## 1NC

### 1

#### Authority means “authorization” – topical affirmatives must remove the permission to act, not just regulate the President

Hohfeld**,** Yale Law,1919(Wesley, <http://www.hku.hk/philodep/courses/law/HohfeldRights.htm>)

Many examples of legal powers may readily be given. Thus, X, the owner of ordinary personal property "in a tangible object" has the power to extinguish his own legal interest (rights, powers, immunities, etc.) through that totality of operative facts known as abandonment; and-simultaneously and correlatively-to create in other persons privileges and powers relating to the abandoned object,-e. g., the power to acquire title to the latter by appropriating it. Similarly, X has the power to transfer his interest to Y, that is to extinguish his own interest and concomitantly create in Y a new and corresponding interest. So also X has the power to create contractual obligations of various kinds. Agency cases are likewise instructive. By the use of some metaphorical expression such as the Latin, qui facit per alium, facit per se\* the true nature of agency relations is only too frequently obscured. **The creation of an agency relation involves**, inter alia, **the** grant of legal powers **to the so-called agent**, and the creation of correlative liabilities in the principal. That is to say, **one party,** P, **has the power to create agency powers in another party**, A,-for example, the power to convey P's property, the power to impose (so called) contractual obligations on P, the power to discharge a debt owing to P, the power to "receive" title to property so that it shall vest in P, and so forth. In passing, it may be well to observe that **the term "authority,**" so frequently used in agency cases, is very ambiguous and slippery in its connotation. Properly employed in the present connection, the word **seems to be an abstract or qualitative term corresponding to the concrete "authorization," the latter consisting of a particular group of operative facts taking place between the principal and the agent**. **All too often, however, the term in question is so used as** to blend and confuse **these operative facts with the powers and privileges thereby created in the agent. A** careful discrimination **in these particulars would**, it is submitted, **go far toward clearing up certain problems in the law of agency**.

#### Restriction on authority must reduce permission to act

Lobel, 8 - Professor of Law, University of Pittsburgh Law School (Jules, “Conflicts Between the Commander in Chief and Congress: Concurrent Power over the Conduct of War” 392 OHIO STATE LAW JOURNAL [Vol. 69:391, <http://moritzlaw.osu.edu/students/groups/oslj/files/2012/04/69.3.lobel_.pdf>)

So  too, the congressional power to declare or authorize war has been long held to permit Congress to authorize and wage a limited war—“limited in place, in objects, and in time.” 63 When Congress places such restrictions on the President’s authority to wage war, it limits the President’s discretion to conduct battlefield operations. For example, Congress authorized President George H. W. Bush to attack Iraq in response to Iraq’s 1990 invasion of Kuwait, but it confined the President’s authority to the use of U.S. armed forces pursuant to U.N. Security Council resolutions directed to force Iraqi troops to leave Kuwait. That restriction would not have permitted the President to march into Baghdad after the Iraqi army had been decisively ejected from Kuwait, a limitation recognized by President Bush himself.64

#### Violation – the plan reviews Obama’s detention policy and rules that some people should be released – he still retains the authority to indefinitely detain, it’s just now subject to new enforcement mechanisms.

#### Prefer our interp –

#### Limits – infinite ways to regulate presidential actions – explodes number of affs by allowing for small changes to reporting mechanisms.

#### It skirts core topic discussions about the presidential authority because the aff focuses on corrections to specific instances of presidential authority without changing the legal structure for that authority – that’s key to every process CP and DAs.

#### Voter for fairness and education.

### 2

#### Text: The United States Congress should establish a National Security Court with sole jurisdiction over cases pursuant to Section 1021 of the National Defense Authorization Act for Fiscal Year 2012.

#### The NSC solves the aff while preventing the release of dangerous terrorists.

Sulmasy, Commander and associate professor of law at the U.S. Coast Guard Academy, ‘9

[Glenn, The National Security Court System: A Natural Evolution of Justice in an Age of Terror, Oxford University Press, 2009, RSR]

Boumediene placed civilian judges with oversight of military detention. Within the civilian law context, this is reasonable. However, during armed conflict such a decision can have major impacts on the security of the United States. 83 It seems to me the Court was legitimately concerned about the process at Guantanamo and, as Justice Souter noted in his thoughtful and impassioned concurrence, the length of time the detainees have been in custody without charges. 84 However, it may have overreacted to these perceived injustices. The Supreme Court has now formally given greater due process rights to the detainees than would be afforded to prisoners of war under the Geneva Conventions. 85 This is simply not the best means to ensure the legality of the detainees’ detention. The National Security Court System will ameliorate these suggested weaknesses contained within the Supreme Court’s holding. The NSCS ensures a habeas corpus hearing is held before a civilian Article III federal judge but without necessarily granting constitutional rights to noncitizens captured outside the United States. The system, once again, captures the middle ground. The National Security Judge, an impartial and detached magistrate (not in the trial rotation), would conduct the habeas hearings with military JAGs representing the government as well as the detainees. The strength of this process is that it includes the military’s input and can be seen as overt recognition that this is a war requiring military expertise while still retaining civilian oversight of the process. This will respond, to some degree, to the recent concerns about habeas corpus rights for detainees while still remaining faithful to the Supreme Court’s ruling in Boumediene. The three-judge panels in the trials will use the “beyond a reasonable doubt” standard and require a two-thirds majority of the judges to convict any alleged detainee. Unanimity of the three judges will be required only for capital cases. The evidentiary standards will also be diminished from standard, civilian prosecutions - or military courts- martial for that matter. The NSCS offers the detainee great process and protections but necessarily a decreased expectation of the process ordinarily afforded U.S. citizens. No detainee should, by virtue of his or her status, have traditional U.S. constitutional rights attach. Specifically, the Fourth and Fifth Amendment rights so precious within our judicial system must necessarily be reduced in significance or removed altogether in the NSCS. To do otherwise would be to ensure acquittals in virtually all cases against the detainees.

#### Nuclear terrorism is possible and leads to extinction.

Dvorkin 12 (Major General (retired), doctor of technical sciences, professor, and senior fellow at the Center for International Security of the Institute of World Economy and International Relations of the Russian Academy of Sciences, Vladimir, The Center participates in the working group of the U.S.-Russia Initiative to Prevent Nuclear Terrorism, 9/21/12, "What Can Destroy Strategic Stability: Nuclear Terrorism is a Real Threat," belfercenter.ksg.harvard.edu/publication/22333/what\_can\_destroy\_strategic\_stability.html]

Hundreds of scientific papers and reports have been published on nuclear terrorism. International conferences have been held on this threat with participation of Russian organizations, including IMEMO and the Institute of U.S. and Canadian Studies. Recommendations on how to combat the threat have been issued by the International Luxembourg Forum on Preventing Nuclear Catastrophe, Pugwash Conferences on Science and World Affairs, Russian-American Elbe Group, and other organizations. The UN General Assembly adopted the International Convention for the Suppression of Acts of Nuclear Terrorism in 2005 and cooperation among intelligence services of leading states in this sphere is developing.¶ At the same time, **these efforts fall short for a number of reasons, partly because various acts of nuclear terrorism are possible. Dispersal of radioactive material by detonation of conventional explosives (“dirty bombs”) is a method that is most accessible for terrorists. With the wide spread of radioactive sources, raw materials for such attacks have become much more accessible than weapons-useable nuclear material or nuclear weapons.** The use of **“**dirty bombs” will not cause many immediate casualties, but it **will result into long-term radioactive contamination, contributing to the spread of** panic and socio-economic destabilization**.**¶ Severe **consequences can be caused by sabotaging nuclear power plants, research reactors, and radioactive materials storage facilities. Large cities are especially vulnerable to such attacks. A large city may host dozens of research reactors with a nuclear power plant or a couple of spent nuclear fuel storage facilities and dozens of large radioactive materials storage facilities located nearby.** The past few years have seen significant efforts made to enhance organizational and physical aspects of security at facilities, especially at nuclear power plants. **Efforts have also been made to improve security culture. But these efforts do not preclude the possibility that** well-trained terrorists may be able to penetrate nuclear facilities**.**¶ **Some estimates show that sabotage of a research reactor in a metropolis may expose hundreds of thousands to high doses of radiation. A formidable part of the city would become uninhabitable for a long time**.¶ Of all the scenarios, it **is building an improvised nuclear device by terrorists that poses the maximum risk. There are no engineering problems that cannot be solved if terrorists decide to build a simple “gun-type” nuclear device.** **Information on the design of such devices, as well as implosion-type devices, is available in the public domain**. It is the acquisition of weapons-grade uranium that presents the sole serious obstacle. Despite numerous preventive measures taken, we cannot rule out the possibility that **such materials can be bought on the black market.** Theft of weapons-grade uranium is also possible**. Research reactor fuel is considered to be particularly vulnerable to theft, as it is scattered at sites in dozens of countries. There are about 100 research reactors in the world that run on weapons-grade uranium fuel, according to the International Atomic Energy Agency (IAEA).**¶ **A terrorist “gun-type” uranium bomb can have a yield of least 10-15 kt, which** is comparable to the yield of the bomb dropped on Hiroshima**.** **The explosion of such a bomb in a modern metropolis can kill and wound hundreds of thousands and cause serious economic damage. There will also be long-term sociopsychological and political consequences**.¶ The vast majority of states have introduced unprecedented security and surveillance measures at transportation and other large-scale public facilities after the terrorist attacks in the United States, Great Britain, Italy, and other countries. These measures have proved burdensome for the countries’ populations, but the public has accepted them as necessary. **A nuclear terrorist attack will make the public accept further measures meant to enhance control even if these measures significantly restrict the democratic liberties they are accustomed to. Authoritarian states could be expected to adopt even more restrictive measures**.¶ If a nuclear terrorist act occurs, **nations will delegate tens of thousands of their secret services’ best personnel to investigate and attribute the attack. Radical Islamist groups are among those capable of such an act.** We can imagine what would happen if they do so, **given the anti-Muslim sentiments and resentment that conventional terrorist attacks by Islamists have generated in developed democratic countries. Mass deportation of the non-indigenous population and severe sanctions would follow such an attack in what will cause violent protests in the Muslim world. Series of armed clashing terrorist attacks may follow. The prediction that Samuel Huntington has made in his book “**The Clash of Civilizations **and the Remaking of World Order” may come true**. Huntington’s book clearly demonstrates that it is not Islamic extremists that are the cause of the Western world’s problems. Rather there is a deep, intractable conflict that is rooted in the fault lines that run between Islam and Christianity. **This is especially dangerous for Russia because these fault lines run across its territory.** To sum it up, the political leadership of Russia has every reason to revise its list of factors that could undermine strategic stability.  BMD does not deserve to be even last on that list because its effectiveness in repelling massive missile strikes will be extremely low. BMD systems can prove useful only if deployed to defend against launches of individual ballistic missiles or groups of such missiles. Prioritization of other destabilizing factors—that could affect global and regional stability—merits a separate study or studies. But even without them I can conclude that nuclear terrorism should be placed on top of the list. The threat of nuclear terrorism is real, and a successful nuclear terrorist attack would lead to a radical transformation of the global order.  All of the threats on the revised list must become a subject of thorough studies by experts. States need to work hard to forge a common understanding of these threats and develop a strategy to combat them.

