## 1NC

## Offcase

### Warfighting 1NC

#### Obama’s Syria maneuver has maximized presidential war powers because it’s on his terms

Posner 9/3, Law Prof at University of Chicago

(Eric, Obama Is Only Making His War Powers Mightier, www.slate.com/articles/news\_and\_politics/view\_from\_chicago/2013/09/obama\_going\_to\_congress\_on\_syria\_he\_s\_actually\_strengthening\_the\_war\_powers.html)

President Obama’s surprise announcement that he will ask Congress for approval of a military attack on Syria is being hailed as a vindication of the rule of law and a revival of the central role of Congress in war-making, even by critics. But all of this is wrong. Far from breaking new legal ground, President Obama has reaffirmed the primacy of the executive in matters of war and peace. The war powers of the presidency remain as mighty as ever. It would have been different if the president had announced that only Congress can authorize the use of military force, as dictated by the Constitution, which gives Congress alone the power to declare war. That would have been worthy of notice, a reversal of the ascendance of executive power over Congress. But the president said no such thing. He said: “I believe I have the authority to carry out this military action without specific congressional authorization.” Secretary of State John Kerry confirmed that the president “has the right to do that”—launch a military strike—“no matter what Congress does.” Thus, the president believes that the law gives him the option to seek a congressional yes or to act on his own. He does not believe that he is bound to do the first. He has merely stated the law as countless other presidents and their lawyers have described it before him. The president’s announcement should be understood as a political move, not a legal one. His motive is both self-serving and easy to understand, and it has been all but acknowledged by the administration. If Congress now approves the war, it must share blame with the president if what happens next in Syria goes badly. If Congress rejects the war, it must share blame with the president if Bashar al-Assad gases more Syrian children. The big problem for Obama arises if Congress says no and he decides he must go ahead anyway, and then the war goes badly. He won’t have broken the law as he understands it, but he will look bad. He would be the first president ever to ask Congress for the power to make war and then to go to war after Congress said no. (In the past, presidents who expected dissent did not ask Congress for permission.) People who celebrate the president for humbly begging Congress for approval also apparently don’t realize that his understanding of the law—that it gives him the option to go to Congress—maximizes executive power vis-à-vis Congress. If the president were required to act alone, without Congress, then he would have to take the blame for failing to use force when he should and using force when he shouldn’t. If he were required to obtain congressional authorization, then Congress would be able to block him. But if he can have it either way, he can force Congress to share responsibility when he wants to and avoid it when he knows that it will stand in his way.

#### **Statutory restriction of Presidential War Powers makes warfighting impossible**

Yoo 12 – prof of law @ UC Berkeley

(John, War Powers Belong to the President, ABA Journal February 2012 Issue, http://www.abajournal.com/magazine/article/war\_powers\_belong\_to\_the\_president) <we do not endorse the ableist language used in this card, but have left it in to preserve the author’s intent. we apologize for the author’s inappropriate use of the word “paralyze”>

The framers realized the obvious. Foreign affairs are unpredictable and involve the highest of stakes, making them unsuitable to regulation by pre-existing legislation. Instead, they can demand swift, decisive action—sometimes under pressured or even emergency circumstances—that is best carried out by a branch of government that does not suffer from multiple vetoes or is delayed by disagreements. Congress is too large and unwieldy to take the swift and decisive action required in wartime. Our framers replaced the Articles of Confederation, which had failed in the management of foreign relations because they had no single executive, with the Constitution’s single president for precisely this reason. Even when it has access to the same intelligence as the executive branch, Congress’ loose, decentralized structure would paralyze American policy while foreign threats grow. Congress has no political incentive to mount and see through its own wartime policy. Members of Congress, who are interested in keeping their seats at the next election, do not want to take stands on controversial issues where the future is uncertain. They will avoid like the plague any vote that will anger large segments of the electorate. They prefer that the president take the political risks and be held accountable for failure. Congress’ track record when it has opposed presidential leadership has not been a happy one. Perhaps the most telling example was the Senate’s rejection of the Treaty of Versailles at the end of World War I. Congress’ isolationist urge kept the United States out of Europe at a time when democracies fell and fascism grew in their place. Even as Europe and Asia plunged into war, Congress passed the Neutrality Acts designed to keep the United States out of the conflict. President Franklin Roosevelt violated those laws to help the Allies and draw the nation into war against the Axis. While pro-Congress critics worry about a president’s foreign adventurism, the real threat to our national security may come from inaction and isolationism. Many point to the Vietnam War as an example of the faults of the “imperial presidency.” Vietnam, however, could not have continued without the consistent support of Congress in raising a large military and paying for hostilities. And Vietnam ushered in a period of congressional dominance that witnessed American setbacks in the Cold War and the passage of the ineffectual War Powers Resolution. Congress passed the resolution in 1973 over President Richard Nixon’s veto, and no president, Republican or Democrat, George W. Bush or Obama, has ever accepted the constitutionality of its 60-day limit on the use of troops abroad. No federal court has ever upheld the resolution. Even Congress has never enforced it. Despite the record of practice and the Constitution’s institutional design, critics nevertheless argue for a radical remaking of the American way of war. They typically base their claim on Article I, Section 8, of the Constitution, which gives Congress the power to “declare war.” But these observers read the 18th century constitutional text through a modern lens by interpreting “declare war” to mean “start war.” When the Constitution was written, however, a declaration of war served diplomatic notice about a change in legal relations between nations. It had little to do with launching hostilities. In the century before the Constitution, for example, Great Britain—where the framers got the idea of the declare-war power—fought numerous major conflicts but declared war only once beforehand. Our Constitution sets out specific procedures for passing laws, appointing officers and making treaties. There are none for waging war because the framers expected the president and Congress to struggle over war through the national political process. In fact, other parts of the Constitution, properly read, support this reading. Article I, Section 10, for example, declares that the states shall not “engage” in war “without the consent of Congress” unless “actually invaded, or in such imminent danger as will not admit of delay.” This provision creates exactly the limits desired by anti-war critics, complete with an exception for self-defense. If the framers had wanted to require congressional permission before the president could wage war, they simply could have repeated this provision and applied it to the executive. Presidents, of course, do not have complete freedom to take the nation to war. Congress has ample powers to control presidential policy, if it wants to. Only Congress can raise the military, which gives it the power to block, delay or modify war plans. Before 1945, for example, the United States had such a small peacetime military that presidents who started a war would have to go hat in hand to Congress to build an army to fight it. Since World War II, it has been Congress that has authorized and funded our large standing military, one primarily designed to conduct offensive, not defensive, operations (as we learned all too tragically on 9/11) and to swiftly project power worldwide. If Congress wanted to discourage presidential initiative in war, it could build a smaller, less offensive-minded military. Congress’ check on the presidency lies not just in the long-term raising of the military. It can also block any immediate armed conflict through the power of the purse. If Congress feels it has been misled in authorizing war, or it disagrees with the president’s decisions, all it need do is cut off funds, either all at once or gradually. It can reduce the size of the military, shrink or eliminate units, or freeze supplies. Using the power of the purse does not even require affirmative congressional action. Congress can just sit on its hands and refuse to pass a law funding the latest presidential adventure, and the war will end quickly. Even the Kosovo war, which lasted little more than two months and involved no ground troops, required special funding legislation. The framers expected Congress’ power of the purse to serve as the primary check on presidential war. During the 1788 Virginia ratifying convention, Patrick Henry attacked the Constitution for failing to limit executive militarism. James Madison responded: “The sword is in the hands of the British king; the purse is in the hands of the Parliament. It is so in America, as far as any analogy can exist.” Congress ended America’s involvement in Vietnam by cutting off all funds for the war. Our Constitution has succeeded because it favors swift presidential action in war, later checked by Congress’ funding power. If a president continues to wage war without congressional authorization, as in Libya, Kosovo or Korea, it is only because Congress has chosen not to exercise its easy check. We should not confuse a desire to escape political responsibility for a defect in the Constitution. A radical change in the system for making war might appease critics of presidential power. But it could also seriously threaten American national security. In order to forestall another 9/11 attack, or to take advantage of a window of opportunity to strike terrorists or rogue nations, the executive branch needs flexibility. It is not hard to think of situations where congressional consent cannot be obtained in time to act. Time for congressional deliberation, which leads only to passivity and isolation and not smarter decisions, will come at the price of speed and secrecy. The Constitution creates a presidency that can respond forcefully to prevent serious threats to our national security. Presidents can take the initiative and Congress can use its funding power to check them. Instead of demanding a legalistic process to begin war, the framers left war to politics. As we confront the new challenges of terrorism, rogue nations and WMD proliferation, now is not the time to introduce sweeping, untested changes in the way we make war.

#### The plan spills over to broader Congressional decisionmaking

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Legacy Chains

Finegold & Skocpol (1995: 222) describe policy legacies: Past and present policies are connected in at least three different ways. First, past policies give rise to analogies that affect how public officials think about contemporary policy issues. Second, past policies suggest lessons that help us to understand the processes by which contemporary policies are formulated and implemented and by which the conse quences of contemporary policies will be determined. Third, past policies impose limi tations that reduce the range of policy choices available as responses to contemporary problems. All three of the ways in which they connect past policy to present policy can be viewed as changes in the institutional context in which policy is made. These legacies are institutionalized in two different ways: first, through changes in formal rules or procedures, and second, in the 'taken for granteds', 'schemas', and accepted wisdom of policy makers and ordinary citizens alike (Sewell, 1992: 1-29). While a policy or event can leave multiple legacies, it often leaves a single major legacy. For example, the War Powers Resolution for mally changed the relationship between the president and the congress with regard to war-making and the deployment of troops. Subsequent military interventions were influenced by this change and have, in turn, left their own legacy (legal scholars might call it precedent) as a link in that chain. Legacy chains can be modified, trans formed, or reinforced as they step through each 'link' in the chain. As another example, US involvement in Vietnam left a legacy in the sphere of press/military relations which affected the intervention in Grenada in 1983 (the press was completely excluded for the first 48 hours of the operation). The press legacy chain begun in Vietnam also affected the Panama invasion of 1989 (a press pool was activated, in country, but excluded from the action), but the legacy had been trans formed slightly by the Grenada invasion (the press pool system itself grew out of complaint regarding press exclusion in Grenada) (Paul & Kim, 2004). Because of the different ways in which policy legacies are institutionalized, some legacies have unintended institutional conse quences. The War Powers Resolution was intended to curtail presidential war-making powers and return some authority to the con gress. In practice, the joint resolution failed to force presidents to include congressional participation in their intervention decision making, but it had the unintended conse quence of forcing them to change the way they planned interventions to comply with the letter of the law (see the extended ex ample presented later in the article).1

#### Executive control of warmaking is key to avoiding nuclear war and terrorism

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A. The Emergence of Non-State Actors

Even as the quantity of nation-states in the world has increased dramatically since the end of World War II, the institution of the nation-state has been in decline over the past few decades. Much of this decline is the direct result of the waning of major interstate war, which primarily resulted from the introduction of nuclear weapons.122 The proliferation of nuclear weapons, and their immense capacity for absolute destruction, has ensured that conventional wars remain limited in scope and duration. Hence, "both the size of the armed forces and the quantity of weapons at their disposal has declined quite sharply" since 1945.123 At the same time, concurrent with the decline of the nation-state in the second half of the twentieth century, non-state actors have increasingly been willing and able to use force to advance their causes. In contrast to nation-states, who adhere to the Clausewitzian distinction between the ends of policy and the means of war to achieve those ends, non-state actors do not necessarily fight as a mere means of advancing any coherent policy. Rather, they see their fight as a life-and-death struggle, wherein the ordinary terminology of war as an instrument of policy breaks down because of this blending of means and ends.124 It is the existential nature of this struggle and the disappearance of the Clausewitzian distinction between war and policy that has given rise to a new generation of warfare. The concept of fourth-generational warfare was first articulated in an influential article in the Marine Corps Gazette in 1989, which has proven highly prescient. In describing what they saw as the modem trend toward a new phase of warfighting, the authors argued that: In broad terms, fourth generation warfare seems likely to be widely dispersed and largely undefined; the distinction between war and peace will be blurred to the vanishing point. It will be nonlinear, possibly to the point of having no definable battlefields or fronts. The distinction between "civilian" and "military" may disappear. Actions will occur concurrently throughout all participants' depth, including their society as a cultural, not just a physical, entity. Major military facilities, such as airfields, fixed communications sites, and large headquarters will become rarities because of their vulnerability; the same may be true of civilian equivalents, such as seats of government, power plants, and industrial sites (including knowledge as well as manufacturing industries). 125 It is precisely this blurring of peace and war and the demise of traditionally definable battlefields that provides the impetus for the formulation of a new. theory of war powers. As evidenced by Part M, supra, the constitutional allocation of war powers, and the Framers' commitment of the war power to two co-equal branches, was not designed to cope with the current international system, one that is characterized by the persistent machinations of international terrorist organizations, the rise of multilateral alliances, the emergence of rogue states, and the potentially wide proliferation of easily deployable weapons of mass destruction, nuclear and otherwise. B. The Framers' World vs. Today's World The Framers crafted the Constitution, and the people ratified it, in a time when everyone understood that the state controlled both the raising of armies and their use. Today, however, the threat of terrorism is bringing an end to the era of the nation-state's legal monopoly on violence, and the kind of war that existed before-based on a clear division between government, armed forces, and the people-is on the decline. 126 As states are caught between their decreasing ability to fight each other due to the existence of nuclear weapons and the increasing threat from non-state actors, it is clear that the Westphalian system of nation-states that informed the Framers' allocation of war powers is no longer the order of the day. 127 As seen in Part III, supra, the rise of the modem nation-state occurred as a result of its military effectiveness and ability to defend its citizens. If nation-states such as the United States are unable to adapt to the changing circumstances of fourth-generational warfare-that is, if they are unable to adequately defend against low-intensity conflict conducted by non-state actors-"then clearly [the modern state] does not have a future in front of it.' 128 The challenge in formulating a new theory of war powers for fourthgenerational warfare that remains legally justifiable lies in the difficulty of adapting to changed circumstances while remaining faithful to the constitutional text and the original meaning. 29 To that end, it is crucial to remember that the Framers crafted the Constitution in the context of the Westphalian system of nation-states. The three centuries following the Peace of Westphalia of 1648 witnessed an international system characterized by wars, which, "through the efforts of governments, assumed a more regular, interconnected character."' 130 That period saw the rise of an independent military class and the stabilization of military institutions. Consequently, "warfare became more regular, better organized, and more attuned to the purpose of war-that is, to its political objective."' 1 3' That era is now over. Today, the stability of the long-existing Westphalian international order has been greatly eroded in recent years with the advent of international terrorist organizations, which care nothing for the traditional norms of the laws of war. This new global environment exposes the limitations inherent in the interpretational methods of originalism and textualism and necessitates the adoption of a new method of constitutional interpretation. While one must always be aware of the text of the Constitution and the original understanding of that text, that very awareness identifies the extent to which fourth-generational warfare epitomizes a phenomenon unforeseen by the Framers, a problem the constitutional resolution of which must rely on the good judgment of the present generation. 13 Now, to adapt the constitutional warmarking scheme to the new international order characterized by fourth-generational warfare, one must understand the threat it is being adapted to confront. C. The Jihadist Threat The erosion of the Westphalian and Clausewitzian model of warfare and the blurring of the distinction between the means of warfare and the ends of policy, which is one characteristic of fourth-generational warfare, apply to al-Qaeda and other adherents of jihadist ideology who view the United States as an enemy. An excellent analysis of jihadist ideology and its implications for the rest of the world are presented by Professor Mary Habeck. 133 Professor Habeck identifies the centrality of the Qur'an, specifically a particular reading of the Qur'an and hadith (traditions about the life of Muhammad), to the jihadist terrorists. 134 The jihadis believe that the scope of the Qur'an is universal, and "that their interpretation of Islam is also intended for the entire world, which must be brought to recognize this fact peacefully if possible and through violence if not."' 135 Along these lines, the jihadis view the United States and her allies as among the greatest enemies of Islam: they believe "that every element of modern Western liberalism is flawed, wrong, and evil" because the basis of liberalism is secularism. 136 The jihadis emphasize the superiority of Islam to all other religions, and they believe that "God does not want differing belief systems to coexist."' 37 For this reason, jihadist groups such as al-Qaeda "recognize that the West will not submit without a fight and believe in fact that the Christians, Jews, and liberals have united against Islam in a war that will end in the complete destruction of the unbelievers.' 138 Thus, the adherents of this jihadist ideology, be it al-Qaeda or other groups, will continue to target the United States until she is destroyed. Their ideology demands it. 139 To effectively combat terrorist groups such as al-Qaeda, it is necessary to understand not only how they think, but also how they operate. Al-Qaeda is a transnational organization capable of simultaneously managing multiple operations all over the world."14 It is both centralized and decentralized: al-Qaeda is centralized in the sense that Osama bin Laden is the unquestioned leader, but it is decentralized in that its operations are carried out locally, by distinct cells."4 AI-Qaeda benefits immensely from this arrangement because it can exercise direct control over high-probability operations, while maintaining a distance from low-probability attacks, only taking the credit for those that succeed. The local terrorist cells benefit by gaining access to al-Qaeda's "worldwide network of assets, people, and expertise."' 42 Post-September 11 events have highlighted al-Qaeda's resilience. Even as the United States and her allies fought back, inflicting heavy casualties on al-Qaeda in Afghanistan and destroying dozens of cells worldwide, "al-Qaeda's networked nature allowed it to absorb the damage and remain a threat." 14 3 This is a far cry from earlier generations of warfare, where the decimation of the enemy's military forces would generally bring an end to the conflict. D. The Need for Rapid Reaction and Expanded Presidential War Power By now it should be clear just how different this conflict against the extremist terrorists is from the type of warfare that occupied the minds of the Framers at the time of the Founding. Rather than maintaining the geographical and political isolation desired by the Framers for the new country, today's United States is an international power targeted by individuals and groups that will not rest until seeing her demise. The Global War on Terrorism is not truly a war within the Framers' eighteenth-century conception of the term, and the normal constitutional provisions regulating the division of war powers between Congress and the President do not apply. Instead, this "war" is a struggle for survival and dominance against forces that threaten to destroy the United States and her allies, and the fourth-generational nature of the conflict, highlighted by an indiscernible distinction between wartime and peacetime, necessitates an evolution of America's traditional constitutional warmaking scheme. As first illustrated by the military strategist Colonel John Boyd, constitutional decision-making in the realm of war powers in the fourth generation should consider the implications of the OODA Loop: Observe, Orient, Decide, and Act. 44 In the era of fourth-generational warfare, quick reactions, proceeding through the OODA Loop rapidly, and disrupting the enemy's OODA loop are the keys to victory. "In order to win," Colonel Boyd suggested, "we should operate at a faster tempo or rhythm than our adversaries." 145 In the words of Professor Creveld, "[b]oth organizationally and in terms of the equipment at their disposal, the armed forces of the world will have to adjust themselves to this situation by changing their doctrine, doing away with much of their heavy equipment and becoming more like police."1 46 Unfortunately, the existing constitutional understanding, which diffuses war power between two branches of government, necessarily (by the Framers' design) slows down decision- making. In circumstances where war is undesirable (which is, admittedly, most of the time, especially against other nation-states), the deliberativeness of the existing decision-making process is a positive attribute. In America's current situation, however, in the midst of the conflict with al-Qaeda and other international terrorist organizations, the existing process of constitutional decision-making in warfare may prove a fatal hindrance to achieving the initiative necessary for victory. As a slow-acting, deliberative body, Congress does not have the ability to adequately deal with fast-emerging situations in fourth-generational warfare. Thus, in order to combat transnational threats such as al-Qaeda, the executive branch must have the ability to operate by taking offensive military action even without congressional authorization, because only the executive branch is capable of the swift decision-making and action necessary to prevail in fourth-generational conflicts against fourthgenerational opponents.

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asking how the executive should be allowed to conduct war masks the fundamental question of whether war should be allowed at all – ensures a military mentality

* Accepting that war is inevitable even without realizing it is problematic

**Cady 10 (Duane L., prof of phil @ hamline university, From Warism to Pacifism: A Moral Continuum, pp. 22-23)**

The widespread, unquestioning acceptance of warism and the corresponding reluctance to consider pacifism as a legitimate option make it difficult to propose a genuine consideration of pacifist alternatives. Warism may be held implicitly or explicitly. Held in its implicit form, it does not occur to the warist to challenge the view that war is morally justified; war is taken to be natural and normal. No other way of understanding large-scale human conflict even comes to mind. In this sense warism is like racism, sexism, and homophobia: a prejudicial bias built into conceptions and judgments without the awareness of those assuming it. In its explicit form, warism is openly accepted, articulated, and deliberately chosen as a value judgment on nations in conflict. War may be defended as essential for justice, needed for national security, as “the only thing the enemy understands,” and so on. In both forms warism misguides judgments and institutions by reinforcing the necessity and **inevitability** of war and **precluding alternatives**. Whether held implicitly or explicitly, warism obstructs questioning the conceptual framework of the culture. If we assume (without realizing it) that war itself is morally justifiable, our moral considerations of war will be focused on whether a **particular war** is justified or whether **particular acts within a given war** are morally acceptable. These are important concerns, but addressing them does **not** get at the fundamental issue raised by the pacifist: the morality of war **as such**. In Just and Unjust Wars Michael Walzer explains that “war is always judged twice, first with reference to the **reasons** states have for fighting, secondly with reference to the **means** they adopt.”8 The pacifist suggestion is that there is a third judgment of war that must be made prior to the other two: might war, by its very nature, be morally wrong? This issue is considered by Walzer only as an afterthought in an appendix, where it is dismissed as naïve. Perhaps Walzer should not be faulted for this omission, since he defines his task as describing the conventional morality of war and, as has been argued above, conventional morality does take warism for granted. To this extent Walzer is correct. And this is just the point: our warist conceptual frameworks— our warist normative lenses— **blind us to the root question**. The concern of pacifists is to expose the hidden warist bias and not merely describe cultural values. Pacifists seek to examine cultural values and recommend what they ought to be. This is why the pacifist insists on judging war **in itself**, a judgment **more fundamental** than the more **limited assessments** of the morality of a given war or the morality of **specific acts** within a particular war.

