# 1NC

### Politics

#### Obama’s veto threat is key to preventing new sanctions risking US-backed Israeli war with Iran

Merry 12/31 [Robert W. Merry, political editor of the National Interest, is the author of books on American history and foreign policy.ba MERRY: Obama may buck the Israel lobby on Iran By Robert W. Merry Tuesday, December 31, 2013 Illustration by Alexander Hunter/The Washington Times]

Presidential press secretary Jay Carney uttered 10 words the other day that represent a major presidential challenge to the American Israel lobby and its friends on Capitol Hill. Referring to Senate legislation designed to force President Obama to expand economic sanctions on Iran under conditions the president opposes, Mr. Carney said: “If it were to pass, the president would veto it.” For years, there has been an assumption in Washington that you can’t buck the powerful Israel lobby, particularly the American Israel Public Affairs Committee, or AIPAC, whose positions are nearly identical with the stated aims of Israeli Prime Minister Benjamin Netanyahu. Mr. Netanyahu doesn’t like Mr. Obama’s recent overture to Iran, and neither does AIPAC. The result is the Senate legislation, which is similar to a measure already passed by the House. With the veto threat, Mr. Obama has announced that he is prepared to buck the Israel lobby — and may even welcome the opportunity. It isn’t fair to suggest that everyone who thinks Mr. Obama’s overtures to Iran are ill-conceived or counterproductive is simply following the Israeli lobby’s talking points, but Israel’s supporters in this country are a major reason for the viability of the sanctions legislation the president is threatening to veto. It is nearly impossible to avoid the conclusion that the Senate legislation is designed to sabotage Mr. Obama’s delicate negotiations with Iran (with the involvement also of the five permanent members of the U.N. Security Council and Germany) over Iran’s nuclear program. The aim is to get Iran to forswear any acquisition of nuclear weapons in exchange for the reduction or elimination of current sanctions. Iran insists it has a right to enrich uranium at very small amounts, for peaceful purposes, and Mr. Obama seems willing to accept that Iranian position in the interest of a comprehensive agreement. However, the Senate measure, sponsored by Sens. Robert Menendez, New Jersey Democrat; Charles E. Schumer, New York Democrat; and Mark Kirk, Illinois Republican, would impose potent new sanctions if the final agreement accords Iran the right of peaceful enrichment. That probably would destroy Mr. Obama’s ability to reach an agreement. Iranian President Hasan Rouhani already is under pressure from his country’s hard-liners to abandon his own willingness to seek a deal. The Menendez-Schumer-Kirk measure would undercut him and put the hard-liners back in control. Further, the legislation contains language that would commit the United States to military action on behalf of Israel if Israel initiates action against Iran. This language is cleverly worded, suggesting U.S. action should be triggered only if Israel acted in its “legitimate self-defense” and acknowledging “the law of the United States and the constitutional responsibility of Congress to authorize the use of military force,” but the language is stunning in its brazenness and represents, in the view of Andrew Sullivan, the prominent blogger, “an appalling new low in the Israeli government’s grip on the U.S. Congress.” While noting the language would seem to be nonbinding, Mr. Sullivan adds that “it’s basically endorsing the principle of handing over American foreign policy on a matter as grave as war and peace to a foreign government, acting against international law, thousands of miles away.” That brings us back to Mr. Obama’s veto threat. The American people have made clear through polls and abundant expression (especially during Mr. Obama’s flirtation earlier this year with military action against Bashar Assad’s Syrian regime) that they are sick and weary of American military adventures in the Middle East. They don’t think the Iraq and Afghanistan wars have been worth the price, and they don’t want their country to engage in any other such wars. That’s what the brewing confrontation between Mr. Obama and the Israel lobby comes down to — war and peace. Mr. Obama’s delicate negotiations with Iran, whatever their outcome, are designed to avert another U.S. war in the Middle East. The Menendez-Schumer-Kirk initiative is designed to kill that effort and cedes to Israel America’s war-making decision in matters involving Iran, which further increases the prospects for war. It’s not even an argument about whether the United States should come to Israel’s aid if our ally is under attack, but whether the decision to do so and when that might be necessary should be made in Jerusalem or Washington.

Extinction

Reuveny, 10 (Rafael Reuveny is a professor in the School of Public and Environmental Affairs at Indiana University. Con: Unilateral strike could trigger World War III, global depression, [http://gazettextra.com/news/2010/aug/07/con-unilateral-strike-could-trigger-world-war-iii-/#sthash.tGUOoSDf.dpuf](http://gazettextra.com/news/2010/aug/07/con-unilateral-strike-could-trigger-world-war-iii-/" \l "sthash.tGUOoSDf.dpuf))

A unilateral Israeli strike on Iran’s nuclear facilities would likely have dire consequences, including a regional war, global economic collapse and a major power clash.¶ For an Israeli campaign to succeed, it must be quick and decisive. This requires an attack that would be so overwhelming that Iran would not dare to respond in full force.¶ Such an outcome is extremely unlikely since the locations of some of Iran’s nuclear facilities are not fully known and known facilities are buried deep underground.¶ All of these widely spread facilities are shielded by elaborate air defense systems constructed not only by the Iranians but also the Chinese and, likely, the Russians as well.¶ By now, Iran has also built redundant command and control systems and nuclear facilities, developed early warning systems, acquired ballistic and cruise missiles and upgraded and enlarged its armed forces.¶ Because Iran is well-prepared, a single, conventional Israeli strike—or even numerous strikes—could not destroy all of its capabilities, giving Iran time to respond.¶ Unlike Iraq, whose nuclear program Israel destroyed in 1981, Iran has a second-strike capability comprised of a coalition of Iranian, Syrian, Lebanese, Hezbollah, Hamas, and, perhaps, Turkish forces. Internal pressure might compel Jordan, Egypt, and the Palestinian Authority to join the assault, turning a bad situation into a regional war.¶ During the 1973 Arab-Israeli War, at the apex of its power, Israel was saved from defeat by President Nixon’s shipment of weapons and planes. Today, Israel’s numerical inferiority is greater, and it faces more determined and better-equipped opponents.¶ Despite Israel’s touted defense systems, Iranian coalition missiles, armed forces, and terrorist attacks would likely wreak havoc on its enemy, leading to a prolonged tit-for-tat.¶ In the absence of massive U.S. assistance, Israel’s military resources may quickly dwindle, forcing it to use its alleged nuclear weapons, as it had reportedly almost done in 1973.¶ An Israeli nuclear attack would likely destroy most of Iran’s capabilities, but a crippled Iran and its coalition could still attack neighboring oil facilities, unleash global terrorism, plant mines in the Persian Gulf and impair maritime trade in the Mediterranean, Red Sea and Indian Ocean.¶ Middle Eastern oil shipments would likely slow to a trickle as production declines due to the war and insurance companies decide to drop their risky Middle Eastern clients. Iran and Venezuela would likely stop selling oil to the United States and Europe.¶ The world economy would head into a tailspin; international acrimony would rise; and Iraqi and Afghani citizens might fully turn on the United States, immediately requiring the deployment of more American troops. Russia, China, Venezuela, and maybe Brazil and Turkey — all of which essentially support Iran — could be tempted to form an alliance and openly challenge the U.S. hegemony.¶ ¶ Russia and China might rearm their injured Iranian protege overnight, just as Nixon rearmed Israel, and threaten to intervene, just as the U.S.S.R. threatened to join Egypt and Syria in 1973. President Obama’s response would likely put U.S. forces on nuclear alert, replaying Nixon’s nightmarish scenario.¶ Iran may well feel duty-bound to respond to a unilateral attack by its Israeli archenemy, but it knows that it could not take on the United States head-to-head. In contrast, if the United States leads the attack, Iran’s response would likely be muted.¶ If Iran chooses to absorb an American-led strike, its allies would likely protest and send weapons, but would probably not risk using force.¶ While no one has a crystal ball, leaders should be risk-averse when choosing war as a foreign policy tool. If attacking Iran is deemed necessary, Israel must wait for an American green light. A unilateral Israeli strike could ultimately spark World War III.

#### Political capital is key to a veto threat.

Lee 5

Andrew Lee Truman Scholar , Claremont Mckenna, 2005 “Invest or Spend? Political Capital and Statements of Administration Policy in the First Term of the George W. Bush Presidency” a-s.clayton.edu/trachtenberg/2005%20Proceedings%20Lee.pdf Georgia Political Science Association • Conference Proceedings

How does Congress gauge the credibility of a veto threat? Legislators would gauge the “political capital” of the president to determine the credibility of the threat. According to political journalist Tod Lindberg (2004), political capital is a “form of persuasive authority stemming from a position of political strength” (A21). Political capital can be measured by favorability and job approval polling numbers because they signify support for the president’s actions and agenda. For example, President Bush’s leadership after the September 11th terrorist attacks increased his favorability and job approval polling, and thus his political capital. He subsequently was able to launch a war with Afghanistan and Iraq. In such cases, the president’s high political capital would make a veto more credible. Congress must also reckon whether the president will think an issue is worth spending political capital on. As Richard S. Conley and Amie Kreppel (1999) write, “Whenever the President . . . act[s] to change the voting behavior of a Member, political capital is expended. It would not be logical to expend that capital in what was known ahead of time to be a losing battle” (2).

#### The plan kills political capital, liberal rulings cause massive backlash against Obama

Mirengoff 10 [Paul, The Federalist Society Online Debate Series, http://www.fed-soc.org/debates/dbtid.41/default.asp]

There's a chance that the Democrats' latest partisan innovation will come back to haunt them. Justice Sotomayor and soon-to-be Justice Kagan are on record having articulated a traditional, fairly minimalist view of the role of judges. If a liberal majority were to emerge -- or even if the liberals prevail in a few high profile cases -- the charge of **"deceptive testimony"** could be **turned against them.** And if Barack Obama is still president at that time, he likely will **receive some of the blame.**

### K

#### The Aff’s Harms are inherently subjective - their construction of threats marginalize others to legitimize violence

David, Grondin , master of pol sci and PHD of political studies @ U of Ottowa,2004 “(Re) Writing the “National Security State”: How and Why Realists (Re)Built the(ir) Cold War,” online @ http://www.er.uqam.ca/nobel/ieim/IMG/pdf/rewriting\_national\_security\_state.pdf

Adopting a more critical stance, David Campbell points out that "[d] anger is not an objective condition. It (sic) is not a thing which exists independently of those to whom it may become a threat. [...] Nothing is a risk in itself; [...] it all depends on how one analyses the danger, considers the event" (Campbell, 1998: 1-2). In the same vein, national security discourse does not evaluate objective threats; rather, it is itself a product of historical processes and structures in the state and society that produces it. Whoever has the power to define security is then the one who has the authority to write legitimate security discourses and conduct the policies that legitimize them. The realist analysts and state leaders who invoke national security and act in its name are the same individuals who hold the power to securitize threats by inserting them in a discourse that frames national identity and freezes it.9 Like many concepts, realism is essentially contested. In a critical re-interpretation of realism, James Der Derian offers a genealogy of realism that deconstructs the uniform realism represented in IR: he reveals many other versions of realism that are never mentioned in International Relations texts (Der Derian, 1995: 367). I am aware mat there are many realist discourses in International Relations, but they all share a set of assumptions, such as "the state is a rational unitary actor", "the state is the main actor in international relations", "states pursue power defined as a national interest", and so on. I want to show that realism is one way of representing reality, not the reflection of reality. While my aim here is not to rehearse Der Derian's genealogy of realism, I do want to spell out the problems with a positivist theory of realism and a correspondence philosophy of language. Such a philosophy accepts nominalism, wherein language as neutral description corresponds to reality'. This is precisely the problem of epistemic realism and of the realism characteristic of American realist theoretical discourses. And since for poststructuralists language constitutes reality, a re interpretation of realism as constructed in these discourses is called for.10 These scholars cannot refer to the "essentially contested nature of realism" and then use "realism as the best language to reflect a self-same phenomenon" (Der Derian, 1995: 374). Let me be clear: I am not suggesting that the many neorealist and neoclassical realist discourses in International Relations are not useful. Rather, I want to argue that these techniques and scientist forms of realism serve political purposes, used as they are in many think tanks and foreign policy bureaucracies to inform American political leaders. This is the relevance of deconstructing the uniform realism (as used in International Relations): it brings to light its locatedness in a hermeneutic circle in which it is unwittingly trapped (Der Derian, 1995: 371). And as Friedrich Kratochwil argues, "[...] the rejection of a correspondence theory of truth does not condemn us, as it is often maintained, to mere 'relativism' and/or to endless "deconstruction" in which anything goes but it leaves us with criteria that allows us to distinguish and evaluate competing theoretical creations" (Kratochwil, 2000 : 52). Given that political language is not a neutral medium that gives expression to ideas formed independently of structures of signification that sustain political action and thought, American realist discourses belonging to the neorealist or neoclassical realist traditions cannot be taken as mere descriptions of reality We are wrapped in reduction of discourses in which national leaders and security speech acts emanating from realist discourses develop and reinforce a notion of national identity as synonymous with national security U.S. national security conduct should thus be understood through the prism of the theoretical discourses of American political leaders and realist scholars that co-constitute it. Realist discourses depict American political leaders acting in defense of national security, and political leaders act in the name of national security. In the end, what distinguishes realist discourses is that they depict the United States as having behaved like a national security state since World War II, while legitimating the idea that the United States should continue to do so. Political scientists and historians "are engaged in making (poesis), nor merely recording or reporting" (Medhursr, 2000: 17). Precisely in this sense, rhetoric is nor the description of national security conduct; it constitutes it. It is difficult to trace the exact origins of the concept seems however that its currency in policymaking circles corresponds to the American experience of the Second World War and of the early years of what came to be known as the "Cold War". In this light, it is fair to say that the meaning of the American national security state is bound up with the Cold War context. If one is engaged in deciphering the meaning of the Cold War prism for American leaders, what matters is not uncovering the "reality" of the Cold War as such, but how, it conferred meaning and led people to act upon it as "reality". The Cold War can thus be seen as a rhetorical construction, in which its rhetorical dimensions gave meaning to its material manifestations, such as the national security state apparatus. This is not to say that the Cold War never existed per se, nor does it "make [it] any less real or less significant for being rhetorical" (Medhurst, 2000: 6). As Lynn Boyd Hinds and Theodore Otto Windt, Jr. stress, "political rhetoric creates political reality', structures belief systems, and provides the fundamental bases for decisions" (Hinds and Windt, cited in Medhurst, 2000: 6). In this sense, the Cold War ceases to be a historical period which meaning can be written permanently and becomes instead a struggle that is not context-specific and not geared towards one specific enemy. It is "an orientation towards difference in which those acting on behalf of an assumed but never fixed identity' are tempted by the lure of otherness to interpret all dangers as fundamental threats which require the mobilization of a population" (Campbell, 2000: 227). Indeed, if the meaning of the Cold War is not context-specific, the concept of national security cannot be disconnected from what is known as the Cold War, since its very meaning(s) emerged within it (Rosenberg, 1993 : 277).11 If the American national security state is a given for realist analysts,12 it is important to ask whether we can conceive the United States during the Cold War as anything other than a national security state.13 To be clear, I am not suggesting that there is any such essentialized entity as a "national security state".14 When I refer to the American national security' state, I mean the representation of the American state in the early years of the Cold War, the spirit of which is embodied in the National Security Act of 1947 (Der Derian, 1992: 76). The term "national security state" designates both an institutionalization of a new governmental architecture designed to prepare the United States politically and militarily to face any foreign threat and the ideology — the discourse — that gave rise to as well as symbolized it. In other words, to understand the idea of a national security state, one needs to grasp the discursive power of national security' in shaping the reality of the Cold War in both language and institutions (Rosenberg, 1993 : 281). A national security' state feeds on threats as it channels all its efforts into meeting current and future military' or security threats. The creation of the CIA, the Department of Defense, the Joint Chiefs of Staff, and the National Security' Council at the onset of the Cold War gave impetus to a state mentality' geared to permanent preparedness for war. The construction of threats is thus essential to its well-being, making intelligence agencies privileged tools in accomplishing this task. As American historian of U.S. foreign relations Michael Hogan observes in his study on the rise of the national security state during the Truman administration, "the national security' ideology framed the Cold War discourse in a system of symbolic representation that defined America's national identity' by reference to the un-American 'other,' usually the Soviet Union, Nazi Germany, or some other totalitarian power" (Hogan, 1998: 17). Such a binary system made it difficult for any domestic dissent from U.S. policy to emerge — it would have "amounted to an act of disloyalty" (Hogan, 1998: 18).15 While Hogan distinguishes advocates from critics of the American national security state, his view\* takes for granted that there is a given and fixed American political culture that differs from the "new" national security ideology. It posits an "American way", produced by its cultural, political, and historical experience. Although he stresses that differences between the two sides of the discourse are superficial, pertaining solely to the means, rather than the ends of the national security state, Hogan sees the national security state as a finished and legitimate state: an American state suited to the Cold War context of permanent war, while stopping short of a garrison state: Although government would grow larger, taxes would go up, and budget deficits would become a matter of routine, none of these and other transformations would add up to the crushing regime symbolized in the metaphor of the garrison state. The outcome instead would be an American national security' state that was shaped as much by the country's democratic political culture as it was by the perceived military imperatives of the Cold War (Hogan, 1998: 22). I disagree with this essentialist view of the state identity of the United States. The United States does not need to be a national security state. If it was and is still constructed as such by many realist discourses, it is because these discourses serve some political purpose. Moreover, in keeping with my poststructuralist inclinations, I maintain that identity need not be, and indeed never is, fixed. In a scheme in which "to say is to do", that is, from a perspective that accepts the performativity of language, culture becomes a relational site where identity politics happens rather than being a substantive phenomenon. In this sense, culture is not simply a social context framing foreign policy decision-making. Culture is "a signifying part of the conditions of possibility for social being, [...] the way in which culturalist arguments themselves secure the identity of subjects in whose name they speak" (Campbell, 1998: 221). The Cold War national security culture represented in realist discourses was constitutive of the American national security state. There was certainly a conflation of theory and policy in the Cold War military-intellectual complex, which "were observers of, and active participants in, defining the meaning of the Cold War. They contributed to portray the enemy that both reflected and fueled predominant ideological strains within the American body politic. As scholarly partners in the national security state, they were instrumental in defining and disseminating a Cold War culture" (Rubin, 2001: 15). This national security culture was "a complex space where various representations and representatives of the national security state compete to draw the boundaries and dominate the murkier margins of international relations" (Der Derian, 1992: 41). The same Cold War security culture has been maintained by political practice (on the part of realist analysts and political leaders) through realist discourses in the post-9/11 era and once again reproduces the idea of a national security state. This (implicit) state identification is neither accidental nor inconsequential. From a poststructuralist vantage point, the identification process of the state and the nation is always a negative process for it is achieved by exclusion, violence, and margina-lization. Thus, a deconstruction of practices that constitute and consolidate state identity is necessary: the writing of the state must be revealed through the analysis of the discourses that constitute it. The state and the discourses that (re)constitute it thus frame its very identity and impose a fictitious "national unity" on society; it is from this fictive and arbitrary creation of the modernist dichotomous discourses of inside/outside that the discourses (re)constructing the state emerge. It is in the creation of a Self and an Other in which the state uses it monopolistic power of legitimate violence - a power socially constructed, following Max Weber's work on the ethic of responsibility — to construct a threatening Other differentiated from the "unified" Self, the national society (the nation).16 It is through this very practice of normative statecraft,1' which produces threatening Others, that the international sphere comes into being. David Campbell adds that it is by constantly articulating danger through foreign policy that the states very conditions of existence are generated18.