### 3

#### Michigan’s affirmative action ban in Schuette will remain in place now – Kennedy’s the swing vote and agrees with the power of the popular referendum.

Gringlas and Shahin 13 [Sam and Peter, Staff Reporters, “Ann Arbor reacts to monumental Supreme Court decisions”, 6-26-13, The Michigan Daily,

<http://www.michigandaily.com/news/supreme-court-same-sex-marriage-0?page=0,2>, RSR]

While the case concerns the legality of Michigan’s ban on affirmative action, it deals more directly with the power of popular referendum. Proposal 2 — which banned affirmative action — was adopted with 58 percent support in the 2006 election. In 2012, the Sixth Circuit Court sitting en banc ruled in favor of the Coalition to Defend Affirmative Action’s challenge to the referendum on the grounds that it violated the equal protection clause of the 14th Amendment. Justice Anthony Kennedy — the possible swing vote in Schuette — dissented in Hollingsworth Wednesday, indicating his strong respect for the power of the popular referendum. If he maintains a similar stance in Schuette and upholds the power of referendum, it is nearly impossible for the ban on affirmative action to be overturned by the court. The University is expected to file an amicus curiae brief with the court later this year in support of the ban’s invalidation. Fisher v. University of Texas, another affirmative action case decided on Monday , is unlikely to have an effect on Schuette. “Fisher probably doesn’t have direct implications for Schuette,” Primus said. “The Prop 8 case (Hollingsworth v. Perry) could. In the Prop 8 case, Justice Kennedy, in his dissent, takes a very strong position in favor of the dignity of referenda. The question in Schuette is about what can be done by referendum. If Justice Kennedy has a very approbative view of referenda, it would be difficult to imagine the Supreme Court striking down the referendum in Schuette.”

#### A decision regarding indefinite detention would spark massive backlash – past decisions and the status quo prove.

Devins 10 [Neal, Goodrich Professor of Law and Professor of Government, College of William & Mary,“Talk Loudly and Carry a Small Stick: The Supreme Court and Enemy Combatants”, Journal of Constitutional Law, Vol. 12, No. 2, February 2010, RSR]

Throughout the course of its enemy combatant decision making, the Court has moved incrementally. In so doing, the Court has expanded its authority vis-A-vis the President. Obama administration efforts to moot al-Marri and to relocate Uighur detainees (thereby mooting that litigation) speak to the administration's desire to avoid Supreme Court rulings that might limit the scope of presidential power. Unlike the Bush administration (whose politically tone deaf arguments paved the way for anti-administration rulings), 84 the Obama administration understands that the Court has become a player in the enemy combatant issue. What is striking here, is that the Court never took more than it could get-it carved out space for itself without risking the nation's security or political backlash. Its 2004 and 2006 rulings provided ample opportunity for the President to pursue his enemy combatant initiative. Its 2008 ruling in Boumediene, while clearly constraining the political branches, reflected the views of the new Democratic majority in Congress and (to a lesser extent) the views of presidential candidates Obama and McCain. 8 Its decision to steer clear of early Obama-era disputes likewise avoids the risks of a costly backlash while creating incentives for the Obama administration to take judicial authority into account (by settling these cases outside of court).186 Put another way, by taking prevailing social and political forces into account, the Court was able to flex its muscles without meaningfully undermining the policy preferences of the President and Congress.

#### Controversial decisions burn capital – justices need to pick their fights.

Grosskopf and Mondak 98 [Anke (Assistant Prof of Political Science @ Long Island University) and Jeffrey (Professor of Political Science @ U of Illinois), 1998, “Do attitudes toward specific supreme court decisions matter? The impact of Webster and Texas v Johnson on Public Confidence in the Supreme Court” Political Research Quarterly, vol. 51 no 3 633-54]

The existence of a strong link between basic values and diffuse support does not necessarily preclude a role for specific decisions, particularly when we seek to understand how support comes to change over time (e.g., Caldeira and Gibson 1992: 658-61). We believe that any claim that the Supreme Court is fully immune to backlash against controversial decisions can be rejected on a prima facie level. First, consider the extreme case. Were the Supreme Court to make its occasional blockbusters-Brown v. Board of Education, Roe v. Wade, Texas v. Johnson, etc.-the norm by routinely ruling on the thorniest social questions, we see it as implausible that such actions would bring no cumulative impact on how people view the Court. Second, the Supreme Court's typical mode of operation suggests that justices themselves view institutional support as an expendable political capital (Choper 1980). That is, the Court recognizes its own political limitations, and thus justices pick their spots carefully when approaching potentially controversial cases. From this perspective, the apparent dominance of democratic values as a determinant of institutional support (e.g., Caldeira and Gibson 1992) means not that the Court is insulated from backlash, but that strategic justices tread cautiously so as to keep backlash to a minimum. Consequently, how and where we examine whether public response to Supreme Court decisions affects institutional support may shape what answer we find.

#### Judicial capital is key to uphold the ban – otherwise Kennedy will vote switch and stick with precedent to preserve Court legitimacy.

Smith 92 [Christopher E. Smith, Pol. Sci. Professor @ Akron, Fall 1992 “SUPREME COURT SURPRISE: JUSTICE ANTHONY KENNEDY'S MOVE TOWARD MODERATION” 45 Okla. L. Rev. 459]

There is, of course, no way to know with certainty why Justice Kennedy made his dramatic move toward moderation in highly publicized cases during the 1991 Term. Because it is highly unlikely that Justice Kennedy will ever forthrightly discuss his changing views, scholars must rely on the available evidence to analyze the motivations for and consequences of his move away from the Court's conservative bloc. It is clear that Justice Kennedy, more than any other Justice, altered his decisions and contradicted his previously stated positions in order to preserve precedents in cases concerning abortion and the Establishment Clause. Although there might be various explanations for this switch, the emphasis in his opinions on preserving doctrinal stability and the Court's legitimacy in the eyes of the public provides the strongest plausible explanation for the change in his judicial behavior. It is difficult to predict how Justice Kennedy will vote in future cases or if his move toward moderation will have lasting impact, particularly because new ap- pointments in the next few years may further alter the ideological balance of power on the Court. In any event, Justice Kennedy's decisions during the 1991 Term seem to confirm two important observations. First, Justices' decisions are obviously affected by a set of factors more complex than the mere sum of their judicial philosophies and policy preferences. As Justice Kennedy's actions demonstrate, the factors motivating a Justice's decisions can change from Term to Term. Justice Kennedy's obvious concern for the Court's legitimacy with respect to the abortion issue did not emerge until Roe was actually threatened with reversal during the tumult of a presidential election year. Second, this relatively quiet and unassuming Justice, who'is nearly always overshadowed by his more controversial and outspoken col- leagues, deserves additional scrutiny from scholars as an emerging "power broker" in the middle of the Supreme Court who can determine the out- comes of cases when the Court is deeply divided.

#### Upholding the ban is key to preserve states’ rights and federalism.

Bursch, et al 12 [John (Michigan Solicitor General); Bill Schuette (Attorney General); Eric Restuccia (Deputy Solicitor General); and Aaron Lindstrom (Assistant Solicitor General), “PETITION FOR A WRIT OF CERTIORARI”, November 2012, RSR]

Second, this case involves a constitutional amendment enacted by public initiative. As the Ninth Circuit explained, if a court “relies on an erroneous legal premise [to strike down a public initiative], the decision operates to thwart the will of the people in the most literal sense.” Wilson, 122 F.3d at 699. What the people of the state “willed to do is frustrated on the basis of principles that the people of the United States neither ordained nor established.” Id. “A system which permits [the courts] to block with the stroke of a pen what [millions of] residents voted to enact as law tests the integrity of our constitutional democracy.” Id. The same is true here. Using an equal-protection theory rejected by every federal and state court to consider it, the Sixth Circuit en banc majority struck down a constitutional amendment approved by more than two Michigan million voters. Within our federalist system, it is no small matter for a federal court to strike down a properly enacted state constitutional provision. See Bond v. United States, 131 S. Ct. 2355, 2364 (2011) (“Federalism . . . allows States to respond, through the enactment of positive law, to the initiative of those who seek a voice in shaping the destiny of their own times without having to rely solely upon the political processes that control a remote central power.”). That is why the United States Constitution generally does not meddle in the way that states choose to structure their government. See Sailors v. Bd. of Educ. of Kent Cnty., 387 U.S. 105, 109 (1967). Given the special respect that should be accorded to state constitutional provisions, certiorari is appropriate to review their annulment.

#### Federalism is key economic consolidation--which is vital for economic growth

Calebresi 95 (Stephen, Associate Professor, Northwestern University School of Law. B.A. 1980, J.D. 1983, Yale, “Reflections on United States v. Lopez: "A government of limited and enumerated powers: in defense of United States v. Lopez,” 94 Mich. L. Rev. 752, Michigan Law Review, December, lexis, AD: 7/5/9) LS

A third related advantage is that international federations can undertake a host of which there are significant economies of scale. This is one reason why federations can provide better for the common defense than can their constituent parts. Intercontinental ballistic missiles, nuclear-powered aircraft carriers and submarines, and B-2 stealth bombers tend to be expensive. Economies of scale make it cheaper for fifty states to produce one set of these items than it would be for fifty states to try to produce fifty sets. This is true even without factoring in the North American regional tensions that would be created if this continent had to endure the presence of fifty nuclear minipowers, assuming that each small state could afford to own at least one Hiroshima-sized nuclear bomb. Important governmental economies of scale obtain in other areas, as well, however, going well beyond national defense. For example, there are important economies of scale to the governmental provision of space programs, scientific and biomedical research programs, the creation of transportation infrastructure, and even the running of some kinds of income and wealth redistribution programs.