That causes extinction and structural violence

* Another impact: freeing ourselves from war = more resources for peace

**Lawrence 9** (Grant, “Military Industrial "War" Consciousness Responsible for Economic and Social Collapse,” OEN—OpEdNews, March 27)

As a presidential candidate, [Barack Obama](http://obama.senate.gov/) called [Afghanistan](http://en.wikipedia.org/wiki/War_in_Afghanistan_%282001%E2%80%93present%29) ''the war we must win.'' He was absolutely right. Now it is time to win it... Senators [John McCain](http://www.imdb.com/name/nm0564587/) and Joseph Lieberman [calling](http://www.miamiherald.com/opinion/inbox/story/960269.html) for an expanded war in Afghanistan "How true it is that war can destroy everything of value." Pope Benedict XVI [decrying](http://www.google.com/hostednews/afp/article/ALeqM5iuue8kE-e0lYZVFpt4RlbX4M_IEw) the suffering of Africa Where troops have been quartered, brambles and thorns spring up. In the track of great armies there must follow lean years. Lao Tzu on [War](http://www.sacred-texts.com/tao/salt/salt09.htm) As Americans we are raised on the utility of war to conquer **every problem.** We have a drug problem so we wage war on it. We have a cancer problem so we wage war on it. We have a crime problem so we wage war on it. Poverty cannot be dealt with but it has to be warred against. Terror is another problem that must be warred against. In the [United States](http://maps.google.com/maps?ll=38.8833333333,-77.0166666667&spn=10.0,10.0&q=38.8833333333,-77.0166666667%20%28United%20States%29&t=h), solutions can only be found in terms of wars. In a society that functions to support a massive military industrial war machine and empire, it is important that the **terms** promoted support the **conditioning of** its **citizens**. We are conditioned to see war as the solution to major social ills and major political disagreements. That way when we see so much of our resources devoted to war then we don't question the utility of it. The term "war" excites mind and body and creates a fear mentality that looks at life in terms of attack. In war, there has to be an attack and a must win attitude to carry us to victory. But is this war mentality working for us? In an age when nearly half of our tax money goes to support the war machine and a good deal of the rest is going to support the elite that control the war machine, we can see that our present war mentality is not working. Our values have been so perverted by our war mentality that we see sex as sinful but killing as entertainment. Our society is **dripping violence**. The violence is fed by poverty, social injustice, the break down of family and community that also arises from economic injustice, and by the managed media. **The cycle of violence** that exists in our society **exists because it is useful to those that control society.** It is easier to sell the war machine when your population is conditioned to violence. Our military industrial consciousness may not be working for nearly all of the life of the planet but it does work for the very few that are the master manipulators of our values and our consciousness. Rupert Murdoch, the media monopoly man that runs the "Fair and Balanced" [Fox Network](http://www.fox.com/), Sky Television, and [News Corp](http://www.newscorp.com/) just to name a few, [had](http://en.wikipedia.org/wiki/Rupert_Murdoch) all of his 175 newspapers editorialize in favor of the [Iraq war](http://en.wikipedia.org/wiki/Iraq_War). Murdoch snickers when [he says](http://www.newscorpse.com/ncWP/?p=341) "we tried" to manipulate public opinion." The Iraq war was a good war to Murdoch [because,](http://www.americanprogress.org/issues/2004/07/b122948.html) "The death toll, certainly of Americans there, by the terms of any previous war are quite minute." But, to the media manipulators, the phony politicos, the military industrial elite, a million dead Iraqis are not to be considered. War is big business and it is supported by a **war consciousness that allows it to prosper.** That is why more war in Afghanistan, the war on Palestinians, and the other wars around the planet in which the [military industrial complex](http://en.wikipedia.org/wiki/Military-industrial_complex) builds massive wealth and power will continue. The military industrial war mentality is not only killing, maiming, and destroying but it is also contributing to the present social and economic collapse. As mentioned previously, the massive wealth transfer that occurs when the American people give half of their money to support death and destruction is money that could have gone to support a just society. It is no accident that after years of war and preparing for war, our society is crumbling. Science and technological resources along with economic and natural resources have been squandered in the never-ending pursuit of enemies. All of that energy **could** have been utilized for the good of humanity, ¶ instead of maintaining the power positions of the very few super wealthy. So the suffering that we give is ultimately the suffering we get. Humans want to believe that they can escape the consciousness that they live in. But that consciousness determines **what we experience** and **how we live.** As long as we choose to live in "War" in **our minds** then we will continue to get "War" in **our lives**. When humanity chooses to wage peace on the world then there will be a flowering of life. But until then we will be forced to live the life our present war consciousness is creating.

#### The alternative must begin in our minds – we need to free ourselves of the presumption towards war and advocate for peace and social justice to stop the flow of militarism that threatens existence

Demenchonok 9 – Worked as a senior researcher at the Institute of Philosophy of the Russian Academy of Sciences, Moscow, and is currently a Professor of Foreign Languages and Philosophy at Fort Valley State University in Georgia, listed in 2000 Outstanding Scholars of the 21st Century and is a recipient of the Twenty-First Century Award for Achievement in Philosophy from the International Biographical Centre --Edward, Philosophy After Hiroshima: From Power Politics to the Ethics of Nonviolence and Co-Responsibility, February, American Journal of Economics and Sociology, Volume 68, Issue 1, Pages 9-49

Where, then, does the future lie? Unilateralism, hegemonic political anarchy, mass immiseration, ecocide, and global violence—a Hobbesian bellum omnium contra omnes? Or international cooperation, social justice, and genuine collective—political and human—security? Down which path lies cowering, fragile hope?¶ Humanistic thinkers approach these problems from the perspective of their concern about the situation of individuals and the long-range interests of humanity. They examine in depth the root causes of these problems, warning about the consequences of escalation and, at the same time, indicating the prospect of their possible solutions through nonviolent means and a growing global consciousness. Today's world is in desperate need of realistic alternatives to violent conflict. Nonviolent action—properly planned and executed—is a powerful and effective force for political and social change. The ideas of peace and nonviolence, as expressed by Immanuel Kant, Leo Tolstoy, Mahatma Gandhi, Martin Luther King, and many contemporary philosophers—supported by peace and civil rights movements—counter the paralyzing fear with hope and offer a realistic alternative: a rational approach to the solutions to the problems, encouraging people to be the masters of their own destiny.¶ Fortunately, the memory of the tragedies of war and the growing realization of this new existential situation of humanity has awakened the global conscience and generated protest movements demanding necessary changes. During the four decades of the Cold War, which polarized the world, power politics was challenged by the common perspective of humanity, of the supreme value of human life, and the ethics of peace. Thus, in Europe, which suffered from both world wars and totalitarianism, spiritual-intellectual efforts to find solutions to these problems generated ideas of "new thinking," aiming for peace, freedom, and democracy. Today, philosophers, intellectuals, progressive political leaders, and peace-movement activists continue to promote a peaceful alternative. In the asymmetry of power, despite being frustrated by war-prone politics, peaceful projects emerge each time, like a phoenix arising from the ashes, as the only viable alternative for the survival of humanity. The new thinking in philosophy affirms the supreme value of human and nonhuman life, freedom, justice, and the future of human civilization. It asserts that the transcendental task of the survival of humankind and the rest of the biotic community must have an unquestionable primacy in comparison to particular interests of nations, social classes, and so forth. In applying these principles to the nuclear age, it considers a just and lasting peace as a categorical imperative for the survival of humankind, and thus proposes a world free from nuclear weapons and from war and organized violence.44 In tune with the Charter of the United Nations, it calls for the democratization of international relations and for dialogue and cooperation in order to secure peace, human rights, and solutions to global problems. It further calls for the transition toward a cosmopolitan order.¶ The escalating global problems are symptoms of what might be termed a contemporary civilizational disease, developed over the course of centuries, in which techno-economic progress is achieved at the cost of depersonalization and dehumanization. Therefore, the possibility of an effective "treatment" today depends on whether or not humankind will be able to regain its humanity, thus establishing new relations of the individual with himself or herself, with others, and with nature. Hence the need for a new philosophy of humanity and an ethics of nonviolence and planetary co-responsibility to help us make sense not only of our past historical events, but also of the extent, quality, and urgency of our present choices.

### CP

#### The United States federal judiciary should rule that all habeas corpus hearings of persons detained under the War Powers Authority of the President of the United States be subject to due process guarantees and that such individuals who have won their habeas corpus hearing be released and should prohibit use of surveillance drones in Mexico.

#### **Judiciary can apply due process to detainees which solves their aff**

Pereira 8 [Spring 2008, Marcia Pereira is a Civil Litigation &Transactional Attorney and University of Miami School of Law Graduate, “THE "WAR ON TERROR" SLIPPERY SLOPE POLICY: GUANTANAMO BAY AND THE ABUSE OF EXECUTIVE POWER”, 15 U. Miami Int'l & Comp. L. Rev. 389]

Ideally, principles of equality should apply to detainees. Irrespective of their status, race, religion, or the like, they should be entitled to a robust and fair adjudicative process for being "accused" of having potentially committed the same crime against the same sovereignty as the U.S. citizen detainees. In constructing this ideal "world" with an eye toward avoiding a flood of federal habeas petitions by these individuals, it could be possible to provide for an alternate form of legal review. By establishing a doctrinal approach that allows for rational basis review in exchange for jurisdiction, non-U.S. citizens would at least be able to bring the claim before the courts and enable the courts to ensure principles of separations of powers and due process are minimally observed. While it may be plausible that aliens are not entitled to the full panoply of constitutional guarantees under the Constitution, some basic rights should be part of the package in lieu of the U.S. Government's complete control over their freedom. For example, one option would be to extend the types of due process rights discussed in Hamdi to the whole group of detainees as part of their adjudicative process. This model would entail an "adjusted due process" to the effect that it be similar to those rights afforded to U.S. citizens detained. By reducing the gap between domestic law and international law of armed conflict, this approach would be particularly narrow and solely apply to the detainees in times of war. This model would enable detainees to have access to evidence intended to be used against them, claim rights against self-incrimination, and have evidence obtained by means of coercion stricken from the record. Not in the ambiguous sense provided under the MCA, but in the real sense by means of explicit language. The Government's counterargument to allowing any due process rights to alien detainees underlies the notion that it would be deprived of [\*436] critical enemy information. However, since the detainees are mostly held incommunicado, this argument seems unpersuasive. It is of little surprise that many scholars, after long years of studies of constitutional law and criminal procedure, strongly censure how the Executive and the Judiciary have dealt with these detentions. The Supreme Court seems to struggle with the potential desire to do justice and to simply give deference to the current political branches undertakings under the notion that federal courts should refrain from adjudicating matters considered to involve "political questions." n145 As this Article has previously indicated, foreign relations might be envisioned as a matter fitting within the political question doctrine. However, where the fundamental rights of individuals are in question, an exception to the political question doctrine should be made. While both alternatives might be highly speculative, this will not change how poorly reasoned the rulings of these cases have been. Take for instance the treatment of the Reasonableness Clause n146 of the Fourth Amendment as an example. This clause provides for the protection of individuals against unreasonable searches and seizures. In [\*437] that sense, the Fourth Amendment is a restraint on Executive power. n147 While the Executive claims the constitutional shield does not protect alien detainees on the basis that they are not Americans on top of being "enemy-combatants," nothing in the Amendment creates this distinction. Furthermore, it would certainly serve the interest of equality and fairness to replicate the Fourth Amendment principles to adequately adjudicate how these men captured and detained. Nevertheless, a great number of innocent individuals were arrested as Al-Qaeda members. Does this reflect the reasonableness the Framers were expecting to promote? If they were on U.S. soil or were citizens would we think so? Is there anything in the Constitution that allows the Executive to detain aliens abroad without any evidence against them in such an arbitrary manner? It would obviously take some creativity in interpreting sections of the Constitution to give positive answers to at least some of these questions. Given, however, the current state of affairs in this country, this situation might be required. Perhaps, as Joan Hartman has noticed, there is a "widespread perception that suspension of human rights is practically inevitable during periods of acute crisis." n148 However, such presumption of fundamental rights derogation, oftentimes, tends to go beyond the necessary, typically resulting in normalcy rather than exigency. n149 Moreover, the duality between exigency and obligation to abide by international norms is further endangered by instituted principles of balance. On the scale, the balance seems almost inevitably to tilt more to one side than to the other depending on how much power each side holds. n150

### DA

**Obama will prevail in the debt ceiling battle by maintaining a focused message and strong political image**

**Dovere and Epstein, 10/1** (EDWARD-ISAAC DOVERE and REID J. EPSTEIN, 10/1/2013, “Government shutdown: President Obama holds the line,” <http://www.politico.com/story/2013/10/government-shutdown-president-obama-holds-the-line-97646.html?hp=f3>)

President Barack **Obama started September in an agonizing, extended display of how little sway he had in Congress. He ended the month with a display of resolve and strength that could redefine his presidency.**

**All it took was a government shutdown.**

This was less a White House strategy than simply staying in the corner the House GOP had painted them into — to the White House’s surprise, **Obama was forced to do what he so rarely has as president: he said no, and he didn’t stop saying no**.

For two weeks ahead of Monday night’s deadline, Obama and aides rebuffed the efforts to kill Obamacare with the kind of firm, narrow sales pitch they struggled with in three years of trying to convince people the law should exist in the first place. There was no litany of doomsday scenarios that didn’t quite come true, like in the run-up to the fiscal cliff and the sequester. No leaked plans or musings in front of the cameras about Democratic priorities he might sacrifice to score a deal.

After five years of what’s often seen as Obama’s desperation to negotiate — to the fury of his liberal base and the frustration of party leaders who argue that he negotiates against himself. Even his signature health care law came with significant compromises in Congress.

Instead, **over and over and over again, Obama delivered the simple line: Republicans want to repeal a law that was passed and upheld by the Supreme Court** — to give people health insurance — or they’ll do something that everyone outside the GOP caucus meetings, including Wall Street bankers, seems to agree would be a ridiculous risk.

“If we lock these Americans out of affordable health care for one more year,” Obama said Monday afternoon as he listed examples of people who would enjoy better treatment under Obamacare, “if we sacrifice the health care of millions of Americans — then they’ll fund the government for a couple more months. Does anybody truly believe that we won’t have this fight again in a couple more months? Even at Christmas?”

The president and his advisers weren’t expecting this level of Republican melee, a White House official said. Only during Sen. Ted Cruz’s (R-Texas) 21-hour floor speech last week did the realization roll through the West Wing that they wouldn’t be negotiating because they couldn’t figure out anymore whom to negotiate with. And even then, they didn’t believe the shutdown was really going to happen until Saturday night, when the House voted again to strip Obamacare funding.

This wasn’t a credible position, Obama said again Monday afternoon, but rather, bowing to “extraneous and controversial demands” which are “all to save face after making some impossible promises to the extreme right wing of their political party.”

Obama and aides have said repeatedly that they’re not thinking about the shutdown in terms of political gain, but the situation’s is taking shape for them. Congress’s approval on dealing with the shutdown was at 10 percent even before the shutters started coming down on Monday according to a new CNN/ORC poll, with 69 percent of people saying the House Republicans are acting like “spoiled children.”

**“The Republicans are making themselves so radioactive that the president and Democrats can win this debate in the court of public opinion” by waiting them out, said** Jim **Manley, a Democratic strategist** and former aide to Senate Majority Leader Harry Reid who has previously been critical of Obama’s tactics.

Democratic pollster Stan Greenberg said the Obama White House learned from the 2011 debt ceiling standoff, when it demoralized fellow Democrats, deflated Obama’s approval ratings and got nothing substantive from the negotiations.

“They didn’t gain anything from that approach,” Greenberg said. “I think that there’s a lot they learned from what happened the last time they ran up against the debt ceiling.”

While the Republicans have been at war with each other, the White House has proceeded calmly — a breakthrough phone call with Iranian President Hassan Rouhani Friday that showed him getting things done (with the conveniently implied juxtaposition that Tehran is easier to negotiate with than the GOP conference), his regular golf game Saturday and a cordial meeting Monday with his old sparring partner Israeli Prime Minister Benjamin Netanyahu.

White House press secretary Jay Carney said Monday that the shutdown wasn’t really affecting much of anything.

“It’s busy, but it’s always busy here,” **Carney said**. “It’s busy for most of you covering this White House, any White House. **We’re very much focused on making sure that the implementation of the Affordable Care Act continues.”**

Obama called all four congressional leaders Monday evening — including Boehner, whose staff spent Friday needling reporters to point out that the president hadn’t called for a week. According to both the White House and Boehner’s office, the call was an exchange of well-worn talking points, and changed nothing.

Manley advised Obama to make sure people continue to see Boehner and the House Republicans as the problem and not rush into any more negotiations until public outrage forces them to bend.

“He may want to do a little outreach, but not until the House drives the country over the cliff,” Manley said Monday, before the shutdown. “Once the House has driven the country over the cliff and failed to fund the government, then it might be time to make a move.”

The White House believes Obama will take less than half the blame for a shutdown – with the rest heaped on congressional Republicans.

The divide is clear in a Gallup poll also out Monday: over 70 percent of self-identifying Republicans and Democrats each say their guys are the ones acting responsibly, while just 9 percent for both say the other side is.

**If Obama is able to turn public opinion against Republicans, the GOP won’t be able to turn the blame back on Obama**, Greenberg said. “Things only get worse once things begin to move in a particular direction,” he said. “They don’t suddenly start going the other way as people rethink this.”

**Losing authority would embolden the GOP on the debt ceiling fight and undermine the economy**

**Seeking Alpha, 9/10** (“Syria Could Upend Debt Ceiling Fight,” 9/10/2013, <http://seekingalpha.com/article/1684082-syria-could-upend-debt-ceiling-fight>)

Unless President Obama can totally change a reluctant public's perception of another Middle-Eastern conflict, it seems unlikely that he can get 218 votes in the House, though he can probably still squeak out 60 votes in the Senate. This **defeat would be totally unprecedented as a President has never lost a military authorization vote** in American history. To forbid the Commander-in-Chief of his primary power renders him all but impotent. At this point, a rebuff from the House is a 67%-75% probability.

I reach this probability by looking within the whip count. I assume the 164 declared "no" votes will stay in the "no" column. To get to 218, Obama needs to win over 193 of the 244 undecided, a gargantuan task. Within the "no" column, there are 137 Republicans. Under a best case scenario, Boehner could corral 50 "yes" votes, which would require Obama to pick up 168 of the 200 Democrats, 84%. Many of these Democrats rode to power because of their opposition to Iraq, which makes it difficult for them to support military conflict. The only way to generate near unanimity among the undecided Democrats is if they choose to support the President (recognizing the political ramifications of a defeat) despite personal misgivings. The idea that all undecided Democrats can be convinced of this argument is relatively slim, especially as there are few votes to lose. In the best case scenario, the House could reach 223-225 votes, barely enough to get it through. Under the worst case, there are only 150 votes. Given the lopsided nature of the breakdown, the chance of House passage is about one in four.

While a failure in the House would put action against Syria in limbo, I have felt that the market has overstated the impact of a strike there, which would be limited in nature. Rather, **investors should focus on the profound ripple through the power structure in Washington, which would greatly impact impending battles over spending and the debt ceiling**.

Currently, the government loses spending authority on September 30 while it hits the debt ceiling by the middle of October. Markets have generally felt that Washington will once again strike a last-minute deal and avert total catastrophe. Failure in the Syrian vote could change this. **For the Republicans to beat Obama on a President's strength (foreign military action), they will likely be emboldened that they can beat him on domestic spending issues.**

Until now, consensus has been that the two sides would compromise to fund the government at sequester levels while passing a $1 trillion stand-alone debt ceiling increase. However, the right wing of Boehner's caucus has been pushing for more, including another $1 trillion in spending cuts, defunding of Obamacare, and a one year delay of the individual mandate. **Already, Conservative PACs** have begun airing advertisements, **urging a debt ceiling fight over Obamacare. With the President rendered hapless on Syria, they will become even more vocal about their hardline resolution, setting us up for a showdown that will rival 2011's debt ceiling fight.**

I currently believe the two sides will pass a short-term continuing resolution to keep the government open, and then the GOP will wage a massive fight over the debt ceiling. While Obama will be weakened, he will be unwilling to undermine his major achievement, his healthcare law. In all likelihood, both sides will dig in their respective trenches, unwilling to strike a deal, essentially in a game of chicken. If the House blocks Syrian action, it will take America as close to a default as it did in 2011. Based on the market action then, we can expect massive volatility in the final days of the showdown with the Dow falling 500 points in one session in 2011.

As markets panicked over the potential for a U.S. default, we saw a massive risk-off trade, moving from equities into Treasuries. I think there is a significant chance we see something similar this late September into October. **The Syrian vote has major implications on the power of Obama and the far-right when it comes to their willingness to fight over the debt ceiling. If the Syrian resolution fails, the debt ceiling fight will be even worse, which will send equities lower by upwards of 10%. Investors must be prepared for this "black swan" event.**

Looking back to August 2011, stocks that performed the best were dividend paying, less-cyclical companies like Verizon (VZ), Wal-Mart (WMT), Coca-Cola (KO) and McDonald's (MCD) while high beta names like Netflix (NFLX) and Boeing (BA) were crushed. Investors also flocked into treasuries despite default risk while dumping lower quality bonds as spreads widened. The flight to safety helped treasuries despite U.S. government issues. I think we are likely to see a similar move this time.

Assuming there is a Syrian "no" vote, I would begin to roll back my long exposure in the stock market and reallocate funds into treasuries as I believe yields could drop back towards 2.50%. Within the stock market, I think the less-cyclical names should outperform, making utilities and consumer staples more attractive. For more tactical traders, I would consider buying puts against the S&P 500 and look toward shorting higher-beta and defense stocks like Boeing and Lockheed Martin (LMT). I also think lower quality bonds would suffer as spreads widen, making funds like JNK vulnerable. Conversely, gold (GLD) should benefit from the fear trade.

I would also like to address the potential that Congress does not vote down the Syrian resolution. First, news has broken that **Russia has proposed Syria turn over its chemical stockpile. If Syria were to agree** (Syria said it was willing to consider), **the U.S. would not have to strike, canceling the congressional vote.** The proposal can be found here. I strongly believe this is a delaying tactic rather than a serious effort. In 2005, Libya began to turn over chemical weapons; it has yet to complete the hand-off. Removing and destroying chemical weapons is an exceptionally challenging and dangerous task that would take years, not weeks, making this deal seem unrealistic, especially because a cease-fire would be required around all chemical facilities. The idea that a cease-fire could be maintained for months, essentially allowing Assad to stay in office, is hard to take seriously. I believe this is a delaying tactic, and Congress will have to vote within the next two weeks.

The final possibility is that Democrats back their President and barely ram the Syria resolution through. I think the extreme risk of a full-blown debt stand-off to dissipate. However, Boehner has promised a strong fight over the debt limit that the market has largely ignored. I do believe the fight would still be worse than the market anticipates but not outright disastrous. As such, I would not initiate short positions, but I would trim some longs and move into less cyclical stocks as the risk would still be the debt ceiling fight leading to some drama not no drama.

Remember, **in politics everything is connected. Syria is not a stand-alone issue. Its resolution will impact the power structure in Washington. A failed vote in Congress is likely to make the debt ceiling fight even worse, spooking markets, and threatening default on U.S. obligations unless another last minute deal can be struck.**

**Entertaining GOP negotiating demands will drag the process out and trigger economic collapse**

**Lobello, 8/27** --- business editor at TheWeek.com (Carmel, 8/27/2013, “How the looming debt ceiling fight could screw up the U.S. economy; Yup, this is happening — again,” <http://theweek.com/article/index/248775/how-the-looming-debt-ceiling-fight-could-screw-up-the-us-economy)>)

Ready for more debt-ceiling drama?

The Treasury Department said Monday it would hit its borrowing limit in mid-October, which means that Congress will need to raise its $16.7 trillion debt ceiling to pay the nation's bills.

The sooner-than-expected deadline comes at an inconvenient moment, because Congress is already facing a budget deadline for the stopgap "continuing resolution" that finances the federal government, which is set to run out September 30. Failure to come to an agreement would trigger a government shutdown.

