drones-are-a-bigger-privacy-threat-than-the-nsa-says-senate-intel-chair>. //Wyo-BF]

Dianne Feinstein has a bone to pick with drones, especially since she confronted one on her own lawn. “I’m in my home and there’s a demonstration out front, and I go to peek out the window, and there’s a drone facing me,” the California Democratic senator recalled to correspondent Morley Safer on "60 Minutes" Sunday night. Demonstrators from Code Pink, who were protesting NSA surveillance outside her house in July, said it was just a tiny pink toy helicopter. The confusion points to the problems with understanding and regulating and at least defining drones: a drone and a remote-controlled helicopter are the same thing. Big, armed capital-D Drones with creepy names like the Predator and the Reaper have earned a shadowy reputation because they've been used—largely in secret by the CIA—to dramatically extend the reach of the military (and through lawfare, extend the boundaries of what's lawful), within politically vacuous spaces. In a way, this use of Drones is not unlike the use of electronic surveillance by other parts of the intelligence community. But for the purposes of privacy in America, drones are nothing fancier than flying remote controlled GoPro cameras. “When is a drone picture a benefit to society? When does it become stalking? When does it invade privacy? How close to a home can a drone go?” Feinstein asked, listing off questions she had to Safer. In an extra segment, Safer asked Feinstein if she believed that "the drones were the worst thing that could happen to our privacy ever." "To a great extent that's the way I feel right now," she said, "because the drone can take pictures. The sophisticated drone, which isn't necessarily the drone that's going to be used by the average person from 17,000, 20,000 feet and you don't know it's there." As chairwoman of the Senate intelligence committee, Feinstein, 80, has recently upbraided the CIA for allegedly spying on Congress, has largely defended US electronic surveillance, saying curtailing it “would place the nation in jeopardy.” But in hearings on Capitol Hill last year, Feinstein began raising questions about the use of drones by law enforcement officers and the public. “When do you have to have a warrant? When don’t you have to have a warrant? What’s the appropriate governmental use for a drone?” she asked—questions that, as the Drone Census has shown, have not been addressed publicly by law enforcement agencies like the FBI, which has flown drones without warrants on an untold number of occasions. (Even more basic questions, like how often the FBI has used drones, or which agents are certified to fly them, have also proved elusive, even to the FBI itself.) The FAA, which normally only governs airspace 400 feet and higher, has said it intends to integrate drones into its regulations by 2015, but only on the grounds of safety. Last year, its early attempts to fire a warning shot over the use of drones culminated in a $10,000 fine for Raphael Pirker, a pilot who was using drones "commercially," to make cool videos. (Trappy, as he's known in the UAV community, has some of the best drone footage on YouTube.) But last week, a federal judge threw out the case, saying that the FAA has not issued any formal regulations on remote-controlled aircraft, and that flying them in the US is not "illegal." Still, to fly a drone over "major urban areas [that] contains the highest density of manned aircraft," the FAA requires a license for private individuals and government officials who can prove a need to use it for things like "law enforcement, firefighting, border patrol, disaster relief, search and rescue, military training, and other government operational missions." But these regulations only pertain to safety. The application of privacy laws to drone use remains largely uncharted territory, territory that a number of states are beginning to wade into. Already, more than 40 state legislatures have debated bills that ban or curtail the use of civilian drones, drawing lobbyists from industries as diverse as aerospace and hunting (the latter industry wants to protect itself from, among other things, PETA activists with drones).

## Kritik

#### First, Our Interpretation: The resolution asks the question of desirability of USFG action. The Role of ballot is to say yes or no to the action and outcomes of the plan.

#### Prefer this-

#### (\_\_\_) A. Aff Choice, any other framework moots 9 minutes of the 1ac

#### (\_\_\_) B. Its predictable, the res demands USFG action

#### (\_\_\_) C. Its fair, Weigh Aff Impacts and method of the Aff against the K, it’s the only way to test competition and determine the desirability of strategies

#### And voter for competitive equity—prefer our interpretation, allows both teams to compete, other roles of the ballot are arbitrary and self serving

#### Preventing extinction needs to come first

Paul Wapner, associate professor and director of the Global Environmental Policy Program at American University, Winter 2003, Dissent, online: http://www.dissentmagazine.org/menutest/archives/2003/wi03/wapner.htm

All attempts to listen to nature are social constructions-except one. Even the most radical postmodernist must acknowledge the distinction between physical existence and non-existence. As I have said, postmodernists accept that there is a physical substratum to the phenomenal world even if they argue about the different meanings we ascribe to it. This acknowledgment of physical existence is crucial. We can't ascribe meaning to that which doesn't appear. What doesn't exist can manifest no character. Put differently, yes, the postmodernist should rightly worry about interpreting nature's expressions. And all of us should be wary of those who claim to speak on nature's behalf (including environmentalists who do that). But we need not doubt the simple idea that a prerequisite of expression is existence. This in turn suggests that preserving the nonhuman world-in all its diverse embodiments-must be seen by eco-critics as a fundamental good. Eco-critics must be supporters, in some fashion, of environmental preservation. Postmodernists reject the idea of a universal good. They rightly acknowledge the difficulty of identifying a common value given the multiple contexts of our value-producing activity. In fact, if there is one thing they vehemently scorn, it is the idea that there can be a value that stands above the individual contexts of human experience. Such a value would present itself as a metanarrative and, as Jean-François Lyotard has explained, postmodernism is characterized fundamentally by its "incredulity toward meta-narratives." Nonetheless, I can't see how postmodern critics can do otherwise than accept the value of preserving the nonhuman world. The nonhuman is the extreme "other"; it stands in contradistinction to humans as a species. In understanding the constructed quality of human experience and the dangers of reification, postmodernism inherently advances an ethic of respecting the "other." At the very least, respect must involve ensuring that the "other" actually continues to exist. In our day and age, this requires us to take responsibility for protecting the actuality of the nonhuman. Instead, however, we are running roughshod over the earth's diversity of plants, animals, and ecosystems. Postmodern critics should find this particularly disturbing. If they don't, they deny their own intellectual insights and compromise their fundamental moral commitment.