#### Securitization and its Mediation Ensures Total War and Genocide – Their Representations of Instability Ensure Astonishing Violence.

Karsten **Friis**, UN Sector @ the Norwegian Institute of International Affairs, **2k** [*Peace and Conflict Studies* 7.2, “From Liminars to Others: Securitization Through Myths,” http://shss.nova.edu/pcs/journalsPDF/V7N2.pdf#page=2]

The problem with societal securitization is **one of representation**. It is rarely clear in advance who it is that speaks for a community. There is no system of representation as in a state. Since literately anyone can stand up as representatives, there is room for entrepreneurs. It is not surprising if we experience a struggle between different representatives and also their different representations of the society. What they do share, however, is a conviction that they are best at providing (a new) order. If they can do this convincingly, they gain legitimacy. What must be done is to make the uncertain certain and make the unknown an object of knowledge. To present a discernable Other is a way of doing this. The Other is represented as an Other -- as an unified single actor with a similar unquestionable set of core values (i.e. the capital “O”). They are objectified, made into an object of knowledge, by re-presentation of their identity and values. In other words, the representation of the Other is depoliticized in the sense that its inner qualities are treated as given and non-negotiable. In Jef Huysmans (1998:241) words, there is both a need for a mediation of chaosas well as of threat. A mediation of chaos is more basic than a mediation of threat, as it implies making chaos into a meaningful order by a convincing representation of the Self and its surroundings. It is a mediation of “ontological security”, which means “...a strategy of managing the limits of reflexivity ... by fixing social relations into a symbolic and institutional order” (Huysmans 1998:242). As he and others (like Hansen 1998:240) have pointed out, the importance of a threat construction for political identification, is often overstated. The mediation of chaos, of being the provider of order in general, is just as important. This may imply naming an Other but not necessarily as a threat. Such a dichotomization implies a **necessity** to get rid of all the liminars (what Huysmans calls “strangers”). This is because they “...connote a challenge to categorizing practices through the impossibility of being categorized”, and does not threaten the community, “...but the possibility of ordering itself” (Huysmans 1998:241). They are a challenge to the entrepreneur by their very existence. They confuse the dichotomy of Self and Other and thereby the entrepreneur’s mediation of chaos. As mentioned, a liminar can for instance be people of mixed ethnical ancestry but also representations of competing world-pictures. As Eide (1998:76) notes: “Over and over again we see that the “liberals” within a group undergoing a mobilisation process for group conflict are the first ones to go”. The liminars threaten the ontological order of the entrepreneur by challenging his representation of Self and Other and his mediation of chaos, which ultimately undermines the legitimacy of his policy. The liminars may be securitized by some sort of disciplination, from suppression of cultural symbols to ethnic cleansing and expatriation. This is a threat to the ontological order of the entrepreneur, stemming from inside and thus repoliticizing the inside/outside dichotomy. Therefore the liminar must disappear. It must be made into a Self, as several minority groups throughout the world have experienced, or it must be forced out of the territory. A liminar may also become an Other, as its connection to the Self is cut and their former common culture is renounced and made insignificant. In Anne Norton’s (1988:55) words, “The presence of difference in the ambiguous other leads to its classification as wholly unlike and identifies it unqualifiedly with the archetypal other, denying the resemblance to the self.” Then the liminar is no longer an ontological danger (chaos), but what Huysmans (1998:242) calls a mediation of “daily security”. This is not challenging the order or the system as such but has become a visible, clear-cut Other. In places like Bosnia, this naming and replacement of an Other, has been regarded by the securitizing actors as the solution to the ontological problem they have posed. Securitization was not considered a political move, in the sense that there were any choices. It was a necessity: Securitization was a solution based on a depoliticized ontology.10 This way the world-picture of the securitizing actor is not only a representation but also made into reality. The mythical second-order language is made into first-order language, and its “innocent” reality is forced upon the world. To the entrepreneurs and other actors involved it has become a **“natural” necessity** with a need to make order, even if it implies making the world match the map. Maybe that is why war against liminars are so often total; it attempts a **total expatriation** or a total “solution” (like the Holocaust) and not only a victory on the battlefield. If the enemy is not even considered a legitimate Other, the door may be more open to a kind of violence that is way beyond any war conventions, any jus in bello. This way, securitizing is legitimized: The entrepreneur has succeeded both in launching his world-view and in prescribing the necessary measures taken against it. This is possible by using the myths, by speaking on behalf of the natural and eternal, where truth is never questioned.

#### Alternative – Reject The Affirmative’s Security Logic – This Allows for *Actual Political Thought* – Accepting Their Descriptions and Responses Colonizes the Debate.

Mark Neocleous, Prof. of Government @ Brunel, 2008 [*Critique of Security*, 185-6]

The only way out of such a dilemma, to escape the fetish, is perhaps to eschew the logic of security altogether - to reject it as so ideologically loaded in favour of the state that any real political thought other than the authoritarian and reactionary should be pressed to give it up. That is clearly something that can not be achieved within the limits of bourgeois thought and thus could never even begin to be imagined by the security intellectual. It is also something that the constant iteration of the refrain 'this is an insecure world' and reiteration of one fear, anxiety and insecurity after another will also make it hard to do. But it is something that the critique of security suggests we may have to consider if we want a political way out of the impasse of security. This impasse exists because security has now become so all-encompassing that it marginalises all else, most notably the constructive conflicts, debates and discussions that animate political life. The constant prioritising of a mythical security as a political end - as the political end constitutes a rejection of politics in any meaningful sense of the term. That is, as a mode of action in which differences can be articulated, in which the conflicts and struggles that arise from such differences can be fought for and negotiated, in which people might come to believe that another world is possible - that they might transform the world and in turn be transformed. Security politics simply removes this; worse, it remoeves it while purportedly addressing it. In so doing it suppresses all issues of power and turns political questions into debates about the most efficient way to achieve 'security', despite the fact that we are never quite told - never could be told - what might count as having achieved it. Security politics is, in this sense, an anti-politics,"' dominating political discourse in much the same manner as the security state tries to dominate human beings, reinforcing security fetishism and the monopolistic character of security on the political imagination. We therefore need to get beyond security politics, not add yet more 'sectors' to it in a way that simply expands the scope of the state and legitimises state intervention in yet more and more areas of our lives. Simon Dalby reports a personal communication with Michael Williams, co-editor of the important text Critical Security Studies, in which the latter asks: if you take away security, what do you put in the hole that's left behind? But I'm inclined to agree with Dalby: maybe there is no hole."' The mistake has been to think that there is a hole and that this hole needs to be filled with a new vision or revision of security in which it is re-mapped or civilised or gendered or humanised or expanded or whatever. All of these ultimately remain within the statist political imaginary, and consequently end up reaffirming the state as the terrain of modern politics, the grounds of security. The real task is not to fill the supposed hole with yet another vision of security, but to fight for an alternative political language which takes us beyond the narrow horizon of bourgeois security and which therefore does not constantly throw us into the arms of the state. That's the point of critical politics: to develop a new political language more adequate to the kind of society we want. Thus while much of what I have said here has been of a negative order, part of the tradition of critical theory is that the negative may be as significant as the positive in setting thought on new paths. For if security really is the supreme concept of bourgeois society and the fundamental thematic of liberalism, then to keep harping on about insecurity and to keep demanding 'more security' (while meekly hoping that this increased security doesn't damage our liberty) is to blind ourselves to the possibility of building real alternatives to the authoritarian tendencies in contemporary politics. To situate ourselves against security politics would allow us to circumvent the debilitating effect achieved through the constant securitising of social and political issues, debilitating in the sense that 'security' helps consolidate the power of the existing forms of social domination and justifies the short-circuiting of even the most democratic forms. It would also allow us to forge another kind of politics centred on a different conception of the good. We need a new way of thinking and talking about social being and politics that moves us beyond security. This would perhaps be emancipatory in the true sense of the word. What this might mean, precisely, must be open to debate. But it certainly requires recognising that security is an illusion that has forgotten it is an illusion; it requires recognising that security is not the same as solidarity; it requires accepting that insecurity is part of the human condition, and thus giving up the search for the certainty of security and instead learning to tolerate the uncertainties, ambiguities and 'insecurities' that come with being human; it requires accepting that 'securitizing' an issue does not mean dealing with it politically, but bracketing it out and handing it to the state; it requires us to be brave enough to return the gift."'

### XO

#### CP: The President of the United States should issue an executive order mandating that the United States cease illegal arms sales. The President of the United States should issue an executive order mandating that regulation of private arms sales be substantially expanded and sales be reduced.

#### Executive can restrain itself --- it is subject to internal separation of powers

Sales, 12 --- Assistant Professor of Law, George Mason University School of Law (7/3/2012, Nathan Alexander Sales, Journal of National Security Law & Policy, “Self-Restraint and National Security,” 6 J. Nat'l Security L. & Pol'y 227, Lexis))

III. Self-Restraint as Cost-Benefit Asymmetry

As we've seen, certain officials within military and intelligence agencies - general counsels, legal advisors, and other watchdogs - are responsible for ensuring that national security operations comply with the relevant domestic and international legal requirements. These players intervene to rule out missions they believe would cross a legal line. But sometimes they go beyond that basic function - ensure compliance with the law, full stop - and reject operations that, while lawful, are thought to be undesirable on policy grounds. That is, they impose self-restraints that are stricter than the applicable laws. Why?[\*261] One way to answer that question is to consider the individual and institutional incentives that color the behavior of military and intelligence officials. Looking at the government's national security apparatus through the lens of public choice theory (especially the idea that bureaucrats are rationally self interested actors who seek to maximize their utility n152) and basic agency relationships (e.g., the relationships between senior policymakers and the subordinates who act on their behalf n153) reveals a complex system in which power is distributed among a number of different nodes. The executive branch "is a "they,' not an "it.'" n154 The national security community in particular is subdivided into various semi-autonomous entities, each of which promotes its own parochial interests within the system and, in so doing, checks the like ambitions of rival entities; n155 the government thus is subject to what Neal Katyal has called the "internal separation of powers." n156 These basic insights into how military and intelligence agencies operate suggest several possible explanations for why self-restraint occurs. As elaborated in this Part, such constraints might result from systematic asymmetries in the expected value calculations of senior policymakers and their lawyers. In addition, as explained in Part IV, self-restraint might occur due to bureaucratic empire building by officials who review operations for compliance with domestic and international law.

### Stripping

#### Detention change uniquely causes court stripping – In other areas Congress seldom does anything; with detention, even procedural protections have been nullified by court stripping. Backlash to the plan would be massive

Alexander 7 Janet Cooper Alexander, Frederick I. Richman Professor of Law, Stanford Law School. California Law Review Fall, 2007 95 Calif. L. Rev. 1193 ARTICLE: Jurisdiction-Stripping in a Time of Terror

Although the question of congressional power to limit the jurisdiction of the federal courts is a centerpiece of the federal courts canon, there are few decided cases that grapple squarely with the constitutional issues involved in juris-diction-stripping. n1 For the past fifty years or so, jurisdiction-stripping bills have been introduced on a host of politically controversial issues n2 including racial discrimination, free speech and association, the rights of criminal defendants, state legislative apportionment, abortion, school prayer, gay marriage, n3 and environmental preservation. n4 In the end, however, Congress usually backs off; very few such bills have been enacted. n5 And while the Supreme Court has re-peatedly [\*1194] said that "substantial constitutional questions" would be raised if judicial review of constitutional claims were unavailable, n6 the Court has almost always managed to resolve challenges to jurisdiction-stripping statutes on non-constitutional grounds-most recently in June 2006. n7 Both Congress and the Court have avoided confrontation. n8

But now the Executive Branch seems determined to force the constitutional issue. After the Supreme Court rendered decisions requiring procedural safeguards for detainees in the war on terrorism, n9 and with more cases pending that raised additional claims, n10 the Administration elected to press its vision of exclusive and unfettered presidential power and its effort to make Guantanamo Bay a law-free zone where the Constitution does not operate. When the Supreme Court held in Rasul v. Bush that the Guantanamo detainees had a right to file habeas petitions challenging their detention and stated in a footnote that their petitions "unquestionably" described violations of the Constitution, n11 Congress passed the Detainee Treatment Act of 2005 (DTA) n12 withdrawing federal jurisdiction over habeas petitions by Guantanamo detainees. n13 Senators who opposed [\*1195] eliminating habeas jurisdiction noted that Hamdan v. Rumsfeld, a habeas petition challenging the constitutionality of military commission trials of detainees, was then pend-ing before the Supreme Court, n14 and explicitly likened the situation to that of Ex parte McCardle. n15

The Administration's handling of the detainees received another blow when the Court held in Hamdan that the DTA's jurisdiction-stripping provisions were inapplicable to pending cases and invalidated the military commissions because they violated the Uniform Code of Military Justice (UCMJ) and the Geneva Conventions. n16 Rather than complying with the decision, or seeking Congressional authorization of appropriate procedures as the Court strongly hinted, however, the Administration secured the passage of the Military Commissions Act of 2006 (MCA). n17 Although the MCA was presented as a compromise bill it in fact was a virtually complete victory for the President, a congressional endorsement (albeit over strong opposition in the Senate) of his broad claims of presidential power in the war on terrorism.