#### Economic collapse causes global nuclear war.

Friedberg and Schoenfeld, ‘8 (Aaron [Prof. Politics. And IR @ Princeton’s Woodrow Wilson School and Visiting Scholar @ Witherspoon Institute], and Gabriel, [Senior Editor of Commentary and Wall Street Journal], “The Dangers of a Diminished America”,

http://online.wsj.com/article/SB122455074012352571.html)

Then there are the dolorous consequences of a potential collapse of the world's financial architecture. For decades now, Americans have enjoyed the advantages of being at the center of that system. The worldwide use of the dollar, and the stability of our economy, among other things, made it easier for us to run huge budget deficits, as we counted on foreigners to pick up the tab by buying dollar-denominated assets as a safe haven. Will this be possible in the future? Meanwhile, traditional foreign-policy challenges are multiplying. The threat from al Qaeda and Islamic terrorist affiliates has not been extinguished. Iran and North Korea are continuing on their bellicose paths, while Pakistan and Afghanistan are progressing smartly down the road to chaos. Russia's new militancy and China's seemingly relentless rise also give cause for concern. If America now tries to pull back from the world stage, it will leave a dangerous power vacuum. The stabilizing effects of our presence in Asia, our continuing commitment to Europe, and our position as defender of last resort for Middle East energy sources and supply lines could all be placed at risk. In such a scenario there are shades of the 1930s, when global trade and finance ground nearly to a halt, the peaceful democracies failed to cooperate, and aggressive powers led by the remorseless fanatics who rose up on the crest of economic disaster exploited their divisions. Today we run the risk that rogue states may choose to become ever more reckless with their nuclear toys, just at our moment of maximum vulnerability. The aftershocks of the financial crisis will almost certainly rock our principal strategic competitors even harder than they will rock us. The dramatic free fall of the Russian stock market has demonstrated the fragility of a state whose economic performance hinges on high oil prices, now driven down by the global slowdown. China is perhaps even more fragile, its economic growth depending heavily on foreign investment and access to foreign markets. Both will now be constricted, inflicting economic pain and perhaps even sparking unrest in a country where political legitimacy rests on progress in the long march to prosperity. None of this is good news if the authoritarian leaders of these countries seek to divert attention from internal travails with external adventures.

### 4

#### Judicial deference on detention high now – solely presidential discretion.

Thomas Eddlem 7/19/13, writer for The New American, “ NDAA Indefinite Detention Without Trial Approved by Appeals Court,” http://www.thenewamerican.com/usnews/constitution/item/16026-ndaa-indefinite-detention-without-trial-approved-by-appeals-court

The U.S. Court of Appeals for the Second District struck down an injunction against indefinite detention of U.S. citizens by the president under the National Defense Authorization Act of 2012 in a July 17 ruling that is a blow to civil liberties protected by the U.S. Constitution. The appellate court ruled:¶ Plaintiffs lack standing to seek preenforcement review of Section 1021 and vacate the permanent injunction. The American citizen plaintiffs lack standing because Section 1021 says nothing at all about the President’s authority to detain American citizens.¶ The Section 1021 of the NDAA allows “detention under the law of war without trial until the end of the hostilities” for “a person who was a part of or substantially supported al-Qaeda, the Taliban, or associated forces that are engaged in hostilities against the United States or its coalition partners, including any person who has committed a belligerent act or has directly supported such hostilities in aid of such enemy forces.” The court is technically correct in stating that the law does not specifically mention U.S. citizens when it uses the term “person,” but like the vaguely worded “supported such hostilities in aid of such enemy forces,” it appears to be all-encompassing and subject solely to the president's discretionary whims.

#### Reducing court deference breaks the political question doctrine

Lederman 11 (Martin, Professor of Law – Georgetown University Law Center, “War, Terror, and the Federal Courts, Ten Years After 9/11: Conference\*: Association of American Law Schools' Section on Federal Courts Program at the 2012 AALS Annual Meeting in Washington, D.C.,” American University Law Review, June, 61 Am. U.L. Rev. 1253, Lexis)

Number two: Numerous very important, contested, hotly debated topics have arisen in the last ten years, many of them in the Bush Administration, involving for example interrogation techniques, the scope of detention authority, habeas review, military commissions, targeted killings,and the use of force more broadly. On some of these questions, the federal courts - and the Supreme Court in particular - have had quite a lot to say; and on others, not so much, at least in part because of several different federal courts doctrines that prevent the courts from speaking too much about those. You're all familiar with standing limits, political questions, state secrets, etc. We're going to focus particularly on a couple of them, which are immunity doctrines and the weakening of the Bivens n2 and state court sorts of causes of action. We will also discuss the fact that there are many people who think the federal courts have become too involved at supervising and resolving substantive questions involving the political branches, including some of Judge Kavanaugh's colleagues, who have been particularly vocal about that, engaging in what appears to be a form of resistance to the Supreme Court's Boumediene n3 decision. By contrast, many other people think the courts have not been nearly involved enough at resolving some of the unresolved questions about the scope of interrogation and detention and military commissions and the like, that might be lingering from the last administration, or occurring now in the new administration, such as with respect to use of force. So that's the second broad topic - whether the federal courts have been too timid or too aggressive in this area.

#### Setting a precedent against the PQD spills over to climate change cases---litigants are turning to the Courts now and asking them to abrogate the PQD

Tribe, the Carl M. Loeb University Professor, Harvard Law School, ‘10

[Laurence H., Joshua D. Branson, J.D., Harvard Law School and NDT Champion, Northwestern University; and Tristan L. Duncan, Partner, Shook, Hardy & Bacon L.L.P., January 2010, “TOOHOTFORCOURTSTO HANDLE: FUEL TEMPERATURES, GLOBAL WARMING, AND THE POLITICAL QUESTION DOCTRINE,” <http://www.wlf.org/Upload/legalstudies/workingpaper/012910Tribe_WP.pdf>]

Two sets of problems, one manifested at a microcosmic level and the other about as macrocosmic as imaginable, powerfully illustrate these propositions. Not coincidentally, both stem from concerns about temperature and its chemical and climactic effects, concerns playing an increasingly central role in the American policy process. As those concerns have come to the fore, courts have correspondingly warmed to the idea of judicial intervention, drawn by the siren song of making the world a better place and fueled by the incentives for lawyers to convert public concern into private profit. In both the fuel temperature and global warming cases, litigants, at times justifying their circumvention of representative democracy by pointing to the slow pace of policy reform, have turned to the courts. By donning the cloak of adjudication, they have found judges for whom the common law doctrines of unjust enrichment, consumer fraud, and nuisance appear to furnish constitutionally acceptable and pragmatically useful tools with which to manage temperature’s effects. Like the proverbial carpenter armed with a hammer to whom everything looks like a nail, those judges are wrong. For both retail gasoline and global climate, the judicial application of common law principles provides a constitutionally deficient—and structurally unsound—mechanism for remedying temperature’s unwanted effects. ¶ It has been axiomatic throughout our constitutional history that there exist some questions beyond the proper reach of the judiciary. In fact, the political question doctrine originates in no less august a case than Marbury v. Madison, where Chief Justice Marshall stated that “[q]uestions in their nature political, or which are, by the constitution and laws, submitted to the executive, can never be made in this court.”1 Well over a century after that landmark ruling, the Supreme Court, in Baker v. Carr, famously announced six identifying characteristics of such nonjusticiable political questions, which, primarily as a “function of the separation of powers,” courts may not adjudicate.2 Of these six characteristics, the Court recently made clear that two are particularly important: (1) the presence of “a textually demonstrable constitutional commitment of the issue to a coordinate political department;” and (2) “a lack of judicially discoverable and manageable standards for resolving it.”3 ¶ The spectrum of nonjusticiable political questions in a sense spans the poles formed by these two principles. At one pole, the Constitution’s specific textual commitments shield issues expressly reserved to the political branches from judicial interference. At the other pole lie matters not necessarily reserved in so many words to one of the political branches but nonetheless institutionally incapable of coherent and principled resolution by courts acting in a truly judicial capacity; such matters are protected from judicial meddling by the requirement that “judicial action must be governed by standard, by rule” and by the correlative axiom that “law pronounced by the courts must be principled, rational, and based upon reasoned distinctions.”4¶ At a deeper level, however, the two poles collapse into one. The reason emerges if one considers issues that courts are asked to address involving novel problems the Constitution’s framers, farsighted though they were, could not have anticipated with sufficient specificity to entrust their resolution to Congress or to the Executive in haec verba. A perfect exemplar of such problems is the nest of puzzles posed by humaninduced climate change. When matters of that character are taken to court for resolution by judges, what marks them as “political” for purposes of the “political question doctrine” is not some problem-specific language but, rather, the demonstrable intractability of those matters to principled resolution through lawsuits. And one way to understand that intractability is to view it as itself marking the Constitution’s textual, albeit broadly couched, commitment of the questions presented to the processes we denominate “legislative” or “executive”—that is, to the pluralistic processes of legislation and treaty-making rather than to the principle-bound process of judicially resolving what Article III denominates “cases” and “controversies.” In other words, the judicial unmanageability of an issue serves as powerful evidence that the Constitution’s text reserves that issue, even if broadly and implicitly, to the political branches.5¶ It has become commonplace that confusion and controversy have long distinguished the doctrine that determines, as a basic matter of the Constitution’s separation of powers, which questions are “political” in the specific sense of falling outside the constitutional competence of courts and which are properly justiciable despite the “political” issues they may touch. But that the principles in play have yet to be reduced to any generally accepted and readily applied formula cannot mean that courts are simply free to toss the separation of powers to the winds and plunge ahead in blissful disregard of the profoundly important principles that the political question doctrine embodies. Unfortunately, that appears to be just what some courts have done in the two temperature-related cases—one involving hot fuels, the other a hot earth— that inspired this publication. In the first, a court allowed a claim about measuring fuels to proceed despite a constitutional provision specifically reserving the issue to Congress. In the second—a case in which the specific issue could not have been anticipated, much less expressly reserved, but in which the only imaginable solutions clearly lie beyond judicial competence—a court, rather than dismissing the case as it ought to have done, instead summarily dismissed the intractable obstacles to judicial management presented by climate change merely because it was familiar with the underlying cause of action. As this pair of bookend cases demonstrates, the political question doctrine is feeling heat from both directions.