#### The courts solve circumvention—they make all targeting illegal without court approval—means circumvention is impossible—that’s plaw

#### Obama will comply

NYT, 4-7-13

[Editorial, The Trouble With Drones, http://www.nytimes.com/2013/04/08/opinion/the-trouble-with-drones.html?\_r=0] /Wyo-MB

Mr. Obama has promised to break down the wall of secrecy and work with Congress to create a lasting legal framework for drone strikes. It is essential that the administration not drag its feet so it can maintain maximum authority with minimum oversight. Among the proposals it should consider is some form of judicial review, like the special court that approves wiretaps for intelligence gathering, before it kills American citizens.

#### Obama will accept any restraints to his war powers

Rohde, 2012

[Steven, Constitutional lawyer, lecturer, writer and political activist, Will President Obama Restore the Rule of Law During His Second Term?, 11/19/12, http://www.huffingtonpost.com/stephen-rohde/obama-rule-of-law\_b\_2159415.html] /Wyo-MB

Asked if "Congress prohibits a specific interrogation technique, can the president instruct his subordinates to employ that technique despite the statute," Obama again was unequivocal:¶ No. The president is not above the law, and not entitled to use techniques that Congress has specifically banned as torture. We must send a message to the world that America is a nation of laws, and a nation that stands against torture. As president I will abide by statutory prohibitions for all U.S. government personnel and contractors.¶ Asked if "any executive power the Bush administration has claimed or exercised" was unconstitutional, Obama declared "I reject the view that the president may do whatever he deems necessary to protect national security, and that he may torture people in defiance of congressional enactments." Significantly he added the "detention of American citizens, without access to counsel, fair procedure, or pursuant to judicial authorization, as enemy combatants is unconstitutional," that "[w]arrantless surveillance of American citizens, in defiance of FISA, is unlawful and unconstitutional" and the "violation of international treaties that have been ratified by the Senate, specifically the Geneva Conventions," and the "creation of military commissions, without congressional authorization," were both unlawful (as the Supreme Court held) and "bad ideas."

#### First perm do both,

#### And, debating the law teaches us how to make it better – rejection is worse

Hedrick 12

Todd Hedrick, Assistant Professor of Philosophy at Michigan State University, Sept 2012, Democratic Constitutionalism as Mediation: The Decline and Recovery of an Idea in Critical Social Theory, Constellations Volume 19, Issue 3, pages 382–400