The statute expands the definition of enemy combatant far beyond the Supreme Court's narrow definition in Hamdi. Whereas Hamdi defined "enemy combatant" as one who was "part of or supporting forces hostile to the United States or coalition partners in Afghanistan and who engaged in [\*1196] an armed conflict against the United States there," n18 the MCA expands the definition to include those who have "purposefully and materially supported hostilities" against the United States or its allies. n19

Hamdi did not authorize detention of anyone who did not actually engage in armed conflict against U.S. or allied troops in Afghanistan. The MCA, however, permits the President to treat persons captured far from any battlefield, who have not participated in any violent activity, as enemy combatants. Indeed, the Government's lawyers have taken the position in court that a "little old lady in Switzerland who writes checks to what she thinks is a charity that helps orphans in Afghanistan but ... really is a front to finance al-Qaeda activities" can be classified as an enemy combatant. n20

The MCA also makes all noncitizens who are declared to be enemy combatants subject to trial by military commission rather than the courts, n21 including even lawful permanent residents located within the United States. The provisions denying habeas review apply to all proceedings "relating to" such military commission prosecutions. n22 Additionally, the MCA authorizes the use of military commission procedures that fall short of the requirements of the Geneva Conventions, contrary to the holding of Hamdan; purports to give the President the power to interpret the meaning and application of the Conventions; n23 attempts to legislatively define the commissions and the MCA's amendments to the War Crimes Act into compliance with the Conventions; n24 declares that the Conventions may not [\*1197] be judicially enforced by any individual, including citizens, n25 despite Hamdan's holding to the contrary; and prohibits the courts from using foreign sources of law in cases interpreting the War Crimes Act. n26 In addition to its express provisions, the MCA strengthens the President's assertion of legal authority in his actions toward the detainees by placing them into the highest category of deference under Youngstown, n27 when the President exercises his Article II powers with the express authorization of Congress exercising its Article I powers.

The MCA attempts to insulate all of these innovations from constitutional scrutiny by eliminating the possibility of judicial review. While the DTA denied habeas only for noncitizens detained at Guantanamo by the Department of Defense, the MCA purports to deny habeas (and "any other action" seeking judicial review) for any alien, regardless of geographical location, who has been "determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination." n28 The MCA thus strips habeas protection from lawful resident aliens detained within the United States as well as detainees at Guantanamo and other locations outside the United States.

#### B. The Ukraine judiciary, including its independence is based off the American court system. Ukraine adjusts its system each year to mirror that of the US

The Supreme Court of Ohio ‘8 (The Supreme court of Ohio and the Ohio judicial system Nov. 14, 2008 [www.sconet.state.oh.us/PIO/news/2008/ukraine\_111408.asp](http://www.sconet.state.oh.us/PIO/news/2008/ukraine_111408.asp))

The Supreme Court of Ohio will welcome six members of the Ukrainian judiciary on Monday as they begin a week-long visit to study the American judicial system. “The Supreme Court of Ohio, the Supreme Court of Ukraine and the Supreme Rada of Ukraine have been partners for 16 years to exchange ideas and further the ideals of democracy in both countries,” said Chief Justice Thomas J. Moyer. “We are honored to host this Ukrainian delegation and again provide a forum on the rule of law and the democratic electoral processes.” Four Ukrainian judges, one court administrator and one facilitator are at the Court for a five-day visit with judges, attorneys, court personnel and university professors. Their visit is marked by several highlights, including discussions with Chief Justice Moyer and a visit to the Montgomery County Courthouse to observe court proceedings. Their visit will begin with the traditional Ukrainian welcoming Bread and Salt Ceremony at 8:30 a.m., Monday, Nov. 17, at the Ohio Judicial Center. The delegation also will participate in a panel discussion about the role of the courts in a maturing democracy at the John Glenn School of Public Affairs at The Ohio State University and numerous sessions focusing on trial procedures and court policies. During the Bread and Salt Ceremony, the visitors will be presented with bread, which represents hospitality, and salt, which symbolizes eternal friendship, in a custom dating to the Middle Ages. While in Dayton, the delegates will meet with Judge Michael T. Hall, Administrative Judge for the Montgomery County Court of Common Pleas, and other judges. In addition to an overview of the Ohio judicial system by the Chief Justice, the group will learn about the differences and similarities between the United States and Ukraine systems of justice from Elena V. Helmer, a visiting assistant professor of law at the Ohio Northern University Pettit College of Law, who has taught in law schools in Russia, Kazakhstan and the United States. Another aspect of their learning will center on the Ohio judicial branch budgeting process. Leaders from all three branches of government will explain their roles in proposing, developing or considering the budget including Steven C. Hollon, Supreme Court administrative director; David Ellis, assistant director of the Ohio Office of Budget and Management; and State Rep. Scott Oelslager. Several other topics round out the delegation’s lesson plan including a comparison of administrative justice in the United States and the Ukraine, Ohio criminal justice, public accountability cases, dispute resolution assistance and overviews of Ohio’s Criminal Sentencing Commission and the Court’s Domestic Violence Program. The visit to the Supreme Court of Ohio is part of a 10-day visit to the United States organized through the congressionally sponsored Open World Program and the Russian American Rule of Law Consortium (RAROLC). Prior to their arrival in Columbus, the Ukrainian delegation is in Washington, D.C., for orientation meetings with federal officials. Ohio is represented at the Washington meetings by Licking County Common Pleas Court Judge Jon R. Spahr. Managed by the Open World Leadership Center, Open World is the only exchange program in the U.S. legislative branch. Participants get an inside look at the U.S. judicial system and develop ties with the U.S. judges who host them. They also gain insight into how the U.S. political system promotes and protects **judicial independence** and the rule of law. The Open World Program is a nonpartisan initiative of the U.S. Congress that builds mutual understanding between the emerging political and civic leaders of participating countries and their U.S. counterparts. The Open World Leadership Center has awarded a grant to the Russian American Rule of Law Consortium of Colchester, Vermont to administer this and similar exchanges in 2008. Chief Justice Moyer worked with judicial leaders of Ukraine to develop an independent judiciary after the fall of the Soviet Union. The Ohio Ukraine Rule of Law Project involved numerous exchange trips by Ohio judges and lawyers to introduce Ukraine to concepts related to the rule of law. The Chief Justice also has worked with the U.S. Department of State in conducting education programs for judges and lawyers in Argentina and Chile.

#### Ukrainian Judicial independence is key to political and economic stability

Ukrainian Rule of law project ‘9 (Ukrainian Rule of Law project in cooperation with the United States Agency for International development and the millennium challenge corporation “An expert conference ''Judicial Reform in Ukraine: Finding Solutions in Line with European Standards” March 23 March 2009 http://www.ukrainerol.org.ua/index.php?option=com\_content&task=view&id=128&Itemid=1&lang=en )

The Council of Europe in the framework of the Joint Programme between the European Union and the Council of Europe Transparency and Efficiency of the Judicial System of Ukraine together with USAID Ukraine Rule of Law Project, in cooperation with the Council of Judges of Ukraine, the Supreme Court of Ukraine, and with participation of the Committees of the Verkhovna Rada of Ukraine and the National Commission on Strengthening Democracy and the Rule of Law supported the expert discussion on judicial reform in Ukraine in line with European and International standards. The objective of the conference was to open an expert dialogue and to start building a consensus among a variety of stakeholders on a number of issues related to the judicial reform in Ukraine. The issues of the structure of the court system, the functioning of judicial institutions, and judicial self-governance, as well as judicial selection, training and discipline of judges were discussed. Representatives of top judicial institutions, courts, judicial self-governmental bodies, Verkhovna Rada, national governmental officials, European and International experts, academicians, media, and the public exchanged views on the challenges faced by the Ukrainian judiciary today. The participants expressed different approaches to judicial reform in Ukraine. However, they all stressed on the importance of implementation of the Council of Europe standards in organisation of judiciary and principles of its functioning while conducting judicial reform. When becoming the Council of Europe member, Ukraine took obligation to ensure real independence of judiciary and judges. In the opinions of the participants the Constitution of Ukraine should be amended in several positions to ensure enforcement of and compatibility of the judicial system with European standards. Vasyl Onopenko, the Chief Justice of the Supreme Court of Ukraine, stated that there are several systemic issues in Ukrainian judiciary, including state authorities’ attitudes toward courts, judiciary not acting as one holistic system, absence of socially oriented laws. Chief Justice also referred to the need to rapidly elaborate a substantiated strategy for the wider reform of the legal system and professions including advanced institutional and procedural solutions. Speaking about the current issues in Ukrainian judicial system Mykola Onishchuk, the Minister of Justice mentioned that Ukraine has been successful in reforming its judicial system from the Soviet type system to the democratic one, based on European standards instance based judicial system. The Minister of Justice especially emphasized that all reforms of legal professions and legal system in general have to be well prepared and financed. He also mentioned that in some cases the changes to the Constitution are necessary to fulfill European standards. The Minister mentioned in his opening speech that following steps should be taken in order to improve judicial system in Ukraine: adoption of the institutional approach to the judiciary, specialization of courts, improvement of the system of selection and accountability of judges and judicial control over pre-trial investigation. **U.S. Ambassador William Taylor pointed out that a** fair, **independent**, transparent, and efficient **judicial system** **is the cornerstone of a democratic society that also promotes investment and economic growth**. It is therefore essential that the structure and organization of judicial institutions be clearly and carefully articulated in the law. Head of Operations Section of the European Commission Delegation to Ukraine, Mr. Schieder stressed that in all European countries the cooperation between different actors in solving issues related to the judiciary is highly appreciated. EU also provides help to a number of countries and helps to build up administrative and professional capacity of judiciary. He emphasized that in cooperation, the EC approach is moving from project based cooperation to the sector-wide approach and for successful cooperation the clear and consolidated vision of Ukrainian authorities and political actors must be elaborated. This vision should be based on common European values and respective standards. As it was stressed in the presentation of David Vaughn, Chief of Party of the Ukrainian Rule of Law Project “Public confidence in the judicial system and in the moral authority and integrity of the judiciary is of the utmost importance in a modern democratic society. That is why the UROL Project together with our partners contributes to a consensus on judicial reform in Ukraine”.Stephan Gass, Vice-President of the International Association of Judges, Judge of the Court of Appeal of Basel (Switzerland), emphasized that judicial independence is not the privilege but the tool for achieving and supporting the rule of law and democracy in the widest terms. He also underlined that the Venice Commission in his opinion noted too high complexity of judicial self-government system proposed in the draft laws and proposed to simplify it. Carsten Mahnke, team leader and resident expert of the Council of Europe and European Commission joint project in Moldova stressed that it is important that first the European standards are introduced into the legislation and then implemented in practice. In his summary report Daimar Liiv, resident expert of the Joint Programme between the European Union and the Council of Europe “Transparency and Efficiency of the Judicial System of Ukraine” expressed his satisfaction of high level of discussions. He underlined that clear opinion of experts-participants was formed that there is a real need for high level expert discussion over the next steps in the reform of judiciary and legal professions in Ukraine and that experts clearly supported the idea of introducing relevant European standards into laws. He also mentioned that the need for changes of the Constitution of Ukraine to achieve the reform ultimate goals - better judiciary **and higher level of protection of rights of Ukrainian people**, was expressed by the vast majority of the participants.

#### Ukrainian economic collapse draws in Russia and the west leading to a nuclear world war three

Kingston, Loveridge, Steritt ‘9

(Brian Kingston, Peter Loveridge, Joe Sterritt masters paper @ The Norman Paterson School of International Affairs – CIFP “UKRAINE: A RISK ASSESSMENT REPORT February 2009 www.carleton.ca/cifp/app/serve.php/1214.pdf)

Worst Case Scenario: WWIII Economics: Ukraine suffers catastrophic economic collapse during the global recession; Ukrainians are plunged into deep economic hardship and revolt against the government. Domestic Politics: The 2010 Presidential elections worsen domestic political stability (i.e. the President and PM can still not work together); economic collapse fractures the domestic political situation; the threat of internal violence increases. Russia: Russia seeks to influence the weakened Ukraine, inflaming ethnic-Russian separatism; Crimea declares independence; Ukraine resists, perhaps seeing an external war as a distraction from internal strife; Russia comes to the aid of Crimea/ethnic-Russians resulting in open warfare between Russia and Ukraine. The West: **The West** also suffers from the global recession, but (perhaps following a period of inward looking protectionism) realizes **that it cannot allow Russian success** in Ukraine; open **hostilities** **erupt** **between** **Russian** **and** **NATO** forces **triggering** **World** **War** **III** **and the strong possibility of** **nuclear** **war**, or at least the drawing in of many other countries.

### AT: Afghanistan

#### No Indo-Pak war, that’s the only scenario for escalation

Loudon 8 [Bruce, The Australian, Doomsday dread, December 04, 2008, http://www.theaustralian.news.com.au/story/0,25197,24746635-25837,00.html]

THE doomsayers' published assessments tell the grim story: upwards of 12 million people killed on the first day of a nuclear exchange, more than 150 million dead in a longer nuclear conflict. Devastation and destruction on a scale that is almost unimaginable. A catastrophe that would vastly transcend that seen at Hiroshima and Nagasaki at the end of World War II. That is why, as India and Pakistan muscle up to each other after the Mumbai massacre and leaders from across the world hurry to counsel cool heads and caution in New Delhi and Islamabad, the unspoken fear everywhere is that the two South Asian neighbours could be pushed into the unthinkable: their fourth war, and one in which they would mobilise their nuclear arsenals. It is, it must be said, **an unlikely prospect.** No one in either capital -- even among the hotheads -- is thinking in those terms. **Experienced strategic analysts rule it out**. "Don't even think about it. It ain't going to happen," one says. But as the crisis over terrorism across South Asia deepens and jihadist groups linked to al-Qa'ida launch devastating attacks such as the one in Mumbai last week -- attacks designed to exacerbate tensions between India and Pakistan -- there is, in the view of most analysts, always the potential for events to tumble out of control and lead to a doomsday nuclear conflagration, with enormous loss of life. "South Asia's a nuclear tinderbox," a leading military analyst in New Delhi tells The Australian. "Yes, of course, I'd just about rule it out in the context of the face-off following the Mumbai attack. "But it's always there, always nagging at the edges of the constant tensions in the subcontinent. And there's no doubt that Osama (bin Laden) is doing his bit to stir the pot and do what he can to increase those tensions, since conflict between India and Pakistan serves the jihadist cause." Yesterday, US military officials in Washington, DC, closely monitoring the situation described the military temperature between the two neighbours as "pretty low right now", adding that although Pakistan has moved some aircraft and air defence units closer to the Indian border since the Mumbai attack, "on the nuclear side there is nothing". Which is hardly surprising, for the political will in both sides, despite the muscle-flexing, is **overwhelmingly against** resort to their nuclear arsenals. India, since it demonstrated its nuclear capability in 1998, has maintained a firm no-first-strike policy and a few days ago Pakistan's President Asif Ali Zardari turned longstanding Pakistani policy on its head (some believe to the annoyance of the country's powerful generals) by articulating a similar stance. On both sides there is a **mood of extreme caution** on the subject of any possible use of nuclear weapons, matched only by the intense secrecy that surrounds their arsenals.

#### **Afghanistan collapse inevitable**

Ajami 13 [Fouad Ajami](http://search.bloomberg.com/search?q=Fouad%20Ajami&site=wnews&client=wnews&proxystylesheet=wnews&output=xml_no_dtd&ie=UTF-8&oe=UTF-8&filter=p&getfields=wnnis&sort=date:D:S:d1&partialfields=-wnnis:NOAVSYND&lr=-lang_ja), senior fellow at Stanford University’s Hoover Institution Nov 26, 2013 Why Obama Keeps Putting Up With Karzai’s Chutzpah http://www.bloomberg.com/news/2013-11-26/why-obama-keeps-putting-up-with-karzai-s-chutzpah.html

With no national debate, with Congress mired in all sorts of disputes, Obama proposes a U.S. commitment in Afghanistan that runs to 2024. The hope that this commitment will produce a decent government that could defeat the Taliban is a thin reed. We should dispense with the illusion that the forces we train will stand up and fight, that an Afghan regime addicted to foreign handouts will come together when it truly matters.

With our guns and money, we have suspended the feuds of Afghanistan. When we truly pack up our gear, the hard truth of that country will win out. The warlords and the vultures will take what they can and leave the place to darkness and ruin.