Having two big deadlines fall two weeks apart could be a recipe for disaster. Republicans, led by Speaker John **Boehner** (R-Ohio), **have been musing about the possibility of using the debt ceiling, instead of a government shutdown, as leverage to delay the implementation of ObamaCare**.

But as Ezra Klein put it in The Washington Post, "Trading a government shutdown for a debt-ceiling breach is like trading the flu for septic shock":

**Anything Republicans might fear about a government shutdown is far more terrifying amidst a debt-ceiling breach. The former is an inconvenience. The latter is a global financial crisis.** It’s the difference between what happened in 1995, when the government did shutdown, and what happened in 2008, when global markets realized a bedrock investment they thought was safe (housing in that case, U.S. treasuries in this one) was full of risk. [The Washington Post]

Indeed, **a debt ceiling debate in 2011 that went on to the last possible minute had real economic consequences, leading Standard & Poor's to downgrade the United States' credit rating. The move "left a clear and deep dent in US economic and market data," said** Matt **Phillips at Quartz**.

Investors pulled huge amounts of cash from the stock market, and consumer confidence was hurt as well. When the same problem cropped up again in May 2012, because Congress failed to reach a long-term deal, Betsey Stevenson and Justin Wolfers in Bloomberg explained how confidence plummeted the first time around:

[Confidence] went into freefall as the political stalemate worsened through July. Over the entire episode, confidence declined more than it did following the collapse of Lehman Brothers Holdings Inc. in 2008. After July 31, when the deal to break the impasse was announced, consumer confidence stabilized and began a long, slow climb that brought it back to its starting point almost a year later. [Bloomberg]

This morning, Wolfers had this to say:

Treasury Secretary Jack Lew visited CNBC Tuesday morning to reiterate President Obama's promise not to go down he same road. **"The president has made it clear: We're not going to negotiate over the debt limit,"** Lew said.

He also explained why in a letter to Boehner Monday morning. "Protecting the full faith and credit of the United States is the responsibility of Congress, because only Congress can extend the nation's borrowing authority," he wrote. "Failure to meet that responsibility would cause irreparable harm to the American economy."

**This will destroy the U.S. and global economy and collapse trade**

**Davidson, 9/10** (Adam - co-founder of NPR’s “Planet Money” 9/10/2013, “Our Debt to Society,” <http://www.nytimes.com/2013/09/15/magazine/our-debt-to-society.html?pagewanted=all&_r=0)>)

This is the definition of a deficit, and it illustrates why the government needs to borrow money almost every day to pay its bills. Of course, all that daily borrowing adds up, and we are rapidly approaching what is called the X-Date — the day, somewhere in the next six weeks, when the government, by law, cannot borrow another penny. **Congress** has imposed a strict limit on how much debt the federal government can accumulate, but **for nearly 90 years**, it **has raised the ceiling well before it was reached**. But **since a large number of Tea Party**-aligned **Republicans entered the House** of Representatives, in 2011, **raising that debt ceiling has become a matter of fierce debate**. This summer, House **Republicans have promised**, in Speaker John Boehner’s words, **“a whale of a fight” before they raise the debt ceiling — if they even raise it at all.**

**If the debt ceiling isn’t lifted** again this fall, **some serious financial decisions will have to be made**. Perhaps the government can skimp on its foreign aid or furlough all of NASA, but eventually the big-ticket items, like Social Security and Medicare, will have to be cut. At some point, **the government won’t be able to pay interest on its bonds and will enter what’s known as sovereign default, the ultimate national financial disaster** achieved by countries like Zimbabwe, Ecuador and Argentina (and now Greece). In the case of the United States, though, **it won’t be an isolated national crisis**. If the American government can’t stand behind the dollar, the world’s benchmark currency, **then the global financial system will very likely enter a new era in which there is much less trade and much less economic growth. It would be**, by most accounts, **the largest self-imposed financial disaster in history**.

Nearly everyone involved predicts that someone will blink before this disaster occurs. Yet a small number of House Republicans (one political analyst told me it’s no more than 20) appear willing to see what happens if the debt ceiling isn’t raised — at least for a bit. This could be used as leverage to force Democrats to drastically cut government spending and eliminate President Obama’s signature health-care-reform plan. In fact, Representative Tom Price, a Georgia Republican, told me that the whole problem could be avoided if the president agreed to drastically cut spending and lower taxes. Still, it is hard to put this act of game theory into historic context. Plenty of countries — and some cities, like Detroit — have defaulted on their financial obligations, but only because their governments ran out of money to pay their bills. **No wealthy country has ever voluntarily decided — in the middle of an economic recovery, no less — to default**. And there’s certainly no record of that happening to the country that controls the global reserve currency.

Like many, I assumed a self-imposed U.S. debt crisis might unfold like most involuntary ones. **If the debt ceiling isn’t raised by X-Day, I figured, the world’s investors would begin to see America as an unstable investment and rush to sell their Treasury bonds. The U.S. government, desperate to hold on to investment, would then raise interest rates far higher**, hurtling up rates on credit cards, student loans, mortgages and corporate borrowing — **which would effectively put a clamp on all trade and spending. The U.S. economy would collapse far worse than anything we’ve seen in the past several years**.

Instead, Robert **Auwaerter, head of bond investing for Vanguard, the world’s largest mutual-fund company, told me that the collapse might be more insidious**. “You know what happens when the market gets upset?” he said. “There’s a flight to quality. Investors buy Treasury bonds. It’s a bit perverse.” In other words, **if the U.S. comes within shouting distance of a default (which Auwaerter is confident won’t happen), the world’s investors — absent a safer alternative, given the recent fates of the euro and the yen — might actually buy even more Treasury bonds. Indeed, interest rates would fall and the bond markets would soar.**

**While this possibility might not sound so bad, it’s really far more damaging than the apocalyptic one I imagined.** Rather than resulting in a sudden crisis, failure to raise the debt ceiling would lead to a slow bleed. Scott Mather, head of the global portfolio at Pimco, the world’s largest private bond fund, explained that while governments and institutions might go on a U.S.-bond buying frenzy in the wake of a debt-ceiling panic, they would eventually recognize that the U.S. government was not going through an odd, temporary bit of insanity. They would eventually conclude that it had become permanently less reliable. **Mather imagines institutional investors and governments turning to a basket of currencies, putting their savings in a mix of U.S., European, Canadian, Australian and Japanese bonds. Over the course of decades, the U.S. would lose its unique role in the global economy.**

**The U.S. benefits enormously from its status as global reserve currency and safe haven**. Our interest and mortgage rates are lower; companies are able to borrow money to finance their new products more cheaply. As a result, there is much more economic activity and more wealth in America than there would be otherwise. If **that status erodes, the U.S. economy’s peaks will be lower and recessions deeper**; future generations will have fewer job opportunities and suffer more when the economy falters. And, Mather points out, **no other country would benefit from America’s diminished status**. When you make the base risk-free asset more risky, the entire global economy becomes riskier and costlier.

**The impact is global nuclear war**

**Freidberg & Schonfeld, 8** --- \*Professor of Politics and IR at Princeton’s Woodrow Wilson School, AND \*\*senior editor of Commentary and a visiting scholar at the Witherspoon Institute in Princeton (10/21/2008, Aaron and Gabriel, “The Dangers of a Diminished America”, Wall Street Journal, http://online.wsj.com/article/SB122455074012352571.html?mod=googlenews\_wsj)

**With the global financial system in serious trouble, is America's geostrategic dominance likely to diminish?** If so, what would that mean?

One immediate implication of the crisis that began on Wall Street and spread across the world is that **the primary instruments of U.S. foreign policy will be crimped**. The next president will face an entirely new and adverse fiscal position. Estimates of this year's federal budget deficit already show that it has jumped $237 billion from last year, to $407 billion. With families and businesses hurting, there will be calls for various and expensive domestic relief programs.

In the face of this onrushing river of red ink, both Barack Obama and John McCain have been reluctant to lay out what portions of their programmatic wish list they might defer or delete. Only Joe Biden has suggested a possible reduction -- foreign aid. This would be one of the few popular cuts, but in budgetary terms it is a mere grain of sand. Still, Sen. Biden's comment hints at where **we may be headed: toward a major reduction in America's world role, and perhaps even a new era of financially-induced isolationism.**

**Pressures to cut defense spending, and to dodge the cost of waging two wars, already intense before this crisis, are likely to mount.** Despite the success of the surge, the war in Iraq remains deeply unpopular. Precipitous withdrawal -- attractive to a sizable swath of the electorate before the financial implosion -- might well become even more popular with annual war bills running in the hundreds of billions.

Protectionist sentiments are sure to grow stronger as jobs disappear in the coming slowdown. Even before our current woes, calls to save jobs by restricting imports had begun to gather support among many Democrats and some Republicans. **In a prolonged recession, gale-force winds of protectionism will blow.**

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** 19**30s**, **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**.

As for our democratic friends, the present crisis comes when many European nations are struggling to deal with decades of anemic growth, sclerotic governance and an impending demographic crisis. Despite its past dynamism, Japan faces similar challenges. India is still in the early stages of its emergence as a world economic and geopolitical power.

What does this all mean? **There is no substitute for America on the world stage**. The choice we have before us is between the potentially disastrous effects of disengagement and the stiff price tag of continued American leadership.

## Case

## Rights

#### Torture, wire-tapping, and detention are alt causes

Horowitz,2/6/12 - As co-founder of PolicyMic, Jake is managing the writing and editing process and trying to spark thoughtful debate on important political issues. He graduated from Stanford University (Jake, “Why is the U.S. Constitution Losing Influence Across the World?,”

http://www.policymic.com/articles/3975/why-is-the-u-s-constitution-losing-influence-across-the-world

But, my sense is that the Constitution is slipping because America has lost its power and prestige as a shining democracy due to over a decade of constitutional excess. In particular, the Bush administration's War on Terror policies which interpreted the Constitution to permit torture, deprive suspected terrorists of due process, sanction wire-tapping and domestic spying, and amass unprecedented power in the hands of the executive eroded the credibility of the document and undermined our democracy. After a decade of America's imprisoning and torturing Arab citizens under the guise of the Constitution, it is no wonder that it no longer holds any weight in newly emerging democracies like Egypt and Tunisia. Moreover, the decline in influence is also a reflection of the all-too-often forgotten fact that American liberal democracy is not for every country. The U.S. Constitution guarantees certain rights, like the separation of religion and state, which may not neatly fit into other countries' models of democracy. Stanford democracy expert Larry Diamond has written often about public opinion polling of the Arab world, which indicates that although the majority of Arabs want democracy, they also believe Islam should play a strong role in governing their society. The U.S. Constitution, then, provides little guidance for structuring newly emer ging democracies with more devout populations. Although the decline of the Constitution is likely to unnerve the bevy of IR theorists and pundits who routinely lament America's decline, this study is not necessarily cause for concern. Rather, that emerging democracies are adapting democracy to fit their context serves as a powerful reminder that liberal democracy cannot be imposed from the outside, something the U.S. learned well this past decade in Iraq. It should also serve as a stark warning to President Barack Obama, however, that the longer Guantanamo remains open, and the more the administration chips away at our civil liberties by signing bills like the NDAA, the more U.S. influence, leadership, and credibility will wane across the globe.

Broader systems are jack our cred

**Mariam 8/18/**13 – PhD, JD, teaches political science at California State University, San Bernardino (Alemayehu, 8/18/2013, “Is America Disinventing Human Rights?,” http://www.ethiopianreview.us/48632)JCP

In his 1981 farewell speech, President Jimmy Carter said, “America did not invent human rights. In a very real sense, it is the other way round. Human rights invented America.”

In a New York Times op-ed piece in June 2012, Carter cautioned, “At a time when popular revolutions are sweeping the globe, the United States should be strengthening, not weakening, basic rules of law and principles of justice enumerated in the Universal Declaration of Human Rights. But instead of making the world safer, America’s violation of international human rights abets our enemies and alienates our friends.”

Carter also raised a number of important questions: Has the U.S. abdicated its moral leadership in the arena of international human rights? Has the U.S. betrayed its core values by maintaining a detention facility at Guantánamo Bay, Cuba, and subjecting dozens of prisoners to “cruel, inhuman or degrading treatment or punishment” and leaving them without the “prospect of ever obtaining their freedom”? Does the arbitrary killing of a person suspected to be an enemy terrorist in a drone strike along with women and children who happen to be nearby comport with America’s professed commitment to the rule of law and human rights?

In 1948, the U.S. played a central leadership role in “inventing” the principal instrument which today serves as the bedrock foundation of modern human rights. The Universal Declaration of Human Rights (UDHR), adopted by the UN General Assembly in December 1948, set a “common standard of achievement for all peoples and all nations” in terms of equality, dignity and rights. Mrs. Eleanor Roosevelt, the widow of President Franklin D. Roosevelt, chaired the committee that drafted the UDHR. Eleanor remains an unsung heroine even though she was the mother of the modern global human rights movement. Without her, there would have been no UDHR; and without the UDHR, it is doubtful that the plethora of subsequent human rights conventions and regimes would have come into existence. Remarkably, she managed to mobilize, organize and proselytize human rights even though she had no legal training, diplomatic experience or bureaucratic expertise. She used her skills as political activist and advocate in the cause of freedom, justice and civil rights to work for global human rights.

Is America disinventing human rights?

It seems the U.S. is “disinventing” human rights through the pursuit of double (triple, quadruple) standard of human rights policy wrapped in a cover of diplocrisy. In Africa, the U.S. has one set of standards for Robert Mugabe’s Zimbabwe and Omar al-Bashir’s Sudan. Mugabe and Bashir are classified as the nasty hombres of human rights in Africa. The U.S. has targeted both regimes for crippling economic sanctions and diplomatic pressure. The U.S. has frozen the assets of Mugabe’s family and henchmen because the “Mugabe regime rules through politically motivated violence and intimidation and has triggered the collapse of the rule of law in Zimbabwe.”

The U.S. calls “partners” equally brutal regimes in Africa which serve as its proxies. Paul Kagame of Rwanda, Yuweri Museveni of Uganda and the deceased leader of the regime in Ethiopia are lauded as the “new breed of African leaders” and crowned “partners”. Uhuru Kenyatta, recently elected president of Kenya and a suspect under indictment by the International Criminal Court (ICC) for crimes against humanity is said to be different than Bashir who faces similar ICC charges. In 2009, Ambassador Susan E. Rice, then-U.S. Permanent Representative to the United Nations, demanded Bashir’s arrest and prosecution: “The people of Sudan have suffered too much for too long, and an end to their anguish will not come easily. Those who committed atrocities in Sudan, including genocide, should be brought to justice.” No official U.S. statement on Uhuru’s ICC prosecution was issued.

The U.S. maintains excellent relations with Teodoro Obiang Nguema Mbasogo of Equatorial Guinea who has been in power since 1979 because of that country’s oil reserves; but all of the oil revenues are looted by Obiang and his cronies. In 2011, the U.S. brought legal action in federal court against Obiang’s son to seize corruptly obtained assets including a $40 million estate in Malibu, California overlooking the Pacific Ocean, a luxury plane and a dozen super-sports cars worth millions of dollars. The U.S. has not touched any of the other African Ali Babas and their forty dozen thieving cronies who have stolen billions and stashed their cash in U.S. and other banks.

Despite lofty rhetoric in support of the advancement of democracy and protection of human rights in Africa, the United States continues to subsidize and coddle African dictatorships that are as bad as or even worse than Mugabe’s. The U.S. currently provides substantial economic aid, loans, technical and security assistance to the repressive regimes in Ethiopia, Congo (DRC), Uganda, Rwanda and elsewhere. None of these countries holds free elections, allow the operation of an independent press or free expression or abide by the rule of law. All of them are corrupt to the core, keep thousands of political prisoners, use torture and ruthlessly persecute their opposition. Yet they are deemed U.S. “partners”.

“Principled disengagement” as a way of reinventing an American human rights policy?

If the Obama Administration indeed has a global or African human rights policy, it must be a well-kept secret. In March 2013, Michael Posner, U.S. Assistant Secretary of State for Democracy, Human Rights, and Labor said American human rights policy is based on “principled engagement”: “We are going to go to the United Nations and join the Human Rights Council and we’re going to be part of it even though we recognize it doesn’t work… We’re going to engage with governments that are allies but we are also going to engage with governments with tough relationships and human rights are going to be part of those discussions.” Second, the U.S. will follow “a single standard for human rights, the Universal Declaration of Human Rights, and it applies to all including ourselves…” Third, consistent with President “Obama’s personality”, the Administration believes “change occurs from within and so a lot of the emphasis… [will be] on how we can help local actors, change agents, civil society, labor activists, religious leaders trying to change their societies from within and amplify their own voices and give them the support they need…”

On August 14, according to Egyptian government sources, 525 protesters, mostly members of the Muslim Brotherhood, were killed and 3,717 injured at the hands of Egyptian military and security forces. It was an unspeakably horrifying massacre of protesters exercising their right to peaceful expression of grievances.

On August 15, President Obama criticized the heavy-handed crackdown on peaceful protesters with the usual platitudes. “The United States strongly condemns the steps that have been taken by Egypt’s interim government and security forces. We deplore violence against civilians.” His message to the Egyptian people was somewhat disconcerting in light of the massacre. “America cannot determine the future of Egypt. We do not take sides with any particular party or political figure. I know it’s tempting inside Egypt to blame the United States.”

In July 2009, in Ghana, President Obama told Africa’s “strongmen”, “History offers a clear verdict: governments that respect the will of their own people are more prosperous, more stable, and more successful than governments that do not…. No person wants to live in a society where the rule of law gives way to the rule of brutality… Make no mistake: history is on the side of these brave Africans [citizens and their communities driving change], and not with those who use coups or change Constitutions to stay in power. Africa doesn’t need strongmen, it needs strong institutions.”

President Obama has a clear choice in Egypt between “those who use coups to stay in power” and the people of Egypt peacefully protesting in the streets. Now he says, “We don’t take sides…” By “not taking sides”, it seems he has taken sides with Egypt’s strongmen who “use coups to stay in power”. So much for “principled engagement”!

Obama reassured the Egyptian military that the U.S. does not intend to end or suspend its decades-old partnership with them. He cautioned the military that “While we want to sustain our relationship with Egypt, our traditional cooperation cannot continue as usual while civilians are being killed in the streets.” He indicated his disapproval of the imposition of “martial law” but made no mention of the manifest military coup that had ousted Morsy. He obliquely referred to it as a “military intervention”. He made a gesture of “action” cancelling a symbolic military exercise with the Egyptian army. There will be no suspension of U.S. military aid to Egypt and no other sanctions will be imposed on the Egyptian military or government.

I am not clear what Obama’s human rights policy of “principled engagement” actually means. But I have a lot of questions about it: Does it mean moral complacency and tolerance of the crimes against humanity of African dictators for the sake of the war on terror and oil? Is it a euphemism for abdication of American ideals on the altar of political expediency? Does it mean overlooking and excusing the crimes of ruthless dictators and turning a blind eye to their bottomless corruption? Does “principled engagement” mean allowing dictators to suck at the teats of American taxpayers to satisfy their insatiable aid addiction while they brutalize their people?

The facts of Obama’s “principled engagement” tell a different story. In May 2010, after the ruling party in Ethiopia declared it had won 99.6 percent of the seats in parliament, the U.S. demonstrated its “principled engagement” by issuing a Statement expressing “concern that international observers found that the elections fell short of international commitments” and promised to “work diligently with Ethiopia to ensure that strengthened democratic institutions and open political dialogue become a reality for the Ethiopian people.” There is no evidence that the U.S. did anything to “strengthen democratic institutions and open political dialogue to become a reality for the Ethiopian people.”

When two ICC indicted suspects in Kenya (Kenyatta and Ruto) won the presidency in Kenya a few months ago, the U.S. applied its “principled engagement” in the form of a robust defense of the suspects. Johnnie Carson, the former United States Assistant Secretary of State for African Affairs, said the ICC indictments of Bashir and Uhuru/Ruto are different. “I don’t want to make a comparison with Sudan in its totality because Sudan is a special case in many ways.” What makes Bashir and Sudan different, according to Carson, is the fact that Sudan is on the list of countries that support terrorism and Bashir and his co-defendants are under indictment for the genocide in Darfur. Since “none of that applies to Kenya,” according to Carson, it appears the U.S. will follow a different policy.

President Obama says the U.S. will maintain its traditional partnership with Egypt’s military, Egypt’s “strongmen”. At the onset of the Egyptian Revolution in 2011, Obama and his foreign policy team froze in stunned silence, flat-footed and twiddling their thumbs and scratching their heads for days before staking out a position on that popular uprising. They could not bring themselves to use the “D” word (dictator as in Hosni Mubarak) to describe events in Egypt then. Today Obama cannot bring himself to say the “C” word (as in Egyptian military coup).

Obama is in an extraordinary historical position as a person of color to advance American ideals and values throughout the world in convincing and creative ways. But he cannot advance these ideals and values through a hollow notion of “principled engagement.”

Rather, he must adopt a policy of “principled disengagement” with African dictators. That does not mean isolationism or a hands off approach to human rights. By “principled disengagement” I mean a policy and policy outcome that is based on measurable human rights metrics. Under a policy of “principled disengagement”, the U.S. would establish clear, attainable and measurable human rights policy objectives in its relations with African dictatorships. The policy would establish minimum conditions of human rights compliance. For instance, the U.S. could set some basic criteria for the conduct of free and fair elections, press and individual freedoms, limits on arbitrary arrests and detentions, prevention of extrajudicial punishments, etc. Using its annual human rights assessments, the U.S. could make factual determinations on the extent to which it will engage or disengage with a particular regime. “Partnership” status and the benefits that come with it will be reserved to those regimes that have good and improving records on specific human rights measures. Regimes that steal elections, win elections by 99.6 percent, engage in arbitrary arrests and detentions and other human rights violations would be denied “partnership” status and denied aid, loans and technical assistance. Persistent violators of human rights would be given a compliance timetable to improve their records and provided appropriate assistance to achieve specific human rights goals. If regimes persist in a pattern and practice of human rights violations, the U.S. could raise the stakes and impose economic and diplomatic sanctions.

The ‘‘Ethiopia Democracy and Accountability Act of 2007’’ contained many important statutory provisions that could serve as a foundation for “principled disengagement”.

Obama’s “principled engagement” seems to be a justification for expediency at the cost of American ideals. Until he decides to stand for principle, instead of standing behind the rhetoric of “principled engagement”, he will continue to find himself on a tightrope of moral, legal and political ambiguity. The U.S. cannot “condemn” and “deplore” its way out of its human rights obligations or global leadership role. Yes, the U.S. must take sides! It must take a stand either with the victims of human rights abuses throughout the world or the human rights abusers of the world. If Obama wants to save the world from strongmen with boots and in designer suits with briefcases full of cash, he should pursue a policy of “principled disengagement”. But he should start by reflecting on the words he spoke during his first inauguration speech:

Our Founding Fathers, faced with perils we can scarcely imagine, drafted a charter to assure the rule of law and the rights of man, a charter expanded by the blood of generations. Those ideals still light the world, and we will not give them up for expedience’s sake.”