#### That crushes global coordination necessary to solve climate change.

Tribe, the Carl M. Loeb University Professor, Harvard Law School, ‘10

[Laurence H., Joshua D. Branson, J.D., Harvard Law School and NDT Champion, Northwestern University; and Tristan L. Duncan, Partner, Shook, Hardy & Bacon L.L.P., January 2010, “TOOHOTFORCOURTSTO HANDLE: FUEL TEMPERATURES, GLOBAL WARMING, AND THE POLITICAL QUESTION DOCTRINE,” <http://www.wlf.org/Upload/legalstudies/workingpaper/012910Tribe_WP.pdf>]

But that being said, if the Second Circuit was implying that such claims are justiciable in part because they are relatively costless, it was wrong again. In the wake of the recent Copenhagen climate negotiations, America is at a crossroads regarding its energy policy. At Copenhagen, the world—for the first time including both the United States and China—took a tremulous first step towards a comprehensive and truly global solution to climate change.44 By securing a modicum of international consensus—albeit not yet with binding commitments—President Obama laid the foundation for what could eventually be a groundbreaking congressional overhaul of American energy policy, an effort that will undoubtedly be shaped by considerations as obviously political as our energy independence from hostile and unreliable foreign regimes and that will both influence and be influenced by the delicate state of international climate negotiations.45¶ Against this backdrop, courts would be wise to heed the conclusion of one report that what “makes climate change such a difficult policy problem is that decisions made today can have significant, uncertain, and difficult to reverse consequences extending many years into the future."46 This observation is even more salient given that America—and the world—stand at the precipice of major systemic climate reform, if not in the coming year then in the coming decade. It would be disastrous for climate policy if, as at least one commentator has predicted,47 courts were to “beat Congress to the punch” and begin to concoct common law “solutions” to climate change problems before the emergence of a legislative resolution. Not only does judicial action in this field require costly and irreversible technological change on the part of defendants, but the prior existence of an ad hoc mishmash of common law regimes will frustrate legislators’ attempts to design coherent and systematic marketbased solutions.48 Indeed, both emissions trading regimes and carbon taxes seek to harness the fungibility of GHG emissions by creating incentives for reductions to take place where they are most efficient. But if courts were to require reductions of randomly chosen defendants—with no regard for whether they are efficient reducers— they would inhibit the effective operation of legislatively-created, market-based regimes by prematurely and artificially constricting the size of the market. And as one analyst succinctly put it before Congress, “[a]n insufficient number of participants will doom an emissions trading market.”49¶ There is no doubt that the “Copenhagen Accord only begins the battle” against climate change, as diplomats, bureaucrats, and legislators all now begin the lengthy struggle to turn that Accord’s audacious vision into concrete reality.50 But whatever one’s position in the debate between emissions trading and carbon taxes, or even in the debate over the extent or indeed the reality of anthropogenic climate change, one thing is clear: legislators, armed with the best economic and scientific analysis, and with the capability of binding, or at least strongly incentivizing, all involved parties, are the only ones constitutionally entitled to fight that battle. ¶ CONCLUSION ¶ Some prognosticators opine that the political question doctrine has fallen into disrepute and that it no longer constitutes a viable basis upon which to combat unconstitutional judicial overreaching.51 No doubt the standing doctrine could theoretically suffice to prevent some of the most audacious judicial sallies into the political thicket, as it might in the climate change case, where plaintiffs assert only undifferentiated and generalized causal chains from their chosen defendants to their alleged injuries. But when courts lose sight of the important limitations that the political question doctrine independently imposes upon judicial power–even where standing problems are at low ebb, as with the Motor Fuel case–then constitutional governance, and in turn the protection of individual rights and preservation of legal boundaries, suffer. The specter of two leading circuit courts manifestly losing their way in the equally real thicket of political question doctrine underscores the urgency, perhaps through the intervention of the Supreme Court, of restoring the checks and balances of our constitutional system by reinforcing rather than eroding the doctrine’s bulwark against judicial meddling in disputes either expressly entrusted by the Constitution to the political branches or so plainly immune to coherent judicial management as to be implicitly entrusted to political processes. It is not only the climate of the globe that carries profound implications for our future; it is also the climate of the times and its implications for how we govern ourselves.

#### Warming is real, anthropogenic and causes extinction

Flournoy 12 -- Citing Feng Hsu, PhD NASA Scientist @ the Goddard Space Flight Center. Don Flournoy is a PhD and MA from the University of Texas, Former Dean of the University College @ Ohio University, Former Associate Dean @ State University of New York and Case Institute of Technology, Project Manager for University/Industry Experiments for the NASA ACTS Satellite, Currently Professor of Telecommunications @ Scripps College of Communications @ Ohio University (Don, "Solar Power Satellites," January, Springer Briefs in Space Development, Book, p. 10-11

In the Online Journal of Space Communication , Dr. Feng Hsu, a  NASA scientist at Goddard Space Flight Center, a research center in the forefront of science of space and Earth, writes, “The evidence of global warming is alarming,” noting the potential for a catastrophic planetary climate change is real and troubling (Hsu 2010 ) . Hsu and his NASA colleagues were engaged in monitoring and analyzing climate changes on a global scale, through which they received first-hand scientific information and data relating to global warming issues, including the dynamics of polar ice cap melting. After discussing this research with colleagues who were world experts on the subject, he wrote: I now have no doubt global temperatures are rising, and that global warming is a serious problem confronting all of humanity. No matter whether these trends are due to human interference or to the cosmic cycling of our solar system, there are two basic facts that are crystal clear: (a) there is overwhelming scientific evidence showing positive correlations between the level of CO2 concentrations in Earth’s atmosphere with respect to the historical fluctuations of global temperature changes; and (b) the overwhelming majority of the world’s scientific community is in agreement about the risks of a potential catastrophic global climate change. That is, if we humans continue to ignore this problem and do nothing, if we continue dumping huge quantities of greenhouse gases into Earth’s biosphere, humanity will be at dire risk (Hsu 2010 ) . As a technology risk assessment expert, Hsu says he can show with some confidence that the planet will face more risk doing nothing to curb its fossil-based energy addictions than it will in making a fundamental shift in its energy supply. “This,” he writes, “is because the risks of a catastrophic anthropogenic climate change can be potentially the extinction of human species, a risk that is simply too high for us to take any chances” (Hsu 2010 )

### 5

#### CP Text: The executive branch should grant parole status to Uighurs and stop using torture.

#### Granting parole status solves Kiyemba detainees, preserves flex, and is proven historically to solve

Hernandez-Lopez 12 – Professor of Law @ Chapman

(Kiyemba, Guantánamo, and Immigration Law: An Extraterritorial Constitution in a Plenary Power World, UC IRVINE LAW, 193.2 - TCA)

Under the executive’s authority, parole remains a viable legal option to release the five Uighurs from the base. With parole, the executive permits an alien to enter the United States without any particular visa or refugee status.210 The court in Kiyemba I discounted this option, claiming it requires that an alien must be applying for admission and that an alien refugee cannot qualify unless it is for “compelling reasons in the public interest.”211 This is troubling given parole’s flexibility and historic use. It has been used by the United States on various occasions when aliens did not have a designated legal right to enter the United States, including Hungarian refugees after 1956, Cuban and Southeast Asian refugees before the Refugee Act of 1980, Soviet Union nationals after 1988, and Cuban refugees in 1994.212 Presidents have used the power of parole to permit the entry of foreigners when visa categories did not neatly match up or were used up, at times allowing entry for large groups of foreigners.213 The court though overlooks how parole can easily remedy the problems of indefinite detention, detainees without any specific right to enter the United States, unclear extraterritorial reach of habeas remedies, and an ineffective habeas release order. Statutory law and migration practices, benefiting from a long history and case precedent, suggest that the Uighurs can be paroled in the United States. The problem is that the executive does not want to do so, given domestic political resistance and foreign relations concerns. If the appropriate departments of the executive branch worked to allow the Uighurs to enter the United States, they could easily be paroled without acting outside the authority of the Department of Homeland Security or State. ¶ Developed by the administrative ingenuity of immigration officials early last ¶ century, parole is a remedy allowing a noncitizen to travel away from the border and immigration detention.214 It is currently provided for in INA section ¶ 212(d)(5),215 with its regulations in 8 C.F.R. § 212.5.216 The Uighurs arguably ¶ qualify for either of the two statutory justifications for parole, which are for “urgent humanitarian reasons” or “significant public benefit.”217 Their detention for nine years on a U.S. base, capture in and transport from Pakistan, and inability to return home or to third countries may meet the humanitarian and public benefit justifications. The regulations provide various examples of these ¶ justifications, involving juvenile, family, pregnancy, medical, and court appearance ¶ reasons.218 With parole for “urgent humanitarian reasons,” the United States could ¶ end their indefinite detention, which surely deprives them of important liberties. ¶ While their parole entry into the United States would result in the “significant ¶ public benefit” of ending this detention, it raises foreign relations and ¶ constitutional habeas problems. The most obvious way to craft a parole remedy would be to determine that their continued detention “is not in the public interest,” or that their entry into the United States fulfills a humanitarian need. ¶ This could be determined by officials authorized to grant parole.219 These are mostly Assistant Secretary and Director level officials in the Department of Homeland Security, also including district directors, special agents, and field directors.220 The regulations state that any parole justification is determined on a ¶ “case-by-case basis,”221 suggesting legal precedent or parole categories would not ¶ be created by such a remedy

### Solvency

#### Restrictions cause Obama to claim detention power under article 2 – Broadens detention

McAuliff 13 (Michael, Covers Congress and politics for The Huffington Post, “AUMF Repeal Bill Would End Extraordinary War Powers Granted After 9/11”, 6/10/13, <http://www.huffingtonpost.com/2013/06/10/aumf-repeal-bill-war-powers_n_3416689.html>)