#### Afghanistan’s judiciary doesn’t look to U.S. – cultural differences.

Zafar 1/2 [Morwari, Morwari Zafar is an Afghanistan subject matter expert for the U.S. government and previously worked on international development projects in Afghanistan. She is currently pursuing her PhD in anthropology from the University of Oxford. - See more at: http://southasia.foreignpolicy.com/posts/2014/01/02/us\_injustice\_in\_afghanistan#sthash.6NBdvIRV.dpuf US justice doesn’t sit well in Afghanistan Posted on 2014-01-06 17:36:59]

Questions of jurisprudence are useless abstractions in Afghanistan, where the perceptions and pursuit of justice are based on customs - not the rule of law. The American concept of “justice” and methods of dispute mediation are dramatically different from the customary laws and tribal justice of Afghanistan. Because of this, even if the United States brings American perpetrators of crimes in Afghanistan to court, as they did in the case of Staff Sgt. Robert Bales, Afghan victims and their families often feel as though they’ve missed out on true justice. The US should take note of this, as an understanding of “justice” through the eyes of Afghans is essential to moving forward in a post-Nato environment. The trial of Staff Sgt. Bales helps illustrate the importance of this discrepancy and the way in which the US failed to take Afghan traditions of dispute mediation into account, ultimately causing many Afghans to feel that Americans hold the lives of US criminals in higher regard than those of innocent Afghans. In 2012, when Bales murdered 16 Afghan civilians in Panjwai, a small district in Kandahar province, the Afghan government could not prevent his extradition back to the United States for a military court martial. For Afghans, removing the perpetrator of the crimes from the purview and judgment of his victims and their families seemed an audacious act. While Afghan witnesses and family members of the victims were flown from Kandahar to Joint Base Fort Lewis-McChord in Washington state by the US military to testify at Bales’ trial, the six witnesses who made this journey - on two separate occasions - found the American justice system in general, and the military court martial in particular, unfamiliar, grotesquely protracted, and in essence, unjust. They also felt that it was against their socio-cultural framework. Panjwai is an archetype of Afghan culture and religious conservatism. Ethnically Pashtun and socially tribal, the population maintains civil order by complying with cultural honour codes and Islamic sharia law. Justice is local, personal, and above all else, swift. Bales’ murderous rampage and the wealth of evidence against him, in their minds, should have warranted his immediate execution: no trial, no jury, and certainly no mercy. Had Bales been an Afghan man and tried in Afghanistan, a trial council of village or tribal elders would have been convened in a matter of days. The trial - a discussion about the crimes from the aggrieved parties - would have taken place in someone’s home or a local public forum. The sentence would have been whatever the council determined was fair to settle a blood feud, which, more often than not, is the accused’s life. But Bales is an American and was a member of the US Army at the time of the incident - important distinctions. Rather than serving justice in the Afghan tradition, a US military court martial occurred 7,000 miles from the scene of the crime, lasted 17 months, and ultimately resulted in a guilty plea from Bales, in exchange for removing the death penalty from the table. For the victims and their families, the trial itself added insult to injury, as the US court martial took pains to make the process fair and equal for both parties, exacerbating the witnesses’ frustration. For example, during the sentencing, Haji Naim, one of the Afghan witnesses, exclaimed in surprise that Bales appeared in court “dressed like a general.” In his world, the man would have been shunned for cowardice and not afforded a place front and centre in the trial. Even the legal structure itself seemed to privilege the accused. Local justice mechanisms in rural Afghanistan are modelled after Islamic principles of equality before God, and as such, village and tribal councils are conducted informally, with the participants sitting in a circle in which the perception of power is diffused among all present. Those involved can talk freely and openly, and often, over each other. There is no witness box to physically mark the spaces between the witness or victim, the accused, and the advocates of justice. The judge does not preside from a high chair over the court, and the forum does not restrict impassioned appeals in favour of categorical questioning and cross-examination. When Haji Wazir, whose six children, wife, and mother were among the dead, took the witness stand to testify against Bales for the last time, he hesitated to leave it knowing that he would have no voice as soon as he stepped down. “Does anyone - anyone - have any more questions for me,” he asked. “I did not get to say what was in my heart.” Seventeen months after the murders, the verdict, sentencing Bales to life in prison without parole, seemed neither satisfactory nor expedient. “We wanted this murderer to be executed, but we did not get our wish,” Wazir told the Tacoma News Tribune at the conclusion of the trial. “We came all the way to the United States to get justice, but we did not get that.” Afghanistan’s informal justice mechanisms, while dramatically unlike those of the US, reinforce local governance structures in Afghanistan. From an Afghan perspective, this system promotes equality and justice in a way that the American system does not. In terms of jurisprudence, even shadow governments like that of the Taliban, though regarded as problematic and oppressive, promote a rule of law that is more consistent with traditional customs than western ideologies. Furthermore, because years of international developmental support, both pecuniary and technical, have failed to create corruption-free formal governance and justice systems with the capacity to address crimes in Afghanistan, it is understandable that Afghans have more faith in their own informal methods than formal institutions of dispute mediation - particularly those of a foreign government.

#### Corruption outweighs U.S. signal.

MacKenzie 13 [Jean MacKenzieDecember 9, 2013 13:03 Just how corrupt is Afghanistan? Reporter’s notebook: A peek behind the curtain at one of the world’s shadiest nations. http://www.globalpost.com/dispatch/news/regions/asia-pacific/afghanistan/131206/corruption-afghanistan]

It’s now official: Afghanistan ranks as one of the three most corrupt nations on Earth — splitting the crown with Somalia and North Korea, according to Transparency International’s 2013 Corruption Perceptions Index. This is the second year in a row that the trio leads the list of the world's bad guys. In previous years, the best Afghanistan could muster was first runner up. But just how pervasive is the problem? Can it really be true that after more than a decade under international stewardship, the most widespread skill the population has honed is graft? More from GlobalPost: Turns out almost 70 percent of the world's nations are seriously corrupt Let me start by saying that I loved every minute of my seven years in Afghanistan, and am fortunate to count many Afghans as close friends. I have happily put my life in their hands on more than one occasion, and would do so again. But in many Afghans courage, nobility of spirit and graciousness toward guests exist side by side with rampant venality, fed, no doubt, by a lingering resentment of the foreign occupation. A feeling that Afghans are owed some reparation for their pain doesn't help much, either. I have spent significant time in several of Transparency International’s pantheon of the crooked: Uzbekistan, Kyrgyzstan, Kazakhstan, Tajikistan, Belarus and Russia — all old haunts of mine — share the bottom third of the scale with Afghanistan. None of them comes close to the casual disregard for what’s normally considered legality that I saw in my years in Kabul. It starts at the very top. One evening several years ago I was invited to a dinner at the US Embassy in Kabul. I was seated next to an Afghan-American official, and we were discussing corruption. “How can we expect to make any progress when one of the most corrupt people in the country is the minister of counternarcotics?” I fumed. Ahmed Zarar Moqbel, who had been interior minister until the graft and malfeasance in that organization proved too much for the international community to stomach, had recently been made drug czar. The British government, which had taken the lead on counternarcotics, cut off funding to the ministry upon his succession, apparently convinced that Moqbel himself was involved in drug smuggling. Even in Afghanistan, he stands out. The official looked at me, amused. “Zarar is my relative,” he said. I choked simultaneously on my food and my foot, and tried to stammer out an apology, but he just leaned toward me and laughed. “Don’t worry, I agree with you,” he said. “I do not allow my family to see him.” Moqbel has recently been named to head the Foreign Affairs Ministry. In my experience, corruption in Afghanistan is everywhere, from the smallest office to the largest contractor. Examples range from the mildly irritating to the downright dangerous. President Hamid Karzai insists the problem came with the foreigners. In an interview with author William Dalrymple, he shifted blame to his major benefactor. “There is corruption, no doubt,” he said. “Our own petty corruption in the delivery of services was there before, is here today and will continue for some time. The big corruption was designed by the Americans. The contracts were used by the US government to buy influence in Afghanistan. It was designed to corrupt the Afghan political leadership so as to be usable by them.” There may very well be some substance to Karzai’s accusations. After all, if the United States and its allies had not funneled nearly $700 billion dollars into Afghanistan over the past 12 years, it would not have been there to steal. More GlobalPost analysis: Should we send more aid to Afghanistan? Many in the international community also have a habit of looking the other way when it suits them. Take the example of Karzai’s half-brother, Ahmed Wali Karzai, who was widely believed to have been a major figure in the drug trade before he was assassinated in 2011. Ahmed Wali enjoyed good relations with the US — in fact, he was a paid CIA informant. But the bulk of the responsibility has to lie with the Afghans, who have seized opportunities with alacrity.

#### Expert consensus—broad judicial review in Afghanistan is destabilizing.

**Barnett R. Rubin, Ph.D., Director of Studies and Senior Fellow, Center on International Cooperation, NYU, 6-5-2003. [Presentation to Constitutonal Commission of Afghanist, p.** [**http://www.institute-for-afghanstudies.org/Contributions/060503DRRobin\_Presentation\_to\_Constitutional\_Commission\_of\_Afghanistan.htm**](http://www.institute-for-afghan-studies.org/Contributions/060503DRRobin_Presentation_to_Constitutional_Commission_of_Afghanistan.htm)**]**

Finally, I understand that the commission is considering establishment of a constitutional court to review legislation and acts of the government for conformity to the constitution. Afghanistan never had such judicial review in the past. Instead, it was the responsibility of the king to assure that the government acted in accord with the constitution and the fundamental principles (asasat) of Islam. Many new democracies have established such courts to safeguard the rights of the people.

Unfortunately, if judicial review is established in too broad a manner, it can have negative effects on the functioning of government. If a court reviews legislation before it is enacted, such review can delay necessary government decision-making. If a court has the power to decide if the government's decisions conform to a general idea like the principles of Islam, it has a tremendous amount of discretion, it can misuse for political purposes. In Pakistan, for instance, a court overturned arbitrarily the commercial code and the banking laws; on the grounds that they contradicted Sharia with disastrous economic effects. We have seen such dangerous results in Pakistan. In the past the responsibility for conformity to the principles of Islam remained with riyasat-i taqnin and the executive, acting on the advice of experts. The commission might consider if this system might be sufficient for the country today as well. A **number of the experts** whom we consulted suggested that the jurisdiction of the constitutional court should be limited to disputes involving fundamental rights and relations among different parts of the government, as is done in Malaysia, where the laws also conform to Islamic principles.

#### No instability—federalism solves

Cordesman and Mann 12 [Anthony H. Cordesman and Sean T. Mann, Arleigh A. Burke Chair in Strategy at CSIS, AFGHANISTAN: THE FAILING ECONOMICS OF TRANSITION Third Working Draft: June 26, 2012 http://csis.org/files/publication/120626\_Afghan\_Uncert\_Econ\_Trans.pdf]

It is still clear, however, that the economics of Transition – and the level of future US and other donor military and civilian aid efforts – are critical if Afghanistan is to have a chance of creating a reasonable level of post-2014 security and stability. It is also important to remember – for all the problems involved in creating any form of successful ransition – that the various insurgent groups still represent relatively small, unpopular movements with ethnic and sectarian ties that **limit their influence** in many parts of the country. Even if the US and its allies cannot achieve the level of post-2014 stability and security they desire, this does not mean that Afghanistan cannot achieve **relative stability** based on some form of **de facto federalism** or sharing of power between the central government and given factions. This may **limit insurgent gains** and control as well as **mitigate the risk** that Afghanistan will become a center of terrorism.

### AT: Presidential Adventurism

#### Judicial restriction of presidential war powers makes warfighting impossible.

Knott 13 [Stephen, Professor of National Security Affairs at the United States Naval War, 8/22, War by Lawyer, www.libertylawsite.org/2013/08/22/war-by-lawyer/]

It is important to keep this in mind in light of the recent National Security Agency surveillance “scandal” which has led to calls for increased judicial oversight of the nation’s intelligence community. These calls, unfortunately, are not coming solely from the usual liberal suspects, but from conservatives who proclaim their devotion to the Constitution. This is an unfortunate turn of events, for if legislating from the bench is inappropriate in the domestic arena, it is completely unwarranted, and altogether dangerous, in the national security arena. This newfound appreciation for judicial activism from normally sober-minded conservatives can be seen in Senator Rand Paul’s (R-KY) and Representative Justin Amash’s (R-MI) proposal that class action lawsuits be filed against the National Security Agency in order to alter its practices. Paul recently announced that he would challenge “this [NSA surveillance] at the Supreme Court level. I’m going to be asking all the Internet providers and all of the phone companies, ask your customers to join me in a class-action lawsuit. If we get 10 million Americans saying ‘We don’t want our phone records looked at,’ then somebody will wake up and say things will change in Washington.” A program authorized by Congress, managed by the executive, and sanctioned by the FISA court will now be challenged by a class action lawsuit, mimicking the traditional liberal tactic of going to court when you cannot prevail in the political process. Additionally, Senator Patrick Leahy (D-VT), a longtime critic of the American intelligence community, has sponsored legislation with Senator Mike Lee (R-Utah) to “increase judicial review” of terrorist related surveillance requests. The FISA Accountability and Privacy Protection Act of 2013 would, as its sponsors put it, add more “meaningful judicial review” of requests by the government to intercept suspected terrorist communications. On top of this, President Obama has proposed that a “special advocate” be appointed to serve as an adversary to the government in FISA court proceedings. In other words, government officials will have to joust in front of a judge with a lawyer concerned about the civil rights of a suspected Al Qaeda sympathizer living in the United States. While it is not surprising that President Obama and Patrick Leahy would adopt these positions, it is surprising to see prominent Republicans, including potential 2016 GOP nominees, jumping on Pat Leahy’s bandwagon. Terrorist attacks directed from abroad are acts of war against the United States, requiring a response by the nation’s armed forces under the direction of the commander-in-chief. Unity in the executive is critical to the conduct of war, as Alexander Hamilton noted in The Federalist, and war by committee, especially a committee of lawyers, brings to armed conflict the very qualities that are the antithesis of Publius’s “decision, activity, secrecy, and dispatch.” The American military, with the assistance of the American intelligence community, fulfill the constitutional mandate to provide for the common defense. The nation’s defense establishment is not the Internal Revenue Service or the Department of Health and Human Services; if one dislikes the social welfare policies of the Obama administration or disagrees with President Obama for whatever reason, that is all well and good, but true conservatives should reject the principle that judicial review is applicable to the conduct of national defense. The founders understood that the decision to use force, the most important decision any government can make, were non-judicial in nature and were to be made by the elected representatives of the people. Nonetheless, for those weaned during an era when “privacy” was elevated to the be-all and end-all of the American experiment, the war power and related national security powers granted by the Constitution to the elected branches are trumped by modern notions of a limitless “right to privacy.” The civil liberties violations of the War on Terror are considered so egregious as to require the intervention of an appointed judiciary lacking any Constitutional mandate, and lacking the wherewithal, including information and staff, to handle sensitive national security matters. This is judicial activism at its worst and further evidence that the “political questions doctrine,” the idea of deferring to the elected branches of government on matters falling under their constitutional purview, is, for all practical purposes, dead (See the case of Totten vs. U.S., 1875, for an example of judicial deference to the elected branches on intelligence matters. This deference persisted until the late 20th century). Simply put, according to the Constitution and to almost 220 years of tradition, Congress and the President are constitutionally empowered, among other things, to set the rules regarding the measures deemed necessary to gather intelligence and conduct a war. One of the latest demands from advocates of increased judicial oversight is for a “targeted killing court.” In a similar vein, Senator Marco Rubio has called for the creation of a “Red Team” review of any executive targeting of American citizens, which would include a 15 day review process – “decision, activity, secrecy, and dispatch” be damned. A 15 day review process of targeting decisions would horrify Alexander Hamilton and all the framers of the Constitution. No doubt our 16th President would be horrified as well – imagine Abraham Lincoln applying for targeting permits on American citizens suspected of assisting the Confederacy. (“Today, we begin a 15 day review of case #633,721, that of Beauregard Birdwell of Paducah, Kentucky.”) War by lawyer might in the not too distant future include these types of targeting decisions, followed by endless appeals to unelected judges. All of this is a prescription for defeat. We are, sadly, almost at this point, for a new conception about war and national security has taken root in our increasingly legalistic society. We saw this during the Bush years when the Supreme Court for the first time in its history instructed the executive and legislative branches on the appropriate manner of treating captured enemy combatants. The Courts are now micromanaging the treatment of detainees at Guantanamo, to the point of reviewing standards for groin searches of captured Al Qaeda members. True conservatives understand the pitfalls of this legalism, especially of the ill-defined international variety. Conservatives should be especially alert to the dangers arising from elevating international law over the national interest as the standard by which to measure American conduct. The legalistic approach to the war on terror now being endorsed by prominent conservatives would cede presidential authority to executive branch lawyers and to their brethren in the judiciary who are playing a role they were never intended to play. Michael Scheuer, the former head of the CIA’s unit charged with tracking down Osama bin Laden, observed that “at the end of the day, the U.S. intelligence community is palsied by lawyers, and everything still depends on whether the lawyers approve it or not.” This is as far removed from conducting war, as Hamilton described it, with decision and dispatch, and with the “exercise of power by a single hand,” as one can get. War conducted by the courts is not only unconstitutional, it is, to borrow a phrase from author Philip K. Howard, part of the ongoing drift toward the death of common sense.