**Recent scandals destroy our model**

Andranik **Migranyan** – 7/5/**13**, director of the Institute for Democracy and Cooperation in New York, Scandals Harm U.S. Soft Power, the National Interest, <http://nationalinterest.org/commentary/scandals-harm-us-soft-power-8695>

For the past few months, the United States has been rocked by a series of scandals. It all started with the events in Benghazi, when Al Qaeda-affiliated terrorists attacked the General Consulate there and murdered four diplomats, including the U.S. ambassador to Libya. Then there was the scandal exposed when it was revealed that the Justice Department was monitoring the calls of the Associated Press. The Internal Revenue Service seems to have targeted certain political groups. Finally, there was the vast National Security Agency apparatus for monitoring online activity revealed by Edward Snowden. Together, these events provoke a number of questions about the path taken by contemporary Western societies, and especially the one taken by America. Large and powerful institutions, especially those in the security sphere, have become unaccountable to the public, even to representatives of the people themselves. Have George Orwell’s cautionary tales of total government control over society been realized? At the end of the 1960s and the beginning of the 1970s, my fellow students and I read Orwell’s 1984 and other dystopian stories and believed them to portray fascist Germany or the Soviet Union—two totalitarian regimes—but today it has become increasingly apparent that Orwell, Huxley and other dystopian authors had seen in their own countries (Britain and the United States) certain trends, especially as technological capabilities grew, that would ultimately allow governments to exert total control over their societies. The potential for this type of all-knowing regime is what Edward Snowden revealed, confirming the worst fears that the dystopias are already being realized. On a practical geopolitical level, the spying scandals have seriously tarnished the reputation of the United States. They have circumscribed its ability to exert soft power; the same influence that made the U.S. model very attractive to the rest of the world. This former lustre is now diminished. The blatant everyday intrusions into the private lives of Americans, and violations of individual rights and liberties by runaway, unaccountable U.S. government agencies, have deprived the United States of its authority to dictate how others must live and what others must do. Washington can no longer lecture others when its very foundational institutions and values are being discredited—or at a minimum, when all is not well “in the state of Denmark.” Perhaps precisely because not all is well, many American politicians seem unable to adequately address the current situation. Instead of asking what isn’t working in the government and how to ensure accountability and transparency in their institutions, they try, in their annoyance, to blame the messenger—as they are doing in Snowden’s case. Some Senators hurried to blame Russia and Ecuador for anti-American behavior, and threatened to punish them should they offer asylum to Snowden. These threats could only cause confusion in sober minds, as every sovereign country retains the right to issue or deny asylum to whomever it pleases. In addition, the United States itself has a tradition of always offering political asylum to deserters of the secret services of other countries, especially in the case of the former Soviet Union and other ex-socialist countries. In those situations, the United States never gave any consideration to how those other countries might react—it considered the deserters sources of valuable information. As long as deserters have not had a criminal and murderous past, they can receive political asylum in any country that considers itself sovereign and can stand up to any pressure and blackmail. Meanwhile, the hysteria of some politicians, if the State Department or other institutions of the executive branch join it, can only accelerate the process of Snowden’s asylum. For any country he might ask will only be more willing to demonstrate its own sovereignty and dignity by standing up to a bully that tries to dictate conditions to it. In our particular case, political pressure on Russia and President Putin could turn out to be utterly counterproductive. I believe that Washington has enough levelheaded people to understand that fact, and correctly advise the White House. The administration will need sound advice, as many people in Congress fail to understand the consequences of their calls for punishment of sovereign countries or foreign political leaders that don’t dance to Washington’s tune. Judging by the latest exchange between Moscow and Washington, it appears that the executive branches of both countries will find adequate solutions to the Snowden situation without attacks on each other’s dignity and self-esteem. Russia and the United States are both Security Council members, and much hinges on their decisions, including a slew of common problems that make cooperation necessary. Yet the recent series of scandals has caused irreparable damage to the image and soft power of the United States. I do not know how soon this damage can be repaired. But gone are the days when Orwell was seen as a relic of the Cold War, as the all-powerful Leviathan of the security services has run away from all accountability to state and society. Today the world is looking at America—and its model for governance—with a more critical eye.

Our promotion strategy is ajoke

Keck 13 - Associate Editor of The Diplomat. He has previously served as a Deputy Editor for E-IR and as an Editorial Assistant for The Diplomat (Zachary, April 24, 2013, “China Slams America on Human Rights,” http://thediplomat.com/the-editor/2013/04/24/chinas-slams-america-on-human-rights/)JCP

One subtle difference between the U.S. and Chinese reports is actually rather telling. Specifically, whereas the U.S. human rights reports focus on mainly political and social issues, China’s report on the United States focuses heavily on economic issues. For instance, the evidence China cites about ethnic discrimination in America points to minorities’ inferior economic opportunities in society. When criticizing China’s treatment of its ethnic populations, the U.S. report focuses on the level of surveillance and lack of civil and political rights that these groups enjoy.

In the one sense, this may just reflect the fact that each country is more vulnerable to charges of discrimination made on political or economic rights than the other. **Still, it seems to me to point to a larger difference on how the Western world in general, but the United States in particular, views human rights, compared to the rest of the world conceives of them.**

Specifically, the U.S. and the West seem to put political rights above all else, as seen from, among other things, the emphasis Washington placed on holding elections in Afghanistan and Iraq when it first invaded those countries. By contrast, it has placed far less importance on ensuring effective governance and economic opportunities for Afghans and Iraqis. The same is true with how it often views North Korean refugees as fleeing the country to pursue freedom in South Korea, when usually the refugees themselves report just wanting greater economic opportunities in China or elsewhere.

This is not to say that people worldwide don't seek political freedoms as well; it just suggests people place economic security before political freedom if forced to choose.

**Norms**

**People don’t trust norms --- there’s also no impact**

**Drezner 11**

Daniel W. Drezner, Professor of International Politics at the Fletcher School of Law and Diplomacy at Tufts University, Foreign Affairs, July/August 2011, "Does Obama Have a Grand Strategy?", <http://www.foreignaffairs.com/print/67869>

What went wrong? The administration, and many others, erred in believing that improved standing would give the **U**nited **S**tates greater policy leverage. The **U**nited **S**tates' **standing among foreign publics and elites did rebound**. But this shift **did not translate into an appreciable increase in** the **U**nited **S**tates' **soft power**. Bargaining in the G-20 and the UN Security Council **did not get any easier**. Soft power, it turns out, **cannot accomplish much in the absence of a willingness to use hard power**. The other problem was that China, Russia, and other aspiring great powers **did not view themselves as partners of the U**nited **S**tates. Even allies saw the Obama administration's **supposed modesty as a cover** for shifting the burden of providing global public goods from the United States to the rest of the world. **The administration's grand strategy was** therefore **perceived as promoting narrow U.S. interests rather than global public goods.**

**Democratic Peace Theory**

**Democracy impact is empirically denied by Iraq**

**Long timeframe**

**Diamond, 00** (Larry Diamond, professor, lecturer, adviser, and author on foreign policy, foreign aid, and democracy. “Democracy Promotion for the Long Haul.” 11-30-00. http://www.stanford.edu/~ldiamond/papers/AIDpartners.pdf)

It will not do to promote free and fair elections if we do not effectively promote the other elements of democracy as well. And this is not a short-term agenda. A great danger in political assistance is the temptation to seek a big bang, a breakthrough election, and then phase out and walk way. If we want to be effective in promoting democracy, we have to be prepared to be engaged in countries for a long period of time, in a variety of sectors, and at multiple levels of governance. We have to stick with countries—at least with embattled civil societies—when things get grim, and we to sustain our efforts when a crisis subsides and democrats settle into the protracted, prosaic work of gradually building and reforming democratic institutions. We are swimming against long histories and huge odds. We cannot expect to be able to reverse decades of institutional deformity and decay and to transform deeply entrenched cultures and social structures in a few years. We need a strategic view of democracy promotion for the long term. Ten years on, in most of the countries where we work, we are still in the early stages of the struggle for liberal, accountable, legitimate, and sustainable democracy, in other words, for democratic consolidation.

**Econ Leadership**

**No ev econ leadership is key to overall leadership**

**No war from heg decline – international liberal order**

**Ikenberry, 11** – (May/June issue of Foreign Affairs, G. John, PhD, Albert G. Milbank Professor of Politics and International Affairs at Princeton University in the Department of Politics and the Woodrow Wilson School of Public and International Affairs, “The Future of the Liberal World Order,” http://www.foreignaffairs.com/

articles/67730/g-john-ikenberry/the-future-of-the-liberal-world-order?page=show DH)

For all these reasons, many observers have concluded that world politics is experiencing not just a changing of the guard but also a transition in the ideas and principles that underlie the global order. The journalist Gideon Rachman, for example, says that a cluster of liberal internationalist ideas -- such as faith in democratization, confidence in free markets, and the acceptability of U.S. military power -- are all being called into question. According to this worldview, the future of international order will be shaped above all by China, which will use its growing power and wealth to push world politics in an illiberal direction. Pointing out that China and other non-Western states have weathered the recent financial crisis better than their Western counterparts, pessimists argue that an authoritarian capitalist alternative to Western neoliberal ideas has already emerged. According to the scholar Stefan Halper, emerging-market states "are learning to combine market economics with traditional autocratic or semiautocratic politics in a process that signals an intellectual rejection of the Western economic model." Today's international order is not really American or Western--even if it initially appeared that way. But this panicked narrative misses a deeper reality: although the United States' position in the global system is changing, the liberal international order is alive and well. The struggle over international order todayis not about fundamental principles. China and other emerging great powers do not want to contest the basic rules and principles of the liberal international order; they wish to gain more authority and leadership within it. Indeed, today's power transition represents not the defeat of the liberal order but its ultimate ascendance. Brazil, China, and India have all become more prosperous and capable by operating inside the existing international order -- benefiting from its rules, practices, and institutions, including the World Trade Organization (WTO) and the newly organized G-20. Their economic success and growing influence are tied to the liberal internationalist organization of world politics, and they have deep interests in preserving that system. In the meantime, alternatives to an open and rule-based order have yet to crystallize. Even though the last decade has brought remarkable upheavals in the global system -- the emergence of new powers, bitter disputes among Western allies over the United States' unipolar ambitions, and a global financial crisis and recession -- the liberal international order has no competitors. On the contrary, the rise of non-Western powers and the growth of economic and security interdependence are creating new constituencies for it. To be sure, as wealth and power become less concentrated in the United States' hands, the country will be less able to shape world politics. But the underlying foundations of the liberal international order will survive and thrive.Indeed, now may be the best time for the United States and its democratic partners to update the liberal order for a new era, ensuring that it continues to provide the benefits of security and prosperity that it has provided since the middle of the twentieth century.

**Zhang and Shi never say nuclear war**

**Human Rights**

**Human rights violations are empirically denied by the status quo**

**Modeling isn’t reverse causal—takes too long to adapt**

**Chodosh 03** (Hiram, Professor of Law, Director of the Frederick K. Cox International Law Center, Case Western Reserve University School of Law, 38 Tex. Int'l L.J. 587, lexis)

Exposure to foreign systems is helpful but seldom sufficient for effective reform design. Reform models are more likely to be successful if they are not merely copied or transplanted into the system. The argument that transplants are easy and common (though based on substantial historical evidence) profoundly undervalues the relationship between law and external social objectives.

103 Furthermore, reforms conceived as blunt negations of [\*606] the status quo are not likely to be successful. 104 Reform proposals based on foreign systems or in reaction to (or as a negation of) recent domestic experience require careful adaptation to local circumstances and conditions. However, most communities are not familiar with the tools of adaptation and tend to think of foreign models as package deals to accept or reject (but rarely to alter), and alterations tend to graft one institution onto another without comprehensive consideration of the system as a whole. 105

## Legal Crises

#### Can't solve Latin American relations - drug policies and independence from the US

Winter 12

Brian Winter, Reuters, November 9, 2012, "Analysis: Obama faces Latin America revolt over drugs, trade", http://www.reuters.com/article/2012/11/09/us-obama-latinamerica-idUSBRE8A80ZS20121109

President Barack Obama will face an unprecedented revolt by Latin American countries against the U.S.-led drug war during his second term and he also may struggle to pass new trade deals as the region once known as "America's backyard" flexes its muscles like never before.

Washington's ability to influence events in Latin America has arguably never been lower. The new reality is as much a product of the United States' economic struggles as a wave of democracy and greater prosperity that has swept much of the region of 580 million people in the past decade or so.

It's not that the United States is reviled now - far from it. Although a few vocally anti-U.S. leaders like Venezuela's Hugo Chavez tend to grab the media spotlight, Obama has warm or cordial relations with Brazil, Mexico and other big countries in the region.

Most Latin American leaders were rooting, either privately or publicly, for his re-election on Tuesday.

That said, even close allies are increasingly emboldened to act without worrying about what "Tio Sam" will say or do. Nowhere is that more evident than on anti-narcotics policy.

In 2012 as never before, many governments challenged the four-decade-old policies under which Washington has encouraged, and often bankrolled, efforts to disrupt the cultivation and smuggling of cocaine, marijuana and other drugs in the region.

The reasons for the unrest: Frustration with what many perceive as the pointless bloodshed caused by the "war on drugs," plus a feeling the United States has not done enough to reduce its own demand for narcotics - if, that is, it's even possible to curb demand.

Those are hardly new complaints but they used to be aired in private. In April, several presidents voiced doubts about anti-drug policies at a regional summit that Obama attended. At the U.N. General Assembly in September, the leaders of Mexico, Colombia and Guatemala - historically three of the most reliable U.S. partners on drug interdiction - called on world governments to explore new alternatives to the problem.

#### It's the key issue

Winter 12

Brian Winter, Reuters, November 9, 2012, "Analysis: Obama faces Latin America revolt over drugs, trade", http://www.reuters.com/article/2012/11/09/us-obama-latinamerica-idUSBRE8A80ZS20121109

Obama and other U.S. officials have energetically lobbied against legalization of drugs or letting up in the fight against powerful smuggling gangs. Yet some leaders and well-connected observers across Latin America expect substantial shifts in the next few years.

"The taboo is broken," said Moises Naim, a senior associate at the Carnegie Endowment for International Peace in Washington. "2012 will go down as the year when Latin American governments became assertive and began making changes of their own accord."

It remains unclear what exactly the changes will look like or how many countries will embrace them.

Some leaders, such as Guatemalan President Otto Perez, have openly proposed legalizing or "decriminalizing" certain drugs. Others have pushed for less dramatic changes such as legalizing only marijuana or, like Mexico's Felipe Calderon, have spoken in vague terms of a "less prohibitionist" approach.

Uruguay has gone furthest, proposing a bill this year that would legalize marijuana and have the state distribute it. That move was regarded as too extreme by many in the region, although this week's decision by voters in Washington and Colorado states to legalize marijuana for recreational use showed that, even in the United States, the status quo is changing fast.

"Nobody knows where this is going yet," said Fernando Henrique Cardoso, a former Brazilian president and part of an influential group of statesmen who have met behind the scenes with current leaders to advance the debate.

"I'd describe this as a phase of timid, controlled experimentation," Cardoso told Reuters. "It's going forward, and it seems there will be changes ... Nobody seems very concerned with how the United States will react."

#### Can’t negotiate anything

Sullivan 2/8/13

Mark P. Sullivan, Coordinator Specialist in Latin American Affairs, Congressional Research Service, February 8, 2013, "Latin America and the Caribbean: Key Issues for the 113th Congress", http://www.fas.org/sgp/crs/row/R42956.pdf

On the other hand, a number of analysts have urged the Administration to articulate a strategic vision and more cohesive policy approach toward Latin America. 27 In looking at President Obama’s first term, some analysts contend that as problems have arisen in the region, U.S. responses have been reactive rather than proactive, and can be characterized “as improvised and lacking a sense of strategic direction.” 28 Center for International and Strategic Studies (CSIS) senior associate Howard Wiarda argues that a “coherent, mature policy for the region” needs to be articulated, although he contends that the United States has accomplished a great deal at individual country-level policies in terms of democracy, development, modernization, and in fostering good bilateral relations. 29 Peter Hakim of the Inter-American Dialogue has described U.S. policy toward Latin America as adrift, with a growing separation of the United States from Latin America and a shrinking U.S. vision for Latin America. He contends that while U.S. leaders regularly affirm the importance of the region to the United States, they have not been able to devise a strategy to effectively exploit what former U.S. Secretary of State Hillary Clinton described as the “power of proximity.” 30

**Mexico Relations**

**They don’t have a Mexico internal link --- it says Nieto thinks drones are “totally unacceptable” --- no spillover ev**

**Immigrant detention is a massive alt cause**

Roberto **Lovato 9**, a New York-based contributing Associate Editor with New America Media and a frequent contributor to The Nation Magazine. He's also written for the Los Angeles Times, Salon, Der Spiegel, Utne Magazine, La Opinion, and other national and international media outlets. He has also appeared as a source and commentator on English and Spanish language network news shows on Univision, CNN, PBS and other programs and made a recent appearance on Bill Moyers Journal. Lovato was the former Executive Director of CARECEN, which was the largest immigrant rights organization in the country, 2/26/09, “U.S. Immigration Policies Bring Global Shame on Us”, <http://ofamerica.wordpress.com/2009/02/26/us-immigration-policies-bring-global-shame-on-us/>

**The proliferation of stories** in international media and in global forums **about** the **Guantanamo-like problems in the country’s immigrant detention system**- death, abuse and neglect at the hands of detention facility guards; **prolonged and indefinite detention of immigrants** (including children and families) **denied habeas corpus and other fundamental rights**; filthy, overcrowded and extremely unhealthy facilities; denial of basic health services – **are** again **tarnishing the U.S. image abroad, according to several experts.** As a result, reports from Arizona and immigrant detention facilities have created a unique problem: **they are making it increasingly difficult for Obama to persuade** the planet’s **people that the U**nited **S**tates **is ready claim exceptional leadership on human rights** in a soon-to-be-post-Guantanamo world. **Consider** the case of **Mexico**. Just last week, following news reports from Arizona, **the Mexican government**, which is traditionally silent or very tepid in its criticism of U.S. immigration and other policies, **issued a statement in which it “energetically protested the undignified way in which the Mexicans were transferred to ‘Tent City’**” in Maricopa County. David Brooks, U.S correspondent for Mexico’s La Jornada newspaper, believes that **immigrant detention stories hit Mexicans closer to home because those** reportedly being **abused in detention are not from a far off country; they are family, friends, neighbors and fellow citizens. In the same way that Guantanamo erased** the idea of **U.S. leadership in human rights** in the Bush era, says Brooks, who was born in Mexico, **practices in immigrant detention facilities like those reported by global media in Maricopa** County **may begin to do so in the Obama era if something does not change**. “Mexicans have never seen the U.S. as a great model for promotion of human rights. But **with Obama** we take him at his word. **We’re expecting some change**,” said Brooks. “**But that will not last long if we see him continuing Bush’s** [immigration] **policies**: raids, **increasing detention**, deportation. Regardless of his excuse, he will quickly become mas de lo mismo (more of the same) in terms of the experience down south.” **If uncontested, the expression of such sentiments** far beyond Mexico and Mexican immigrants **could lead to the kind of American exceptionalism Obama doesn’t want**.

**Asia Stability**

**Asian wars not likely**

**Bitzinger and Desker, Rajaratnam School of International Studies, 8 (Richard A., sr. fellow @ the school of international studies @ Nanyang Technological University, and Barry, Dean of the** [**S Rajaratnam School of International Studies**](http://en.wikipedia.org/wiki/S_Rajaratnam_School_of_International_Studies)**, Survival, Volume 50, Issue 6, December, Informaworld)**

Yet despite all these potential crucibles of conflict, the Asia-Pacific, if not an area of serenity and calm, is certainly more stable than one might expect. To be sure, there are separatist movements and internal struggles, particularly with insurgencies, as in Thailand, the Philippines and Tibet. Since the resolution of the East Timor crisis, however, the region has been relatively free of open armed warfare. Separatism remains a challenge, but the break-up of states is unlikely. Terrorism is a nuisance, but its impact is contained. The North Korean nuclear issue, while not fully resolved, is at least moving toward a conclusion with the likely denuclearisation of the peninsula. Tensions between China and Taiwan, while always just beneath the surface, seem unlikely to erupt in open conflict any time soon, especially given recent Kuomintang Party victories in Taiwan and efforts by Taiwan and China to re-open informal channels of consultation as well as institutional relationships between organisations responsible for cross-strait relations. And while in Asia there is no strong supranational political entity like the European Union, there are many multilateral organisations and international initiatives dedicated to enhancing peace and stability, including the Asia-Pacific Economic Cooperation (APEC) forum, the Proliferation Security Initiative and the Shanghai Co-operation Organisation. In Southeast Asia, countries are united in a common geopolitical and economic organisation - the Association of Southeast Asian Nations (ASEAN) - which is dedicated to peaceful economic, social and cultural development, and to the promotion of regional peace and stability. ASEAN has played a key role in conceiving and establishing broader regional institutions such as the East Asian Summit, ASEAN+3 (China, Japan and South Korea) and the ASEAN Regional Forum. All this suggests that war in Asia - while not inconceivable - is unlikely.