But without the AUMF in force, Congress and the administration would have to decide how to deal with prisoners of war in the absence of a specific war. While dozens of captives at Guantanamo are cleared to be released, many are deemed threats to the United States who cannot be tried or let go. "That is the most difficult kernel to pop," said Schiff. "There is still a remaining group of people for whom the evidence is either highly classified or highly problematic because it was a product of torture. And that problem remains to be solved." Simply freeing those Guantanamo detainees is not an option, he said. "There will be a need for continued detention, even after the expiration of the AUMF," Schiff said, citing a World War II precedent for handling prisoners of war. "I don't know that the authority to detain enemy combatants would end with AUMF. But I do think that Guantanamo ought to come to an end, ideally to match up with the expiration of the AUMF in about 18 months," he said. Schiff's effort comes amid the recent revelations of the breadth of the National Security Agency's ability to spy on Americans -- an authority that stems from a separate law also inspired by the 2001 terror attacks, the PATRIOT Act. It also comes as observers on both the left and right have expressed greater suspicion of the executive branch's use of power in targeting reporters, whistleblowers and conservative groups. Schiff, a member of the House Intelligence Committee, said the broader debate provides "context" for his measure, but evaluating the AUMF and the type of force Congress allows the president to use in the war on terror is a separate, if equally difficult, matter. "There's probably a more substantial consensus that the existing AUMF is outdated and probably should be replaced," he said. "There's a lot less consensus about what should come after." Ending the AUMF, he said, would either force Congress to grapple with that question -- and confront the defacto policy of perpetual war -- or allow the president to grow even more powerful. "If we authorize a new and more limited AUMF, we are nonetheless continuing a war footing," Schiff said. "On the other hand, if we don't and the president takes these actions under his Article II power [of the Constitution], then we're broadening the power of the presidency to act unilaterally."

#### The president won’t comply with the plan.

Druck 2012 (Judah A. Druck, B.A., Brandeis University, 2010; J.D. Candidate, Cornell Law School, 2013, “DRONING ON: THE WAR POWERS RESOLUTION AND THE NUMBING EFFECT OF TECHNOLOGY-DRIVEN WARFARE,” Cornell Law Review, Vol. 98:209, http://www.lawschool.cornell.edu/research/cornell-law-review/upload/Druck-final.pdf)

By now, the general pattern concerning presidential treatment of¶ the WPR should be clear: when faced with a situation in which the¶ WPR should, by its own terms, come into play, presidents circumvent¶ its application by proffering questionable legal analyses. Yet, as was¶ frequently the case following the aforementioned presidential actions,¶ those looking to the courts for support were disappointed to learn¶ that the judiciary would be of little help. Indeed, congressional and¶ private litigants have similarly been unsuccessful in their efforts to¶ check potentially illegal presidential action.52¶ The suits arising out of possible WPR violations are well-documented53 and therefore only require a brief review. Generally, when¶ faced with a question concerning the legality of presidential military¶ action, courts have punted the issue using a number of procedural¶ tools to avoid ruling on the merits. For example, when twenty-nine¶ representatives filed suit after President Reagan’s possible WPR violation in El Salvador, the U.S. District Court for the District of Columbia¶ dismissed the suit on political question grounds.54 Similar suits were¶ dismissed for issues involving standing,55 mootness,56 ripeness,57 or¶ nonjusticiability because Congress could better handle fact-finding.58¶ Despite the varying grounds for dismissing WPR suits, a general theme¶ has emerged: absent action taken by Congress itself, the judiciary cannot be counted on to step in to check the President.¶ To be sure, the judiciary’s unwillingness to review cases arising¶ from WPR disputes arguably carries some merit. Two examples illus- trate this point. First, although a serviceperson ordered into combat¶ might have standing to sue, congressional standing is less clear.59 Indeed, debates rage throughout war powers literature concerning¶ whether congressional suits should even be heard on their merits.60¶ And though some courts have held that a member of Congress can¶ have standing when a President acts unilaterally, holding that such¶ unauthorized actions amount to “disenfranchisement,”61 subsequent¶ decisions and commentators have thrown the entire realm of legislative standing into doubt.62 Though the merits of this debate are beyond the scope of this Note, it is sufficient to emphasize that a¶ member of Congress arguably suffers an injury when a President violates the WPR because the presidential action prevents the congressperson from being able to vote (namely, on whether to authorize¶ hostilities),63 thereby amounting to disenfranchisement by¶ “preclu[ding] . . . a specific vote . . . by a presidential violation of¶ law . . . .”64 As such, under the right circumstances, perhaps the standing doctrine should not be as problematic as history seems to indicate¶ when a congressperson attempting to have a say on military action¶ brings a WPR suit.¶ Secondly, and perhaps more importantly, it is arguably unclear¶ what, if any, remedy is available to potential litigants. Unlike a private¶ lawsuit, where a court can impose a simple fine or jail sentence, suits¶ against the executive branch carry a myriad of practical issues. For¶ example, if the remedy is an injunction, issues concerning enforcement arise: Who enforces it and how?65 Or, if a court makes a declaratory judgment stating that the President has acted illegally, it might¶ invite open defiance, thereby creating unprecedented strife among¶ branches. Yet, a number of possible remedies are indeed available.¶ For one, courts could simply start the WPR clock, requiring a Presi- dent to either seek congressional approval or cease all actions within¶ the time remaining (depending on whether the court starts the clock¶ from the beginning or applies it retroactively).66 In doing so, a court¶ would trigger the WPR in the same way that Congress would have had¶ it acted alone. On a similar note, a court could declare the relevant¶ military conflict illegal under the WPR, thereby inviting Congress to¶ begin impeachment proceedings.67 Although both cases require¶ some level of congressional involvement, a court could at least begin¶ the process of providing a suitable remedy. Thus, the more questionable issues of standing and remedies should not (under the right circumstances) prevent a WPR suit from moving forward.

#### That turns the case—takes out modeling

**Marshall 08** – Professor of Law @ University of North Carolina [ William P. Marshall, “Eleven Reasons Why Presidential Power Inevitably Expands and Why It Matters,” Boston University Law Review, Vol. 88, Issue 2 (April 2008), pp. 505-522

As Justice Jackson recognized in Youngstown, **the power of the Presidency** **has** also **been magnified by the nature of media coverage. This coverage,** **which focuses on the President as the** center of national power,66 **has only** **increased since Jackson's day as the dominance of television has increasingly** identified the image of the nation with the image of the particular President holding office. 67 **The effects of this image are substantial**. Because **the** **President is seen as speaking for the nation,** the Presidency is imbued with a unique credibility. **The President thereby holds an immediate and substantial** **advantage in any political confrontation**. 68 Additionally, unlike the Congress or the Court, **the President is uniquely able** to demand the attention of the media **and**, in that way, **can influence the Nation's political agenda** to an extent that no other individual, or institution, can even approximate. Pg. 516

#### Congress will backlash. It will functionally bar the Court from exercising its authority.

Vladeck, Professor of Law and Associate Dean for Scholarship @ American University, ‘11

[Stephen, “Why Klein (Still) Matters: Congressional Deception and the War on Terrorism,” Journal of National Security Law, Volume 5]

¶ Six weeks later, Congress enacted the USA PATRIOT Act, which included a series of controversial revisions to immigration, surveillance, and other law enforcement authorities.34 But it would be over four years before Congress would again pass a key counterterrorism initiative, enacting the Detainee Treatment Act of 2005 (DTA)35 after—and largely in response to—the Supreme Court’s grant of certiorari in Hamdan v. Rumsfeld.36 In the five years since, Congress had enacted a handful of additional antiterrorism measures, including the Military Commissions Act (MCA) of 2006,37 as amended in 2009,38 the Protect America Act of 2007,39 and the 2008 amendments40 to the Foreign Intelligence Surveillance Act of 1978, known in shorthand as the FAA.41 And yet, although Congress has spoken in these statutes both to the substantive authority for military commissions and to the scope of the government’s wiretapping and other surveillance powers, it has otherwise left some of the central debates in the war on terrorism completely unaddressed.42 Thus, Congress has not revisited the scope of the AUMF since September 18, 2001, even as substantial questions have been raised about whether the conflict has extended beyond that which Congress could reasonably be said to have authorized a decade ago.43 Nor has Congress intervened, despite repeated requests that it do so, to provide substantive, procedural, or evidentiary rules in the habeas litigation arising out of the military detention of noncitizen terrorism suspects at Guantánamo.44¶ As significantly, at the same time as Congress has left some of these key questions unanswered, it has also attempted to keep courts from answering them. Thus, the DTA and the MCA purported to divest the federal courts of jurisdiction over habeas petitions brought by individuals detained at Guantánamo and elsewhere.45 Moreover, the 2006 MCA precluded any lawsuit seeking collaterally to attack the proceedings of military commissions,46 along with “any other action against the United States or its agents relating to any aspect of the detention, transfer, treatment, trial, or conditions of confinement of an alien who is or was detained by the United States and has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.”47 And although the Supreme Court in Boumediene invalidated the habeas-stripping provision as applied to the Guantánamo detainees,48 the same language has been upheld as applied elsewhere,49 and the more general non-habeas jurisdiction-stripping section has been repeatedly enforced by the federal courts in other cases.50¶ Such legislative efforts to forestall judicial resolution of the merits can also be found in the telecom immunity provisions of the FAA,51 which provided that telecom companies could not be held liable for violations of the Telecommunications Act committed in conjunction with certain governmental surveillance programs.52 Thus, in addition to changing the underlying substantive law going forward, the FAA pretermitted a series of then-pending lawsuits against the telecom companies.53¶ Analogously, Congress has attempted to assert itself in the debate over civilian trials versus military commissions by barring the use of appropriated funds to try individuals held at Guantánamo in civilian courts,54 and by also barring the President from using such funds to transfer detainees into the United States for continuing detention or to other countries, as well.55 Rather than enact specific policies governing criteria for detention, treatment, and trial, Congress’s modus operandi throughout the past decade has been to effectuate policy indirectly by barring (or attempting to bar) other governmental actors from exercising their core authority, be it judicial review or executive discretion.¶ Wasserman views these developments as a period of what Professor Blasi described as “constitutional pathology,” typified by “an unusually serious challenge to one or more of the central norms of the constitutional regime.” Nevertheless, part of how Wasserman defends the “Klein vulnerable” provisions of the MCA and FAA is by concluding that the specific substantive results they effectuate can be achieved by Congress, and so Klein does not stand in the way. But if Redish and Pudelski’s reading of Klein is correct, then the fact that Congress could reach the same substantive results through other means is not dispositive of the validity of these measures. To the contrary, the question is whether any of these initiatives were impermissibly “deceptive,” such that Congress sought to “vest the federal courts with jurisdiction to adjudicate but simultaneously restrict the power of those courts to perform the adjudicatory function in the manner they deem appropriate.”56 pg. 257-259