Habermas’ alleged abandonment of immanent critique, however, is belied by the role that the democratic legal system comes to play in his theory. While in some sense just one system among others, it has a special capacity to shape the environments of other systems by regulating their interaction. Of course, the legal system is not the only one capable of affecting the environments of other systems, but law is uniquely open to inputs from ordinary language and thus potentially more pliant and responsive to democratic will formation: “Normatively substantive messages can circulate throughout society only in the language of law … . Law thus functions as the ‘transformer’ that guarantees that the socially integrating network of communication stretched across society as a whole holds together.”55 This allows for the possibility of consensual social regulation of domains ranging from the economy to the family, where actors are presumed to be motivated by their private interests instead of respect for the law, while allowing persons directed toward such interests to be cognizant that their privately oriented behavior is compatible with respect for generally valid laws. While we should be cautious about automatically viewing the constitution as the fulcrum of the legal order, its status as basic law is significant in this respect. For, recalling Hegel's broader conception of constitutionalism, political constitutions not only define the structure of government and “the relationship between citizens and the state” (as in Hegel's narrower “political” constitution); they also “implicitly prefigure a comprehensive legal order,” that is, “the totality comprised of an administrative state, capitalist economy, and civil society.”56 So, while these social spheres can be conceived of as autonomous functional subsystems, their boundaries are legally defined in a way that affects the manner and degree of their interaction: “The political constitution is geared to shaping each of these systems by means of the medium of law and to harmonizing them so that they can fulfill their functions as measured by a presumed ‘common good’.”57 Thus, constitutional discourses should be seen less as interpretations of a positive legal text, and more as attempts to articulate legal norms that could shift the balance between these spheres in a manner more reflective of generalizable interests, occurring amidst class stratification and cultural pluralism.¶ A constitution's status as positive law is also of importance for fundamentally Hegelian reasons relating to his narrower sense of political constitutionalism: its norms must be public and concrete, such that differently positioned citizens have at least an initial sense of what the shared hermeneutic starting points for constitutional discourse might be. But these concrete formulations must also be understood to embody principles in the interest of all citizens, so that constitutional discourse can be the site of effective democratic will formation concerning the basic norms that mediate between particular individuals and the general interests of free and equal citizens. This recalls Hegel's point that constitutions fulfill their mediational function by being sufficiently positive so as to be publicly recognizable, yet are not exhausted by this positivity – the content of the constitution is instead filled in over time through ongoing legislation. In order to avoid Hegel's foreshortened conception of public participation in this process and his consequent authoritarian tendencies, Habermas and, later, Benhabib highlight the importance of being able to conceive of basic constitutional norms as themselves being the products of public contestation and discourse. In order to articulate this idea, they draw on legal theorists like Robert Cover and Frank Michelman who characterize this process of legal rearticulation as “jurisgenesis”58: a community's production of legal meaning by way of continuous rearticulation, through reflection and contestation, of its constitutional project.¶ Habermas explicitly conceives of the democratic legal order in this way when, in the context of considering the question of how a constitution that confers legitimacy on ordinary legislation could itself be thought to be democratically legitimate, he writes:¶ I propose that we understand the regress itself as the understandable expression of the future-oriented character, or openness, of the democratic constitution: in my view, a constitution that is democratic – not just in its content but also according to its source of legitimation – is a tradition-building project with a clearly marked beginning in time. All the later generations have the task of actualizing the still-untapped normative substance of the system of rights.59¶ A constitutional order and its interpretive history represent a community's attempt to render the terms under which they can give themselves the law that shapes their society's basic structure and secure the law's integrity through assigning basic liberties. Although philosophical reflection can give us some grasp of the presuppositions of a practice of legitimate lawmaking, this framework of presuppositions (“the system of rights”) is “unsaturated.”60 In Hegelian fashion, it must, to be meaningful, be concretized through discourse, and not in an one-off way during a founding moment that fixes the terms of political association once and for all, but continuously, as new persons enter the community and as new circumstances, problems, and perspectives emerge.¶ The stakes involved in sustaining a broad and inclusive constitutional discourse turn out to be significant. Habermas has recently invoked the concept of dignity in this regard, linking it to the process through which society politically constitutes itself as a reciprocal order of free and equal citizens. As a status rather than an inherent property, “dignity that accrues to all persons equally preserves the connotation of a self-respect that depends on social recognition.”61 Rather than being understood as a quality possessed by some persons by virtue of their proximity to something like the divine, the modern universalistic conception of dignity is a social status dependent upon ongoing practices of mutual recognition. Such practices, Habermas posits, are most fully instantiated in the role of citizens as legislators of the order to which they are subject.¶ [Dignity] can be established only within the framework of a constitutional state, something that never emerges of its own accord. Rather, this framework must be created by the citizens themselves using the means of positive law and must be protected and developed under historically changing conditions. As a modern legal concept, human dignity is associated with the status that citizens assume in the self-created political order.62¶ Although the implications of invoking dignity (as opposed to, say, autonomy) as the normative core of democratic constitutionalism are unclear,63 plainly Habermas remains committed to strongly intersubjective conceptions of democratic constitutionalism, to an intersubjectivity that continues to be legally and politically mediated (a dimension largely absent from Honneth's successor theory of intersubectivity).¶ What all of this suggests is a constitutional politics in which citizens are empowered to take part and meaningfully impact the terms of their cultural, economic, and political relations to each other. Such politics would need to be considerably less legalistic and precedent bound, less focused on the democracy-constraining aspects of constitutionalism emphasized in most liberal rule of law models. The sense of incompleteness and revisability that marks this critical theory approach to constitutionalism represents a point where critical theories of democracy may claim to be more radical and revisionary than most liberal and deliberative counterparts. It implies a sharp critique of more familiar models of bourgeois constitutionalism: whether they conceive of constitutional order as having a foundation in moral rights or natural law, or in an originary founding moment, such models a) tend to be backward-looking in their justifications, seeing the legal order as founded on some exogenously determined vision of moral order; b) tend to represent the law as an already-determined container within which legitimate ordinary politics takes place; and c) find the content of law to be ascertainable through the specialized reasoning of legal professionals. On the critical theory conception of constitutionalism, this presumption of completeness and technicity amounts to the reification of a constitutional project, where a dynamic social relation is misperceived as something fixed and objective.64 We can see why this would be immensely problematic for someone like Habermas, for whom constitutional norms are supposed to concern the generalizable interests of free and equal citizens. If it is overall the case for him that generalizable interests are at least partially constituted through discourse and are therefore not given in any pre-political, pre-discursive sense,65 this is especially so in a society like ours with an unreconciled class structure sustained by pseudo-compromises. Therefore, discursive rearticulation of basic norms is necessary for the very emergence of generalizable interests.¶ Despite offering an admirably systematic synthesis of radical democracy and the constitutional rule of law, Habermas’ theory is hobbled by the hesitant way he embraces these ideas. Given his strong commitment to proceduralism, the view that actual discourses among those affected must take place during the production of legitimate law if constitutionalism is to perform its mediational function, as well as his opposition to foundational or backward-looking models of political justification, we might expect Habermas to advocate the continuous circulation in civil society of constitutional discourses that consistently have appreciable impact on the way constitutional projects develop through ongoing legislation such that citizens can see the links between their political constitution (narrowly construed), the effects that democratic discourse has on the shape that it takes, and the role of the political constitution in regulating and transforming the broader institutional backbone of society in accordance with the common good. And indeed, at least in the abstract, this is what the “two track” conception of democracy in Between Facts and Norms, with its model of discourses circulating between the informal public sphere and more formal legislative institutions, seeks to capture.66 As such, Habermas’ version of constitutionalism seems a natural ally of theories of “popular constitutionalism”67 emerging from the American legal academy or of those who, like Jeremy Waldron,68 are skeptical of the merits of legalistic constitutionalism and press for democratic participation in the ongoing rearticulation of constitutional norms. Indeed, I would submit that the preceding pages demonstrate that the Left Hegelian social theoretic backdrop of Habermas’ theory supplies a deeper normative justification for more democratic conceptions of constitutionalism than have heretofore been supplied by their proponents (who are, to be fair, primarily legal theorists seeking to uncover the basic commitments of American constitutionalism, a project more interpretive than normative.69) Given that such theories have very revisionary views on the appropriate method and scope of judicial review and the role of the constitution in public life, it is surprising that Habermas evinces at most a mild critique of the constitutional practices and institutions of actually existing democracies, never really confronting the possibility that institutions of constitutional review administered by legal elites could be paternalistic or extinguish the public impetus for discourse he so prizes.70 In fact, institutional questions concerning where constitutional discourse ought to take place and how the power to make authoritative determinations of constitutional meaning should be shared among civil society, legislative, and judiciary are mostly abstracted away in Habermas’ post-Between Facts and Norms writings, while that work is mostly content with the professional of administration of constitutional issues as it exists in the United States and Germany.