**Presence of tensions *proves* Asia is stable --- it hasn’t escalated for decades**

**ALAGAPPA 2003 – DIRECTOR EAST-WEST CENTER WASHINGTON , ASIAN SECURITY ORDER, PAGE 2-4**

It is undeniable that Asia faces serious security challenges and that some ri­valry and competition feature in the still-evolving strategic picture. It is not a foregone conclusion, however, that Asia is a dangerous place characterized by capricious interaction and instability. Contemporary Asia is a far more **stable and predictable place** than during the early postindependence era that coincided with the height of the Cold War. That period witnessed, among others, the Korean War (1950-53), the French (1946-54) and American (1964-75) wars in Indochina, the Indonesian confrontation against Malaysia and Singapore (1963-65), Soviet-, Chinese-, and Vietnamese-supported communist insurgencies in several South­east Asian countries (approximately 1948-81), North Vietnam's conquest of South Vietnam (1975), Vietnam's invasion and occupation of Cambodia and Laos (1978-89), the three Indo-Pakistani wars (1947, 1965, 1971), the Sino-Indian bor­der war (1962), and the Sino-Soviet military confrontation (1969) over their dis­puted boundary. For the better part of three decades, Asia was truly a region in turmoil. **Asia has now enjoyed relative peace for more than two decades.** There has been no major war since the Vietnamese invasion of Cambodia in 1978 and the Chinese punitive attack on Vietnam in 1979. Despite periodic tensions, there has not been a war across the Taiwan Strait or in the Korean peninsula. The Kashmir conflict has witnessed much greater military activity and casualties, and the prob­ability of overt military clash is higher than in the other two acute conflicts. How­ever, even here, despite and in some ways because of the acquisition of nuclear capabilities by India and Pakistan, the actual use of force has been limited and confined largely to the areas adjacent to the line of control in Kashmir. Although it had the potential, the 1999 Kargil conflict did not escalate to full-scale war, let alone trigger a nuclear exchange. The crisis precipitated by the December 13, 2001, attack on the Indian parliament by militant Islamic groups based in Pakistan, continued Pakistani support for militant infiltration and terrorist activities in India, and the resulting massive Indian and Pakistani military mobilization along the line of control have generated much tension between the two countries, moving them to the brink of war. While a war cannot be ruled out, it is equally important to acknowledge the increasing constraints on the unlimited use of force. **In the event that a war does occur, it is likely to be limited and confined to the conventional level.** The many other territorial disputes on land and at sea in Asia have resulted only in occasional military clashes. The nuclear crisis in the Korean peninsula was defused through an agreed framework in 1994 to freeze North Korea's nuclear development. The Indian and Pakistani nuclear tests have not had the feared chain reaction, and despite the periodic crisis between these two states, the nuclear threshold has not been breached. The apprehensions among the Asian powers (rooted in old memories and contemporary concerns), as well as widespread concern with the predominant position of the United States and the rise of China, have contributed to the development of certain military capabilities (both conventional and nuclear) and redeployment of forces, but they have not resulted in unrestrained competition and arms racing. Asia has not become an arena of incessant rivalry. Nor has it become a hotbed of wars where the survival of states is deeply problematic and states are constantly jockeying for power. With very few exceptions, **Asian states do not fear for their survival**. Even when survival is at stake as in the case of Taiwan, international interaction is not always governed by considerations of survival and threat of force. The international political, economic, and social interaction of most states occurs in the context of a stable and predictable environment and generally is in accord with internationally accepted principles and norms. International power and position ire important, but these are long-range considerations, not immediate triggers of behavior. Contemporary Asia is much more stable than the Asia of the past and indeed more stable than several other regions of the world today (Eastern Europe, the Middle East, Africa). **There is little likelihood that such stability will be undermined quickly.**

### Solvency

#### Targeted killing regulation is impossible

Alston, professor – NYU Law, ‘11

(Philip, 2 Harv. Nat'l Sec. J. 283)

Despite the existence of a multiplicity of techniques by which the CIA might be held to account at the domestic level, the foregoing survey demonstrates that there is no evidence to conclude that any of them has functioned effective-ly in relation to the expanding practices involving targeted killings. The CIA Inspector General's Office has been unable to exact accountability and proposals to expand or strengthen his role run counter to almost all official actions taken in relation to his work. The President's Intelligence Oversight Board and the President's Foreign Intelligence Advisory Board are lauded by some for their potential, but there is no indication that they scrutinize activities such as targeted killings policy or practice, and many indications that they view their role as being to support rather than monitor the intelligence community. The Privacy and Civil Liberties Oversight Board remains dormant. Congressional oversight has been seriously deficient and far from manifesting an appetite to scrutinize the CIA's targeted killings policies, a range of senior members of congress are on record as favoring a hands-off policy. And a combination of the political question doctrine, the state secrets privilege, and a reluctance to prosecute, ensure that the courts have indeed allowed the CIA to fall into a convenient legal **gre**y hole. Finally, civil society has been largely stymied by the executive and the courts in their efforts to make effective use of freedom of information laws. All that remains is the media, and most of what they obtain through leaks come from government sources that are deliberately "spinning" the story in their own favor. Simi-lar conclusions have been reached in closely related contexts. Thus, for example, Kitrosser's survey of official responses to the warrantless wiretapping initiated after 9/11 led her to conclude that it was a shell [\*406] game, involving "an indefinite bi-partisan, cross-administration, cross-institutional pattern of accountability-avoidance." n450 In brief, at least in relation to targeted killings, the CIA enjoys almost complete impunity and is not subject to any form of meaningful internal or external accountability. Whether from the perspective of democratic theory or of interna-tional accountability for violations of the right to life, this is deeply problematic. One solution to this that has been sug-gested by some commentators is to follow the precedent set by Israel in its efforts to ensure legal oversight of its target killings programs. We turn now to examine the feasibility and desirability of pursuing such an option.

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#### Military will backlash, prevents implementation

Yoo, professor of law – U California, Berkeley, ‘9

(John, 58 Duke L.J. 2277)

As conditions worsened in Iraq after the fall of Saddam Hussein's regime, the military became more critical of Sec-retary Rumsfeld. Military officers anonymously criticized the Secretary for refusing to send enough troops to pacify the country, and generally attacked him for ignoring their advice and counsel. In an April 2006 act known in the military as the "revolt of the generals," dozens of senior retired military officers called for Rumsfeld's resignation for allegedly mismanaging the war. n73 In 2006, retired general Gregory Newbold, former director of operations of the Joint Chiefs, wrote an essay in Time declaring that it was his "sincere view ... that the commitment of forces to this fight was done with a casualness and swagger that are the special province of those who have never had to execute these missions - or bury the results." n74 Part of the impetus for the revolt was the deeper lesson, taken by the officer corps from Vietnam, that the military had been too subservient to civilian leaders and that they should talk straight to the political leadership about their views. Ironically, the 2007-08 surge in forces in Iraq and the improvement in the country's rebuilding came against the advice of the senior military leadership, which had decided that the size of the American footprint in Iraq was part of the problem. n75 Dissension over Iraq was matched by contention over the continuing war on terrorism. Perhaps the most public ex-ample was Congress's consideration of the Military Commissions Act of 2006 [\*2290] (MCA), n76 which established rules for the detention and military trials of terrorists. In November 2001, President Bush issued an executive order es-tablishing military commissions, in the form of a military tribunal, to try al Qaeda members and their allies for war crimes. n77 Some members of the military's Judge Advocate Generals (JAG) corps wanted to use courts-martial instead, but civilian leaders in the Pentagon favored commissions, which promised a flexible balance between the need for an open, fair proceeding and the need to keep national security secrets. In Hamdan v. Rumsfeld, n78 the Supreme Court held that the tribunals had to operate according to the lines set out in Common Article 3 of the Geneva Conventions, n79 set-ting off Congress's consideration of the 2006 Act. During congressional hearings, JAGs for the Marines and the Army testified that commission rules withholding classified evidence from the defendant, but not his lawyer, would still vio-late the Geneva Conventions, whereas the civilian representative of the Department of Justice testified to the opposite effect. n80 Military disagreement over civilian policy in the war on terrorism extended back to the beginning of the conflict. JAGs challenged President Bush's decision in February 2002, after extensive debate within the executive branch, that members of al Qaeda and the Taliban were not to receive the status of prisoners of war under the Geneva Conventions. n81 After that decision, JAGs reportedly cooperated with private human rights groups to challenge the decision in federal court. Once uniformed lawyers were appointed to represent detainees in the military commission process, they [\*2291] dispensed with the secrecy and filed suit against the Bush administration directly. n82 Members of the uniformed military also challenged the legality of holding suspected al Qaeda at the U.S. Navy Station at Guantanamo Bay, Cuba. n83 Ac-cording to media reports, JAGs representing detainees in the military commission process met with members of Con-gress to seek their assistance in reversing Bush administration policies on detainees. n84 Congress's enactment of the MCA hewed closely to civilian preferences on the commissions and the designation of al Qaeda as illegal combatants. Although the Supreme Court, in Boumediene v. Bush, n85 reversed the MCA's effort to prohibit federal habeas corpus review over the detainees at Guantanamo Bay, n86 it has not yet addressed the substance of the MCA. All of this has led historians and political scientists to warn of a crisis in civil-military relations. Russell Weigley, a prominent military historian, compared General Powell's resistance to intervention in Bosnia to General McClellan's reluctance to engage General Lee during the Civil War. n87 By 2002, Richard Kohn, a distinguished military historian, had already concluded that "civilian control of the military has weakened in the United States and is threatened today." n88 According to Kohn, "the American military has grown in influence to the point of being able to impose its own per-spective on many policies and decisions." n89 He detects "no conspiracy but repeated efforts on the part of the armed forces to frustrate or evade civilian authority when that opposition seems likely to preclude outcomes the military dis-likes." n90 He believes that civilian-military relations in that period are as poor as in any other period in American histo-ry. n91 Michael Desch argues that the high tensions in civil-military relations are due [\*2292] not to the military but to the civilians, which have violated Huntington's advice in favor of "objective control" by giving the military broad dis-cretion over tactics and operations while keeping final say over politics and grand strategy. n92 In a 1999 study, Desch found that civilians prevailed in almost all of the seventy-five civil-military disputes from 1938 to 1997, but that the military has won in seven or eight of the twelve post-Cold War conflicts. n93 Some attribute this discord to the regular give-and-take inherent in the civil-military relationship, whereas others believe that the military has grown bold in ques-tioning the foreign policy decisions of the civilian leadership. n94

#### Military compliance key to implementation

Yoo, professor of law – U California, Berkeley, ‘9

(John, 58 Duke L.J. 2277)

A number of broader changes in both civilian and military personnel may exacerbate the gap in their preferences on particular policy questions. The change that has attracted much notice is the [\*2301] growing difference between civil-ian and military values and perspectives, which has expressed itself in a number of ways. Scholars have observed that the officer corps, for example, has become increasingly Republican in the last few decades, the likely result of self-selection, Republican party outreach, and the decline in the Democratic party's hawkish wing after the Vietnam War. n123 As a result, the agency model would predict more friction during periods of Democratic control of the executive branch, but it would not have predicted the high levels of conflict under Bush. The introduction of the all-volunteer force after Vietnam has reduced the number of veterans in society at large and in the civilian political leadership in particular, a dynamic enhanced by the reduction of the military's size after the Cold War and a drop in the number of bases through-out the country. n124 Civilians and military officers have come to have a growing difference in both their opinions and their experience. There is nothing normatively wrong with a difference in preferences between civilians and the military. It is inher-ent in the principal-agent relationship. Principals want to save time and resources by delegating authority to agents. The latter naturally desire autonomy in pursuing their missions. It is also not surprising that in an area as fraught with signif-icance as the nation's security, there will be strong differences in preferences beyond questions solely of institutional independence. The phrase "shirking," when used in the literature on business organizations, implies that managers are attempting to benefit themselves financially at the expense of the shareholders - but it does not have that implication in the analysis of the public sector. Rather, as here, it refers to examples when agents seek to pursue their own interests rather than those of civilians. Shirking, in fact, may better advance overall American national security, should military policy preferences actually prove superior to civilian preferences on an individual question. But it would come at the cost of a reduction in civilian control of the military.

#### Turns heg

Mackubin Thomas Owens, professor of national security affairs in the National Security Affairs Department of the Naval War College, Spring 2012, WHAT MILITARY OFFICERS NEED TO KNOW ABOUT CIVIL-MILITARY RELATIONS, http://www.usnwc.edu/getattachment/1ef74daf-ebff-4aa4-866e-e1dd201d780e/What-Military-Officers-Need-to-Know-about-Civil-Mi.aspx

CIVILIAN CONTROL INVOLVES NOT ONLY THE EXECUTIVE BRANCH

It involves Congress as well. As the constitutional scholar Edward Corwin once famously observed, the Constitution is an “invitation to struggle for the privilege of directing American foreign policy” between Congress and the president.13 But there is a similar tension at work with regard to civil-military relations. Those who neglect the congressional role in American civil-military relations are missing an important element.14

The military has two civilian masters, and this has implications for civil-military relations that officers must understand. For instance, while the president and secretary of defense control the military when it comes to the use of force, including strategy and rules of engagement, Congress controls the military directly with regard to force size, equipment, and organization, and indirectly regarding doctrine and personnel. Indeed, Congress is the “force planner” of last resort.

The U.S. military accepts civilian control by both Congress and the president but offers advice intended to maintain its own institutional and professional autonomy. On use of force, the military is usually granted a good deal of leeway regarding the terms and conditions for such use.

By not dissenting from executive-branch policy, American military officers implicitly agree to support presidential decisions on the budget and the use of force, but they also must recognize an obligation to provide their alternative personal views in response to Congress. However, officers must recognize that Congress exerts its control with less regard for military preferences than for the political considerations of its individual members and committees. Thus congressional control of the military is strongly influenced by political considerations, by what Samuel Huntington called “structural,” or domestic, imperatives as opposed to strategic ones.

When the president and Congress are in agreement, the military complies. When the two branches are in disagreement, the military tends to side with the branch that most favors its own views, but never to the point of direct disobedience to orders of the commander in chief. Military officers are obligated to share their views with Congress. Doing so should not be treated as an “end run” undermining civilian control of the military.15

THE ABSENCE OF A COUP

The absence of a coup does not indicate that civil-military relations are healthy or that civilian control has not eroded. All too often, officers seem to believe that if the United States does not face the prospect of a Latin American– or African-style military coup d’état, all is well in the realm of civil-military relations. But this is a straw man. A number of scholars, including Richard Kohn, Peter Feaver, the late Russell Weigley, Michael Desch, and Eliot Cohen, have argued that although there is no threat of a coup on the part of the military, American civil-military relations have nonetheless deteriorated over the past two decades.16

Their concern is that the American military “has grown in influence to the point of being able to impose its own perspective on many policies and decisions,” which manifests itself in “repeated efforts on the part of the armed forces to frustrate or evade civilian authority when that opposition seems likely to preclude outcomes the military dislikes.” The result is an unhealthy civil-military pattern that “could alter the character of American government and undermine national defense.”

#### CMR collapse overwhelms the aff—leads to national collapse

Mark Shulman, Assistant Dean for Graduate Programs and International Affairs and an Adjunct Professor of Law, Pace University School of Law, January 2012, SUPPORT AND DEFEND: CIVIL-MILITARY RELATIONS IN THE AGE OF OBAMA, 35 Fordham Int'l L.J. 409

This Article starts out by explaining why robust civil-military relations matter. Without meaningful and reliable civilian control of the military, governments lose some measure of control over the destiny of their nation. In extreme circumstances it can even lead an overthrow of government. Part I discusses A More Perfect Military: How the Constitution Can Make Our Military Stronger by law professor Diane Mazur, a new book that examines recent civil-military relations in the United States. Her carefully constructed work maintains that since the Vietnam era, the United States Supreme Court has hewn the armed forces from general society in order to create a separate--and more socially conservative--sphere. Part II discusses The Decline and Fall of the American Republic by constitutional scholar Bruce Ackerman, a wise and wide-ranging book that argues that the nation's polity is in decline and that the increasingly politicized armed forces may ultimately lead to a coup. Part III asks where we go from here. The important books under discussion attribute a thinning of the civilian control over the military to legal and political decisions made over the past thirty years. They explain some of the most critical implications of this transformation and they offer sensible proposals about how to improve that critical relationship for the sake of enhancing the effectiveness of our armed forces and the vitality of our republic. But, neither work examines the evolving nature of great power politics since the end of the Cold War, the effects new technologies have on long-standing distinctions and borders, or the relative rise of nonstate actors including Al Qaeda--three sets of exogenous factors that inevitably drive changes in the civil-military relationship. So in the end, these books point to a more ambitious enterprise, reexamining the relationship between force and twenty-first century society.

The remarkable events of the Arab Spring in 2011 illuminate important truths about the nature of governments and governance. Most notably, in order to rule, civilian leadership must exercise consistent and reliable control over the state's security apparatus. In the case of repressive regimes, stability may not be normatively desirable, but it remains significant nonetheless. Without the ability to control the army, almost any regime will fall. This lesson may seem obvious or axiomatic, but it bears repeating and illustrating. The Tunisian military's refusal to support the long-standing regime in the face of a popular uprising condemned President Zine El Abidine [\*412] Ben Ali to a rapid fall from power. n4 Shortly thereafter, the world watched anxiously to see whether the Egyptian military would remain loyal to the regime of President Hosni Mubarak or shift the balance of power to the protesters crowding Cairo's Tahrir Square. Much like their counterparts in Tunisia, the Egyptian military tried to play the role of an honest broker, effectively denying support to the president and thus ensuring the protesters the space in which to give effect to their revolution. n5 Months after Mubarak fled Cairo, the military continues to exercise power, running the interim government. n6 In contrast, the armed forces of Bahrain and Syria have thus far remained mostly obedient to their governments, which in turn have, to date, survived. n7 The case of Libya illustrates a third way. The Libyan military split on supporting the regime of Muammar Muhammad el-Qaddafi, resulting in a bitter and protracted civil war. n8 In every instance where the military has fully supported the government, the government survived. Where the military turned against the national leadership, the governments fell. And where the military has vacillated, violent conflict and political indeterminacy ensued.

These examples demonstrate several elemental points. Civilian control of the military is not necessarily binary. When a nation's armed forces take orders from the civilian leadership, the government has a good chance of retaining power. When the military is not absolutely obedient, the regime's ability to govern is significantly diminished. When the military defects, a change in leadership invariably results. The events of the Arab Spring offer a timely and poignant reminder of a role that armed forces play in the life and death of a state--a role generally downplayed, but nevertheless very real in the United States. When the government does not exercise a monopoly on the use of large-scale violence, the regime's effectiveness and longevity becomes less certain. This lesson might seem self-evident, but it is worth spelling out because of its momentous implications.

#### Nuclear war

Pinkerton 3,

(Fellow @ New America Foundation, http://www.techcentralstation.com/1051/defensewrapper.jsp?PID=1051-350&CID=1051-020403A)

Historically, the only way that the slow bureaucratic creep of government is reversed is through revolution or war. And that could happen. But there's a problem: the next American revolution won't be fought with muskets. It could well be waged with proliferated wonder-weapons. That is, about the time that American yeopersons decide to resist the encroachment of the United Nations, or the European Union—or the United States government—the level of destructive power in a future conflict could remove the choice expressed by Patrick Henry in his ringing cry, "Give me liberty, or give me death." The next big war could kill everybody, free and unfree alike.

#### No political will to implement the plan

Druck, JD – Cornell Law, ‘12

(Judah, 98 Cornell L. Rev. 209)

There are obvious similarities between the causes and effects of the public scrutiny associated with the larger wars discussed above. In each situation, the United States was faced with some, or even all, of the traditional costs associated with war: a draft, an increasingly large military industry, logistical sacrifices (such as rationing and other noncombat expenses), and significant military casualties. n114 Americans looking to keep the United States out of foreign affairs ob-viously had a great deal on the line, which provided sufficient incentive to scrutinize military policy. In the face of these potentially colossal harms, the public was willing to assert a significant voice, which in turn increased the willingness of politicians to challenge and subsequently shift presidential policy. As a result, public scrutiny and activism placed a President under constant scrutiny in one war, delayed U.S. intervention in another, and even helped end two wars entire-ly. Thus, we may extract a general principle from these events: when faced with the prospect of a war requiring heavy domestic sacrifices, and absent an incredibly compelling reason to engage in such a war (as seen in World War II, for example), n115 the public is properly incentivized to emerge and exert social (and, consequently, political) pressure in order to engage and shift foreign policy. However, as we will see, the converse is true as well. B. The Introduction of Technology-Driven Warfare and Shifting Wartime Doctrines The recent actions in Libya illustrate the culmination of a shift toward a new era of warfare, one that upsets the system of social and political checks on presidential military action. Contrary to the series of larger conflicts fought in the twen-tieth century, this new era has ushered in a system of war devoid of some of the fundamental aspects of war, including the traditional costs discussed above. Specifically, through the advent of military technology, especially in the area of robotics, modern-day hostilities no longer require domestic sacrifices, thereby concealing the burden of war from main-stream consciousness. n116 By using fewer troops and introducing drones and other [\*228] forms of mechanized warfare into hostile areas more frequently, n117 an increased number of recent conflicts have managed to avoid many domestic casualties, economic damages, and drafts. n118 In a way, less is on the line when drones, rather than people, take fire from enemy combatants, and this reality displaces many hindrances and considerations when deciding whether to use drones in the first place. n119 This move toward a limited form of warfare has been termed the "Obama Doctrine," which "emphasizes air power and surgical strikes, rather than boots on the ground." n120 Under this military framework, as indicated by the recent use of drones in the Middle East, the traditional harms associated with war might become increasingly obsolete as technolo-gy replaces the need for soldiers. Indeed, given the increased level of firepower attached to drones, we can imagine a situation where large-scale military engagements are fought without any American soldiers being put in harm's way, without Americans having to ration their food purchases, and without teenagers worrying about being drafted. n121 For example, "with no oxygen-and sleep-needing human on board, Predators and other [unmanned aerial vehicles] can watch over a potential target for 24 hours or more - then attack when opportunity knocks." n122 Thus, if the recent actions in Libya are any indication of what the future will look like, we can predict a major shift in the way the United States carries out wars . n123 [\*229] C. The Effects of Technology-Driven Warfare on Politics and Social Movements The practical effects of this move toward a technology-driven, and therefore limited, proxy style of warfare are mixed. On the one hand, the removal of American soldiers from harm's way is a clear benefit, n124 as is the reduced harm to the American public in general. For that, we should be thankful. But there is another effect that is less easy to identify: pub-lic apathy. By increasing the use of robotics and decreasing the probability of harm to American soldiers, modern war-fare has "affected the way the public views and perceives war" by turning it into "the equivalent of sports fans watching war, rather than citizens sharing in its importance." n125 As a result, the American public has slowly fallen victim to the numbing effect of technology-driven warfare; when the risks of harm to American soldiers abroad and civilians at home are diminished, so too is the public's level of interest in foreign military policy. n126 In the political sphere, this effect snowballs into both an uncaring public not able (or willing) to effectively mobi-lize in order to challenge presidential action and enforce the WPR, and a Congress whose own willingness to check presidential military action is heavily tied to public opinion. n127 Recall, for example, the case of the Mayaguez, where potentially unconstitutional action went unchecked because the mission was perceived to be a success. n128 Yet we can imagine that most missions involving drone strikes will be "successful" in the eyes of [\*230] the public: even if a strike misses a target, the only "loss" one needs to worry about is the cost of a wasted missile, and the ease of deploying another drone would likely provide a quick remedy. Given the political risks associated with making critical statements about military action, especially if that action results in success, n129 we can expect even less congressional WPR en-forcement as more military engagements are supported (or, at the very least, ignored) by the public. In this respect, the political reaction to the Mayaguez seems to provide an example of the rule, rather than the exception, in gauging politi-cal reactions within a technology-driven warfare regime. Thus, when the public becomes more apathetic about foreign affairs as a result of the limited harms associated with technology-driven warfare, and Congress's incentive to act consequently diminishes, the President is freed from any possible WPR constraints we might expect him to face, regardless of any potential legal issues. n130 Perhaps unsurpris-ingly, nearly all of the constitutionally problematic conflicts carried out by presidents involved smaller-scale military actions, rarely totaling more than a few thousand troops in direct contact with hostile forces. n131 Conversely, conflicts that have included larger forces, which likely provided sufficient incentive for public scrutiny, have generally complied with domestic law. n132 The result is that as wars become more limited, n133 unilateral presidential action will likely become even more un-checked as the triggers for WPR enforcement fade away. In contrast with the social and political backlash witnessed during the Civil War, World War I, the Vietnam War, and the Iraq War, contemporary military actions provide insuffi-cient incentive to prevent something as innocuous and limited as a drone strike. Simply put, technology-driven warfare is not conducive to the formation of a substantial check on presidential action. n134

#### Inclusion of the courts doesn’t fix it

Eric Posner, Professor of Law, The University of Chicago Law School, and Adrian Vermeule, Professor of Law, Harvard Law School, March 2011, The Executive Unbound, p. 52-4