### Legitimacy

#### Legitimacy’s inevitable and not key to heg

Brooks and Wohlforth, 9 (Stephen Brooks and William Wohlforth, both are professors of Government at Dartmouth, “Reshaping the world order: how Washington should reform international institutions,” Foreign Affairs, March-April)

FOR ANALYSTS such as Zbigniew Brzezinski and Henry Kissinger, the key reason for skepticism about the United States' ability to spearhead global institutional change is not a lack of power but a lack of legitimacy. Other states may simply refuse to follow a leader whose legitimacy has been squandered under the Bush administration; in this view, the legitimacy to lead is a fixed resource that can be obtained only under special circumstances. The political scientist G.John Ikenberry argues in After Victory that states have been well positioned to reshape the institutional order only after emerging victorious from some titanic struggle, such as the French Revolution, the Napoleonic Wars, or World War I or II. For the neoconservative Robert Kagan, the legitimacy to lead came naturally to the United States during the Cold War, when it was providing the signal service of balancing the Soviet Union. The implication is that today, in the absence of such salient sources of legitimacy, the wellsprings of support for U.S. leadership have dried up for good. But this view is mistaken. For one thing, it overstates how accepted U.S. leadership was during the Cold War: anyone who recalls the Euromissile crisis of the 1980s, for example, will recognize that mass opposition to U.S. policy (in that case, over stationing intermediaterange nuclear missiles in Europe) is not a recent phenomenon. For another, it understates how dynamic and malleable legitimacy is. Legitimacy is based on the belief that an action, an actor, or a political order is proper, acceptable, or natural. An action - such as the Vietnam War or the invasion of Iraq - may come to be seen as illegitimate without sparking an irreversible crisis of legitimacy for the actor or the order. When the actor concerned has disproportionately more material resources than other states, the sources of its legitimacy can be refreshed repeatedly. After all, this is hardly the first time Americans have worried about a crisis of legitimacy. Tides of skepticism concerning U.S. leadership arguably rose as high or higher after the fall of Saigon in 1975 and during Ronald Reagan's first term, when he called the Soviet Union an "evil empire." Even George W. Bush, a globally unpopular U.S. president with deeply controversial policies,oversaw a marked improvement in relations with France, Germany, and India in recent years - even before the elections of Chancellor Angela Merkel in Germany and President Nicolas Sarkozy in France. Of course, the ability of the United States to weather such crises of legitimacy in the past hardly guarantees that it can lead the system in the future. But there are reasons for optimism. Some of the apparent damage to U.S. legitimacy might merely be the result of the Bush administration's approach to diplomacy and international institutions. Key underlying conditions remain particularly favorable for sustaining and even enhancing U.S. legitimacy in the years ahead. The United States continues to have a far larger share of the human and material resources for shaping global perceptions than any other state, as well as the unrivaled wherewithal to produce public goods that reinforce the benefits of its global role. No other state has any claim to leadership commensurate with Washington's. And largely because of the power position the United States still occupies, there is no prospect of a counterbalancing coalition emerging anytime soon to challenge it. In the end, the legitimacy of a system's leader hinges on whether the system's members see the leader as acceptable or at least preferable to realistic alternatives. Legitimacy is not necessarily about normative approval: one may dislike the United States but think its leadership is natural under the circumstances or the best that can be expected. Moreover, history provides abundant evidence that past leading states - such as Spain, France, and the United Kingdom - were able to revise the international institutions of their day without the special circumstances Ikenberry and Kagan cite. Spainfashioned both normative and positive laws to legitimize its conquest of indigenous Americans in the early seventeenth century; France instituted modern concepts of state borders to meet its needs as Europe's preeminent land power in the eighteenth century; and the United Kingdom fostered rules on piracy, neutral shipping, and colonialism to suit its interests as a developing maritime empire in the nineteenth century. As Wilhelm Grewe documents in his magisterial The Epochs of International Law, these states accomplished such feats partly through the unsubtle use of power: bribes, coercion, and the allure oflucrative long-term cooperation. Less obvious but often more important, the bargaining hands of the leading states were often strengthened by the general perception that they could pursue their interests in even less palatable ways - notably, through the naked use of force. Invariably, too, leading states have had the power to set the international agenda, indirectly affecting the development of new rules by defining the problems they were developed to address. Given its naval primacy and global trading interests, the United Kingdom was able to propel the slave trade to the forefront of the world's agenda for several decades after it had itself abolished slavery at home, in 1833. The bottom line is that the UnitedStates today has the necessary legitimacy to shepherd reform of the international system.

#### The aff is not sufficient – 1AC Vaughn says the rule of law—touted by the United States throughout the world since the end of World War II— has been “steadily undermined . . . since we began the so-called ‘War on Terror. No reason plan solves other aspects of the war on terror. Their Welsh ev confirms it when it cites polls that deal with the overall response to the war on terror. Cites things like the war in Iraq.

#### Soft power fails – persuasion is difficult, the US isn’t trusted and hard power trumps.

Kroenig et. al, ‘10

[Matthew (assistant professor of Government at Georgetown University and a Stanton Nuclear Security Fellow at the Council on Foreign Relations), Melissa McAdam (Ph.D. candidate in political science at the University of California), Steven Weber (professor of political science at the University of California), December 2010, “Taking Soft Power Seriously”, Comparative Strategy, 29: 5, 412 – 431

<http://www.matthewkroenig.com/Kroenig_Taking%20Soft%20Power%20Seriously.pdf>, RSR]

Foreign policy actors have many reasons to experiment with soft power, not merely because its use can be less costly than hard power. But, soft power comes with its own quite striking limitations. Our research suggests that soft power strategies will be unlikely to succeed except under fairly restrictive conditions. It may very well be, then, that the U.S. foreign policy elite is at risk of exaggerating the effectiveness of soft power (rather than underutilizing it) as a tool of foreign policy. After all, international communication is fraught with difﬁculties, persuading people to change ﬁrmly held political views is hard, and individual attitudes are often thought to have an insigniﬁcant role in determining international political outcomes. Soft power, therefore, will probably be considered a niche foreign policy option useful for addressing a small fraction of the problems on Washington’s foreign policy agenda. Analysts who suggest that soft power can easily be substituted for hard power or who maintain that soft power should provide an overarching guide to the formulation of U.S. foreign policy are badly mistaken. It is not conducive to good policy to employ the idea of soft power as a way of arguing against the use of military force, for example.

**Indefinite detention is insufficient—loads of alt causes**

Thomas **Hilde 09**, professor at the University of Maryland School of Public Policy, “Beyond Guantanamo. Restoring U.S. Credibility on Human Rights,” Heinrich Böll Foundation, http://www.boell.org/downloads/hbf\_Beyond\_Guantanamo\_Thomas\_Hilde(2).pdf

The first step required by law is a formal investigation of abuse. The **investigations** by the U.S. Department of Justice **must be legitimate and comprehensive or the U.S. will be faced with investigations by the governments of other countries**, including the NATO allies, who are obligated to do so by international law. However, as Mark Drumbl writes of international accountability for atrocities, “**the accountability process remains narrowly oriented to incarceration** following liberal criminal trials. **It is not a broader process that is yet comfortable with meaningful restorative initiatives, indigenous values, qualified amnesties, reintegrative shaming, the needs of victims, reparations, collective or foreign responsibilities, distributive justice, or pointed questions regarding the structural nature of violence in the international system**… **With pronouncement of sentence comes a rush to closure, absolution for the acquiescent, and the evaporation of collective responsibility.**”42 A clearer legal understanding of the contours and details of the torture regime is necessary before making concrete policy decisions holding into the indefinite future. The point that Drumbl underscores, however, is that **to render account involves much more than litigation.**

#### Hegemony is dead and unsustainable – other nations are already ignoring or challenging the US and fiscal troubles trump.

Kanin and Meyer, ‘12

[David (Adjunct Professor of International Studies at John Hopkins) and Steven (Fellow at the Center for Public Justice), “America’s Outmoded Security Strategy," Current History, January]