¶ This is evident in Habermas’ embrace of figures from liberal constitutional theory. He does not present an independent theory of judicial decision-making, but warmly receives Dworkin's well-known model of “law as integrity.” To a certain extent, this allegiance makes sense, given Dworkin's sensitivity to the hermeneutic dimension of interpretation and the fact that his concept of integrity mirrors discourse theory in holding that legal decisions must be justifiable to those affected in terms of publicly recognizable principles. Habermas does, however, follow Michelman in criticizing the “monological” form of reasoning that Dworkin's exemplary Judge Hercules employs,71 replacing it with the interpretive activities of a specialized legal public sphere, presumably more responsive to the public than Hercules. But this substitution does nothing to alleviate other aspects of Dworkin's theory that make a match between him and Habermas quite awkward: Dworkin's standard of integrity compels judges to regard the law as a complete, coherent whole that rests on a foundation of moral rights.72 Because Dworkin regards deontic rights in a strongly realistic manner and as an unwritten part of the law, there is a finished, retrospective, “already there” quality to his picture of it. Thinking of moral rights as existing independently of their social articulation is what moves Dworkin to conceive of them as, at least in principle, accessible to the right reason of individual moral subjects.73 Legal correctness can be achieved when lawyers and judges combine their specialized knowledge of precedent with their potentially objective insights into deontic rights. Fashioning the law in accordance with the demands of integrity thereby becomes the province of legal elites, rendering public discourse and the construction of generalizable interests in principle unnecessary. This helps explain Dworkin's highly un-participatory conception of democracy and his comfort with placing vast decision-making powers in the hands of the judiciary.7¶ There is more than a little here that should make Habermas uncomfortable. Firstly, on his account, legitimate law is the product of actual discourses, which include the full spate of discourse types (pragmatic, ethical-political, and moral). If the task of judicial decision-making is to reconstruct the types of discourse that went into the production of law, Dworkin's vision of filling in the gaps between legal rules exclusively with considerations of individual moral rights (other considerations are collected under the heading of “policy”75) makes little sense.76 While Habermas distances himself from Dworkin's moral realism, calling it “hard to defend,”77 he appears not to appreciate the extent to which Dworkin links his account of legal correctness to this very possibility of individual insight into the objective moral order. If Habermas wishes to maintain his long held position that constitutional projects involve the ongoing construction of generalizable interests through the democratic process – which in my view is really the heart of his program – he needs an account of legal correctness that puts some distance between this vision and Dworkin's picture of legal elites discovering the content of law through technical interpretation and rational intuition into a fixed moral order.¶ Also puzzling is the degree of influence exercised by civil society in the development of constitutional projects that Habermas appears willing to countenance. While we might expect professional adjudicative institutions to play a sort of yeoman's role vis-à-vis the public, Habermas actually puts forth something akin to Bruce Ackerman's picture of infrequent constitutional revolutions, where the basic meaning of a constitutional project is transformed during swelling periods of national ferment, only to resettle for decades at a time, during which it is administered by legal professionals.78 According to this position, American civil society has not generated new understandings of constitutional order that overcome group divisions since the New Deal, or possibly the Civil Rights era. Now, this may actually be the case, and perhaps Habermas’ apparent acquiescence to this view of once-every-few-generations national conversations is a nod to realism, i.e., a realistic conception of how much broad based, ongoing constitutional discourse it is reasonable to expect the public to conduct. But while a theory with a Left Hegelian pedigree should avoid “the impotence of the ought” and utopian speculation, and therefore ought not develop critical conceptions of legal practice utterly divorced from present ones, such concessions to realism are unnecessary. After all, critical theory conceptions of constitutionalism will aim to be appreciably different from the more authoritarian ones currently in circulation, which more often than not fail to stimulate and sustain public discourse on the basic constitution of society. Instead, their point would be to suggest how a more dynamic, expansive, and mediational conception of constitutionalism could unlock greater democratic freedom and rationally integrated social identities.¶ Given these problems in Habermas’ theory, the innovations that Benhabib makes to his conception of constitutionalism are most welcome. While operating within a discourse theoretic framework, her recent work more unabashedly recalls Hegel's broader conception of the constitution as the basic norms through which a community understands and relates to itself (of which a founding legal document is but a part): a constitution is a way of life through which individuals seek to connect themselves to each other, and in which the very identity and membership of a community is constantly at stake.79 Benhabib's concept of “democratic iterations,” which draws on meaning-as-use theories, emphasizes how meaning is inevitably transformed through repetition:¶ In the process of repeating a term or a concept, we never simply produce a replica of the original usage and its intended meaning: rather, very repetition is a form of variation. Every iteration transforms meaning, adds to it, enriches it in ever-so-subtle ways. In fact, there is really no ‘originary’ source of meaning, or an ‘original’ to which all subsequent forms must conform … . Every iteration involves making sense of an authoritative original in a new and different context … . Iteration is the reappropriation of the ‘origin’; it is at the same time its dissolution as the original and its preservation through its continuous deployment.80¶ Recalling the reciprocal relationship that Hegel hints at between the narrow “political” constitution and the broader constitution of society's backbone of interrelated institutions, Benhabib here seems to envision a circular process whereby groups take up the conceptions of social relations instantiated in the legal order and transform them in their more everyday attempts to live with others in accordance with these norms. Like Cover and Michelman, she stresses that the transformation of legal meaning takes place primarily in informal settings, where different groups try (and sometimes fail) to live together and to understand themselves in their relation to others according to the terms they inherit from the constitutional tradition they find themselves subject to.81 Her main example of such democratic iteration is the challenge Muslim girls in France raised against the head scarf prohibition in public schools (“L’Affaire du Foulard”), which, while undoubtedly antagonistic, she contends has the potential to felicitously transform the meaning of secularity and inclusion in the French state and to create new forms of togetherness and understanding. But although Benhabib illustrates the concept of democratic iterations through an exemplary episode, this iterative process is a constant and pervasive one, which is punctuated by events and has the tendency to have a destabilizing effect on authority.82¶ It is telling, however, that Benhabib's examples of democratic iterations are exclusively centered on what Habermas would call ethical-political discourses.83 While otherwise not guilty of the charge,84 Benhabib, in her constitutional theory, runs afoul of Nancy Fraser's critical diagnosis of the trend in current political philosophy to subordinate class and distributional conflicts to struggles for cultural inclusion and recognition.85 Perhaps this is due to the fact that “hot” constitutional issues are so often ones with cultural dimensions in the foreground, rarely touching visibly on distributional conflicts between groups. This nonetheless is problematic since much court business clearly affects – often subtly and invisibly – the outcomes of these conflicts, frequently with bad results.86 For another reason why centering constitutional discourse on inclusion and cultural issues is problematic, it is useful to remind ourselves of Habermas’ critique of civic republicanism, according to which the main deficit in republican models of democracy is its “ethical overburdening” of the political process.87 To some extent, republicanism's emphasis on ethical discourse is understandable: given the level of cooperativeness and public spirit that republicans view as the font of legitimate law, political discourses need to engage the motivations and identities of citizens. Arguably, issues of ethical self-understanding do this better than more abstract or arid forms of politics. But it is not clear that this is intrinsically so, and it can have distorting effects on politics. In the American media, for example, this amplification of the cultural facets of issues is very common; conflicts over everything from guns to taxes are often reduced to conflicts over who is a good, real American and who is not. It is hard to say that this proves edifying; substantive issues of rights and social justice are elided, politics becomes more fraudulent and conflictual. None of this is to deny a legitimate place for ethical-political discourse. However, we do see something of a two-steps-forward-one-step-back movement in Benhabib's advancement of Habermas’ discourse theory of law: although her concept of democratic iterations takes center stage, she develops the notion solely along an ethical-political track. Going forward, critical theorists developing conceptions of constitutional discourse should work to see it as a way of integrating questions of distributional justice with questions of moral rights and collective identities without subordinating or conflating them.¶ 4. Conclusion¶ Some readers may find the general notion of reinvigorating a politics of constitutionalism quixotic. Certainly, it has not been not my intention to overstate the importance or positive contributions of constitutions in actually existing democracies, where they can serve to entrench political systems experiencing paralysis in the face of long term fiscal and environmental problems, and where public appeals to them more often than not invoke visions of society that are more nostalgic, ethno-nationalistic, authoritarian, and reactionary than what Habermas and Benhabib presumably have in mind. Instead, I take the basic Hegelian point I started this paper with to be this: modern persons ought to be able to comprehend their social order as the work of reason; the spine of institutions through which their relations to differently abled and positioned others are mediated ought to be responsive to their interests as fully-rounded persons; and comprehending this system of mediation ought to be able to reconcile them to the partiality of their roles within the universal state. Though modern life is differentiated, it can be understood, when seen through the lens of the constitutional order, as a result of citizens’ jointly exercised rationality as long as certain conditions are met. These conditions are, however, more stringent than Hegel realized. In light of this point, that so many issues deeply impacting citizens’ social and economic relations to one another are rendered marginal – and even invisible – in terms of the airing they receive in the public sphere, that they are treated as mostly settled or non-questions in the legal system consitutues a strikingly deficient aspect of modern politics. Examples include the intrusion of market logic and technology into everyday life, the commodification of public goods, the legal standing of consumers and residents, the role of shareholders and public interests in corporate governance, and the status of collective bargaining arrangements. Surely a contributing factor here is the absence of a shared sense of possibility that the basic terms of our social union could be responsive to the force that discursive reason can exert. Such a sense is what I am contending jurisgenerative theories ought to aim at recapturing while critiquing more legalistic and authoritarian models of law.¶ This is not to deny the possibility that democratic iterations themselves may be regressive or authoritarian, populist in the pejorative sense. But the denial of their **legitimacy or** possibility moves us in the direction of authoritarian conceptions of law and political power and the isolation of individuals and social groups wrought by a political order of machine-like administration that Horkheimer and Adorno describe as a main feature of modern political domination. Recapturing some sense of how human activity makes reason actual in the ongoing organization of society need not amount to the claim that reason culminates in some centralized form, as in the Hegelian state, or in some end state, as in Marx. It can, however, move us to envision the possibility of an ongoing practice of communication, lawmaking, and revision that seeks to reconcile and overcome positivity and division, without the triumphalist pretension of ever being able to fully do so.