We now turn from Congress to the courts, the other main hope of liberal legalism. In both economic and security crises, courts are marginal participants. Here two Schmittian themes are relevant: that courts come too late to the crisis to make a real difference in many cases, and that courts have pragmatic and political incentives to defer to the executive, whatever the nominal standard of review. The largest problem, underlying these mechanisms, is that courts possess legal authority but not robust political legitimacy. Legality and legitimacy diverge in crisis conditions, and the divergence causes courts to assume a restrained role. We take up these points in turn. The Timing of Review A basic feature of judicial review in most Anglo-American legal systems is that courts rely upon the initiative of private parties to bring suits, which the courts then adjudicate as "cases and controversies" rather than as abstract legal questions. This means that there is always a time lag, of greater or lesser duration, between the adoption of controversial government measures and the issuance of judicial opinions on their legal validity Common lawyers sometimes praise this delayed review precisely because the delay ensures that courts are less likely to set precedents while crises are hot, precedents that will be warped by the emotions of the day or by the political power of aroused majorities." Delayed review has **severe costs**, however. For one thing, courts often face a fait accompli. Although it is sometimes possible to strangle new programs in the crib, once those measures are up and running, it is all the more difficult for courts to order that they be abolished. This may be because new measures create new constituencies or otherwise entrench themselves, creating a ratchet effect, but the simpler hypothesis is just that officials and the public believe that the measures have worked well enough. Most simply, returning to the pre-emergency status quo by judicial order seems unthinkable; **doing so would just re-create the conditions that led the legislature and executive to take emergency measures in the first place.** For another thing, even if courts could overturn or restrict emergency measures, by the time their review occurs, those measures will by their nature already have worked, or not. If they have worked, or at least if there is a widespread sense that the crisis has passed, then the legislators and public may not much care whether the courts invalidate the emergency measures after the fact. By the time the courts issue a final pronouncement on any constitutional challenges to the EESA, the program will either have increased liquidity and stabilized financial markets, or not. In either case, the legal challenges will interest constitutional lawyers, but will lack practical significance. Intensity of Review Another dimension of review is intensity rather than timing. At the level of constitutional law, the overall record is that courts tend to defer heavily to the executive in times of crisis, only reasserting themselves once the public sense of imminent threat has passed. As we will discuss in chapter 3, federal courts deciding administrative cases after 9/11 have tended to defer to the government's assertion of security interests, although more large-number work is necessary to understand the precise contours of the phenomenon. Schmitt occasionally argued that the administrative state would actually increase the power of judges, insofar as liberal legislatures would attempt to compensate for broad delegations to the executive by creating broad rights of judicial review; consider the Administrative Procedure Act (APA), which postdates Schmitt's claim. It is entirely consistent with the broader tenor of Schmitt's thought, however, to observe that the very political forces that constrain legislatures to enact broad delegations in times of crisis also hamper judges, including judges applying APA-style review. While their nominal power of review may be vast, the judges cannot exercise it to the full in times of crisis. Legality and Legitimacy At a higher level of abstraction, the basic problem underlying judicial review of emergency measures is the divergence between the courts' legal powers and their political legitimacy in times of perceived crisis. As Schmitt pointed out, emergency measures can be "exceptional" in the sense that although illegal, or of dubious legality; they may nonetheless be **politically legitimate,** if they respond to the public's sense of the necessities of the situation.71 Domesticating this point and applying it to the practical operation of the administrative state, courts reviewing emergency measures may be on strong legal ground, but will tend to lack the political legitimacy needed to invalidate emergency legislation or the executive's emergency regulations. Anticipating this, courts pull in their horns. When the public sense of crisis passes, legality and legitimacy will once again pull in tandem; courts then have more freedom to invalidate emergency measures, but it is less important whether or not they do so, as the emergency measure will in large part have already worked, or not. The precedents set after the sense of crisis has passed may be calmer and more deliberative, and thus of higher epistemic quality—this is the claim of the common lawyers, which resembles an application of the Madisonian vision to the courts—but the public will not take much notice of those precedents, and they will have little sticking power when the next crisis rolls around.

#### Executive branch lawyers will circumvent

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(Tai-Heng, 106 A.J.I.L. 710)

Lubell's analysis of drone attacks shows the limits of his method in clarifying the law as it stands. He explains that "IHL and human rights law can lead to differing conclusions" about the legality of drone attacks (p. 258). Under human rights law, "the intentional killing of the individuals is likely to have been unlawful" (p. 255). In contrast, in an armed conflict, "[t]argeting [persons] could be lawful under IHL if they are seen to be non-civilians" (p. 257). Although he proposes various criteria for selecting between human rights law and IHL, Lubell ultimately concludes: "While the concurrent applicability of human rights and IHL is a legal reality, the lack of an agreed approach to interpretation leads to difficulties of implementation in practice" (pp. 258-59), resulting in "difficulty in achieving certainty on this matter" (p. 258). Ruys's survey of state practice to determine whether customary international law currently permits the use of force against nonstate actors in a foreign state illustrates the limits of his method in identifying clear legal rules, even within a single legal regime. He concedes that the legal significance of relevant incidents is open to interpretation. For example, whether the invasion of Afghanistan by the United States and its allies extended the right of self-defense to armed attacks by nonstate actors is open to "a wide range of possible interpretative outcomes depending on one's point of view" (p. 442). Similarly, a "possible interpretation" of Turkey's attacks on Iraqi Kurds in 2008 (p. 461) is that it changed the law to authorize force against nonstate actors, but an observer could also conclude that "States felt uncomfortable about setting a new precedent" (p. 462). Likewise, when Ethiopian troops were sent in 2006 into Somalia to fight the Union of Islamic Courts that threatened Ethiopia, the lack of legal debates among states about Ethiopia's actions "impede[s] the analysis" of that incident (p. 470). Based on his review of events, Ruys proposes that the attack **[\*713]** on these nonstate actors is "not unambiguously illegal" (p. 487). This triple negative assessment of legality leaves much room for further clarification of the law. Lubell's and Ruys's analyses of preemptive self-defense also show how policy appraisals of what the law ought to be can shape the law as it stands. Both authors argue that customary international law prohibits the use of preemptive force against a nonimminent threat. Lubell supports his contention with a Security Council resolution that "strongly condemn[ed] Israel for carrying out a pre-emptive strike [in 1981] against the Osiraq nuclear reactor in Iraq" (p. 61). However, he also concedes that this evidence of *opinio juris* against preemptive attacks is inconclusive because the resolution "can be the result of a number of factors, including a perception that the circumstances of that particular case may not have warranted an attack due to a lack of exhaustion of viable alternatives as well as no imminent need" (*id.*). Faced with this inconclusive evidence of state practice and *opinio juris*, the reader might infer that Lubell believes that preemptive self-defense is legally prohibited for policy reasons. Quoting Rosalyn Higgins, he emphasizes a "primary and fundamental concern . . . that preemption will become 'a pretext for unprovoked aggression'" (p. 62). Ruys similarly rejects the legality of preemptive self-defense on policy grounds. As noted, Ruys argues that the 2003 invasion of Iraq by the United States and its allies did not constitute state practice and *opinio juris* permitting preemptive self-defense because, inter alia, the states that supported the invasion did not justify it with a broad reading of Article 51 of the UN Charter and "a majority of States apparently held the opinion that the operation violated the UN Charter" (pp. 317-18). His footnotes show, however, that, while many states opposed the invasion, the number was far short of "a majority of States" in the world and that some of those states criticized the invasion as illegitimate rather than a violation of the Charter (p. 317 nn.338-39). Ruys also acknowledges that Michael Reisman has found numerous statements by states about the legality of preemptive force but minimizes their importance as "political sabre-rattling . . . rather than as reliable manifestations of States' *opinio juris*" (pp. 333-34). Based on these interpretations of evidence, Ruys concludes that "it is impossible to identify *de lege lata* a general right of pre-emptive--and a fortiori preventive--self-defence" (p. 342). Taken alone, this analysis of preemptive self-defense might persuade some readers. Yet when studied alongside Ruys's analysis of the use of force against terrorists, doubts emerge. Just as Ruys's evidence for the acceptance of preemptive self-defense is mixed, his evidence for the legality of use of force against nonstate actors is not entirely persuasive. While Ruys dismisses statements by states in favor of preemptive self-defense as political and not legal, he characterizes the acquiescence of some states to the use of force against nonstate actors to be "a fickle barometer of *opinio juris*" (p. 462). However, although he claims that a right of preemptive self-defense does not exist because no evidence clearly supports it, Ruys concludes in contrast, as noted, that the use of force against nonstate actors is "not unambiguously illegal" (p. 487) in spite of the equivocal evidence. Although his assessment about the legality of force against nonstate actors is couched in qualified terms, the practical difference with his position on preemptive force is sharp. If policy makers accept his view, they may choose to attack, without clearly breaking the law, nonstate actors who have attacked the state of those policy makers. However, if they use force preemptively against a state or nonstate actor, they will have acted unlawfully. Certainly, one might finely parse the evidence to argue that state practice as well as *opinio juris* in support of the use of force against nonstate actors was stronger than the evidence in support of preemptive force, thereby justifying Ruys's conclusions that the former is "not unambiguously illegal" while the latter remains clearly illegal. However, another equally plausible--and perhaps more compelling--explanation is that Ruys was guided by his differing policy appraisals of the use of force against nonstate actors versus the use of preemptive force. When considering the use of force against nonstate actors, Ruys emphasizes "the delicacy of balancing the national security interests of a State that falls victim to non-State attacks and the fundamental rights to sovereignty" **[\*714]** (*id.*). He explicitly acknowledges the competing policy concerns of magnified "destructive potential" of terrorists through modern technologies (p. 488) versus the risks of "increased legitimacy of the non-State group [once they are attacked] or a further degradation of the authority of the 'host State' . . . [or] military escalation" (*id.*). In contrast, Ruys appraises preemptive force as "highly undesirable from a *de lege ferenda* perspective" because it would usurp the Security Council's responsibility for keeping international peace and because the right to use preemptive force would be open to abuse (p. 324). While acknowledging that supporters of preemptive self-defense "stress time and again . . . the increasing speed and destructive potential of modern weaponry" (p. 257), Ruys neither explicitly assesses the weight of this policy concern relative to the potential for abuse nor explains why he chose not to do so. These methodological observations about Ruys's and Lubell's findings do not significantly diminish their contribution to international legal scholarship. Quite the contrary. Their books are not just studies on the use of force. They are also case studies of contemporary positivism. Ruys's and Lubell's methods reveal how much it has in common with other international legal theories. As discussed earlier, Lubell recognizes that the choice between IHL and human rights law can lead to different conclusions about the legality *vel non* of drone attacks, but the methods of choosing among legal theories remain unclear. This conclusion is consistent with Martii Koskemenmi's recent critical legal studies research showing uncertainty about the legality of actions where different legal regimes may apply to the same international problem and where each regime may lead to a different legal conclusion. n1 Ruys asserts that the legal significance of "incidents"--a term of art proposed by Reisman to describe basic epistemic units in international law n2 --is determined by claims and counterclaims among states (p. 51). This view comes close to the conceptualization of law in policy-oriented jurisprudence as an ongoing process of communication among relevant actors, n3 with which international legal process and constructivist international relations theories also seem to agree. n4

## 2NC

## Legal Biz

### AT: Mexico

Their relations card isn’t about drones – it’s about border security

#### The un-highlighted part of their Sager ev says that US drone used could casue Mexican drug use (see blue highlighting) – Obvi that doesn’t hurt relations because the US isn’t doing it

Without the constraint of an enforceable international law, there may be too few barriers in place to stop other nations from exploiting the same loopholes that the U.S. has to kill members of groups they deem ‘terrorists’—say, Mexican drug cartels or the Free Syrian Army—but their own citizens, as well. Seen in this light, the assassinations of Harithi, Awlaki, and thousands of others are not mere casualties of short-term war; they are the first dead in new breed of globalized warfare, bound only by feasibility and the size of one’s defense budget.

#### The relations impact is about fights over border security – its an alt cause, not an impact

#### Mexican government is on board with drones

Washington Post – 3/16/11, Mary Beth Sheridan, Mexico confirms use of U.S. drones in drug war, http://articles.washingtonpost.com/2011-03-16/world/35207497\_1\_drones-jaime-zapata-cartels

The Mexican government confirmed Wednesday that it had authorized the use of U.S. drones to collect intelligence on several occasions, a new sign of the two countries’ intensifying cooperation against the drug cartels threatening Mexico. The statement from Mexico’s presidential office said the drones had been requested for “specific occasions and events” and had been operated under the supervision of its government. But until now, the flights were secret, apparently out of concern about a possible backlash in Mexico. Mexican politicians and the public have historically been highly sensitive to U.S. involvement in the country. The use of the drones was first reported by the New York Times, which said the Pentagon began sending high-altitude, unarmed drones deep into Mexico last month. The Mexican government statement did not specify which U.S. agency was running the drones, and presidential spokesman Alejandro Poire did not return a call for comment. The U.S. government has flown drones on the American side of the border for years. American officials have publicly hinted that the United States shares information from those flights with Mexico. Those drones are operated by the Department of Homeland Security. On Wednesday, asked about the latest disclosure, one senior U.S. official said: “It’s been a process of cooperation over time, and so some suggestion that this is 10 days old wouldn’t be accurate.” The official spoke on the condition of anonymity because of the sensitivity of the matter. The Pentagon referred calls to the Mexican government. The U.S. and Mexican governments have rapidly expanded their cooperation in recent years against cartels that have been waging a ferocious war for control of drug markets and routes in Mexico. More than 35,000 people have been killed since President Felipe Calderon launched a military offensive against the cartels in 2006. Some Mexican opposition politicians lashed out at the government for the secret drone flights. “There are constitutional regulations that have to do with Mexican airspace,” Rosario Green, a former foreign minister and a senator from the Institutional Revolutionary Party, told the newspaper Reforma. “If there is nothing to hide, why not debate it in Congress, which at the end of the day has a lot to do with maintaining our national sovereignty?” The Mexican government statement said the U.S. drone assistance was particularly sought in operations in the border area. When the drones were operating in Mexico, “the establishment of the objectives, the information to collect, and the specific tasks to carry out have been under the control of Mexican authorities,” the statement said. Poire said in an interview with Mexico’s Radio Formula that the intelligence gathered by the drones had contributed to the arrest of drug lords. The Times story said a U.S. Homeland Security drone had helped Mexican authorities locate several suspects in the slaying last month of Jaime Zapata, a U.S. Immigration and Customs Enforcement agent. Matthew Chandler, a Homeland Security spokesman, declined to comment, citing the ongoing investigation into Zapata’s slaying.

#### No solvency – obviously they don’t stop surveillance drones, just the lethal ones – if anything they lead to circumvention in this area

## Rights

### AT: Drone Prolif Advantage

#### No impact to global drone use – easily deterred

Singh 12 (Joseph Singh is a researcher at the Center for a New American Security. “Betting Against a Drone Arms Race,” http://nation.time.com/2012/08/13/betting-against-a-drone-arms-race/)

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

### AT: Kerry’s Speech = Drone Use Down

#### Drone use is still high

Mazzetti and Landler, August 2013 - Pulitzer Prize for reporting on the intensifying violence in Pakistan and Afghanistan and Washington's response. (August 2, Mark and Mark, “Despite Administration Promises, Few Signs of Change in Drone Wars ” <http://www.nytimes.com/2013/08/03/us/politics/drone-war-rages-on-even-as-administration-talks-about-ending-it.html?pagewanted=print>)

There were more drone strikes in Pakistan last month than any month since January. Three missile strikes were carried out in Yemen in the last week alone. And after Secretary of State John Kerry told Pakistanis on Thursday that the United States was winding down the drone wars there, officials back in Washington quickly contradicted him. More than two months after President Obama signaled a sharp shift in America’s targeted-killing operations, there is little public evidence of change in a strategy that has come to define the administration’s approach to combating terrorism. Most elements of the drone program remain in place, including a base in the southern desert of Saudi Arabia that the Central Intelligence Agency continues to use to carry out drone strikes in Yemen. In late May, administration officials said that the bulk of drone operations would shift to the Pentagon from the C.I.A. But the C.I.A. continues to run America’s secret air war in Pakistan, where Mr. Kerry’s comments underscored the administration’s haphazard approach to discussing these issues publicly. During a television interview in Pakistan on Thursday, Mr. Kerry said the United States had a “timeline” to end drone strikes in that country’s western mountains, adding, “We hope it’s going to be very, very soon.” But the Obama administration is expected to carry out drone strikes in Pakistan well into the future. Hours after Mr. Kerry’s interview, the State Department issued a statement saying there was no definite timetable to end the targeted killing program in Pakistan, and a department spokeswoman, Marie Harf, said, “In no way would we ever deprive ourselves of a tool to fight a threat if it arises.” Micah Zenko, a fellow with the Council on Foreign Relations, who closely follows American drone operations, said Mr. Kerry seemed to have been out of sync with the rest of the Obama administration in talking about the drone program. “There’s nothing that indicates this administration is going to unilaterally end drone strikes in Pakistan,” Mr. Zenko said, “or Yemen for that matter.”

## Solvency

### CMR

#### Military compliance key to implementation

Yoo, professor of law – U California, Berkeley, ‘9

(John, 58 Duke L.J. 2277)

A number of broader changes in both civilian and military personnel may exacerbate the gap in their preferences on particular policy questions. The change that has attracted much notice is the [\*2301] growing difference between civil-ian and military values and perspectives, which has expressed itself in a number of ways. Scholars have observed that the officer corps, for example, has become increasingly Republican in the last few decades, the likely result of self-selection, Republican party outreach, and the decline in the Democratic party's hawkish wing after the Vietnam War. n123 As a result, the agency model would predict more friction during periods of Democratic control of the executive branch, but it would not have predicted the high levels of conflict under Bush. The introduction of the all-volunteer force after Vietnam has reduced the number of veterans in society at large and in the civilian political leadership in particular, a dynamic enhanced by the reduction of the military's size after the Cold War and a drop in the number of bases through-out the country. n124 Civilians and military officers have come to have a growing difference in both their opinions and their experience. There is nothing normatively wrong with a difference in preferences between civilians and the military. It is inher-ent in the principal-agent relationship. Principals want to save time and resources by delegating authority to agents. The latter naturally desire autonomy in pursuing their missions. It is also not surprising that in an area as fraught with signif-icance as the nation's security, there will be strong differences in preferences beyond questions solely of institutional independence. The phrase "shirking," when used in the literature on business organizations, implies that managers are attempting to benefit themselves financially at the expense of the shareholders - but it does not have that implication in the analysis of the public sector. Rather, as here, it refers to examples when agents seek to pursue their own interests rather than those of civilians. Shirking, in fact, may better advance overall American national security, should military policy preferences actually prove superior to civilian preferences on an individual question. But it would come at the cost of a reduction in civilian control of the military.

## CP

### CP

#### Promoting a strong judiciary is necessary to make those transitions stable and democratic—detention policies guarantee global authoritarianism

CJA 4, Center for Justice and Accountability

[OCTOBER 2004, The Center for Justice & Accountability (“CJA”) seeks, by use of the legal systems, to deter torture and other human rights abuses around the world., “BRIEF OF the CENTER FOR JUSTICE AND ACCOUNTABILITY, the INTERNATIONAL LEAGUE FOR HUMAN RIGHTS, and INDIVIDUAL ADVOCATES for the INDEPENDENCE of the JUDICIARY in EMERGING DEMOCRACIES as AMICI CURIAE IN SUPPORT OF PETITIONERS”, http://www.cja.org/downloads/Al-Odah\_Odah\_v\_US\_\_\_Rasul\_v\_Bush\_CJA\_Amicus\_SCOTUS.pdf]