One implication of all this is that the United ¶ States cannot sustainably afford the financial costs ¶ of engaging the world as it has in the past. The ¶ amounts that the United States has spent on wars ¶ in Iraq and Afghanistan are so enormous, and have ¶ been handled so poorly, that it is difficult to calculate the exact expenditures. In 2010 the economists Joseph Stiglitz and Linda Bilmes estimated ¶ that the cost of American involvement in Iraq ultimately will exceed $3 trillion. Pentagon officials, ¶ according to USA Today, say the war in Afghanistan has been costing about $10 billion a month.¶ Meanwhile, the US sovereign debt is around $14 ¶ trillion and growing. Americans hold the majority ¶ of this debt, but foreign entities hold a significant ¶ amount of it, including more than $1 trillion held ¶ by China. Although the corrosive effects of this debt ¶ are well known theoretically and intellectually, no ¶ serious effort is being made to come to grips with ¶ it. Since the end of the cold war, US administrations ¶ have remained engaged in the hubristic extension ¶ of American power with little consideration for the ¶ devastating financial costs of the effort.¶ A second implication of US decline is that Washington now lacks the power to dictate how others ¶ must act. When scholars argue that there is no alternative to US hegemony, they ignore an essential ¶ fact: that the emergence of economic and military ¶ rivals already has removed—permanently—America’s ability to dictate global economic and security ¶ structures and norms.¶ There will be no more Dumbarton Oaks diktats; no more US-led global security forums. ¶ Dwight Eisenhower in 1956 turned Britain’s behavior on a dime when he threatened the pound ¶ during the Suez crisis, but American presidents ¶ have lost this ability forever. NATO is an anachronism, a hollowed-out relic of the cold war. It survives not on account of legitimate security needs ¶ but rather as what Otto von Bismarck called a ¶ “sentimental alliance.” ¶ The “unipolar moment” celebrated by the commentator Charles Krauthammer was in fact not ¶ much more than that—a moment. Some of America’s subsequent decline can be understood in ¶ relative terms, as other global actors have gained ¶ wealth, power, and influence. China, India, and ¶ Brazil are most frequently cited as the next great ¶ economic (and perhaps political and military) ¶ powers, but the rapid development of other countries, regions, businesses, terrorist groups, and ¶ proliferating nonstate entities adds significantly to ¶ the relative loss of US power and influence.¶ Certainly, the United States retains some global ¶ fascination because of its “otherness,” but this too ¶ is a wasting asset. People know Americans better now. Some nations have suffered American ¶ bombings, others have witnessed US mistakes first ¶ hand, and even many of America’s friends shake ¶ their heads in disbelief at successive administrations’ nonstrategic and oscillating approaches to ¶ frustrating or dangerous trends. China’s Hu Jintao, ¶ Russia’s Vladimir Putin, and assorted radical Islamists—worlds away in culture and outlook—are ¶ not intimidated by US power.¶ The decline of American power and influence ¶ is not merely relative. It is also absolute, in part ¶ because of the debilitating fiscal mess that the ¶ country has created for itself. Gone forever are the ¶ heady days when the United States could afford ¶ to rebuild a damaged continent or fund a military ¶ budget as large as the rest of the world’s combined.¶ Never again, moreover, can America use its geographic position as a shield against hostile military ¶ powers or intrusion from outside economic forces. ¶ The current state of technology and the interdependence of the global economy simply will not ¶ allow this. The presence of more than 11 million ¶ illegal aliens in the United States testifies to America’s vulnerability to forces beyond its control. The combination of relative and absolute decline has led to a growing propensity among others to push back, or simply to ignore US demands ¶ and “leadership.” This reaction is palpable, for ¶ example, in Pakistan’s reluctance to heed US insistence that it do more to fight the Taliban.

#### Smooth decline now - fighting to maintain power causes conflict.

Quinn, 11

[Adam, Lecturer in International Studies at the University of Birmingham, having previously worked at the University of Leicester and the University of Westminster alongside his graduate studies at the LSE. His chief area of interest is the role of national history and ideology in shaping US grand strategy, “The art of declining politely: Obama’s prudent presidency and the waning of American power”, International Affairs 87:4 (2011) 803–824,

http://www.chathamhouse.org/sites/default/files/87\_4quinn.pdf]

As noted in the opening passages of this article, the narratives of America’s decline and Obama’s restraint are distinct but also crucially connected. Facing this incipient period of decline, America’s leaders may walk one of two paths. Either the nation can come to terms with the reality of the process that is under way and seek to finesse it in the smoothest way possible. Or it can ‘rage against the dying of the light’, refusing to accept the waning of its primacy. President Obama’s approach, defined by restraint and awareness of limits, makes him ideologically and temperamentally well suited to the former course in a way that, to cite one example, his predecessor was not. He is, in short, a good president to inaugurate an era of managed decline. Those who vocally demand that the President act more boldly are not merely criticizing him; in suggesting that he is ‘weak’ and that a ‘tougher’ policy is needed, they implicitly suppose that the resources will be available to support such a course. In doing so they set their faces against the reality of the coming American decline. 97 If the United States can embrace the spirit of managed decline, then this will clear the way for a judicious retrenchment, trimming ambitions in line with the fact that the nation can no longer act on the global stage with the wide latitude once afforded by its superior power. As part of such a project, it can, as those who seek to qualify the decline thesis have suggested, use the significant resources still at its disposal to smooth the edges of its loss of relative power, preserving influence to the maximum extent possible through whatever legacy of norms and institutions is bequeathed by its primacy. The alternative course involves the initiation or escalation of conflictual scenarios for which the United States increasingly lacks the resources to cater: provocation of a military conclusion to the impasse with Iran; deliberate escalation of strategic rivalry with China in East Asia; commitment to continuing the campaign in Afghanistan for another decade; a costly effort to consistently apply principles of military interventionism, regime change and democracy promotion in response to events in North Africa. President Obama does not by any means represent a radical break with the traditions of American foreign policy in the modern era. Examination of his major foreign policy pronouncements reveals that he remains within the mainstream of the American discourse on foreign policy. In his Nobel Peace Prize acceptance speech in December 2009 he made it clear, not for the first time, that he is no pacifist, spelling out his view that ‘the instruments of war do have a role to play in preserving the peace’, and that ‘the United States of America has helped underwrite global security for more than six decades with the blood of our citizens and the strength of our arms’. 98 In his Cairo speech in June the same year, even as he sought distance from his predecessor with the proclamation that ‘no system of government can or should be imposed by one nation on any other’, he also endorsed with only slight qualification the liberal universalist view of civil liberties as transcendent human rights. ‘I … have an unyielding belief that all people yearn for certain things,’ he declared. ‘The ability to speak your mind and have a say in how you are governed; confidence in the rule of law and the equal administration of justice; government that is transparent and doesn’t steal from the people; the freedom to live as you choose. These are not just American ideas.’ 99 His Westminster speech repeated these sentiments. Evidently this is not a president who wishes to break signally with the mainstream, either by advocating a radical shrinking of America’s military strength as a good in itself or by disavowing liberal universalist global visions, as some genuine dissidents from the prevailing foreign policy discourse would wish. 100 No doubt sensibly, given the likely political reaction at home, it is inconceivable that he would explicitly declare his strategy to be one of managed American decline. Nevertheless, this is a president who, within the confines of the mainstream, embraces caution and restraint to the greatest extent that one could hope for without an epochal paradigm shift in the intellectual framework of American foreign policy-making. 101 In contemplating the diminished and diminishing weight of the United States upon the scales of global power, it is important not to conflate the question of what will be with that of what we might prefer. It may well be, as critics of the decline thesis sometimes observe, that the prospect of increased global power for a state such as China should not, on reflection, fill any westerner with glee, whatever reservations one may have held regarding US primacy. It is also important not to be unduly deterministic in projecting the consequences of American decline. It may be a process that unfolds gradually and peacefully, resulting in a new order that functions with peace and stability even in the absence of American primacy. Alternatively, it may result in conflict, if the United States clashes with rising powers as it refuses to relinquish the prerogatives of the hegemon, or continues to be drawn into wars with middle powers or on the periphery in spite of its shrinking capacity to afford them. Which outcome occurs will depend on more than the choices of America alone. But the likelihood that the United States can preserve its prosperity and influence and see its hegemony leave a positive legacy rather than go down thrashing its limbs about destructively will be greatly increased if it has political leaders disposed to minimize conflict and consider American power a scarce resource—in short, leaders who can master the art of declining politely. At present it seems it is fortunate enough to have a president who fits the bill.

#### Hegemonic retrenchment’s key to avoid great power war---maintaining unipolarity’s self-defeating which internal link-turns their offense.

(Conflict is inevitable. It’s only a question of escalation)

Montiero, Assistant Professor of Political Science at Yale University, ‘12

[Nuno, “Unrest Assured: Why Unipolarity is Not Peaceful,” International Security, Winter 2012, Vol. 36, No. 3, p. 9-40]

From the perspective of the overall peacefulness of the international system, then, no U.S. grand strategy is, as in the Goldilocks tale, “just right.”116 In fact, each strategic option available to the unipole produces significant conflict. Whereas offensive and defensive dominance will entangle it in wars against recalcitrant minor powers, disengagement will produce regional wars among minor and major powers. Regardless of U.S. strategy, conflict will abound. Indeed, if my argument is correct, the significant level of conflict the world has experienced over the last two decades will continue for as long as U.S. power remains preponderant.¶ From the narrower perspective of the unipole’s ability to avoid being involved in wars, however, disengagement is the best strategy. A unipolar structure provides no incentives for conflict involving a disengaged unipole. Disengagement would extricate the unipole’s forces from wars against recalcitrant minor powers and decrease systemic pressures for nuclear proliferation. There is, however, a downside. Disengagement would lead to heightened conflict beyond the unipole’s region and increase regional pressures for nuclear proliferation. As regards the unipole’s grand strategy, then, the choice is between a strategy of dominance, which leads to involvement in numerous conflicts, and a strategy of disengagement, which allows conflict between others to fester.¶ In a sense, then, strategies of defensive and offensive dominance are self-defeating. They create incentives for recalcitrant minor powers to bolster their capabilities and present the United States with a tough choice: allowing them to succeed or resorting to war in order to thwart them. This will either drag U.S. forces into numerous conflicts or result in an increasing number of major powers. In any case, U.S. ability to convert power into favorable outcomes peacefully will be constrained.117¶ This last point highlights one of the crucial issues where Wohlforth and I differ—the benefits of the unipole’s power preponderance. Whereas Wohlforth believes that the power preponderance of the United States will lead all states in the system to bandwagon with the unipole, I predict that states engaged in security competition with the unipole’s allies and states for whom the status quo otherwise has lesser value will not accommodate the unipole. To the contrary, these minor powers will become recalcitrant despite U.S. power preponderance, displaying the limited pacifying effects of U.S. power.¶ What, then, is the value of unipolarity for the unipole? What can a unipole do that a great power in bipolarity or multipolarity cannot? My argument hints at the possibility that—at least in the security realm—unipolarity does not give the unipole greater influence over international outcomes.118 If unipolarity provides structural incentives for nuclear proliferation, it may, as Robert Jervis has hinted, “have within it the seeds if not of its own destruction, then at least of its modification.”119 For Jervis, “[t]his raises the question of what would remain of a unipolar system in a proliferated world. The American ability to coerce others would decrease but so would its need to defend friendly powers that would now have their own deterrents. The world would still be unipolar by most measures and considerations, but many countries would be able to protect themselves, perhaps even against the superpower. . . . In any event, the polarity of the system may become less important.”120¶ At the same time, nothing in my argument determines the decline of U.S. power. The level of conflict entailed by the strategies of defensive dominance, offensive dominance, and disengagement may be acceptable to the unipole and have only a marginal effect on its ability to maintain its preeminent position. Whether a unipole will be economically or militarily overstretched is an empirical question that depends on the magnitude of the disparity in power between it and major powers and the magnitude of the conflicts in which it gets involved. Neither of these factors can be addressed a priori, and so a theory of unipolarity must acknowledge the possibility of frequent conflict in a nonetheless durable unipolar system.¶ Finally, my argument points to a “paradox of power preponderance.”121 By putting other states in extreme self-help, a systemic imbalance of power requires the unipole to act in ways that minimize the threat it poses. Only by exercising great restraint can it avoid being involved in wars. If the unipole fails to exercise restraint, other states will develop their capabilities, including nuclear weapons—restraining it all the same.122 Paradoxically, then, more relative power does not necessarily lead to greater influence and a better ability to convert capabilities into favorable outcomes peacefully. In effect, unparalleled relative power requires unequaled self-restraint.