#### Credible conventional deterrence checks nuclear aggression

Gerson 09

MICHAEL S. GERSON, research analyst at the Center for Naval Analyses, Policy Fellow with the ONE Campaign, a visiting fellow with the Center for Public Justice, and a former senior fellow at the Council on Foreign Relations,“Conventional Deterrence in the Second Nuclear Age”, Strategic Studies Institute, Autumn 2009 //jchen

Although implicit or explicit nuclear threats may lack credibili- ty against non-WMD regimes, many potential adversaries believe that the United States will use conventional firepower, especially because America has conventional superiority and a demonstrated willingness to use it. Consequently, when dealing with non-WMD-related threats, conventional deterrence will be the most likely mechanism for deterring hostile actions.

According to Admiral Michael Mullen, the current Chairman of the Joint Chiefs of Staff, “A big part of credibility, of course, lies in our convention- al capability. The capability to project power globally and conduct effective theater-level operations . . . remains essential to deterrence effectiveness.”14

Conventional deterrence also plays an important role in preventing nonnuclear aggression by nuclear-armed regimes. Regional nuclear pro- liferation may not only increase the chances for the use of nuclear weap- ons, but, equally important, the possibility of conventional aggression. The potential for conventional conflict under the shadow of mutual nucle- ar deterrence was a perennial concern throughout the Cold War, and that scenario is still relevant. A nuclear-armed adversary may be emboldened to use conventional force against US friends and allies, or to sponsor ter- rorism, in the belief that its nuclear capabilities give it an effective deter- rent against US retaliation or intervention.15 For example, a regime might calculate that it could undertake conventional aggression against a neigh- bor and, after achieving a relatively quick victory, issue implicit or explicit nuclear threats in the expectation that the United States (and perhaps coali- tion partners) would choose not to get involved.

In this context, conventional deterrence can be an important mech- anism to limit options for regional aggression below the nuclear threshold. By deploying robust conventional forces in and around the theater of potential conflict, the United States can credibly signal that it can respond to conventional aggression at the outset, and therefore the opponent can- not hope to simultaneously achieve a quick conventional victory and use nuclear threats to deter US involvement. Moreover, if the United States can convince an opponent that US forces will be engaged at the beginning of hostilities—and will therefore incur the human and financial costs of war from the start—it can help persuade opponents that the United States would be highly resolved to fight even in the face of nuclear threats be- cause American blood and treasure would have already been expended.16 Similar to the Cold War, the deployment of conventional power in the re- gion, combined with significant nuclear capabilities and escalation dom- inance, can help prevent regimes from believing that nuclear possession provides opportunities for conventional aggression and coercion.

#### Foreign policy resolve’s key to prevent a host of impacts---now’s key

Chapin and Hanson 9 – Bernard Chapin- interviewer, and Victor Davis Hanson, the Martin and Illie Anderson senior fellow at the Hoover Institution, December 7, 2009, “Change, weakness, disaster,” online: http://pajamasmedia.com/blog/change-weakness-disaster-obama-answers-from-victor-davis-hanson/

BC: Are we currently sending a message of weakness to our foes and allies? Can anything good result from President Obama’s marked submissiveness before the world? Dr. Hanson: Obama is one bow and one apology away from a circus. The world can understand a kowtow gaffe to some Saudi royals, but not as part of a deliberate pattern. Ditto the mea culpas. Much of diplomacy rests on public perceptions, however trivial. We are now in a great waiting game, as regional hegemons, wishing to redraw the existing landscape — whether China, Venezuela, Iran, North Korea, Pakistan, Syria, etc. — are just waiting to see who’s going to be the first to try Obama — and whether Obama really will be as tenuous as they expect. If he slips once, it will be 1979 redux, when we saw the rise of radical Islam, the Iranian hostage mess, the communist inroads in Central America, the Soviet invasion of Afghanistan, etc. BC: With what country then — Venezuela, Russia, Iran, etc. — do you believe his global repositioning will cause the most damage? Dr. Hanson: I think all three. I would expect, in the next three years, Iran to get the bomb and begin to threaten ever so insidiously its Gulf neighborhood; Venezuela will probably cook up some scheme to do a punitive border raid into Colombia to apprise South America that U.S. friendship and values are liabilities; and Russia will continue its energy bullying of Eastern Europe, while insidiously pressuring autonomous former republics to get back in line with some sort of new Russian autocratic commonwealth. There’s an outside shot that North Korea might do something really stupid near the 38th parallel and China will ratchet up the pressure on Taiwan. India’s borders with both Pakistan and China will heat up. I think we got off the back of the tiger and now no one quite knows whom it will bite or when.

#### Strong executive key to prevent multiple scenarios for nuclear war in Asia and South Asia

COES 2011 (Ben, former speechwriter for George H.W. Bush, September 30, “The Disease of a Weak President,” <http://dailycaller.com/2011/09/30/the-disease-of-a-weak-president/>

The disease of a weak president usually begins with the Achilles’ heel all politicians are born with — the desire to be popular. It leads to pandering to different audiences, people and countries and creates a sloppy, incoherent set of policies. Ironically, it ultimately results in that very politician **losing the trust and respect of friends and foes alike.**

In the case of Israel, those of us who are strong supporters can at least take comfort in the knowledge that Tel Aviv will do whatever is necessary to protect itself from potential threats from its unfriendly neighbors. While it would be preferable for the Israelis to be able to count on the United States, in both word and deed, the fact is right now they stand alone. Obama and his foreign policy team have undercut the Israelis in a multitude of ways. Despite this, I wouldn’t bet against the soldiers of Shin Bet, Shayetet 13 and the Israeli Defense Forces.

But Obama’s weakness could — in other places — have implications far, far worse than anything that might ultimately occur in Israel. The triangular plot of land that connects Pakistan, India and China is held together with much more fragility and is built upon a truly foreboding foundation of religious hatreds, radicalism, resource envy and nuclear weapons. If you can only worry about preventing one foreign policy disaster, worry about this one.

Here are a few unsettling facts to think about: First, Pakistan and India have fought three wars since the British de-colonized and left the region in 1947. All three wars occurred before the two countries had nuclear weapons. Both countries now possess hundreds of nuclear weapons, enough to wipe each other off the map many times over.

Second, Pakistan is 97% Muslim. It is a question of when — not if — Pakistan elects a radical Islamist in the mold of Ayatollah Khomeini as its president. Make no mistake, it will happen, and when it does the world will have a far greater concern than Ali Khamenei or Mahmoud Ahmadinejad and a single nuclear device.

Third, China sits at the northern border of both India and Pakistan. China is strategically aligned with Pakistan. Most concerning, China covets India’s natural resources. Over the years, it has slowly inched its way into the northern tier of India-controlled Kashmir Territory, appropriating land and resources and drawing little notice from the outside world.

In my book, Coup D’Etat, I consider this tinderbox of colliding forces in Pakistan, India and China as a thriller writer. But thriller writers have the luxury of solving problems by imagining solutions on the page. In my book, when Pakistan elects a radical Islamist who then starts a war with India and introduces nuclear weapons to the theater, America steps in and removes the Pakistani leader through a coup d’état. I wish it was that simple.

The more complicated and difficult truth is that we, as Americans, must take sides. We must be willing to be unpopular in certain places. Most important, **we must be ready and willing to threaten our military might on behalf of our allies**. And our allies are Israel and India.

There are many threats out there — Islamic radicalism, Chinese technology espionage, global debt and half a dozen other things that smarter people than me are no doubt worrying about. But the single greatest threat to America is none of these. **The single greatest threat** facing America and our allies **is a weak U.S. president.** It doesn’t have to be this way. President Obama could — if he chose — develop a backbone and lead. Alternatively, America could elect a new president. It has to be one or the other. The status quo is simply not an option.

#### No presidential interventionism—public opinion restrains the president.

#### The scenario in their card is Senkaku Island disputes

Rudd 13 -- Former Prime Minister and Former Foreign Minister, Member, Australian Parliament, interview with Jonathan Tepperman (Kevin, 2013, "The Situation in North Korea and the Future of U.S.-China Relations," http://www.cfr.org/australasia-and-the-pacific/situation-north-korea-future-us-china-relations/p30230)

What ultimately drives this is a -- is a conflicting set of interests between rampant nationalisms on the one hand and, on the other hand, a pragmatic recognition by governments both in Beijing and Tokyo that conflict, for both of them, would be absolutely disastrous and would retard economic growth and stability in the wider region and would further (retard China's ?) -- primacy of China's own economic development objectives. Now, if they're the two competing poles in this debate, both in Tokyo and Beijing, rational foreign policy actors would conclude that rational self-interest and rational economic self-interest would ultimately (prevail ?). As you know, history cautions us against reaching those conclusions. And I think if you've seen the drift in the numbers, both in terms of Sino-Japanese trade numbers and Sino-Japanese investment numbers over the last six to nine months, the impact in real numbers is palpable and measurable in terms of the state of the China-Japan relationship. I think my friends in Beijing, when I have spoken with them, including the military, I think it's fair to say, are working very actively behind the scenes to find face-saving mechanisms by which this can be managed to the point of stability for the period ahead and then put into some longer-term process with the Japanese. However, when I was last in Beijing, which was prior to the -- (audio interference) -- lock-on incident, the -- it was very much a question within the Chinese minds about how one would do that without actually losing face on the national mistakes in the public discourse both about Japan and with Japan.

#### No war – China will maintain the squo.

Renic 12 [Neil, University of Queensland, ‘Rising China’: A Threat to International Security?, April 13, 2012 http://www.e-ir.info/2012/04/13/rising-china-a-threat-to-international-security/]

Despite alarmist claims to the contrary, the growth of China is unlikely to jeopardise the security of other regional states. When describing the rise of continental powers, Napoleon famously said, ‘the policies of such states are inherent in their geography’ (cited in Kaplan 2010: 23). This is certainly true regarding the rise of contemporary China. Whatever China’s true regional ambitions are, an observation of the East Asian alliance system indicates the improbability of a Chinese “Monroe Doctrine” in the near future. With direct economic and political contestation from both India and Japan, both key allies to the U.S. (Power 2006: 32), any attempt to supplant the U.S. as a regional hegemon, **seems increasingly unlikely.** Nye states that a more probable scenario for East Asia is one in which the U.S., Japan, Australia, India, and others, from a position of strength, engage China and incentivise it to engage more responsibly with the regional community. By again contrasting the rise of China with that of the Soviet Union, likely regional developments are better able to be ascertained. While the Soviet Union was believed to be a ‘highly revisionist state bent on radically overturning the status quo’ (Glaser 2011: 85), virtually **no evidence** suggests China shares these qualities. This highlights the reasonable probability of avoiding war within East Asia, as China continues to rise. Finally, the maintenance of the regional status quo seems increasingly likely, given the direct advantage to China of a significant U.S. naval presence in East Asia. Strategic analyst Khalid R. Al-Rodhan argues that the U.S. naval dominance of East Asia serves China strategically by providing security against terrorism and smuggling, maintaining the balance of power by preventing Japanese militarisation, and contributing to general stability (2007: 52). The fact that the U.S. East Asian naval presence allows China to better focus on domestic matters, strongly suggests that peace can be maintained regionally, as China continues to strengthen. Despite these positive developments, virtual unanimity can be found among those concerned with China’s rise, when focus is placed on the volatility that exists between China and Taiwan.

### AT: Russia

#### Relations resilient

Sawczak 11 [Dr. Peter Sawczak, Adjunct Research Fellow at Monash University, “Obama’s Russia Policy: The Wages and Pitfalls of the Reset,” peer reviewed paper presented at the 10th Biennial Conference of the Australasian Association for Communist and Post-Communist Studies, Feb 3-4 2011, <http://cais.anu.edu.au/sites/default/files/Sawczak_Obama.pdf>]

As a measure of their optimism, US officials like to point – cautiously – to a discernible shift in Russian foreign policy towards a more pragmatic, cooperative approach. Whether or not the Obama administration can claim credit for this, the United States has at least shown Russia the dividends which could flow from enhanced cooperation. This is most palpably reflected in the Russian foreign policy paper leaked in May 2010, which identifies a “need to strengthen relations of mutual interdependence with the leading world powers, such as the European Union and the US,” 5 as well as, more indirectly, in Medvedev’s modernisation agenda. The fact that Russia has sought, in the tragic circumstances attending commemoration ceremonies at Katyn, rapprochement with Poland and moved to demarcate its border with Norway, in addition to partnering with the US on arms control, Iran and Afghanistan, suggests to US policy-makers that a rethink, however tenuous, is underway. Noteworthy also is the fact that Russia, gladdened by the emergence of more compliant leaders in Ukraine and Kyrgyzstan, has been remarkably restrained of late in its dealings closer to home, not having waged any major gas wars, threatened leaders, or incited civil war. ¶ How Russia engages on looming challenges – which McFaul has prioritised as cooperation on missile defence, Russia’s WTO accession, future European security architecture and Medvedev’s modernisation agenda 6 – will demonstrate the extent of its willingness to comply with the Obama administration’s preferred modus operandi of identifying shared interests as a means of pursuing US national interests. There will be temptation on Russia's part to push the United States to entertain grand bargains in certain areas, especially - and however unrealistically - on its perceived privileged interests in former Soviet states. Both sides, however, have demonstrated a relatively high level of comfort with agreeing to disagree, and there is now an increasingly even mix of interests on both sides. Immediate impediments that will need to be worked through include reluctance by the Pentagon to share sensitive military technology in relation to missile defence and Russia's slowness to create favourable conditions for foreign investment.

#### No Russian war.

MacGregor 11 [Lean, Mean Fighting Machine How to slash the Pentagon budget? Declare victory and go home. BY DOUGLAS MACGREGOR | APRIL 26, 2011 http://www.foreignpolicy.com/articles/2011/04/26/lean\_mean\_fighting\_machine]

For one thing, there is no existential military threat to the United States or to its vital strategic interests. The nuclear arsenals in Russia and China could be used against the United States and its forces, but Russian and Chinese leaders have no incentive to contemplate suicide in a nuclear confrontation with the United States. Russia's diminished million-man armed forces are hard-pressed to modernize, let alone secure their own country, which borders 14 other states. For all its rhetoric, Russia's military focus is on restive Muslim populations in the Caucasus and Central Asia, not on NATO.

#### Communications check miscalc

Ford 8 [Christopher, Senior Fellow at the Hudson Institute in Washington, D.C. former U.S. Special Representative for Nuclear Nonproliferation and former Principal Deputy Assistant Secretary of State for Verification, Compliance, and Implementation “Dilemmas of Nuclear Force ‘De-Alerting,’” <http://www.hudson.org/files/documents/De-Alerting%20FINAL2%20%282%29.pdf>]

The United States and Russia have also worked for years to improve communications, reduce misunderstandings, and develop ways to lessen the risk of inadvertent launch or other errors in their strategic relationship. Most readers will be familiar with the Direct Communications Link (the famous “hotline”) established in 1963. 27 In 1971, however, Washington and Moscow also signed an agreement establishing basic procedures to increase mutual consultation and notification regarding relatively innocent but potentially alarming activities – thereby reducing the risk of accidental nuclear war. 28 Since 1987, the two parties have also operated securely linked 24-hour communications centers – the U.S. node of which is the Nuclear Risk Reduction Center (NRRC) operated by the State Department 29 – which specialize in transmitting such things as the notifications required under arms control treaties. Pursuant to a 1988 memorandum, NRRC transmittals, which go directly to the Russian Ministry of Defense, include ballistic missile launch notifications. This link also proved useful to help prevent strategic tensions after the terrorist assault of September 11, 2001 – at which point U.S. officials used the NRRC to reassure their Russian counterparts that the sudden American security alert in the wake of the Manhattan and Pentagon attacks was not in any way an indication of impending U.S. belligerence vis-à-vis Russia.

### AT: Middle East War

#### No escalation in the Middle East

Maloney, Brookings, 7 [Suzanne, Senior Fellow at the Saban Center for Middle East Policy, International Herald Tribune Why the Iraq War Won't Engulf the Mideast Iraq, Middle East, Islamic World, Civil War Ray Takeyh, Fellow Steven A. Cook, Fellow June 28, 2007 http://www.brookings.edu/views/op-ed/maloney20070629.htm]

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

### AT: China

#### No war – China won’t risk it all and no flashpoints.

Bremmer 10 [Ian, president of Eurasia Group and the author, most recently, of The End of the Free Market: Who Wins the War between States and Corporations?, Gathering Storm: America and China in 2020 July/August 2010 http://www.worldaffairsjournal.org/articles/2010-JulyAugust/full-Bremmer-JA-2010.html]

In addition, **Beijing has no incentive to** mount a global military **challenge** to **U.S. power**. China will one day possess a much more substantial military capacity than it has today, but its economy has **grown so quickly** over the past two decades, and its living standards improved so dramatically, that it is difficult to imagine the kind of catastrophic, game-changing event that would push Beijing to risk it all by posing the West a large-scale military challenge. It has **no incentive** to allow anything less than the most serious threat to its sovereignty to trigger a military conflict that might sever its expanding network of commercial ties with countries all over the world—and with the United States, the European Union, and Japan, in particular. The more familiar flash points are **especially unlikely** to spark a hot war: Beijing is well aware that no U.S. government will support a Taiwanese bid for independence, and China need not invade an island that it has largely co-opted already, via an offer to much of Taiwan’s business elite of privileged access to investment opportunities on the mainland.