A STRONG, INDEPENDENT JUDICIARY IS ESSENTIAL TO THE PROTECTION OF INDIVIDUAL FREEDOMS AND THE ESTABLISHMENT OF STABLE GOVERNANCE IN EMERGING DEMOCRACIES AROUND THE WORLD. A. Individual Nations Have Accepted and Are Seeking to Implement Judicial Review By A Strong, Independent Judiciary. Many of the newly independent governments that have proliferated over the past five decades have adopted these ideals. They have emerged from a variety of less-than-free contexts, including the end of European colonial rule in the 1950's and 1960's, the end of the Cold War and the breakup of the former Soviet Union in the late 1980's and 1990's, the disintegration of Yugoslavia, and the continuing turmoil in parts of Africa, Latin America and southern Asia. Some countries have successfully transitioned to stable and democratic forms of government that protect individual freedoms and human rights by means of judicial review by a strong and independent judiciary. Others have suffered the rise of tyrannical and oppressive rulers who consolidated their hold on power in part by diminishing or abolishing the role of the judiciary. And still others hang in the balance, struggling against the onslaught of tyrants to establish stable, democratic governments. In their attempts to shed their tyrannical pasts and to ensure the protection of individual rights, emerging democracies have consistently looked to the United States and its Constitution in fashioning frameworks that safeguard the independence of their judiciaries. See Ran Hirschl, The Political Origins of Judicial Empowerment through Constitutionalization: Lessons from Four Constitutional Revolutions, 25 Law & Soc. Inquiry 91, 92 (2000) (stating that of the “[m]any countries . . . [that] have engaged in fundamental constitutional reform over the past three decades,” nearly all adopted “a bill of rights and establishe[d] some form of active judicial review”) Establishing judicial review by a strong and independent judiciary is a critical step in stabilizing and protecting these new democracies. See Christopher M. Larkins, Judicial Independence and Democratization: A Theoretical and Conceptual Analysis, 44 Am. J. Comp. L. 605, 605-06 (1996) (describing the judicial branch as having "a uniquely important role" in transitional countries, not only to "mediate conflicts between political actors but also [to] prevent the arbitrary exercise of government power; see also Daniel C. Prefontaine and Joanne Lee, The Rule of Law and the Independence of the Judiciary, International Centre for Criminal Law Reform and Criminal Justice Policy (1998) ("There is increasing acknowledgment that an independent judiciary is the key to upholding the rule of law in a free society . . . . Most countries in transition from dictatorships and/or statist economies recognize the need to create a more stable system of governance, based on the rule of law."), available at http://www.icclr.law.ubc.ca/Publications/Reports/RuleofLaw. pdf (last visited Jan. 8, 2004). Although the precise form of government differs among countries, “they ultimately constitute variations within, not from, the American model of constitutionalism . . . [a] specific set of fundamental rights and liberties has the status of supreme law, is entrenched against amendment or repeal . . . and is enforced by an independent court . . . .” Stephen Gardbaum, The New Commonwealth Model of Constitutionalism, 49 Am. J. Comp. L. 707, 718 (2001). This phenomenon became most notable worldwide after World War II when certain countries, such as Germany, Italy, and Japan, embraced independent judiciaries following their bitter experiences under totalitarian regimes. See id. at 714- 15; see also United States v. Then, 56 F.3d 464, 469 (2d Cir. 1995) (Calabresi, J., concurring) (“Since World War II, many countries have adopted forms of judicial review, which — though different from ours in many particulars — unmistakably draw their origin and inspiration from American constitutional theory and practice. See generally Mauro Cappelletti, The Judicial Process in Comparative Perspective (Oxford: Clarendon Press, 1989).”). It is a trend that continues to this day. It bears mention that the United States has consistently affirmed and encouraged the establishment of independent judiciaries in emerging democracies. In September 2000, President Clinton observed that "[w]ithout the rule of law, elections simply offer a choice of dictators. . . . America's experience should be put to use to advance the rule of law, where democracy's roots are looking for room and strength to grow." Remarks at Georgetown University Law School, 36 Weekly Comp. Pres. Doc. 2218 (September 26, 2000), available at http://clinton6.nara.gov/2000/09/2000-09-26- remarks-by-president-at-georgetown-international-lawcenter.html. The United States acts on these principles in part through the assistance it provides to developing nations. For example, the United States requires that any country seeking assistance through the Millenium Challenge Account, a development assistance program instituted in 2002, must demonstrate, among other criteria, an "adherence to the rule of law." The White House noted that the rule of law is one of the "essential conditions for successful development" of these countries. See http://www.whitehouse.gov/infocus/developingnations (last visited Jan. 8, 2004).12 A few examples illustrate the influence of the United States model. On November 28, 1998, Albania adopted a new constitution, representing the culmination of eight years of democratic reform after the communist rule collapsed. In addition to protecting fundamental individual rights, the Albanian Constitution provides for an independent judiciary consisting of a Constitutional Court with final authority to determine the constitutional rights of individuals. Albanian Constitution, Article 125, Item 1 and Article 128; see also Darian Pavli, "A Brief 'Constitutional History' of Albania" available at http://www.ipls.org/services/others/chist.html (last visited Janaury 8, 2004); Jean-Marie Henckaerts & Stefaan Van der Jeught, Human Rights Protection Under the New Constitutions of Central Europe, 20 Loy. L.A. Int’l & Comp. L.J. 475 (Mar. 1998). In South Africa, the new constitutional judiciary plays a similarly important role, following generations of an oppressive apartheid regime. South Africa adopted a new constitution in 1996. Constitution of the Republic of South Africa, Explanatory Memorandum. It establishes a Constitutional Court which “makes the final decision whether an Act of Parliament, a provincial Act or conduct of the President is constitutional.” Id. at Chapter 8, Section 167, Item (5), available at http://www.polity.org.za/html/govdocs/constitution/saconst.html?r ebookmark=1 (last visited January 8, 2004); see also Justice Tholakele H. Madala, Rule Under Apartheid and the Fledgling Democracy in Post-Apartheid South Africa: The Role of the Judiciary, 26 N.C. J. Int’l L. & Com. Reg. 743 (Summer 2001). Afghanistan is perhaps the most recent example of a country struggling to develop a more democratic form of government. Adoption by the Loya Jirga of Afghanistan's new constitution on January 4, 2004 has been hailed as a milestone. See http://www.cbsnews.com/stories/2004/01/02/world/main59111 6.shtml (Jan 7, 2004). The proposed constitution creates a judiciary that, at least on paper, is "an independent organ of the state," with a Supreme Court empowered to review the constitutionality of laws at the request of the Government and/or the Courts. Afghan Const. Art. 116, 121 (unofficial English translation), available at http://www.hazara.net/jirga/AfghanConstitution-Final.pdf (last visited January 8, 2004). See also Ron Synowitz, Afghanistan: Constitutional Commission Chairman Presents Karzai with Long-Delayed Draft Constitution (November 3, 2003), available at http://www.rferl.org/nca/features/2003/11/03112003164239.as p (last visited Jan. 8, 2004). B. Other Nations Have Curtailed Judicial Review During Times Of Crisis, Often Citing the United States' Example, And Individual Freedoms Have Diminished As A Result. While much of the world is moving to adopt the institutions necessary to secure individual rights, many still regularly abuse these rights. One of the hallmarks of tyranny is the lack of a strong and independent judiciary. Not surprisingly, where countries make the sad transition to tyranny, one of the first victims is the judiciary. Many of the rulers that go down that road justify their actions on the basis of national security and the fight against terrorism, and, disturbingly, many claim to be modeling their actions on the United States. Again, a few examples illustrate this trend. In Peru, one of former President Alberto Fujimori’s first acts in seizing control was to assume direct executive control of the judiciary, claiming that it was justified by the threat of domestic terrorism. He then imprisoned thousands, refusing the right of the judiciary to intervene. International Commission of Jurists, Attacks on Justice 2000-Peru, August 13, 2001, available at http://www.icj.org/news.php3?id\_article=2587&lang=en (last visited Jan. 8, 2004). In Zimbabwe, President Mugabe’s rise to dictatorship has been punctuated by threats of violence to and the co-opting of the judiciary. He now enjoys virtually total control over Zimbabweans' individual rights and the entire political system. R.W. Johnson, Mugabe’s Agents in Plot to Kill Opposition Chief, Sunday Times (London), June 10, 2001; International Commission of Jurists, Attacks on Justice 2002— Zimbabwe, August 27, 2002, available at http://www.icj.org/news.php3?id\_article=2695&lang=en (last visited Jan. 8, 2004). While Peru and Zimbabwe represent an extreme, the independence of the judiciary is under assault in less brazen ways in a variety of countries today. A highly troubling aspect of this trend is the fact that in many of these instances those perpetuating the assaults on the judiciary have pointed to the United States’ model to justify their actions. Indeed, many have specifically referenced the United States’ actions in detaining persons in Guantánamo Bay. For example, Rais Yatim, Malaysia's "de facto law minister" explicitly relied on the detentions at Guantánamo to justify Malaysia's detention of more than 70 suspected Islamic militants for over two years. Rais stated that Malyasia's detentions were "just like the process in Guantánamo," adding, "I put the equation with Guantánamo just to make it graphic to you that this is not simply a Malaysian style of doing things." Sean Yoong, "Malaysia Slams Criticism of Security Law Allowing Detention Without Trial," Associated Press, September 9, 2003 (available from Westlaw at 9/9/03 APWIRES 09:34:00). Similarly, when responding to a United States Government human rights report that listed rights violations in Namibia, Namibia's Information Permanent Secretary Mocks Shivute cited the Guantánamo Bay detentions, claiming that "the US government was the worst human rights violator in the world." BBC Monitoring, March 8, 2002, available at 2002 WL 15938703. Nor is this disturbing trend limited to these specific examples. At a recent conference held at the Carter Center in Atlanta, President Carter, specifically citing the Guantánamo Bay detentions, noted that the erosion of civil liberties in the United States has "given a blank check to nations who are inclined to violate human rights already." Doug Gross, "Carter: U.S. human rights missteps embolden foreign dictators," Associated Press Newswires, November 12, 2003 (available from Westlaw at 11/12/03 APWIRES 00:30:26). At the same conference, Professor Saad Ibrahim of the American University in Cairo (who was jailed for seven years after exposing fraud in the Egyptian election process) said, "Every dictator in the world is using what the United States has done under the Patriot Act . . . to justify their past violations of human rights and to declare a license to continue to violate human rights." Id. Likewise, Shehu Sani, president of the Kaduna, Nigeriabased Civil Rights Congress, wrote in the International Herald Tribune on September 15, 2003 that "[t]he insistence by the Bush administration on keeping Taliban and Al Quaeda captives in indefinite detention in Guantánamo Bay, Cuba, instead of in jails in the United States — and the White House's preference for military tribunals over regular courts — helps create a free license for tyranny in Africa. It helps justify Egypt's move to detain human rights campaigners as threats to national security, and does the same for similar measures by the governments of Ivory Coast, Cameroon and Burkina Faso." Available at http://www.iht.com/ihtsearch.php?id=109927&owner=(IHT)&dat e=20030121123259. In our uni-polar world, the United States obviously sets an important example on these issues. As reflected in the foundational documents of the United Nations and many other such agreements, the international community has consistently affirmed the value of an independent judiciary to the defense of universally recognized human rights. In the crucible of actual practice within nations, many have looked to the United States model when developing independent judiciaries with the ability to check executive power in the defense of individual rights. Yet others have justified abuses by reference to the conduct of the United States. Far more influential than the words of Montesquieu and Madison are the actions of the United States. This case starkly presents the question of which model this Court will set for the world. CONCLUSION Much of the world models itself after this country’s two hundred year old traditions — and still more on its day to day implementation and expression of those traditions. To say that a refusal to exercise jurisdiction in this case will have global implications is not mere rhetoric. Resting on this Court’s decision is not only the necessary role this Court has historically played in this country**. Also at stake are the freedoms that many in emerging democracies** around the globe seek to ensure for their peoples.

## Warfighting

### OV

#### Now is key to pop terrorists – Al Qaeda is at a transitional moment

McLaughlin 13 (John McLaughlin was a CIA officer for 32 years and served as deputy director and acting director from 2000-2004. He currently teaches at the Johns Hopkins University's School of Advanced International Studies and is a Non-Resident Senior Fellow at the Brookings Institution, ¶ 06:00 AM ET¶ Terrorism at a moment of transition7/12, http://security.blogs.cnn.com/2013/07/12/terrorism-at-a-moment-of-transition/)

A third major trend has to do with the debate underway among terrorists over tactics, targets, and ways to correct past errors.¶ On targets, jihadists are now pulled in many directions. Many experts contend they are less capable of a major attack on the U.S. homeland. But given the steady stream of surprises they’ve sprung – ranging from the 2009 “underwear bomber” to the more recent idea of a surgically implanted explosive – it is hard to believe they’ve given up trying to surprise us with innovations designed to penetrate our defenses.¶ We especially should remain alert that some of the smaller groups could surprise us by pointing an attacker toward the United States, as Pakistan’s Tehrik e Taliban did in preparing Faizal Shazad for his attempted bombing of Times Square in 2010.¶ At the same time, many of the groups are becoming intrigued by the possibility of scoring gains against regional governments that are now struggling to gain or keep their balance – opportunities that did not exist at the time of the 9/11 attacks.¶ Equally important, jihadists are now learning from their mistakes, especially the reasons for their past rejection by populations where they temporarily gained sway.¶ Documents from al Qaeda in the Islamic Maghreb, discovered after French forces chased them from Mali, reveal awareness that they were too harsh on local inhabitants, especially women. They also recognized that they need to move more gradually and provide tangible services to populations – a practice that has contributed to the success of Hezbollah in Lebanon.¶ We are now seeing a similar awareness among jihadists in Syria, Tunisia, Libya, and Yemen. If these “lessons learned” take hold and spread, it will become harder to separate terrorists from populations and root them out.¶ Taken together, these three trends are a cautionary tale for those seeking to gauge the future of the terrorist threat.¶ Al Qaeda today may be weakened, but its wounds are far from fatal. It is at a moment of transition, immersed in circumstances that could sow confusion and division in the movement or, more likely, extend its life and impart new momentum.¶ So if we are ever tempted to lower our guard in debating whether and when this war might end, we should take heed of these trends and of the wisdom J. R. R. Tolkien has Eowyn speak in “Lord of the Rings”: "It needs but one foe to breed a war, not two ..."

#### Terrorists can easily acquire nuclear weapons- an attack would trigger full scale nuclear war

Speice ‘6

(Patrick F. Jr.-, J.D. Candidate @ Marshall-Wythe School of Law, B.A. @ Wake, Feb., William & Mary Law Review, “Negligence and Nuclear Nonproliferation: Eliminating the Current Liability Barrier to Bilateral U.S.-Russian Nonproliferation Assistance Programs”, Lexis)

Although no terrorist acts directed against the population or interests of the United States or other states have been launched with nuclear weapons yet, this failure "must be assumed to be due to lack of means rather than lack of motivation." Attempts by al-Qaeda to acquire nuclear material are well documented, and several other attempted thefts of nuclear material indicates that there is a demand for nuclear material among terrorist groups, many of which are hostile to the United States.

The collapse of the Soviet Union dramatically increased the risk that terrorist organizations will succeed in acquiring fissile material from Russia for several reasons. First, the end of the Soviet state marked the end of state control over every aspect of life in the Soviet Union. 34 One by-product of stringent centralized control was heavy regulation and intense security measures for military facilities and nuclear installations. 35 Second, the economic decline that accompanied the transition to a market economy 36 exacerbated the problem, as the fiscal situation in the former Soviet states, most notably [\*1437] Russia, made security programs impossible to fund. 37 Graham Allison summarizes the implications of post-Soviet disorder in Russia:

The dramatic changes ... have produced political uncertainty, economic distress, and social dislocation. For tens of millions of Russians, hardship and deprivation are inescapable facts of life... [H]arsh economic conditions can create incentives for nuclear theft and smuggling. For people who are poorly housed, poorly fed, and poorly paid (when paid at all), there will be a temptation to do what they can to improve their lives and secure their futures. Russia's nuclear custodians face these pressures as they preside over weapons and materials that are immensely valuable to any state or group that covets nuclear weapons. It is not

hard to imagine that people leading bleak, uncertain, and difficult lives might find irresistible the prospect of wealth and security via the nuclear black market...

Organizations such as the Russian military and Minatom are now operating in circumstances of great stress. Money is in short supply, paychecks are irregular, living conditions unpleasant ... [D]isorder within Russia and the resulting strains within the military could easily cause a lapse or a breakdown in the Russian military's guardianship of nuclear weapons. 38

Accordingly, there is a significant and ever-present risk that terrorists could acquire a nuclear device or fissile material from Russia as a result of the confluence of Russian economic decline and the end of stringent Soviet-era nuclear security measures. 39

Terrorist groups could acquire a nuclear weapon by a number of methods, including "steal[ing] one intact from the stockpile of a country possessing such weapons, or ... [being] sold or given one by [\*1438] such a country, or [buying or stealing] one from another subnational group that had obtained it in one of these ways." 40 Equally threatening, however, is the risk that terrorists will steal or purchase fissile material and construct a nuclear device on their own. Very little material is necessary to construct a highly destructive nuclear weapon. 41 Although nuclear devices are extraordinarily complex, the technical barriers to constructing a workable weapon are not significant. 42 Moreover, the sheer number of methods that could be used to deliver a nuclear device into the United States makes it incredibly likely that terrorists could successfully employ a nuclear weapon once it was built. 43 Accordingly, supply-side controls that are aimed at preventing terrorists from acquiring nuclear material in the first place are the most effective means of countering the risk of nuclear terrorism. 44

Moreover, the end of the Cold War eliminated the rationale for maintaining a large military-industrial complex in Russia, and the nuclear cities were closed. 45 This resulted in at least 35,000 nuclear scientists becoming unemployed in an economy that was collapsing. 46 Although the economy has stabilized somewhat, there are still at least 20,000 former scientists who are unemployed or underpaid and who are too young to retire, raising the chilling prospect that these scientists will be tempted to sell their nuclear knowledge, or steal nuclear material to sell, to states or terrorist organizations with nuclear ambitions. 48

The potential consequences of the unchecked spread of nuclear knowledge and material to terrorist groups that seek to cause mass destruction in the United States are truly horrifying. A terrorist attack with a nuclear weapon would be devastating in terms of immediate human and economic losses. 49 Moreover, there would be immense political pressure in the United States to discover the perpetrators and retaliate with nuclear weapons, massively increasing the number of casualties and potentially triggering a full-scale nuclear conflict. 50 In addition to the threat posed by terrorists, leakage of nuclear knowledge and material from Russia will reduce the barriers that states with nuclear ambitions face and may trigger widespread proliferation of nuclear weapons. 51 This proliferation will increase the risk of nuclear attacks against the United States [\*1440] or its allies by hostile states, 52 as well as increase the likelihood that regional conflicts will draw in the United States and escalate to the use of nuclear weapons. 53

#### Disad outweighs and turns case

#### 2- Escalation- takes 24 hours

Easterbrook Senior Editor New Republic ‘1

(Nov. 1, Lexis)

Well, what held through the Cold War, when the United States and Russia had thousands of nuclear weapons pointed at each other, what held each side back was the fact that fundamentally they were rational. They knew that if they struck, they would be struck in turn. Terrorists may not be held by this, especially suicidal terrorists, of the kind that al Qaeda is attempting to cultivate. But I think, if I could leave you with one message, it would be this: that the search for terrorist atomic weapons would be of great benefit to the Muslim peoples of the world in addition to members, to people of the United States and Western Europe, because if an atomic warhead goes off in Washington, say, in the current environment or anything like it, in the 24 hours that followed, a hundred million Muslims would die as U.S. nuclear bombs rained down on every conceivable military target in a dozen Muslim countries.

#### 3- Turns leadership and relations- causes isolationism

Pfaff ‘1

(William-, Sept. 20, International Herald Tribune, “The War on Terrorism May Bring on a New U.S. Isolationism”, Lexis)

The successful terrorist attacks on New York and Washington breached that confidence in national separation and singularity that has been at the core of American political identity.

Most mainstream comment in Europe and Asia has expressed concern that the Washington and New York attacks could have the ultimate effect of promoting American isolationism.

What happens will depend most on how the hunt for the terrorists ends. Assume success: Osama bin Laden and his entourage are seized and tried, or killed while resisting arrest. His terrorist network, so far as it can be traced, is rolled up through police and intelligence cooperation in the United States and among its allies and other friendly states.

If the search for the terrorists is successful, and American actions enjoy wide allied and other support, it is reasonable to think that a U.S. re-engagement with the world will follow, with the unilateralist and isolationist drift of the Bush administration's recent policies stopped.

American victory would nonetheless accentuate an already deep split between the United States and many in the Third World who cannot identify with the American cause and don't think that the United States represents their interests. Thus, victory by the United States would not be a victory for them, at least as they see it. Some would consider it a defeat, a fact that implies an eventual recurrence of terrorism. Consider the pessimistic scenario, in which the search for those responsible for the attacks goes badly. Military operations might produce heavy collateral civilian casualties, as well as deaths among the military forces engaged.

The United States might take decisions that set off controversy inside the Western alliance, as well as in the larger international community. If countries that Americans think of as allies or friends put obstacles in the U.S. path there will be a popular backlash in the United States.

A bad or even frustrating outcome -- with some allies having failed to support Washington, or Russia, China or the Europeans on the UN Security Council having made difficulties -- could trigger an isolationist reaction in the United States.

A new isolationism would likely rest on a new and narrowed American alliance incorporating NAFTA, Israel, Taiwan and possibly Japan, with Saudi Arabia and the Gulf States its semi-dependencies. Washington would be determined to keep Japan in such an alliance, despite popular misgivings there.

This forecast envisages a general geopolitical realignment in which the United States regroups its economic and security dependencies into a tight new alliance, reactive but essentially defensive. It would be conservative and unilateralist in outlook, militarily dominant in the world, an aggressive although fundamentally protectionist commercial competitor to former allies as well as to former enemies.

This scenario also assumes that American and European political interests and conceptions diverge more sharply than now is the case.

What roles would Russia and China claim? Their current common ambition is to promote a multilateral international balance in which U.S. power can be offset by their own limited military power, plus the economic and political weight of Europe and India. This would be encouraged by the new alignment.

The new American isolationism, incorporating Taiwan and possibly Japan, would prove a destabilizing factor in Asia.

This new and aggressive/defensive American isolationism would imply a final end to Cold War alignments. Its estrangement of the United States from the Third World would mean an end to Washington's "neo-Wilsonian" ideas about global democracy, as well as to the ambitions some have expressed of American global hegemony.

It would impose an independent political role on Europe, wanted or not. It would encourage Russia's European ambitions. It would create new and unwanted Asian tensions.

It would alter the fundamental American idea of the nation's place in the modern world, substituting a conception of defensive entrenchment for the identity it has claimed for two centuries, that of progressive leader. The terrorists could never have anticipated such a result.

#### A nuclear terror attack turns democracy/biopower/Islamaphobia impacts – causes government intervention

Vladimir Z. 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. 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

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.

### Link

#### Drones are key to warfighting – they are the future of combat

Bruntstetter 12, Political Science Professor at UC Irvine

(Daniel, Drones: The Future of Warfare?, www.e-ir.info/2012/04/10/drones-the-future-of-warfare/)

Since President Obama took office, the use of and hype surrounding drones has greatly increased. Obama has conducted more than three times as many drone strikes per year compared to his predecessor in the White House. The increase use of drones points to a potential revolution in warfare, or at least a shift in the perspective of how wars will be fought in the future. As robotics expert P.W. Singer argues, “the introduction of unmanned systems to the battlefield doesn’t change simply how we fight, but for the first time changes who fights at the most fundamental level. It transforms the very agent of war, rather than just its capabilities.” The three major reasons drones are seen as the future of warfare are: they remove the risk to our soldiers, they make fewer mistakes than other weapons platforms, and technology will continue to improve such that drones become even more precise, efficient, and infallible in the future, thus rendering less precise, efficient and fallible human forms of war obsolete. Drones are thus seen as marking “a step forward in humanitarian technology,” and viewed as “a weapon of choice for future presidents, future administrations, in future conflicts and circumstances of self-defense and vital national security of the United States.” Yet, there has been much criticism of these assertions. Journalists challenge the claim that there are diminished civilian deaths from drone strikes, while just war scholars suggest that drones loosen the moral restraints on the use of force and legal scholars grapple with the relation between drones and international law. Notwithstanding these ethical and legal challenges, and despite what advocates say about their place in the future of armed combat, drones are, like any weapons platform, inherently limited in what they can do. In this brief article, I make three claims to contextualize the idea that drones are the future of war to shed light on the circumscribed role they might play in the foreseeable future. First, that drones are an improvement – in terms of providing surveillance capabilities and satisfying the rules of war – compared to previous technology. Their technical advantages (loitering capacity, removal of risk to pilots, and precision) make them an important addition to any military arsenal.

#### Signature strikes are strategically necessary

Anderson 2013 - senior fellow in Governance Studies at Brookings and a professor of law at American University (May 24, Kenneth, “The Case for Drones” <http://www.realclearpolitics.com/articles/2013/05/24/the_case_for_drones_118548.html>)

Are drone technology and targeted killing really so strategically valuable? The answer depends in great part not on drone technology, but on the quality of the intelligence that leads to a particular target in the first place. The drone strike is the final kinetic act in a process of intelligence-gathering and analysis. The success—and it is remarkable success—of the CIA in disrupting al-Qaeda in Pakistan has come about not because of drones alone, but because the CIA managed to establish, over years of effort, its own ground-level, human-intelligence networks that have allowed it to identify targets independent of information fed to it by Pakistan’s intelligence services. The quality of drone-targeted killing depends fundamentally on that intelligence, for a drone is not much use unless pointed toward surveillance of a particular village, area, or person. It can be used for a different kind of targeting altogether: against groups of fighters with their weapons on trucks headed toward the Afghan border. But these so-called signature strikes are not, as sometimes represented, a relaxed form of targeted killing in which groups are crudely blown up because nothing is known about individual members. Intelligence assessments are made, including behavioral signatures such as organized groups of men carrying weapons, suggesting strongly that they are “hostile forces” (in the legal meaning of that term in the U.S. military’s Standing Rules of Engagement). That is the norm in conventional war.

#### CIA signature strikes destroy Al Qaeda upper ranks

Miller et al. 2013 (January 19, Greg, Ellen Nakashima, and Karen DeYoung, “CIA drone strikes will get pass in counterterrorism ‘playbook,’ officials say” <http://articles.washingtonpost.com/2013-01-19/world/36474007_1_drone-strikes-cia-director-playbook/2>)

The term refers to the CIA’s practice of approving strikes in Pakistan based on patterns of suspicious behavior — moving stockpiles of weapons, for example — even when the agency does not have clear intelligence about the identities of the targets. CIA officials have credited the approach with decimating al-Qaeda’s upper ranks there, paradoxically accounting for the deaths of more senior terrorist operatives than in the strikes carried out when the agency knew the identity and location of a target in advance. Signature strikes contributed to a surge in the drone campaign in 2010, when the agency carried out a record 117 strikes in Pakistan. The pace tapered off over the past two years before quickening again in recent weeks.