#### Barnett evidence is correlation without causation. Other things like the spread of globalization, presence of nuclear weapons, etc. could also explain the decline.

#### No impact to heg – best data goes neg.

Fettweis, Department of Political Science at Tulane University, ‘11

[Christopher, 9/26/11, Free Riding or Restraint? Examining European Grand Strategy, Comparative Strategy, 30:316–332, EBSCO]

It is perhaps worth noting that there is no evidence to support a direct relationship between the relative level of U.S. activism and international stability. In fact, the limited data we do have suggest the opposite may be true. During the 1990s, the United States cut back on its defense spending fairly substantially. By 1998, the United States was spending $100 billion less on defense in real terms than it had in 1990. 51 To internationalists, defense hawks and believers in hegemonic stability, this irresponsible “peace dividend” endangered both national and global security. “No serious analyst of American military capabilities,” argued Kristol and Kagan, “doubts that the defense budget has been cut much too far to meet America’s responsibilities to itself and to world peace.” 52 On the other hand, if the paciﬁc trends were not based upon U.S. hegemony but a strengthening norm against interstate war, one would not have expected an increase in global instability and violence. The verdict from the past two decades is fairly plain: The world grew more peaceful while the United States cut its forces. No state seemed to believe that its security was endangered by a less-capable United States military, or at least none took any action that would suggest such a belief. No militaries were enhanced to address power vacuums, no security dilemmas drove insecurity or arms races, and no regional balancing occurred once the stabilizing presence of the U.S. military was diminished. The rest of the world acted as if the threat of international war was not a pressing concern, despite the reduction in U.S. capabilities. Most of all, the United States and its allies were no less safe. The incidence and magnitude of global conﬂict declined while the United States cut its military spending under President Clinton, and kept declining as the Bush ramped the spending back up. No complex statistical analysis should be necessary to reach the conclusion that the two are unrelated. Military spending ﬁgures by themselves are insufﬁcient to disprove a connection between overall U.S. actions and international stability. Once again, one could presumably argue that spending is not the only or even the best indication of hegemony, and that it is instead U.S. foreign political and security commitments that maintain stability. Since neither was signiﬁcantly altered during this period, instability should not have been expected. Alternately, advocates of hegemonic stability could believe that relative rather than absolute spending is decisive in bringing peace. Although the United States cut back on its spending during the 1990s, its relative advantage never wavered. However, even if it is true that either U.S. commitments or relative spending account for global paciﬁc trends, then at the very least stability can evidently be maintained at drastically lower levels of both. In other words, even if one can be allowed to argue in the alternative for a moment and suppose that there is in fact a level of engagement below which the United States cannot drop without increasing international disorder, a rational grand strategist would still recommend cutting back on engagement and spending until that level is determined. Grand strategic decisions are never ﬁnal; continual adjustments can and must be made as time goes on. Basic logic suggests that the United States ought to spend the minimum amount of its blood and treasure while seeking the maximum return on its investment. And if the current era of stability is as stable as many believe it to be, no increase in conﬂict would ever occur irrespective of U.S. spending, which would save untold trillions for an increasingly debt-ridden nation. It is also perhaps worth noting that if opposite trends had unfolded, if other states had reacted to news of cuts in U.S. defense spending with more aggressive or insecure behavior, then internationalists would surely argue that their expectations had been fulﬁlled. If increases in conﬂict would have been interpreted as proof of the wisdom of internationalist strategies, then logical consistency demands that the lack thereof should at least pose a problem. As it stands, the only evidence we have regarding the likely systemic reaction to a more restrained United States suggests that the current peaceful trends are unrelated to U.S. military spending. Evidently the rest of the world can operate quite effectively without the presence of a global policeman. Those who think otherwise base their view on faith alone.

### Democracy

#### Friendly democracies can decipher between good and bad US norms, and authoritarian nations don’t care either way

John O. McGinnis 7, Professor of Law, Northwestern University School of Law. \*\* Ilya Somin \*\* Assistant Professor of Law, George Mason University School of Law. GLOBAL CONSTITUTIONALISM: GLOBAL INFLUENCE ON U.S. JURISPRUDENCE: Should International Law Be Part of Our Law? 59 Stan. L. Rev. 1175

The second benefit to foreigners of distinctive U.S. legal norms is information. The costs and benefits of our norms will be visible for all to see. n268 Particularly in an era of increased empirical social science testing, over time we will be able to analyze and identify the effects of differences in norms between the United States and other nations. n269 Such diversity benefits foreigners as foreign nations can decide to adopt our good norms and avoid our bad ones.¶ The only noteworthy counterargument is the claim that U.S. norms will have more harmful effects than those of raw international law, yet other nations will still copy them. But both parts of this proposition seem doubtful. First, U.S. law emerges from a democratic process that creates a likelihood that it will cause less harm than rules that emerge from the nondemocratic processes [\*1235] that create international law. Second, other democratic nations can use their own political processes to screen out American norms that might cause harm if copied.¶ Of course, many nations remain authoritarian. n270 But our norms are not likely to have much influence on their choice of norms. Authoritarian states are likely to select norms that serve the interests of those in power, regardless of the norms we adopt. It is true that sometimes they might cite our norms as cover for their decisions. But the crucial word here is "cover." They would have adopted the same rules, anyway. The cover may bamboozle some and thus be counted a cost. But this would seem marginal compared to the harm of allowing raw international law to trump domestic law.

#### No internal link between Kiyemba and Supreme Court influence. Supreme court abdication on other issues like the CBW treaties, the voting rights act, etc. are alt causes.

#### Plan can’t solve leadership —too many alt causes and institutional barriers

Nossel 2008(Suzanne, Guardian Staff, November 19, "Closing Gitmo is just the beginning", http://www.guardian.co.uk/commentisfree/cifamerica/2008/nov/19/obama-guantanamo-human-rights)

While abuses carried out as part of the fight against terrorism cost the US its position of leadership on human rights issues globally, regaining that status will require more than just bringing counter-terrorism tactics in line with international norms. While the Bush administration hailed democracy and freedom as centrepieces of its foreign policy, in practice it tended to sideline human rights considerations within its important bilateral relationships.¶ To cite just a few examples, disregard for human rights has contributed to a culture of lawlessness in Pakistan's tribal areas. Despite $10-12bn in mostly military US aid to Pakistan since 2001, civilians affected by the current conflict are left defenceless in squalid, disease-infested camps – some of which the UN refugee agency cannot reach – where their frustration with the US-led war effort only grows. As part of its effort to stabilise this strategically vital region, the US must invest in building institutions that support the rule of law and ensuring that approaches to security uphold human rights. In neighbouring Afghanistan, the US needs to take immediate steps to reduce civilian casualties in military operations, and to press for an end to corruption, which is both fuelling the conflict and undermining popular faith in democratic governance.¶ In contemplating political agreements to end the conflict the US must avoid strengthening the hands of the region's most brutal warlords. While human rights will not be the sole consideration governing multi-faceted relationships with foreign governments, the new administration needs to affirm their place on the agenda and work with like-minded voices to press for progress.¶ The US also has work to do in terms of strengthening the international human rights infrastructure. The Bush administration distanced itself from the international human rights community by failing to ratify key treaties and absenting itself from new institutions of human rights enforcement. The next administration must demonstrate in tangible ways that the US is prepared to cooperate with others in building and strengthening mechanisms to protect and advance human rights in the 21st century. Its absence from key forums and debates has created space for spoilers who seek to vitiate existing human rights norms and prevent new ones from taking hold.¶ In 2005 the UN adopted a new norm, the "responsibility to protect", affirming the duty of states to protect their own populations, and the obligation of the international community to step in when they won't do so. But the new norm has flunked its first test in [Darfur](http://www.guardian.co.uk/world/2008/nov/12/sudan), where the government has suborned rampant human rights abuses and the international community has failed to intervene effectively. Working with allies to build broad-based support for rigorous human rights enforcement is a long-term project that needs to start right away. Necessary steps also include re-engaging with the international criminal court, a body that has begun to prove itself as a vital instrument of international accountability for war crimes. ¶ Building US credibility on human rights will be a long-term project requiring a steady hand against the buffeting forces of foreign policy reality. Done right, the wider human rights agenda could make closing Guantánamo look like the easy part.

#### Democratization doesn’t solve war – history proves.

Kupchan, Professor of International Affairs at Georgetown University, ‘11

[Charles A, April, “Enmity into Amity: How Peace Breaks Out,”

<http://library.fes.de/pdf-files/iez/07977.pdf>]

Second, contrary to conventional wisdom, democracy is not a necessary condition for stable peace. Although liberal democracies appear to be better equipped to fashion zones of peace due to their readiness to institu­tionalize strategic restraint and their more open societies – an attribute that advantages societal integration and narrative/identity change – regime type is a poor predic­tor of the potential for enemies to become friends. The Concert of Europe was divided between two liberalizing countries (Britain and France) and three absolute monar­chies (Russia, Prussia, and Austria), but nevertheless pre­served peace in Europe for almost four decades. Gen-eral Suharto was a repressive leader at home, but after taking power in 1966 he nonetheless guided Indonesia toward peace with Malaysia and played a leading role in the founding of ASEAN. Brazil and Argentina embarked down the path to peace in 1979 – when both countries were ruled by military juntas. These findings indicate that non-democracies can be reliable partners in peace and make clear that the United States, the EU, and de­mocracies around the world should choose enemies and friends on the basis of other states’ foreign policy behav-ior, not the nature of their domestic institutions.