# 2NC

#### And, solves the case – US conventional deterrence checks all 1AC impacts because countries fear US intervention – current security assurances will prevent most wars.

#### Declining military power destroys global U.S. diplomatic influence

Holmes 9 – Kim R. Holmes, Ph.D., Vice President for Foreign and Defense Policy Studies and Director of the Davis Institute for International Studies at the Heritage Foundation, June 1, 2009, “Sustaining American Leadership with Military Power,” online: http://s3.amazonaws.com/thf\_media/2009/pdf/sr0052.pdf

The consequences of hard-power atrophy will be a direct deterioration of America’s diplomatic clout. This is already on display in the western Pacific Ocean, where America’s ability to hedge against the growing ambitions of a rising China is being called into question by some of our key Asian allies. Recently, Australia released a defense White Paper that is concerned primarily with the potential decline of U.S. military primacy and the implications that this decline would have for Australian security and stability in the Asia–Pacific. These developments are anything but reassuring.

The ability of the United States to reassure friends, deter competitors, coerce belligerent states, and defeat enemies does not rest on the strength of our political leaders’ commitment to diplomacy; it rests on the foundation of a powerful military. Only by retaining a “big stick” can the United States succeed in advancing its diplomatic priorities. Only by building a full-spectrum military force can America reassure its many friends and allies and count on their future support.

#### Judicial deference to executive war powers high now.

McCormack 13 [Wayne, Professor of Law at Utah, 8/20, Wayne, U.S. Judicial Independence: Victim in the “War on Terror”, today.law.utah.edu/projects/u-s-judicial-independence-victim-in-the-war-on-terror/]

One of the principal victims in the U.S. so-called “war on terror” has been the independence of the U.S. Judiciary. Time and again, challenges to assertedly illegal conduct on the part of government officials have been turned aside, either because of overt deference to the Government or because of special doctrines such as state secrets and standing requirements. The judiciary has **virtually relinquished** its valuable role in the U.S. system of judicial review. In the face of governmental claims of crisis and national security needs, the courts have refused to examine, or have examined with undue deference, the actions of government officials.

### Link – Detention

#### Restrictions on detention kill exec flexibility.

Tomatz 13 [Michael Tomatz 13, Colonel, B.A., University of Houston, J.D., University of Texas, LL.M., The Army Judge Advocate General Legal Center and School (2002); serves as the Chief of Operations and Information Operations Law in the Pentagon. AND Colonel Lindsey O. Graham B.A., University of South Carolina, J.D., University of South Carolina, serves as the Senior Individual Mobilization Augmentee to The Judge Advocate Senior United States Senator from South Carolina, “NDAA 2012: CONGRESS AND CONSENSUS ON ENEMY DETENTION,” 69 A.F. L. Rev. 1]

Reading the tea leaves of judicial dicta may be fraught with difficulty, but one certainly discerns from these pragmatic guidelines a view that the Executive should be accorded reasonable deference in matters of preventive detention. This deference is strongest during the early phases of detention, when facts are unclear, when the risks of release are acute, and the dangers of substituting a judicial judgment for that of the military or the Commander-in-Chief is greatest. If the Government learns that al-Qaeda operatives have invaded the U.S. bent on detonating explosives near chemical-laden rail cars, the overwhelming national effort must be directed toward destroying or detaining those forces intent on harming the country. This is not the time for Miranda and presentment but for concerted, decisive action bounded by the law of war. Every instrument of national power must be brought to bear, both military and civilian. If it makes the most sense for the FBI to detain someone, they should do so. If the military has the most information and can most quickly and effectively detain and interrogate, then consistent with military regulations, they should do so.¶ The process of understanding the depth and breadth of the danger, connecting the web of those involved, determining the possibility of future attacks takes time. It remains essential to afford the Commander-in-Chief adequate time and decision space to maximize the opportunity to defeat the threat and prevent future attacks. That is why the NDAA imposes no temporal limits, why it avoids geographic restrictions and why it grants no special protections to citizens who take up arms with the enemy. As Hamdan and Boumerdiene make clear, there are limits to the Court's deference. The more time that passes, the greater the consequences of an erroneous deprivation of liberty and the greater the risk of not affording someone a reasonable opportunity to challenge the basis for their detention. If there is consensus on the matter of process in preventive detention, it appears to mean reasonable deference followed by increased scrutiny with the passage of time. It means judicial review bounded by pragmatism, and it means balancing very real security concerns against the need to protect individuals from arbitrary deprivation of liberty.

#### Policymakers DO believe theories of credibility – will act accordingly

Fettweis 4 – Christopher Fettweis, Professor at the U.S. Army War College, December 2004, “Resolute Eagle or Paper Tiger? Credibility, Reputation and the War on Terror,” online: http://www.allacademic.com/meta/p67147\_index.html

In a very important sense, no state controls its reputation or its credibility, since these concepts exist in the minds of others. As will be discussed below, this observation has led Mercer and others to argue that states are therefore unjustified in their obsession with their credibility, since it is ultimately beyond their control. Although the logic behind this argument is quite compelling, its wisdom has not become apparent to policymakers, who persist in their obsession with the credibility of their nations, their parties, and themselves. Kissinger’s observation that “no serious policymaker could allow himself to succumb to the fashionable debunking of ‘prestige’ or ‘honor’ or ‘credibility’” seems to be just as true for the decision makers of today.14

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### A2 President Rollback

#### ---Political barriers check – new, stronger constituencies

Branum-Associate Fulbright and Jaworski- 2

Tara L, Associate, Fulbright & Jaworski L.L.P, “President or King? The Use and Abuse of Executive Orders in Modern Day America” Journal of Legislation 28 J. Legis. 1

Congressmen and private citizens besiege the President with demands  [\*58]  that action be taken on various issues. [n273](http://www.lexisnexis.com/us/lnacademic/frame.do?tokenKey=rsh-20.689002.875983458&target=results_DocumentContent&reloadEntirePage=true&rand=1220903297496&returnToKey=20_T4511783216&parent=docview" \l "n273) To make matters worse, once a president has signed an executive order, he often makes it impossible for a subsequent administration to undo his action without enduring the political fallout of such a reversal. For instance, President Clinton issued a slew of executive orders on environmental issues in the weeks before he left office. [n274](http://www.lexisnexis.com/us/lnacademic/frame.do?tokenKey=rsh-20.689002.875983458&target=results_DocumentContent&reloadEntirePage=true&rand=1220903297496&returnToKey=20_T4511783216&parent=docview" \l "n274) Many were controversial and the need for the policies he instituted was debatable. [n275](http://www.lexisnexis.com/us/lnacademic/frame.do?tokenKey=rsh-20.689002.875983458&target=results_DocumentContent&reloadEntirePage=true&rand=1220903297496&returnToKey=20_T4511783216&parent=docview" \l "n275) Nevertheless, President Bush found himself unable to reverse the orders without invoking the ire of environmentalists across the country. [n276](http://www.lexisnexis.com/us/lnacademic/frame.do?tokenKey=rsh-20.689002.875983458&target=results_DocumentContent&reloadEntirePage=true&rand=1220903297496&returnToKey=20_T4511783216&parent=docview" \l "n276) A policy became law by the action of one man without the healthy debate and discussion in Congress intended by the Framers. Subsequent presidents undo this policy and send the matter to Congress for such debate only at their own peril. This is not the way it is supposed to be.

### Solves – Legitimacy

#### Self-binding solves legitimacy – sends a signal of good faith

Pildes 12 [Richard H., Sudler Family Professor of Constitutional Law, NYU School of Law and Co-Director, NYU Center on Law and Security. 2/27/12 BOOK REVIEWS LAW AND THE PRESIDENT THE EXECUTIVE UNBOUND: AFTER THE MADISONIAN REPUBLIC. By Eric A. Posner and Adrian Vermeule. New York, N.Y.: Oxford University Press. 2010. Pp. 249. $29.95. New York University Public Law and Legal Theory Working Papers]

That Posner and Vermeule miss the role of legal compliance as a powerful signal, perhaps the most powerful signal, in maintaining a President’s critical credibility as a well-motivated user of discretionary power is all the more surprising in light of the central role executive self-binding constraints play in their theory. After asserting that “one of the greatest constraints on [presidential] aggrandizement” is “the president’s own interest in maintaining his credibility” (p. 133), they define their project as seeking to discover the “social-scientific microfoundations” (p. 123) of presidential credibility: the ways in which presidents establish and maintain credibility. One of the most crucial and effective mechanisms, in their view, is executive self-binding, “whereby executives commit themselves to a course of action that would impose higher costs on ill-motivated actors” (p. 137). As they also put it, “a well-motivated president can distinguish himself from an ill-motivated president by binding himself to a policy position that an ill-motivated president would reject” (p. 135). By complying with these constraints, presidents signal their good faith and accrue more trust to take further action. Most importantly from within Posner and Vermeule’s theory, these constraints, many self-generated through executive self-binding, substitute for the constraints of law. , Law does not, or cannot, or should not constrain presidents, in their view but rational-actor presidents recognize that complying with constraints is in their own self-interest; presidents therefore substitute or accept other constraints. Thus, Posner and Vermeule recognize the importance of “enabling constraints”78 in effective mobilization and maintenance of political power; that is, they recognize that what appear to be short-term constraints on the immediate preferences of actors like presidents might actually enable longterm marshaling of effective presidential power. Yet they somehow miss that law, too, can work as an enabling constraint; when it comes to law, Posner and Vermeule seem to see nothing but constraint. Indeed, this failing runs even deeper. For if presidents must signal submission to various constraints to maintain and enhance their credibility — as Posner and Vermeule insist they must — Posner and Vermeule miss the fact that the single most powerful signal of that willingness to be constrained, particularly in American political culture, is probably the President’s willingness to comply with law.

#### U.S. resolve is key to alliances, stopping prolif

Gaffney, 1/1/2000 (Frank – president of the Center for Security Policy, American power – for what, Commentary, p. lexis)

Fundamentally, we agree that the main threat arises not from the United States' being too powerful but from its being perceived abroad as weak and irresolute. That perception, alas, is generally the result of our acting that way at home--a phenomenon all too much in evidence during the Clinton years. It is no coincidence that during this period we have witnessed serious erosion in America's alliances, escalating proliferation, an ominous "strategic partnership" being forged between the Russians and Chinese, and the growing power of rogue states and terrorist organizations. These are tectonic shifts in the geopolitical plate structure with which we will have to contend for years to come.

#### Willingness to use military force solves rogue states.

Donnelly, Resident Scholar at AEI, 2003

[Thomas, 2/1. http://www.aei.org/publications/pubID.15845/pub\_detail.asp]

The preservation of today's Pax Americana rests upon both actual military strength and the perception of strength. The variety of victories scored by U.S. forces since the end of the cold war is testament to both the futility of directly challenging the United States and the desire of its enemies to keep poking and prodding to find a weakness in the American global order. Convincing would-be great powers, rogue states, and terrorists to accept the liberal democratic order--and the challenge to autocratic forms of rule that come with it--requires not only an overwhelming response when the peace is broken, but a willingness to step in when the danger is imminent. The message of the Bush Doctrine--"Don't even think about it!"--rests in part on a logic of preemption that underlies the logic of primacy.

#### Lack of US resolve is a rallying point for terrorism – makes us seem defeatable

Dennis and Shannon 7 – Michael Dennis, Ph.D. Candidate in Government at the University of Texas-Austin, and Vaughn P. Shannon, Assistant Professor of Political Science at the University of Northern Iowa and Director of UNI’s Center for International Peace and Security Studies, April 2007, “Militant Islam and the Futile Fight for Reputation,” Security Studies, Vol. 16, No. 2, p. 287-317

Being motivated to see an adversary as weak leads to a tendency to make analogies that rely on confirmatory behaviors. Our theory suggests that the paper tiger image combines perceptions of an adversary as quantitatively superior but culturally inferior. This combination generates views of an adversary that is aggressive but also weak, vulnerable, spineless, morally bankrupt, and thus, defeatable. The combination of backward and advanced attributes has been found in asymmetric conflict studies and those of ethnic conflict, and explains the ambitious agenda of al Qaeda against the materially stronger United States.55 In short, militant Islamists know their adversary is stronger but think its character is weaker and irresolute. The paper tiger phenomenon, fueled by motivated beliefs and the actions of the paper tiger itself, suggests a strong and evil opponent against whom resistance is not futile; if pushed, they will yield to the just cause and will of the weaker power. Such visions are fed by the motivated biased interpretation of previous actions, completing our quest for the source of reputational analogies. An adversary's withdrawal from battle confirms the reputation formed, blending events and preconceptions.

In analogical terms (AX:BX::AY:BY, where A resembles event B in having characteristic X; A has characteristic Y) therefore it is inferred that B also has characteristic Y, militant Islamist perceptions of desirable superpower withdrawals from Muslim areas would take the following form: Islamist resistance (X) in Lebanon (A) resulted in the withdrawal of an infidel superpower (Y); thus Islamist resistance in Afghanistan, Somalia, and Iraq (B,C,D) will result in the withdrawal of infidel superpowers as well.

The infidel superpower garners a reputation for irresolution when withdrawing from such battles with militant Islam. The militants take credit for the desirable outcomes, but there is a link to the character of the opponent in the analogical story. The superpowers are paper tigers, the type of state that flees in the face of jihad.

What we have presented is a psychologically based alternative to the Mercer thesis that enemies do not generate reputations for their adversaries desired behavior. In our formulation, audience preconceptions and biases matter, as do the actions that either fuel preconceptions or deny such images ammunition. Superpower withdrawals after terrorist actions allow terrorists to believe and perpetrate the paper tiger reputation, confirming a lesson to be applied in future similar arenas.

#### Extinction---equivalent to full-scale nuclear war

Owen B. Toon 7, chair of the Department of Atmospheric and Oceanic Sciences at CU-Boulder, et al., April 19, 2007, “Atmospheric effects and societal consequences of regional scale nuclear conflicts and acts of individual nuclear terrorism,” online: http://climate.envsci.rutgers.edu/pdf/acp-7-1973-2007.pdf

To an increasing extent, people are congregating in the world’s great urban centers, creating megacities with populations exceeding 10 million individuals. At the same time, advanced technology has designed nuclear explosives of such small size they can be easily transported in a car, small plane or boat to the heart of a city. We demonstrate here that a single detonation in the 15 kiloton range can produce urban fatalities approaching one million in some cases, and casualties exceeding one million. Thousands of small weapons still exist in the arsenals of the U.S. and Russia, and there are at least six other countries with substantial nuclear weapons inventories. In all, thirty-three countries control sufficient amounts of highly enriched uranium or plutonium to assemble nuclear explosives. A conflict between any of these countries involving 50-100 weapons with yields of 15 kt has the potential to create fatalities rivaling those of the Second World War. Moreover, even a single surface nuclear explosion, or an air burst in rainy conditions, in a city center is likely to cause the entire metropolitan area to be abandoned at least for decades owing to infrastructure damage and radioactive contamination. As the aftermath of hurricane Katrina in Louisiana suggests, the economic consequences of even a localized nuclear catastrophe would most likely have severe national and international economic consequences. Striking effects result even from relatively small nuclear attacks because low yield detonations are most effective against city centers where business and social activity as well as population are concentrated. Rogue nations and terrorists would be most likely to strike there. Accordingly, an organized attack on the U.S. by a small nuclear state, or terrorists supported by such a state, could generate casualties comparable to those once predicted for a full-scale nuclear “counterforce” exchange in a superpower conflict. Remarkably, the estimated quantities of smoke generated by attacks totaling about one megaton of nuclear explosives could lead to significant global climate perturbations (Robock et al., 2007). While we did not extend our casualty and damage predictions to include potential medical, social or economic impacts following the initial explosions, such analyses have been performed in the past for large-scale nuclear war scenarios (Harwell and Hutchinson, 1985). Such a study should be carried out as well for the present scenarios and physical outcomes.