#### And, legal restraints work- positive role in solving violence

Scheuerman 06

William E. Scheuerman 6, Professor of Political Science at Indiana University, Carl Schmitt and the Road to Abu Ghraib, Constellations, Volume 13, Issue 1

Yet this argument relies on Schmitt’s controversial model of politics, as outlined eloquently but unconvincingly in his famous Concept of the Political. To be sure, there are intense conflicts in which it is naïve to expect an easy resolution by legal or juridical means. But the argument suffers from a troubling circularity: **Schmitt** occasionally **wants to define “political” conflicts as those irresolvable by legal** or juridical **devices in order** then **to argue against** **legal** or juridical **solutions** to them. **The claim** also **suffers from** a certain **vagueness** and lack of conceptual precision. At times, it seems to be directed against trying to resolve conflicts in the courts or juridical system narrowly understood; at other times it is directed against any legal regulation of intense conflict. The former argument is surely stronger than the latter. After all, **legal devices have undoubtedly played a positive role** **in taming** or at least minimizing the potential dangers of harsh **political antagonisms**. In the Cold War, for example, international law contributed to the peaceful resolution of conflicts which otherwise might have exploded into horrific violence, even if attempts to bring such conflicts before an international court or tribunal probably would have failed.22¶ Second, Schmitt dwells on the legal inconsistencies that result from modifying the traditional state-centered system of international law by expanding protections to non-state fighters. His view is that irregular combatants logically enjoyed no protections in the state-centered Westphalian model. By broadening protections to include them, international law helps undermine the traditional state system and its accompanying legal framework. Why is this troubling? The most obvious answer is that Schmitt believes that the traditional state system is normatively superior to recent attempts to modify it by, for example, extending international human rights protections to individuals against states. 23 But what if we refuse to endorse his nostalgic preference for the traditional state system? Then a sympathetic reading of the argument would take the form of suggesting that the project of regulating irregular combatants by ordinary law must fail for another reason: it rests on a misguided quest to integrate incongruent models of interstate relations and international law. We cannot, in short, maintain core features of the (state-centered) Westphalian system while extending ambitious new protections to non-state actors.¶ This is a powerful argument, but it remains flawed. Every modern legal order rests on diverse and even conflicting normative elements and ideals, in part because human existence itself is always “in transition.” When one examines the so-called classical liberal legal systems of nineteenth-century England or the United States, for example, one quickly identifies liberal elements coexisting uneasily alongside paternalistic and authoritarian (e.g., the law of slavery in the United States), monarchist, as well as republican and communitarian moments. The same may be said of the legal moorings of the modern welfare state, which arguably rest on a hodgepodge of socialist, liberal, and Christian and even Catholic (for example, in some European maternity policies) programmatic sources. In short, **it is by no means self-evident that trying to give coherent legal form to a transitional** political and social **moment is always doomed to fail**. Moreover, there may be sound reasons for claiming that the contemporary transitional juncture in the rules of war is by no means as incongruent as Schmitt asserts. In some recent accounts, **the general trend** towards extending basic protections to non-state actors **is** plausibly interpreted in a more **positive** – **and by no means incoherent** – light.24¶ Third, Schmitt identifies a deep tension between the classical quest for codified and stable law and the empirical reality of a social world subject to permanent change: “The tendency to modify or even dissolve classical [legal] concepts…is general, and in view of the rapid change of the world it is entirely understandable” (12). Schmitt’s postwar writings include many provocative comments about what contemporary legal scholars describe as the dilemma of legal obsolescence. 25 In The Partisan, he suggests that the “great transformations and modifications” in the technological apparatus of modern warfare place strains on the aspiration for cogent legal norms capable of regulating human affairs (17; see also 48–50). Given the ever-changing character of warfare and the fast pace of change in military technology, it inevitably proves difficult to codify a set of cogent and stable rules of war. The Geneva Convention proviso that legal combatants must bear their weapons openly, for example, seems poorly attuned to a world where military might ultimately depends on nuclear silos buried deep beneath the surface of the earth, and not the success of traditional standing armies massed in battle on the open field. “Or what does the requirement mean of an insignia visible from afar in night battle, or in battle with the long-range weapons of modern technology of war?” (17).¶ As I have tried to show elsewhere, these are powerful considerations deserving of close scrutiny; Schmitt is probably right to argue that the enigma of legal obsolescence takes on special significance in the context of rapid-fire social change.26 Unfortunately, he seems uninterested in the slightest possibility that we might successfully adapt the process of lawmaking to our dynamic social universe. To be sure, he discusses the “motorization of lawmaking” in a fascinating 1950 publication, but only in order to underscore its pathological core.27 Yet **one** possible **resolution** of the dilemma he describes **would be** to figure how **to reform the process** whereby rules of war are adapted to novel changes in military affairs in order **to minimize the danger of** anachronistic or **out-of-date law. Instead, Schmitt** simply **employs the dilemma of legal obsolescence as a battering ram** against the rule of law and the quest to develop a legal apparatus suited to the special problem of irregular combatants.