### 2NC Congress Spillover Block (With XO)

#### The plan spills over to all other warfighting capabilities –

#### 1.) Institutional memory – the plan embeds normative categories

Paul 2008 - Senior Social Scientist; Professor, Pardee RAND Graduate School Pittsburgh Office Education Ph.D., M.A., and B.A. in sociology, University of California, Los Angeles (September, Christopher, “US Presidential War Powers: Legacy Chains in Military Intervention Decisionmaking\* ,” Journal of Peace Research, Vol. 45, No. 5 (Sep., 2008), pp. 665-679)

The Institutional Context 'Institution' is used quite inclusively in this article. Following Nee & Ingram (1998: 19), 'An institution is a web of interrelated norms ? formal and informal ? governing social relationships' (emphasis in original).For military intervention decisions, these institutions include not only the formal organizations and departments of the gov ernment, but also the basic building blocks of the policy formation process: the laws gov erning who participates in the policy process and the procedures that must be followed. More subtle factors in policy formation are also institutionalized: the relationships between different policy participants (for ex ample, the congress and the White House, or the press and the military), taken for granted normative categories such as isolationism vs. interventionism, and the range of policies that are considered 'legitimate' by the elec torate and by other nations. The preferences, capabilities, and basic self-identities of indi viduals are conditioned by these institutional structures; if these individuals are part of the policymaking process, they can affect policy (Haney, 1997: 17). All actors are constrained by existing political institutions (Mann, 1993: 52). These institutions create and constitute the context (writ large) in which policy is made. The changes in the institutional contexts that constitute policy legacies tend to be of two different types. The first type of institutional legacy is a formal change in rules, structure, organization, or procedure. The second type is an informal institutional change, perhaps a change in the broad taken-for-granted logics that inform decision making. This could include changes in institu tionalized preferences, perceptions, informal rules, and 'schemas' (Sewell, 1992: 1-29). The most important difference between the two has to do with how the legacy comes about. Changes in taken-for-granted logics and schemas involve subtle shifts in perceptions based on demonstrated challenges to previously held assumptions or beliefs. These changes may or may not be undertaken consciously and reflexively, but they are certainly not something that is discussed and decided on; rather, they are a product of collective logic, sense, and unspoken consensus. For example, prior to President Truman's commitment of US forces to combat in Korea without congressional permission or a declaration of war, the division of powers laid down in the Constitution was assumed to be a sufficient protection of the various branches of the government s prerogatives with regarding to war-making. After Korea, such protections were less taken for granted and more contested, ultimately resulting in a formal institutional change: the War Powers Resolution of 1973. Such formal organizational institutional legacies, on the other hand, are the product of active decisionmaking and are codified in rule or law. As the product of a decision making process, these are 'intended' changes, and, if the language formalizing the change is not precisely aligned with its intentions, unintended institutional consequences can result. A case in point: the War Powers Re solution has not so much retilted the balance of power over war-making toward congress as placed artificial institutional constraints (time limits, reporting requirements) on how presidents plan and launch military interventions.

#### 2.) Precedential effect – the plan requires reframing constitutional separations of power

Heder 2010 - magna cum laude , J. Reuben Clark Law School, Brigham Young University (Adam, J.D., “THE POWER TO END WAR: THE EXTENT AND LIMITS OF CONGRESSIONAL POWER,” St. Mary’s Law Journal Vol. 41 No. 3, http://www.stmaryslawjournal.org/pdfs/Hederreadytogo.pdf)

This constitutional silence invokes Justice Rehnquist’s oftquoted language from the landmark “political question” case, Goldwater v. Carter . 121 In Goldwater , a group of senators challenged President Carter’s termination, without Senate approval, of the United States ’ Mutual Defense Treaty with Taiwan. 122 A plurality of the Court held, 123 in an opinion authored by Justice Rehnquist, that this was a nonjusticiable political question. 124 He wrote: “In light of the absence of any constitutional provision governing the termination of a treaty, . . . the instant case in my view also ‘must surely be controlled by political standards.’” 125 Notably, Justice Rehnquist relied on the fact that there was no constitutional provision on point. Likewise, there is no constitutional provision on whether Congress has the legislative power to limit, end, or otherwise redefine the scope of a war. Though Justice Powell argues in Goldwater that the Treaty Clause and Article VI of the Constitution “add support to the view that the text of the Constitution does not unquestionably commit the power to terminate treaties to the President alone,” 126 the same cannot be said about Congress’s legislative authority to terminate or limit a war in a way that goes beyond its explicitly enumerated powers. There are no such similar provisions that would suggest Congress may decline to exercise its appropriation power but nonetheless legally order the President to cease all military operations. Thus, the case for deference to the political branches on this issue is even greater than it was in the Goldwater context. Finally, the Constitution does not imply any additional powers for Congress to end, limit, or redefine a war. The textual and historical evidence suggests the Framers purposefully declined to grant Congress such powers. And as this Article argues, granting Congress this power would be inconsistent with the general war powers structure of the Constitution. Such a reading of the Constitution would unnecessarily empower Congress and tilt the scales heavily in its favor. More over, it would strip the President of his Commander in Chief authority to direct the movement of troops at a time when the Executive’s expertise is needed. 127 And fears that the President will grow too powerful are unfounded, given the reasons noted above. 128 In short, the Constitution does not impliedly afford Congress any authority to prematurely terminate a war above what it explicitly grants. 129 Declaring these issues nonjusticiable political questions would be the most practical means of balancing the textual and historical demands, the structural demands, and the practical demands that complex modern warfare brings . Adjudicating these matters would only lead the courts to engage in impermissible line drawing — lines that would both confus e the issue and add layers to the text of the Constitution in an area where the Framers themselves declined to give such guidance.

#### 3.) Perception of divided government – causes enemies to be emboldened

Posner and Vermeule, 10 - \*professor of law at the University of Chicago AND \*\*professor of law at Harvard (Eric and Adrian, The Executive Unbound, p. 60)

In this way, measures urged by the executive to cope with a crisis of unclear magnitude acquired a kind of self-created momentum. Rejection of those measures would themselves create a political crisis that might, in turn, reduce confidence and thus trigger or exacerbate the underlying financial crisis. A similar process occurred in the debates over the AUMF and the Patriot Act, where proponents of the bills urged that their rejection would send terrorist groups a devastating signal about American political willpower and unity, thereby encouraging more attacks. These political dynamics, in short, create a self-fulfilling crisis of authority that puts legislative institutions under tremendous pressure to accede to executive demands, at least where a crisis is even plausibly alleged. Critics of executive power contend that the executive exploits its focal role during crises in order to bully and manipulate Congress, defeating Madisonian deliberation when it is most needed. On an alternative account, the legislature rationally submits to executive leadership because a crisis can be addressed only by a leader. Enemies are emboldened by institutional conflict or a divided government; financial markets are spooked by it. A government riven by internal conflict will produce policy that varies as political coalitions rise and fall. Inconsistent policies can be exploited by enemies, and they generate uncertainty at a time that financial markets are especially sensitive to agents’ predictions of future government action. It is a peculiar feature of the 2008 financial crises that a damaged president could not fulfill the necessary leadership role, but that role quickly devolved to the Treasury secretary and Fed chair who, acting in tandem, did not once express disagreement publicly.

#### That independently collapses hegemony

Bolton 2009 - Senior fellow at the American Enterprise Institute & Former U.S. ambassador to the United Nations (October 18, John R., “The danger of Obama's dithering,” Los Angeles Times, <http://articles.latimes.com/2009/oct/18/opinion/oe-bolton18>)

Weakness in American foreign policy in one region often invites challenges elsewhere, because our adversaries carefully follow diminished American resolve. Similarly, presidential indecisiveness, whether because of uncertainty or internal political struggles, signals that the United States may not respond to international challenges in clear and coherent ways. Taken together, weakness and indecisiveness have proved historically to be a toxic combination for America's global interests. That is exactly the combination we now see under President Obama. If anything, his receiving the Nobel Peace Prize only underlines the problem. All of Obama's campaign and inaugural talk about "extending an open hand" and "engagement," especially the multilateral variety, isn't exactly unfolding according to plan. Entirely predictably, we see more clearly every day that diplomacy is not a policy but only a technique. Absent presidential leadership, which at a minimum means clear policy direction and persistence in the face of criticism and adversity, engagement simply embodies weakness and indecision.

### Warfighting Impact – Arctic

#### Credible warfighting key to deter Russia

Dowd, 11, Senior Fellow of the Fraser Institute

(The Big Chill: Energy Needs Fueling Tensions in the Arctic,” https://www.fraserinstitute.org/research-news/news/display.aspx?id=2147483979)

One reason a military presence will be necessary is the possibility of accidents caused by drilling and shipping. In addition, competition for Arctic resources could lead to confrontation. Adm. James Stavridis, who serves as NATO’s military commander, concedes that the Arctic could become “a zone of conflict” (UPI). To brace for that possibility and thwart Russia’s Arctic fait accompli, the United States, Canada, Denmark and Norway—all NATO members and Arctic nations—should follow the Cold War playbook: build up the assets needed to defend their interests, use those assets to deter aggression, and deal with Moscow from a posture of strength and unity. The challenge is to remain open to cooperation while bracing for worst-case scenarios. After all, Russia is not the Soviet Union. Even as Putin and his puppets make mischief, Moscow is open to making deals. Russia and Norway, for instance, recently resolved a long-running boundary dispute, paving the way for development in 67,000 square-miles of the Arctic. Moreover, the U.S., Russia, Canada, Denmark and Norway have agreed on Arctic search-and-rescue responsibilities (Cummins). In a world of increasingly integrated markets, we know there is much to gain from Arctic cooperation and much to lose from protracted military standoff. But we also know that dealing naively with Moscow carries a heavy cost—and that integration is a two-way street. “Russian leaders today yearn not for integration,” the Brookings Institution’s Robert Kagan concludes, “but for a return to a special Russian greatness.” In short, Russia is more interested in recreating the autarky of some bygone era than in the shared benefits of globalization. Framework for Partnership Dealing with Russia is about power. As Churchill once said of his Russian counterparts, “There is nothing they admire so much as strength, and there is nothing for which they have less respect than for weakness.” When the message is clear—or “hard and consistent,” to use Putin’s language—Russia will take a cooperative posture. When the message is unclear, Russia will take what it can get.

#### Arctic conflict goes nuclear

Wallace 10, Professor Emeritus at the University of British Columbia

(Ridding the Arctic of Nuclear Weapons A Task Long Overdue”, http://www.arcticsecurity.org/docs/arctic-nuclear-report-web.pdf)

The fact is, the Arctic is becoming a zone of increased military competition. Russian President Medvedev has announced the creation of a special military force to defend Arctic claims. Last year Russian General Vladimir Shamanov declared that Russian troops would step up training for Arctic combat, and that Russia’s submarine fleet would increase its “operational radius.” Recently, two Russian attack submarines were spotted off the U.S. east coast for the first time in 15 years. In January 2009, on the eve of Obama’s inauguration, President Bush issued a National Security Presidential Directive on Arctic Regional Policy. It affirmed as a priority the preservation of U.S. military vessel and aircraft mobility and transit throughout the Arctic, including the Northwest Passage, and foresaw greater capabilities to protect U.S. borders in the Arctic. The Bush administration’s disastrous eight years in office, particularly its decision to withdraw from the ABM treaty and deploy missile defence interceptors and a radar station in Eastern Europe, have greatly contributed to the instability we are seeing today, even though the Obama administration has scaled back the planned deployments. The Arctic has figured in this renewed interest in Cold War weapons systems, particularly the upgrading of the Thule Ballistic Missile Early Warning System radar in Northern Greenland for ballistic missile defence. The Canadian government, as well, has put forward new military capabilities to protect Canadian sovereignty claims in the Arctic, including proposed ice-capable ships, a northern military training base and a deep-water port. Earlier this year Denmark released an all-party defence position paper that suggests the country should create a dedicated Arctic military contingent that draws on army, navy and air force assets with shipbased helicopters able to drop troops anywhere. Danish fighter planes would be tasked to patrol Greenlandic airspace. Last year Norway chose to buy 48 Lockheed Martin F-35 fighter jets, partly because of their suitability for Arctic patrols. In March, that country held a major Arctic military practice involving 7,000 soldiers from 13 countries in which a fictional country called Northland seized offshore oil rigs. The manoeuvres prompted a protest from Russia – which objected again in June after Sweden held its largest northern military exercise since the end of the Second World War. About 12,000 troops, 50 aircraft and several warships were involved. Jayantha Dhanapala, President of Pugwash and former UN under-secretary for disarmament affairs, summarized the situation bluntly: “From those in the international peace and security sector, deep concerns are being expressed over the fact that two nuclear weapon states – the United States and the Russian Federation, which together own 95 per cent of the nuclear weapons in the world – converge on the Arctic and have competing claims. These claims, together with those of other allied NATO countries – Canada, Denmark, Iceland, and Norway – could, if unresolved, lead to conflict escalating into the threat or use of nuclear weapons.” Many will no doubt argue that this is excessively alarmist, but no circumstance in which nuclear powers find themselves in military confrontation can be taken lightly. The current geo-political threat level is nebulous and low – for now, according to Rob Huebert of the University of Calgary, “[the] issue is the uncertainty as Arctic states and non-Arctic states begin to recognize the geo-political/economic significance of the Arctic because of climate change.”

### AT: Heg/Legitimacy

#### Agility is key to solving every challenge – hegemony is insufficient

Berkowitz, 8 - research fellow at the Hoover Institution at Stanford University and a senior analyst at RAND. He is currently a consultant to the Defense Department and the intelligence community (Bruce, STRATEGIC ADVANTAGE: CHALLENGERS, COMPETITORS, AND THREATS TO AMERICA’S FUTURE, p. 1-4)

THIS BOOK is intended to help readers better understand the national security issues facing the United States today and offer the general outline of a strategy for dealing with them. National security policy—both making it and debating it — is harder today because the issues that are involved are more numerous and varied. The problem of the day can change at a moment's notice. Yesterday, it might have been proliferation; today, terrorism; tomorrow, hostile regional powers. Threats are also more likely to be intertwined—proliferators use the same networks as narco-traffickers, narco-traffickers support terrorists, and terrorists align themselves with regional powers. Yet, as worrisome as these immediate concerns may be, the long-term challenges are even harder to deal with, and the stakes are higher. Whereas the main Cold War threat — the Soviet Union — was brittle, most of the potential adversaries and challengers America now faces are resilient. In at least one dimension where the Soviets were weak (economic efficiency, public morale, or leadership), the new threats are strong. They are going to be with us for a long time. As a result, we need to reconsider how we think about national security. The most important task for U.S. national security today is simply to retain the strategic advantage. This term, from the world of military doctrine, refers to the overall ability of a nation to control, or at least influence, the course of events.1 When you hold the strategic advantage, situations unfold in your favor, and each round ends so that you are in an advantageous position for the next. When you do not hold the strategic advantage, they do not. As national goals go, “keeping the strategic advantage” may not have the idealistic ring of “making the world safe for democracy” and does not sound as decisively macho as “maintaining American hegemony.” But keeping the strategic advantage is critical, because it is essential for just about everything else America hopes to achieve — promoting freedom, protecting the homeland, defending its values, preserving peace, and so on. The Changing Threat If one needs proof of this new, dynamic environment, consider the recent record. A search of the media during the past fifteen years suggests that there were at least a dozen or so events that were considered at one time or another the most pressing national security problem facing the United States — and thus the organizing concept for U.S. national security. What is most interesting is how varied and different the issues were, and how many different sets of players they involved — and how each was replaced in turn by a different issue and a cast of characters that seemed, at least for the moment, even more pressing. They included, roughly in chronological order, • regional conflicts — like Desert Storm — involving the threat of war between conventional armies; • stabilizing “failed states” like Somalia, where government broke down in toto; • staying economically competitive with Japan; • integrating Russia into the international community after the fall of communism and controlling the nuclear weapons it inherited from the Soviet Union; • dealing with “rogue states,” unruly nations like North Korea that engage in trafficking and proliferation as a matter of national policy; • combating international crime, like the scandal involving the Bank of Credit and Commerce International, or imports of illegal drugs; • strengthening international institutions for trade as countries in Asia, Eastern Europe, and Latin America adopted market economies; • responding to ethnic conflicts and civil wars triggered by the reemergence of culture as a political force in the “clash of civilizations”; • providing relief to millions of people affected by natural catastrophes like earthquakes, tsunamis, typhoons, droughts, and the spread of HIV/AIDS and malaria; • combating terrorism driven by sectarian or religious extremism; • grassroots activism on a global scale, ranging from the campaign to ban land mines to antiglobalization hoodlums and environmentalist crazies; • border security and illegal immigration; • the worldwide ripple effects of currency fluctuations and the collapse of confidence in complex financial securities; and • for at least one fleeting moment, the safety of toys imported from China. There is some overlap in this list, and one might want to group some of the events differently or add others. The important point, however, is that when you look at these problems and how they evolved during the past fifteen years, you do not see a single lesson or organizing principle on which to base U.S. strategy. Another way to see the dynamic nature of today's national security challenges is to consider the annual threat briefing the U.S. intelligence community has given Congress during the past decade. These briefings are essentially a snapshot of what U.S. officials worry most about. If one briefing is a snapshot, then several put together back to back provide a movie, showing how views have evolved.2 Figure 1 summarizes these assessments for every other year between 1996 and 2006. It shows when a particular threat first appeared, its rise and fall in the rankings, and in some cases how it fell off the chart completely. So, in 1995, when the public briefing first became a regular affair, the threat at the very top of the list was North Korea. This likely reflected the crisis that had occurred the preceding year, when Pyongyang seemed determined to develop nuclear weapons, Bill Clinton's administration seemed ready to use military action to prevent this, and the affair was defused by an agreement brokered by Jimmy Carter. Russia and China ranked high as threats in the early years, but by the end of the decade they sometimes did not even make the list. Proliferation has always been high in the listings, although the particular countries of greatest concern have varied. Terrorism made its first appearance in 1998, rose to first place after the September 11, 2001, terrorist attacks, and remains there today. The Balkans appeared and disappeared in the middle to late 1990s. A few of the entries today seem quaint and overstated. Catastrophic threats to information systems like an “electronic Pearl Harbor” and the “Y2K problem” entered the list in 1998 but disappeared after 2001. (Apparently, after people saw an airliner crash into a Manhattan skyscraper, the possible loss of their Quicken files seemed a lot less urgent.) Iraq first appeared in the briefing as a regional threat in 1997 and was still high on the list a decade later—though, of course, the Iraqi problem in the early years (suspected weapons of mass destruction) was very different from the later one (an insurgency and internationalized civil war). All this is why the United States needs agility. It not only must be able to refocus its resources repeatedly; it needs to do this faster than an adversary can focus its own resources

### Special Ops

#### New nuclear weapons states disrupt alliance structures and lead to war

Sokolski, director of the Nonproliferation Policy Education Center, 9—Executive Director of the Nonproliferation Policy Education Center, serves on the U.S. congressional Commission on the Prevention of Weapons of Mass Destruction Proliferation and Terrorism [Henry, Avoiding a Nuclear Crowd, Policy Review June & July, <http://www.hoover.org/publications/policyreview/46390537.html>]

At a minimum, such developments will be a departure from whatever stability existed during the Cold War. After World War II, there was a clear subordination of nations to one or another of the two superpowers’ strong alliance systems — the U.S.-led free world and the Russian-Chinese led Communist Bloc. The net effect was relative peace with only small, nonindustrial wars. This alliance tension and system, however, no longer exist. Instead, we now have one superpower, the United States, that is capable of overthrowing small nations unilaterally with conventional arms alone, associated with a relatively weak alliance system ( nato) that includes two European nuclear powers (France and the uk). nato is increasingly integrating its nuclear targeting policies. The U.S. also has retained its security allies in Asia (Japan, Australia, and South Korea) but has seen the emergence of an increasing number of nuclear or nuclear-weapon-armed or -ready states.

So far, the U.S. has tried to cope with independent nuclear powers by making them “strategic partners” (e.g., India and Russia), nato nuclear allies (France and the uk), “non-nato allies” (e.g., Israel and Pakistan), and strategic stakeholders (China); or by fudging if a nation actually has attained full nuclear status (e.g., Iran or North Korea, which, we insist, will either not get nuclear weapons or will give them up). In this world, every nuclear power center (our European nuclear nato allies), the U.S., Russia, China, Israel, India, and Pakistan could have significant diplomatic security relations or ties with one another but none of these ties is viewed by Washington (and, one hopes, by no one else) as being as important as the ties between Washington and each of these nuclear-armed entities (see Figure 3).

There are limits, however, to what this approach can accomplish. Such a weak alliance system, with its expanding set of loose affiliations, risks becoming analogous to the international system that failed to contain offensive actions prior to World War I. Unlike 1914, there is no power today that can rival the projection of U.S. conventional forces anywhere on the globe. But in a world with an increasing number of nuclear-armed or nuclear-ready states, this may not matter as much as we think. In such a world, the actions of just one or two states or groups that might threaten to disrupt or overthrow a nuclear weapons state could check U.S. influence or ignite a war Washington could have difficulty containing. No amount of military science or tactics could assure that the U.S. could disarm or neutralize such threatening or unstable nuclear states.22 Nor could diplomats or our intelligence services be relied upon to keep up to date on what each of these governments would be likely to do in such a crisis (see graphic below):

Combine these proliferation trends with the others noted above and one could easily create the perfect nuclear storm: Small differences between nuclear competitors that would put all actors on edge; an overhang of nuclear materials that could be called upon to break out or significantly ramp up existing nuclear deployments; and a variety of potential new nuclear actors developing weapons options in the wings.

In such a setting, the military and nuclear rivalries between states could easily be much more intense than before. Certainly each nuclear state’s military would place an even higher premium than before on being able to weaponize its military and civilian surpluses quickly, to deploy forces that are survivable, and to have forces that can get to their targets and destroy them with high levels of probability. The advanced military states will also be even more inclined to develop and deploy enhanced air and missile defenses and long-range, precision guidance munitions, and to develop a variety of preventative and preemptive war options.

Certainly, in such a world, relations between states could become far less stable. Relatively small developments — e.g., Russian support for sympathetic near-abroad provinces; Pakistani-inspired terrorist strikes in India, such as those experienced recently in Mumbai; new Indian flanking activities in Iran near Pakistan; Chinese weapons developments or moves regarding Taiwan; state-sponsored assassination attempts of key figures in the Middle East or South West Asia, etc. — could easily prompt nuclear weapons deployments with “strategic” consequences (arms races, strategic miscues, and even nuclear war). As Herman Kahn once noted, in such a world “every quarrel or difference of opinion may lead to violence of a kind quite different from what is possible today.”23 In short, we may soon see a future that neither the proponents of nuclear abolition, nor their critics, would ever want.