### Africa War – Stabilizing

#### Africa on the up and up.

O’Brien 12 [Dan, Economics Editor – Irish Times, Africa is booming as renaissance finally gets under way, 8/17/2012, http://www.irishtimes.com/newspaper/finance/2012/0817/1224322324881.html]

AFRICA IS taking off. After decades of disastrous economic underperformance, the planet’s poorest continent is booming. The long hoped for “African renaissance” appears finally to be under way. The change has been dramatic. As the accompanying chart illustrates, the continent was going nowhere in the 1980s. Growth was lower than all other regions, and average incomes were falling as population growth outstripped economic growth. But growth accelerated in the 1990s, first overtaking rich world rates and then the global average. With the exception of 2009, when the Euro-American crash took the wind out of its sails, sub-Saharan Africa has grown by 5-7 per cent annually every year since the turn of the century. Only Asia has done better. And almost all of sub-Sahara’s 45-odd economies have participated. Eleven have more than doubled in size. Only one – Zimbabwe – has contracted. Soaring commodity prices have been a major factor in driving growth in resource-rich Africa, but it is not the sole reason by any means. The McKinsey Global Institute has disaggregated the continent’s GDP data to see which sectors have been generating the expansion. They find that less than one third of growth was accounted for by resources in 2000-08. This gives further reason to believe that Africa’s take-off is not fuelled only by high commodity prices. Telecoms, retail, manufacturing and agriculture are contributing to growth. And there is plenty of potential for other sectors too. Tourism hasn’t contributed much, but it is important, accounting for one in 20 jobs south of the Sahara. Given the upward trajectory of tourism numbers globally (it is already sometimes called the world’s biggest industry) and the continent’s many unique offerings, the potential is huge. As ever with economic performance, there is no agreement on why Africa is doing better, but there are many likely reasons, including less commerce-disrupting conflict and better health and education. Globalisation has been an important driver. Foreign trade and investment opportunities can act as an engine for growth. That is what has happened in 21st century Africa. UN figures show that sub-Saharan Africa attracted foreign direct investment of just under $50 billion in the 1990s. In the first decade of this century, inflows exceeded $200 billion. The export story is as encouraging. According to World Trade Organisation figures, Africa lost world market share over the 50 years to 1998, by which time its exports accounted for less than 2 per cent of the global total. The new century has brought the first sustained reversal in that trend in the post-independence era. Africa’s share of the world export market is back above 3 per cent. Not only is African trade growth outstripping the strong global average, but markets have diversified. According to the International Monetary Fund, about two-thirds of the region’s trade growth in 2005-10 was accounted for by other emerging markets. From near total dependence on Europe 20 years ago, about half of Sub-Saharan Africa’s trade is now with the rest of the developing world. With such weakness in rich economies, more “south-south” exchange is the way to go. China has played a particularly important role in Africa’s trade and investment booms. Illustrating the middle kingdom’s influence in the region better than any figures was the 2006 Africa-China summit when almost every African head of state travelled to Beijing to attend (they would never assemble en masse in Brussels or Washington). Another factor boosting growth is better macroeconomic management. Budgetary discipline and control of inflation have improved. Better microeconomic policy is helping, too. Unnecessary impediments to doing business are gradually being removed and entrepreneurs face less red tape. Although Africa remains the most poorly governed region of the world, policy outcomes have improved. This is mostly an African story, but the rich world’s aid programmes can take some of the credit. Debt relief has improved fiscal positions and the technical assistance and conditionality that comes with aid has raised the quality of governance. The continent faces enormous challenges and a long journey to prosperity, even if the trends of the past decade and more can be maintained. But never in the post-independence era have its prospects been better.

#### Corruption ensures continued violence.

Lawson-Remer 12 [Terra Lawson-Remer, Fellow for Civil Society, Markets, and Democracy, and Joshua Greenstein – CFR, Beating the Resource Curse in Africa: A Global Effort August 2012 Africa in Fact http://www.cfr.org/africa/beating-resource-curse-africa-global-effort/p28780?cid=rss-fullfeed-beating\_the\_resource\_curse\_in\_-080212&utm\_source=feedburner&utm\_medium=feed&utm\_campaign=Feed%3A+cfr\_main+%28CFR.org+-+Main+Site+Feed%29&utm\_content=Google+Reader]

Many resource-rich African countries make poor use of their wealth. Take Equatorial Guinea, a small oil-producing country on the continent's west coast. In 2010, an estimated 75% of the population lived on less than $700 a year, but the average per capita income was almost $35,000, the continent's highest. Instead of creating prosperity, resources have too often fostered corruption, undermined inclusive economic growth, incited armed conflict and damaged the environment. Corruption is endemic in many of Africa's most resource-rich countries. Rather than invest resource revenues into infrastructure and education, crooked politicians, often in collusion with the companies mining the resources, siphon proceeds from the continent's mineral and petroleum wealth into their own pockets. Resource-rich countries are plagued by a phenomenon called "Dutch disease". (The Economist coined the term in 1977 to describe the impact of the North Sea gas bonanza on the economy of the Netherlands, whose exports of natural resources led to foreign exchange inflows which drove up the value of the currency. The overvalued currency made domestic manufacturing, agriculture, and other exports less competitive.) This illness afflicts both well-governed and poorly-governed countries, but the former have more ways of allaying the consequences. Often countries with weak governance and abundant natural resources are prone to armed violence. For example, Sudan, where oil rents are equal to more than 18% of gross domestic product (GDP), and Nigeria, where oil rents amount to almost 30% of GDP, have been plagued by conflict.

#### Won’t escalate – perceptions of futility and lack of interest.

Barrett 5 [Robert, MA in Conflict Analysis and Management, Jun 1, “Understanding the Challenges of African Democratization through Conflict Analysis,” http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=726162]

This is a problem, as Western nations may be increasingly wary of intervening in Africa hotspots after experiencing firsthand the unpredictable and unforgiving nature of societal warfare in both Somalia and Rwanda. On a costbenefit basis, the West continues to be somewhat reluctant to get to get involved in Africa’s dirty wars, evidenced by its political hesitation when discussing ongoing sanguinary grassroots conflicts in Africa. Even as the world apologizes for bearing witness to the Rwandan genocide without having intervened, the United States, recently using the label ‘genocide’ in the context of the Sudanese conflict (in September of 2004), has only proclaimed sanctions against Sudan, while dismissing any suggestions at actual intervention (Giry, 2005). Part of the problem is that traditional military and diplomatic approaches at separating combatants and enforcing ceasefires have yielded little in Africa. No powerful nations want to get embroiled in conflicts they cannot win – especially those conflicts in which the intervening nation has very little interest.

### 2NC Middle East War

#### Empirics prove.

Drum 7 [Kevin, staff writer for Washington Monthly, 9/9/07, Political Animal,http://www.washingtonmonthly.com/archives/individual/2007\_09/012029.php]

Having admitted, however, that the odds of a military success in Iraq are almost impossibly long, Chaos Hawks nonetheless insist that the U.S. military needs to stay in Iraq for the foreseeable future. Why? Because if we leave the entire Middle East will become a bloodbath. Sunni and Shiite will engage in mutual genocide, oil fields will go up in flames, fundamentalist parties will take over, and al-Qaeda will have a safe haven bigger than the entire continent of Europe. Needless to say, this is nonsense. Israel has fought war after war in the Middle East. Result: no regional conflagration. Iran and Iraq fought one of the bloodiest wars of the second half the 20th century. Result: no regional conflagration. The Soviets fought in Afghanistan and then withdrew. No regional conflagration. The U.S. fought the Gulf War and then left. No regional conflagration. Algeria fought an internal civil war for a decade. **No regional conflagration.**

#### Regional multipolarity checks escalation.

Gause 11 [F. Gregory Gause III, Associate Professor of Political Science at the University of Vermont and Director of its Middle East Studies Program Misdiagnosing the Middle East | May 26, 2011 http://nationalinterest.org/commentary/misdiagnosing-the-middle-east-5368?page=show]

Our core interest in the region is preventing any hostile power from dominating it politically and militarily, and thus being able to affect the production and flow of oil there. That interest is not particularly at risk now. There is a **natural multipolarity** in the region—Iran, Turkey, Israel, Egypt, Saudi Arabia. They will **balance each other aggressively in their own interests.** They will do that no matter what their domestic political arrangements are. We can assist in that process, shoring up the weak against the strong and standing ready to intervene against any effort to establish military control over the Persian Gulf. We can do that from offshore. Preventing Arab-Israeli conflict is an important part of avoiding regional upheaval. We should continue in that diplomatic effort, recognizing that the conditions on the ground are not particularly propitious for progress right now. We can acknowledge that military bases in unstable countries are more trouble than they are worth, and thus reconsider our basing arrangements in Bahrain. We can recognize that the day of the stable Arab authoritarian is over, and wish the forces of democracy and freedom in the region well, being the friends of liberty for all but the champion only of our own.

#### Rationality checks miscalculation.

Quinlan 9 [Sir Michael, co-founder and President Emeritus of the International Institute for Strategic Studies, 2009, Thinking About Nuclear Weapons: Principle, Problems, Prospects, p. 68-71]

Similar considerations apply to the hypothesis of nuclear war being mistakenly triggered by false alarm. Critics again point to the fact, as it is understood, of numerous occasions when initial steps in alert sequences for US nuclear forces were embarked upon, or at least called for, by indicators mistaken or misconstrued. In none of these instances, it is accepted, did matters get at all near to nuclear launch-extraordinary good fortune again, critics have suggested. But the rival and more logical inference from hundreds of events stretching over sixty years of experience presents itself once more: that the probability of initial misinterpretation leading far towards mistaken launch is **remote.** Precisely because any nuclear-weapon possessor recognizes the vast gravity of any launch, release sequences have many steps, and human decision is repeatedly interposed as well as capping the sequences. To convey that because a first step was prompted the world somehow came close to accidental nuclear war is wild hyperbole, rather like asserting, when a tennis champion has lost his opening service game, that he was nearly beaten in straight sets. History anyway scarcely offers any ready example of major war started by accident even before the nuclear revolution imposed an order-of-magnitude increase in caution. It was occasionally conjectured that nuclear war might be triggered by the real but accidental or unauthorized launch of a strategic nuclear-weapon delivery system in the direction of a potential adversary. No such launch is known to have occurred in over sixty years. The probability of it is therefore **very low.** But even if it did happen, the further hypothesis of its initiating a general nuclear exchange is **far-fetched.** It fails to consider the real situation of decision-makers, as pages 63-4 have brought out. The notion that cosmic holocaust might be mistakenly precipitated in this way belongs to science fiction. One special form of miscalculation appeared sporadically in the speculations of academic commentators, though it was scarcely ever to be encountered-at least so far as my own observation went-in the utterances of practical planners within government. This is the idea that nuclear war might be erroneously triggered, or erroneously widened, through a state under attack misreading either what sort of attack it was being subjected to, or where the attack came from. The postulated misreading of the nature of the attack referred in particular to the hypothesis that if a delivery system-normally a missile-that was known to be capable of carrying either a nuclear or a conventional warhead was launched in a conventional role, the target country might, on detecting the launch through its earlywarning systems, misconstrue the mission as an imminent nuclear strike and immediately unleash a nuclear counter-strike of its own. This conjecture was voiced, for example, as a criticism of the proposals for giving the US Trident SLBM, long associated with nuclear missions, a capability to deliver conventional warheads. Whatever the merit of those proposals (it is not explored here), it is hard to regard this particular apprehension as having any real-life credibility. The flight time of a ballistic missile would not exceed about thirty minutes, and that of a cruise missile a few hours, before arrival on target made its character-conventional or nuclear-unmistakable. No government will need, and no nonlunatic government could wish, to take within so short a span of time a step as enormous and irrevocable

as the execution of a nuclear strike on the basis of early-warning information alone without knowing the true nature of the incoming attack. The speculation tends moreover to be expressed without reference either to any realistic political or conflict-related context thought to render the episode plausible, or to the manifest interest of the launching country, should there be any risk of doubt, in ensuring-by explicit communication if necessary-that there was no misinterpretation of its conventionally armed launch.

# 1NR

#### No Indo-Pak war – no political will on either side – extreme caution will check any use because neither country wants a fourth war because of both economic and human costs. That’s Louden.

**It’s a tiny nuclear war scenario**

Khan 9 [Shamsur Rabb, Newstrack India, Price of an Indo-Pak War, Newstrack India, 1/20, http://www.newstrackindia.com/newsdetails/62680]

Let us turn to unprecedented casualty in case of a nuclear conflict: Natural Resources Defence Council (NRDC), the New York based global think tank, in its report, “The Consequences of Nuclear Conflict between India and Pakistan” has calculated the human costs of an Indo-Pak nuclear conflict. As per NRDC estimates, both countries have a total of 50 to 75 nuclear weapons. Depicting a nuclear war Scenario (10 bombs on 10 South Asian cities), it says that attack on 10 major cities – 5 each in India and Pakistan – would result in a combined death toll of 2,862,581, with 1,506,859 severely injured and 3,382,978 slightly injured. On Indian side, death toll is estimated at 1,690,702, while 892,459 and 2,021,106 would be severely and slightly injured respectively. On Pakistan side, a total of 1,171,879 people would die, while, 614,400 and 1,361,872 are to be severely and slightly injured. In another scenario (24 Ground Bursts), NRDC calculated the consequences of 24 nuclear explosions detonated on the ground – unlike the Hiroshima airburst – resulting in significant amounts of lethal radioactive fallout, which is far more severe nuclear exchange between India and Pakistan. The report was first appeared in the January 14, 2002, issue of Newsweek (A Face-Off with Nuclear Stakes). Contrary to ground burst, exploding a nuclear bomb above the ground does not produce fallout. For example, can we imagine the consequences of ground burst if the “Little Boy” detonated by the US above Hiroshima at an altitude of 1,900 feet could kill 70,000 people in the immediate effect with some 200,000 died up to 1950? NRDC calculated that 22.1 million people in India and Pakistan would be exposed to lethal radiation doses of 600 roentgen equivalents in man or REM (a large amount of radiation) or more in the first two days of the attack. In addition, about 8 million people would receive a radiation dose of 100 to 600 REM causing severe radiation sickness and potentially death. In all, as many as 30 million people of both countries would be eliminated by nuclear war. Besides fallout, blast and fire would cause substantial destruction within roughly a mile-and-a-half of the bomb craters. However, even after such a devastating annihilation of population, about 99 percent of the population in India and 93 percent of the population in Pakistan would survive the second scenario and their respective military forces would still be intact to continue the conflict. In short, there is nothing to gain from a war, just plenty to lose. Albeit loss of human life would be immense it would not be large enough to result in extinction of Indo-Pak populations or even prevent continuation of a military conflict. Thus, the consequences, though horrific, are not strong enough to rule out Indo-Pak conflict in future. Had size of the Indo-Pak nuclear arsenals equal to those of the US and Russia, a complete annihilation of entire population of the Indian sub-continent would have been possible.

#### Indian self-restraint checks.

Yadav and Barwa 10 [Vikash Yadav is an assistant professor of political science at Hobart and William Smith Colleges in Geneva, New York. Conrad Barwa is a researcher at the School of Oriental and African Studies, London. The future of India-Pakistan rivalry PRAGATI—THE INDIAN NATIONAL INTEREST REVIEW April 2010 ]

\*\*\* BJP = Bharatiya Janata Party - The party is associated with Hindu nationalism and advocates conservative social policies, self-reliance, free market economics, foreign policy driven by a nationalist agenda, and strong national defense [Wikipedia]

There is **zero possibility** that India would contemplate further dismembering Pakistan. India has **no incentive** to risk a nuclear exchange. Evidence of India’s self-restraint over the last decade is **abundant.** Even spectacular attacks by militants, allegedly supported by elements linked to the Pakistani government, on India’s parliament and on its financial core **have not led to war.** The restrained response by the current Congress party-led coalition to the attacks in Pune, despite accusations from the BJP about being ‘soft on terrorism’ demonstrate the **caution** with which India approaches any potential slide into a conflict with Pakistan. The reason is that the fragmentation of Pakistan into a number of hostile and unstable Islamic republics is **India’s nightmare** scenario. **Decapitating the hydra only** **creates more problems** and distractions for India’s foreign policy.

#### No escalation.

Loudon 8 [Bruce, The Australian, Doomsday dread, December 04, 2008, http://www.theaustralian.news.com.au/story/0,25197,24746635-25837,00.html]

Three wars with Pakistan have demonstrated that India, despite its historical association with Mahatma Gandhi's principles of pacifism, is not a non-violent country. It has an army that is more than a million strong and would be prepared to go to war against Pakistan were there to be more attacks such as the one in Mumbai. But recourse to nuclear weapons, most observers believe, **is unlikely**, especially given the country's long-standing adherence to a policy of no first strike. Similarly, the reality behind the chest-thumping in Pakistan is that the country, in trouble on almost every front, would effectively be committing suicide were it to launch a nuclear attack against India, as one analyst puts it. "It's just not on. Only a madman would even think about it. It would amount to national self-destruction. They would not survive it as a nation. **They'd be destroyed,** and everyone in Islamabad knows that," the South Asian analyst says. When, only a few days before the Mumbai attack, Zardari, addressing an Indian audience, pledged Pakistan to a new no-first-strike policy, there was expected to be a reaction against him among the generals who hold the real power in Islamabad. But **none was forthcoming**, and that is seen as an important indication that they, too, in the context of Pakistan's fledgling democratic rebirth, have concluded that the country's nuclear arsenal should be restricted to serving a deterrent purpose.