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## CP

#### Their model will fail in democratizing countries

K. Prempeh, The only answer to the amendments counterplan on the courts topic, “Defying the Odds,” Journal of Democracy 12(4), October 2001. 10.1353/jod.2001.0080

In many newly democratizing countries, political and constitutional reforms accompanying democratic and market transitions have enhanced the stature and power of judiciaries that, until recently, were often little more than appendages of the executive. In some cases -- notably South Africa and Central and Eastern Europe, where the transitions marked a radical break with the past -- constitutional designers not only retooled the existing judicial structure but also founded new constitutional courts. In countries where the transitions were incremental rather than revolutionary, "holdover judiciaries" were retained, but with enhanced powers of review and broader jurisdictions.¶ Regardless of the nature of the transitions, these judiciaries can now boast of far more formal independence than they had in the recent past. Indeed, an independent judiciary, especially one with the power of judicial review, has become a pivotal part of the constitutional architec-ture of today's emerging democracies. Without it, modern constitu-tionalism -- defined as the rule of law within a system of horizontal and vertical checks and balances -- is considered a nonstarter.

#### No Middle East war

Salem 11—Director of the Carnegie Middle East Center. PhD from Harvard (Paul, 'Arab Spring' Has Yet to Alter Region's Strategic Balance, carnegie-mec.org/publications/?fa=43907)

Despite their sweeping repercussions for both domestic and international players, the Arab uprisings have not led to a dramatically new regional order or a new balance of power. This could change, particularly if developments in Syria continue to escalate. While Iran has welcomed uprisings against Western-backed regimes in Egypt and Tunisia, it dealt harshly with its own protesters and has been worried about recent events in Syria. Moreover, countries that threw out pro-Western dictators are not moving closer to Iran. Egypt's and Tunisia’s future foreign policies are more likely to resemble Turkey's in becoming more independent while remaining allied with the West. And Iran's soft power has decreased as its regime looks increasingly repressive and new models of revolutionary success have emerged in Tunisia, Egypt, and other parts of the Arab world. Turkey, for its part, bungled the opportunity to take advantage of this historic shift to bolster its influence in the Arab world. The Arab uprisings are effectively calling for the Arab world to be more like Turkey: democratic, with a vibrant civil society, political pluralism, secularism alongside Islam, and a productive and fairly balanced economy. However, after expressing clear support for Egyptian protesters, Turkey has hedged its bets in Libya and Syria. Turkey has over $15 billion in business contracts with Moammar Kadafi's Libya and has built a close relationship with Syrian President Bashar Assad. Turkey's foreign policy of "zero problems" with neighbors is becoming harder to implement as peoples and governments in the neighborhood are increasingly on opposite sides. Although Arab public opinion has held Turkey in very high esteem in past years, recent events have tarnished that image. This could have been Turkey's moment in the Middle East; the moment was lost. Saudi Arabia has been taken aback by the loss of old allies and remains worried about increased Iranian influence, but has maintained its sphere of influence. Its military intervention in Bahrain shows that Riyadh is extremely worried not only about Iranian influence but about the wave of democratic change, and still has not figured out a way to achieve a balance between addressing growing demands by citizens for better governance and social justice, while keeping Iranian influence out of the Gulf Cooperation Council. Although the United States has generally suffered setbacks from the events of the past months, it is adjusting quickly to the new realities and stands to remain a key player in the coming period. It has not lost its leverage despite the demise of its main Egyptian and Tunisian allies, and has expressed support for protests after realizing they were not dominated by radical groups and that they echoed Western values. Emerging global powers such as Russia, China, India and Brazil have had mixed reactions to the "Arab Spring." All were reluctant to approve Western-led military intervention in Libya, expressing concerns ranging from the risk of higher oil prices to a potential spillover effect on their shores. As for Israel, even though its peace treaty with Egypt will remain in place, it no longer has any friends in the region after the departure of Egyptian President Hosni Mubarak, its declining relations with Turkey and growing unrest in Jordan. The recent Fatah-Hamas accord underlines Israel's predicament. Two difficult challenges lie ahead: The Palestinian Authority's unilateral move to declare Palestinian statehood by the end of the year and a potential Palestinian popular uprising encouraged by the success of neighboring populations. Although the Arab Spring has been largely about internal democracy and reform, it has affected all of the major regional and international actors. However, so far there has been no major shift in the balance of power or the basic pattern of regional relations.

## Politics

### Link uniqueness

#### TK debates and restrictions will happen over the defense authorization bill—link is inevitable—that’s Bennett

#### Debates over court regulation of Drones now

Bravin, 2-4-14

[Jess, Wall street journal, Gonzales Calls for Limits on Drone Strikes, http://blogs.wsj.com/washwire/2014/02/04/gonzales-calls-for-limits-on-drone-strikes/] /Wyo-MB

Former Attorney General Alberto Gonzales is calling on the Obama administration to put limits on drone strikes against U.S. citizens overseas, arguing in a legal journal that Americans should not be targeted without prior approval by a military panel or a federal judge.¶ While others have urged similar safeguards, few bring Mr. Gonzales’s pedigree to the debate. As White House counsel and attorney general under President George W. Bush, Mr. Gonzales was a key figure in counterterrorism policies that placed executive power at the pinnacle, often at the cost of individual rights. The drone war began under Mr. Gonzales’s tenure, with a 2002 strike in Yemen that killed six people, including a U.S. citizen.¶ Writing in the George Washington Law Review, however, Mr. Gonzales says current targeting practices may not be constitutional, and urges the legislative and executive branches to take steps to strengthen protections for citizens.¶ The 60-page article, “Drones: The Power to Kill,” focuses on President Barack Obama‘s decision to target Anwar al-Awlaki, a U.S. citizen killed by a 2011 drone strike in Yemen. Mr. Gonzales says that while he believes there was sufficient evidence to justify killing Mr. Awlaki, the decision-making process may fall short of standards established by a series of Supreme Court decisions since the Sept. 11, 2001 terrorist attacks.¶ “The Supreme Court has a role to play. As Justice O’Connor said in Hamdi, ‘a state of war is not a blank check for the President when it comes to the rights of the nation’s citizens,’” Mr. Gonzales writes.¶ Hamdi v. Rumsfeld is the 2004 opinion by Justice Sandra Day O’Connor that rejected the Bush administration’s claim to hold a U.S. citizen indefinitely as an enemy combatant. Mr. Gonzales was on the losing side of the case, as he was in three other enemy prisoner cases.¶ Mr. Gonzales in an interview said that while he continues to “respectfully disagree” with those decisions, the Supreme Court has the last word. When the Bush administration lost, he said, “we immediately changed our conduct.”¶ According to remarks by Mr. Obama and Attorney General Eric Holder, various groups of “senior officials” and government lawyers determined Mr. Awlaki could not feasibly be captured and that killing him was appropriate.¶ Such a process may fall short of the Fifth Amendment, Mr. Gonzales said, which prohibits the government from taking a life “without due process of law.”

#### Restrictions on the president coming now

Bream, 2-19-14

[Shannon, Fox News, House Republicans sign on to measure to stop presidential overreach, http://www.foxnews.com/politics/2014/02/19/house-republicans-sign-on-to-measure-to-stop-presidential-overreach/] /Wyo-MB

As President Obama's critics grow increasingly concerned about his use of executive power, they're also examining their options. ¶ In the House, more than 100 Republican members have signed on to the Stop This Overreaching President (STOP) Resolution. In it, Rep. Tom Rice, R-SC, lays out the ways in which he believes the president has violated his Article 2, Section 3 constitutional duty to "take Care that the Laws be faithfully executed."¶ Rice points to the president's unilateral modifications to the Affordable Care Act (ACA), welfare-to-work requirements and immigration laws. ¶ If a majority of House members support the STOP resolution, it would authorize a civil lawsuit against Obama. In the past, members have had a tough time launching lawsuits against a sitting president. ¶ Former Democratic congressman Dennis Kucinich of Ohio tried to sue both President George W. Bush and Obama. Both times, a federal judge turned away his lawsuits.¶ Georgetown University law professor Nicholas Rosenkranz has doubts that the current effort will be successful, but grasps the motivation. "I quite understand their frustration," he says, adding, "The president has taken a lot of actions that seem a bit more like writing law or rewriting law - rather than taking care that it be faithfully executed." ¶ Rosenkranz says another tool could be more effective for Congress: the power of the purse. He notes that it gives members a great deal of leverage when they're united.¶ It's a tactic Sen.Mike Lee, R-Utah, is publicly floating. "James Madison talked about this and said when the president abuses his power, the best thing Congress can do is withhold funding for the president, so the president can't continue to hurt the American people," he said.¶ There is yet another option which few are willing to publicly discuss. "A check on executive lawlessness is impeachment," Rosenkranz said in a House hearing last December. Kucinich says the maneuver should be reserved for only "the most extraordinary circumstances," but admits "it's in the Constitution as a check against the abuse of power."¶ Even some of Obama's own one-time supporters say he would be wise to remember his words from the 2008 campaign trail. On March 31, 2008, then-Senator Obama told a crowd at Thaddeus Stevens College of Technology, "I take the Constitution very seriously." ¶ He went on to say that one of the country's biggest problems was the use of executive power by then-President Bush, adding, "That's what I intend to reverse when I'm president of the United States of America."

#### Drone debates happening now—Feinstein had gotten the FAA to cover drones

Pasternack 3/18

[Pasternack, Alan: Editor-At-Large. "Small Drones Are a Bigger Privacy Threat Than the NSA, Says Senate Intel Chair." Motherboard. Motherboard, 18 mar 2014. Web. 20 Mar 2014. <http://motherboard.vice.com/read/small-drones-are-a-bigger-privacy-threat-than-the-nsa-says-senate-intel-chair>. //Wyo-BF]