#### No Pakistan collapse and it doesn't escalate

Dasgupta 13

Sunil Dasgupta is Director of the University of Maryland Baltimore County Political Science Program at the Universities at Shady Grove and non-resident Senior Fellow at the Brookings Institution, East Asia Forum, February 25, 2013, "How will India respond to civil war in Pakistan?", http://www.eastasiaforum.org/2013/02/25/how-will-india-respond-to-civil-war-in-pakistan/

As it is, India and Pakistan have gone down to the nuclear edge four times — in 1986, 1990, 1999 and 2001–02. In each case, India responded in a manner that did not escalate the conflict. Any incursion into Pakistan was extremely limited. An Indian intervention in a civil war in Pakistan would be subject to the same limitations — at least so long as the Pakistani army maintains its integrity.

Given the new US–India ties, the most important factor in determining the possibility and nature of Indian intervention in a possible Pakistani civil war is Washington. If the United States is able to get Kabul and Islamabad to work together against the Taliban, as it is trying to do now, then India is likely to continue its current policy or try to preserve some influence in Afghanistan, especially working with elements of the Northern Alliance.

India and Afghanistan already have a strategic partnership agreement in place that creates the framework for their bilateral relationship to grow, but the degree of actual cooperation will depend on how Pakistan and the Taliban react. If Indian interests in Afghanistan come under attack, New Delhi might have to pull back. The Indian government has been quite clear about not sending troops to Afghanistan.

If the United States shifts its policy to where it has to choose Kabul over Islamabad, in effect reviving the demand for an independent Pashtunistan, India is likely to be much more supportive of US and Afghan goals. The policy shift, however, carries the risk of a full-fledged proxy war with Pakistan in Afghanistan, but should not involve the prospect of a direct Indian intervention in Pakistan itself.

India is not likely to initiate an intervention that causes the Pakistani state to fail. Bill Keller of the New York Times has described Pakistani president Asif Ail Zardari as overseeing ‘a ruinous kleptocracy that is spiraling deeper into economic crisis’. But in contrast to predictions of an unravelling nation, British journalist-scholar Anatol Lieven argues that the Pakistani state is likely to continue muddling through its many problems, unable to resolve them but equally predisposed against civil war and consequent state collapse. Lieven finds that the strong bonds of family, clan, tribe and the nature of South Asian Islam prevent modernist movements — propounded by the government or by the radicals — from taking control of the entire country.

Lieven’s analysis is more persuasive than the widespread view that Pakistan is about to fail as a state. The formal institutions of the Pakistani state are surprisingly robust given the structural conditions in which they operate. Indian political leaders recognise Pakistan’s resilience. Given the bad choices in Pakistan, they would rather not have anything to do with it. If there is going to be a civil war, why not wait for the two sides to exhaust themselves before thinking about intervening? The 1971 war demonstrated India’s willingness to exploit conditions inside Pakistan, but to break from tradition requires strong, countervailing logic, and those elements do not yet exist. Given the current conditions and those in the foreseeable future, India is likely to sit out a Pakistani civil war while covertly coordinating policy with the United States.

#### Court’s isolationism destroys its influence abroad.

Harvard Law Review 1 [DEVELOPMENTS IN THE LAW - INTERNATIONAL CRIMINAL LAW: VI. The International Judicial Dialogue: When Domestic Constitutional Courts Join the Conversation, May, 2001, 114 Harv. L. Rev. 2049]

But see L'Heureux-Dube, supra note 2, at 30, 37-38 (noting that foreign courts cite decisions of the Rehnquist Court less often than they do those of its predecessors, the Warren and Burger Courts, and speculating that this decline in influence may be related to the Rehnquist Court's failure to engage in the international dialogue). Yet even if other constitutional courts continue to examine the U.S. Supreme Court's jurisprudence, the Court's **isolationism** is **likely to limit its international influence.** As section B discusses, the South African Constitutional Court in Makwanyane looked to the Indian Supreme Court's decision in Bachan Singh, not only for its substantive analysis of the death penalty, but also for its examination of international opinion. See supra pp. 2061-62. The South African court's focus on the Indian court's examination of outside legal norms suggests that courts may be developing legal rules for identifying predominant international judicial norms. To the extent that the U.S. Supreme Court chooses not to engage in international and comparative analysis, it will be unable to influence the debate over what constitutes the international norm in a particular area of law. If the U.S. Supreme Court later decides to join the international dialogue, it may face the prospect of incorporating substantive international norms that it did not help to create.

#### Stripping threatens democracy and freedom

Brandenburg 6 Bert Brandenburg and Amy Kay, Justice At Stake Campaign, March 13, 2006 Courting Danger How the War on Terror Has Sapped the Power of Our Courts to Protect Our Constitutional Liberties Second Edition http://www.justiceatstake.org/media/cms/Jascourting2ndEd\_4C79637478CBA.pdf

Courts shouldn’t be immune from criticism and controversy. But our founders gave judges a special job—to protect the Constitution, and decide cases based on the facts and the law, not pressure and politics. Tearing down the courts that protect our rights can only weaken the American judicial system that Chief Justice Rehnquist called the “crown jewel” of our democracy.

If our long war against terrors results in a piecemeal weakening of the power of our courts, and a permanent weakening of the checks and balances that protect our freedoms, Americans will be right to wonder what exactly they’re fighting for. That’s why the PATRIOT Act debate offers Congress and all Americans an excellent opportunity to deliberate carefully and consider the cumulative effects of these measures. In the end, no matter how slowly one slides down a slippery slope, one still ends up at the bottom.

Diamond ‘95

(Larry Diamond, Hoover Institution, Stanford University, December, PROMOTING DEMOCRACY IN THE 1990S, 1995, p. http://www.carnegie.org//sub/pubs/deadly/diam\_rpt.html)

Nuclear, chemical and biological weapons continue to proliferate. The very source of life on Earth, the global ecosystem, appears increasingly endangered. Most of these new and unconventional threats to security are associated with or aggravated by the weakness or absence of democracy, with its provisions for legality, accountability, popular sovereignty and openness. The experience of this century offers important lessons. Countries that govern themselves in a truly democratic fashion do not go to war with one another. They do not aggress against their neighbors to aggrandize themselves or glorify their leaders. Democratic governments do not ethnically "cleanse" their own populations, and they are much less likely to face ethnic insurgency. Democracies do not sponsor terrorism against one another. They do not build weapons of mass destruction to use on or to threaten one another. Democratic countries form more reliable, open, and enduring trading partnerships. In the long run they offer better and more stable climates for investment. They are more environmentally responsible because they must answer to their own citizens, who organize to protest the destruction of their environments.

#### Tension with congress on detention policy causes court stripping

Fahy 8 Brian D. Fahy, J.D. Candidate, Pepperdine University School of Law, May 2009 Pepperdine Law Review 2008 36 Pepp. L. Rev. 129 Comment: Given an Inch, the Detainee Effort to Take a Mile: The Detainee Legislation and the Dangers of the "Litigation Weapon in Unrestrained Enemy Hands" n1 lexis

In 2004, the Supreme Court decided three detainee cases, n152 and Congress and the President responded with a statute to overturn the third and most controversial decision. n153 In 2006, the Court decided a fourth detainee case, n154 and Congress and the President again responded in an attempt to correct what they perceived as an errant ruling. n155 Habeas petitions from two more detainees reached the Court during its October 2007 Term, and a decision was reached in the summer of 2008. n156 Additionally, there is recent detainee litigation in the D.C. Circuit Court of Appeals that is likely to reach the Court in the near future. n157

These developments demonstrate the tension between the Court and the political branches regarding the legality of the detention system established above. A recurring issue is the Court's concern that detainees have the ability to challenge the merits of their detentions through habeas or an acceptable substitute. n158 Whether the legislation enacted in response to the **[\*152]** Court's decisions enables such challenges is a matter of debate and is discussed infra. n159 Those decisions and the resulting legislative responses are discussed in the following section.

#### Congress has made it clear they do not want the courts involved in detainee issues

Richer 10 Kristen L. Richer. J.D., 2010, New York University School of Law November 2010 THE FUNCTIONAL POLITICAL QUESTION DOCTRINE AND THE JUSTICIABILITY OF EMPLOYEE TORT SUITS AGAINST MILITARY SERVICE CONTRACTORS <http://www.nyulawreview.org/sites/default/files/pdf/NYULawReview-85-5-Richer.pdf>

Seven years later, the Court again allowed necessity to overcome the Baker factors, filling the void left when Congress and the Executive failed to regulate adequately detainee treatment at Guantanamo Bay. In Boumediene v. Bush , the Court ruled that lim- iting detainees’ process to military commissions was a constitutionally inadequate alternative to the writ of habeas corpus, and that, as a result, access to the federal courts could not be denied. 48 In doing so, the Court bypassed the functional considerations regarding manageability that might otherwise have militated against judicial involvement. The case was notable on two fronts. First, the fact that detainee treatment is so closely tied to the exercise of military discretion would nor mally have dictated judicial abstention in recognition of the coordinate branches’ superior expertise in the realm of military affairs and national security. 49 Second, Congress had made it abundantly clear in the years preceding Boumediene that it did not want the judiciary involved in such determinations. Congress attempted to strip the Court of jurisdiction over detainees’ habeas claims through the Detainee Treatment Act of 2005 50 and the Military Commission Act of 2006. 51 Indeed, it was only in the wake of a barrage of reports and testimony regarding the failings of the military commission system that Congress had set up as an alternative to habeas review that the Court acted. 52 Boumediene presented the Court with a legal void— one that Congress and the Executive had intentionally created to evade Article III judicial review. 53 In reasserting its power, the Court acted to ensure individual rights and to impose a structural check on the coordinate branches.

1 Pub. L. No. 109-366, 120 Stat. 2600 (codified as amended in scattered sections of U.S.C.). The acts were direct responses to the Court’s decisions in Hamdi v. Rumsfeld , 542 U.S. 507 (2004), and Hamdan v. Rumsfeld , 548 U.S. 557 (2006), respectively.

#### Congress has stripped court jurisdiction in response to detainee cases

Arik 9 Doran G. Arik, Brooklyn Law School Class of 2009; B.A., Georgetown University, 2004 Journal of Law and Policy 2008 16 J.L. & Pol'y 657 NOTE & COMMENT: THE TUG OF WAR: COMBATANT STATUS REVIEW TRIBUNALS AND THE STRUGGLE TO BALANCE NATIONAL SECURITY AND CONSTITUTIONAL VALUES DURING THE WAR ON TERROR

Congress swiftly responded to the wave of petitions filed by detainees. Following the Supreme Court's decision to uphold the right of Guantanamo detainees to petition federal courts for writs of habeas corpus, Congress amended the habeas statute. n46 The [\*669] DTA, which was signed into law by President Bush on December 30, 2005, prevented any United States court from exercising jurisdiction over petitions for writs of habeas corpus filed by detainees held at Guantanamo. n47 As an alternative, the DTA [\*670] allowed for judicial review of CSRT determinations exclusively in the D.C. Circuit Court. n48 The legislative history of the DTA makes clear that Congress' goal was to deny detainees at Guantanamo any rights to petition federal courts for writs of habeas corpus, thereby negating the Supreme Court's ruling in Rasul. n49

The Supreme Court, however, balked at Congress' move to eliminate its jurisdiction. Six months after the DTA was signed into law, the Court held in Hamdan v. Rumsfeld n50 that the DTA "did not strip federal courts' jurisdiction over cases pending on the date of the DTA's enactment." n51 The Court gave import to the fact that no provision of the DTA explicitly applied to pending cases, noting that Congress "chose not to so provide - after being [\*671] presented with the option - for [a provision to deal with pending cases] ... [and that] omission is an integral part of the statutory scheme." n52 In effect, the Court's decision invalidated any habeas corpus petition that was pending when the DTA was enacted.

The struggle between Congress and the Court continued. Congress responded to the Court's ruling in Hamdan that the DTA did not apply to pending cases by passing the Military Commissions Act of 2006. n53 The legislation again amended the habeas statute, this time explicitly stripping federal courts of jurisdiction over any and all habeas petitions filed by Guantanamo detainees, and again limiting the scope of review to CSRT procedures. n54 Congress spoke directly to the Court's decision in [\*672] Hamdan with Section 7(b), which explicitly dealt with pending cases and stated that the amendment to the habeas statute "shall apply to all cases, without exception, pending on or after the date of the enactment of this Act." n55 The plain language of the statute foreclosed any further arguments that pending cases fell outside the scope of the legislation. n56 Subsequently, the D.C. Circuit Court was left with the limited power to review only whether a CSRT complied with its own procedures. n57

[\*673] While Congress attempted to act with sufficient intent to quell future challenges, the struggle continued. In 2006, a group of detainees n58 invoked the limited statutory review permitted by the [\*674] DTA and MCA to challenge their CSRTs and enemy combatant status designations in the D.C. Circuit Court. n59 After months of briefing, largely regarding the scope and type of evidence the court may consider in conducting its review, a unanimous panel of the D.C. Circuit dealt a blow to the government by ruling that it must provide to the reviewing court all the information "reasonably available" to the government relevant to a detainee, as opposed to the smaller subset of evidence presented at his CSRT as the government had urged. n60 Although the government subsequently sought a rehearing en banc, arguing that the court's ruling imposed too substantial a burden and would endanger national security, the D.C. Circuit Court declined to rehear the case in February 2008. n61

In the meantime, another group of detainees mounted a challenge to the court-stripping provision of the DTA and MCA itself. In December 2007, the Supreme Court heard oral arguments in the companion cases Boumediene v. Bush and Al-Odah v. United States, n62 wherein petitioner detainees argued that they are entitled to habeas rights under the United States Constitution, and that the CSRT process along with judicial review in the D.C. Circuit is not an adequate and effective alternative. n63 The government, in contrast, maintained that the right to petition a federal court for a writ of habeas corpus does not extend to non-citizen detainees at Guantanamo and that the procedures afforded by the DTA and MCA are more than adequate. n64

#### Court stripping on Gitmo habeus indicates how congress will respond

Vaughan 11 ZACHARY M. VAUGHAN, Georgetown Law, J.D. expected 2011; Dartmouth College, B.A. 2005.

Georgetown Law Journal March, 2011 99 Geo. L.J. 869 NOTE: The Reach of the Writ: Boumediene v. Bush and the Political Question Doctrine lexis

In 2004, the Court decided Rasul v. Bush, which held that the federal habeas statute, 28 U.S.C. § 2241, extended to detainees held at Guantanamo Bay. n58 In Rasul, the government relied chiefly on Johnson v. Eisentrager, in which the Court denied habeas relief to a group of German enemy aliens who, after Germany's surrender in World War II, had been captured in China and convicted of war crimes before military commissions. n59 The Eisentrager Court held that petitioners, who were being held at Landsberg Prison in the American sector of occupied Germany, had no access to habeas because "at no relevant time were [they] within any territory over which the United States is sovereign, and the scenes of their offense, their capture, their trial and their punishment were all beyond the territorial jurisdiction of any court of the United States." n60

Justice Stevens, writing for the Rasul majority, acknowledged Eisentrager as precedent but argued that the instant petitioners differed from the Eisentrager petitioners in important respects:

[The Rasul petitioners] are not nationals of countries at war with the United States, and they deny that they have engaged in or plotted acts of aggression against the United States; they have never been af-forded access to any tribunal, much less charged with and convicted of wrongdoing; and for more than two years they have been imprisoned in territory over which the United States exercises exclusive juris-diction and control. n61

The way the Rasul Court distinguished Landsberg Prison from Guantanamo Bay would become important to the majority in Boumediene: Landsberg Prison [\*877] was under the joint control of the Allied Powers following World War II, n62 but Guantanamo Bay, by virtue of its lease with Cuba, is under the "complete jurisdiction and control" of the United States. n63 Based on this fact, Justice Kennedy's Rasul concurrence argued that Guantanamo "is in every practical respect a United States territory." n64

In direct response to Rasul, Congress enacted the Detainee Treatment Act of 2005 (DTA), n65 which purported to strip federal courts of jurisdiction to entertain writs of habeas corpus from detainees at Guantanamo. n66 In June 2006, however, the Supreme Court decided Hamdan v. Rumsfeld, which held that the DTA did not apply to habeas petitions that were already pending at the time of the statute's enactment. n67 In response to Hamdan, Congress enacted the Military Commissions Act of 2006 (MCA), n68 which amended the federal habeas statute to strip from federal courts any and all "jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained by the United States who has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination." n69