Dianne Feinstein has a bone to pick with drones, especially since she confronted one on her own lawn. “I’m in my home and there’s a demonstration out front, and I go to peek out the window, and there’s a drone facing me,” the California Democratic senator recalled to correspondent Morley Safer on "60 Minutes" Sunday night. Demonstrators from Code Pink, who were protesting NSA surveillance outside her house in July, said it was just a tiny pink toy helicopter. The confusion points to the problems with understanding and regulating and at least defining drones: a drone and a remote-controlled helicopter are the same thing. Big, armed capital-D Drones with creepy names like the Predator and the Reaper have earned a shadowy reputation because they've been used—largely in secret by the CIA—to dramatically extend the reach of the military (and through lawfare, extend the boundaries of what's lawful), within politically vacuous spaces. In a way, this use of Drones is not unlike the use of electronic surveillance by other parts of the intelligence community. But for the purposes of privacy in America, drones are nothing fancier than flying remote controlled GoPro cameras. “When is a drone picture a benefit to society? When does it become stalking? When does it invade privacy? How close to a home can a drone go?” Feinstein asked, listing off questions she had to Safer. In an extra segment, Safer asked Feinstein if she believed that "the drones were the worst thing that could happen to our privacy ever." "To a great extent that's the way I feel right now," she said, "because the drone can take pictures. The sophisticated drone, which isn't necessarily the drone that's going to be used by the average person from 17,000, 20,000 feet and you don't know it's there." As chairwoman of the Senate intelligence committee, Feinstein, 80, has recently upbraided the CIA for allegedly spying on Congress, has largely defended US electronic surveillance, saying curtailing it “would place the nation in jeopardy.” But in hearings on Capitol Hill last year, Feinstein began raising questions about the use of drones by law enforcement officers and the public. “When do you have to have a warrant? When don’t you have to have a warrant? What’s the appropriate governmental use for a drone?” she asked—questions that, as the Drone Census has shown, have not been addressed publicly by law enforcement agencies like the FBI, which has flown drones without warrants on an untold number of occasions. (Even more basic questions, like how often the FBI has used drones, or which agents are certified to fly them, have also proved elusive, even to the FBI itself.) The FAA, which normally only governs airspace 400 feet and higher, has said it intends to integrate drones into its regulations by 2015, but only on the grounds of safety. Last year, its early attempts to fire a warning shot over the use of drones culminated in a $10,000 fine for Raphael Pirker, a pilot who was using drones "commercially," to make cool videos. (Trappy, as he's known in the UAV community, has some of the best drone footage on YouTube.) But last week, a federal judge threw out the case, saying that the FAA has not issued any formal regulations on remote-controlled aircraft, and that flying them in the US is not "illegal." Still, to fly a drone over "major urban areas [that] contains the highest density of manned aircraft," the FAA requires a license for private individuals and government officials who can prove a need to use it for things like "law enforcement, firefighting, border patrol, disaster relief, search and rescue, military training, and other government operational missions." But these regulations only pertain to safety. The application of privacy laws to drone use remains largely uncharted territory, territory that a number of states are beginning to wade into. Already, more than 40 state legislatures have debated bills that ban or curtail the use of civilian drones, drawing lobbyists from industries as diverse as aerospace and hunting (the latter industry wants to protect itself from, among other things, PETA activists with drones).

### Midterms thumper

#### Nothing will pass before midterms—all votes on legislation will be symbolic jockeying for position—that’s Crittenden

#### Nothing will pass before midterms—super low probability

Friedman, 1-5-14

[Dan, New york daily news, Gridlock in Congress expected to worsen with midterm elections looming, http://www.nydailynews.com/news/national/congressional-gridlock-expected-worsen-article-1.1566718] /Wyo-MB

WASHINGTON — If you thought Congress was useless in 2013, just wait until this year.¶ Congress passed just 58 bills in 2013, the fewest since the institution began counting in the 1940s.¶ With midterm elections looming and the two major parties at loggerheads over just about everything, the gridlock expected this year could make 2013 seem like the good old days.¶ “I can’t imagine Congress doing much more than nominations and (annual) appropriations bills,” said Jim Manley, a former top aide to Senate Majority Leader Harry Reid (D-Nev.).¶ There appears to be little chance lawmakers will enact new gun controls or pass meaningful immigration reform. And the likelihood Democrats will realize their goal of raising the minimum wage and renewing benefits for the long-term unemployed don’t seem much better.¶ Congressional negotiators have a good chance to cut a deal early this year on a long-delayed farm bill impacting agriculture policy and food stamps.¶ And a bipartisan budget agreement that President Obama signed in December is expected to ease passage of spending bills and, at least, avert another government shutdown in 2014.¶ Sen. Chuck Schumer (D-N.Y.), a lead author of the Senate-passed immigration-reform bill, said he hopes recent cooperation “will lead the way to more in 2014, including the passage of immigration reform through the House.”¶ But many lawmakers privately see little chance for the passage of major immigration reform.¶ House Republicans are too concerned about primary challenges from Tea Party-backed opponents to support back any bill that includes a potential path to citizenship for undocumented immigrants.¶ Norm Ornstein, a congressional scholar at the American Enterprise Institute, said it is conceivable lawmakers will pass “one or two” notable bills, “but you would have to be truly outside the normal range of optimism to imagine this being a probability.”¶ Republicans hope to gain seats in the midterms by focusing on the botched roll-out of Obamacare.¶ Democrats, eyeing recent results like Bill de Blasio’s populist win in New York City’s mayoral election and polls that show deep frustration about economic mobility, want to campaign on economic inequality, an issue President Obama recently called his top priority.¶ “Issues like job creation, minimum wage and unemployment insurance are going to weigh on the minds of voters far more than Obamacare by the time the 2014 elections roll around,” Schumer said.¶ Within a few months, lawmakers are likely to shift fully into election mode, dropping real attempts to legislate in favor of posturing for campaign advantage in November, when the Democrats will try to keep control of the Senate and Republicans will try to retain their majority in the House.¶ “A lot of issues will be voted on just to make election-year attack ads,” said John Hudak, a fellow in governance studies at Brookings Institution, a center left think tank.¶ “You are going to see less legislation passing in 2014, if you can imagine that, and more bills being voted on just for political gain.”

#### Nothing passes til after midterms

Todd, 2-21-14

[Chuck, NBC News' chief White House correspondent, Shutdown: Both Parties Avoid Action Until After Elections, http://www.nbcnews.com/politics/first-read/shutdown-both-parties-avoid-action-until-after-elections-n35366] /Wyo-MB

After Congress passed a debt-ceiling increase -- without any strings attached -- we declared that the budget wars, at least in the short term, had ended. And as a consequence, the Obama White House has now officially removed from its budget the Social Security entitlement cuts (chained CPI) it had put on the table to reach a bigger budget deal with Republicans. “President Obama’s forthcoming budget request will seek tens of billions of dollars in fresh spending for domestic priorities while abandoning a compromise proposal to tame the national debt in part by trimming Social Security benefits,” the Washington Post writes. But there’s something else going on here besides the end of austerity: Both Democrats and Republicans have cleared the decks of ANYTHING that could divide their parties before the 2014 midterms. Republicans have essentially taken immigration off the table, as well as the threat of default or a government shutdown. Meanwhile, the White House has now removed chained CPI from its budget and slowed its push for fast-track authority. So both sides are deploying a do-no-harm strategy -- all with less than nine months before Election Day 2014. It’s just the latest reminder that Washington is not going to get ANYTHING major done this year. It’s not even March 1, and both parties are waving the policy white flags.