# Round 1 v. USC HS

## 1NC

### 1NC Topicality

#### Restrictions are prohibitions on action—the aff is not

Schiedler-Brown ‘12 Jean, Attorney, Jean Schiedler-Brown & Associates, Appellant Brief of Randall Kinchloe v. States Dept of Health, Washington, The Court of Appeals of the State of Washington, Division 1, http://www.courts.wa.gov/content/Briefs/A01/686429%20Appellant%20Randall%20Kincheloe%27s.pdf

3. The ordinary definition of the term "restrictions" also does not include the reporting and monitoring or supervising terms and conditions that are included in the 2001 Stipulation. Black's Law Dictionary, 'fifth edition,(1979) defines "restriction" as; A limitation often imposed in a deed or lease respecting the use to which the property may be put. The term "restrict' is also cross referenced with the term "restrain." Restrain is defined as; To limit, confine, abridge, narrow down, restrict, obstruct, impede, hinder, stay, destroy. To prohibit from action; to put compulsion on; to restrict; to hold or press back. To keep in check; to hold back from acting, proceeding, or advancing, either by physical or moral force, or by interposing obstacle, to repress or suppress, to curb. In contrast, the terms "supervise" and "supervisor" are defined as; To have general oversight over, to superintend or to inspect. See Supervisor. A surveyor or overseer. . . In a broad sense, one having authority over others, to superintend and direct. The term "supervisor" means an individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but required the use of independent judgment. Comparing the above definitions, it is clear that the definition of "restriction" is very different from the definition of "supervision"-very few of the same words are used to explain or define the different terms. In his 2001 stipulation, Mr. Kincheloe essentially agreed to some supervision conditions, but he did not agree to restrict his license.

#### Voting issue

#### Bidirectional – checks on authority can claim the aff increases prez powers

#### Limits – hundreds of insignificant conditions the courts could impose – impossible to have a debate about the tactics.

### 1NC CP

#### The Executive Branch of the United States should grant existing Article III courts exclusive jurisdiction over the legal status of individuals indefinitely detained under the War Powers authority of the President of the United States.

#### The Office of Legal Counsel should determine that the Executive Branch lacks the legal authority detain indefinitely without civilian trial by Article III courts.

#### The President should require the Office of Legal Counsel to publish any legal opinions regarding policies adopted by the Executive Branch.

#### CP solves the aff

Adrian Vermeule 7, Harvard law prof - AND - Eric Posner - U Chicago law, The Credible Executive, 74 U. Chi. L. Rev. 865

\*We do not endorse gendered language

The Madisonian system of oversight has not totally failed. Some- times legislators overcome the temptation to free ride; sometimes they invest in protecting the separation of powers or legislative preroga- tives. Sometimes judges review exercises of executive discretion, even during emergencies. But often enough, legislators and judges have no real alternative to letting executive officials exercise discretion un- checked. The Madisonian system is a partial failure; compensating mechanisms must be adopted to fill the area of slack, the institutional gap between executive discretion and the oversight capacities of other institutions. Again, the magnitude of this gap is unclear, but plausibly it is quite large; we will assume that it is. It is often assumed that this partial failure of the Madisonian sys- tem unshackles and therefore benefits ill-motivated executives. This is grievously incomplete. The failure of the Madisonian system harms the well-motivated executive as much as it benefits the ill-motivated one. Where Madisonian oversight fails, the well-motivated executive is a victim of his own power. Voters, legislators, and judges will be wary of granting further discretion to an executive whose motivations are un- certain and possibly nefarious. The partial failure of Madisonian over- sight thus threatens a form of inefficiency, a kind of contracting failure that makes potentially everyone, including the voters, worse off. Our central question, then, is what the well-motivated executive can do to solve or at least ameliorate the problem. The solution is for the executive to complement his (well-motivated) first-order policy goals with second-order mechanisms for demonstrating credibility to other actors. We thus do not address the different question of what voters, legislators, judges, and other actors should do about an executive who is ill motivated and known to be so. That project involves shoring up or replacing the Madisonian system to block executive dictatorship. Our project is the converse of this, and involves finding new mechanisms to help the well-motivated executive credibly distinguish himself as such. ¶ IV. EXECUTIVE SIGNALING: LAW AND MECHANISMS ¶ We suggest that the executive’s credibility problem can be solved by second-order mechanisms of executive signaling. In the general case, well-motivated executives send credible signals by taking actions that are more costly for ill-motivated actors than for well- motivated ones, thus distinguishing themselves from their ill- motivated mimics. Among the specific mechanisms we discuss, an important subset involves executive self-binding, whereby executives commit themselves to a course of action that would impose higher costs on ill-motivated actors. Commitments themselves have value as signals of benign motivations. ¶ This departs from the usual approach in legal scholarship. Legal theory has often discussed self-binding by “government” or govern- ment officials. In constitutional theory, it is often suggested that consti- tutions represent an attempt by “the people” to bind “themselves” against their own future decisionmaking pathologies, or relatedly, that constitutional prohibitions represent mechanisms by which govern- ments commit themselves not to expropriate investments or to exploit their populations.72 Whether or not this picture is coherent,73 it is not the question we examine here, although some of the relevant consid- erations are similar.74 We are not concerned with binding the president so that he cannot abuse his powers, but with how he might bind himself or take other actions that enhance his credibility, so that he can generate support from the public and other members of the government. ¶ Furthermore, our question is subconstitutional: it is whether a well-motivated executive, acting within an established set of constitu- tional and statutory rules, can use signaling mechanisms to generate public trust. Accordingly, we proceed by assuming that no constitutional amendments or new statutes will be enacted. Within these con- straints, what can a well-motivated executive do to bootstrap himself to credibility? The problem for the well-motivated executive is to credibly signal his benign motivations. In general, the solution is to engage in actions that are less costly for good types than for bad types. ¶ We begin with some relevant law, then examine a set of possible mechanisms—emphasizing both the conditions under which they might succeed and the conditions under which they might not—and conclude by examining the costs of credibility. ¶ A. A Preliminary Note on Law and Self-Binding ¶ Many of our mechanisms are unproblematic from a legal per- spective, as they involve presidential actions that are clearly lawful. But a few raise legal questions; in particular, those that involve self- binding.75 Can a president bind himself to respect particular first-order policies? With qualifications, the answer is yes, at least to the same extent that a legislature can. Formally, a duly promulgated executive rule or order binds even the executive unless and until it is validly abrogated, thereby establishing a new legal status quo.76 The legal authority to establish a new status quo allows a president to create inertia or political constraints that will affect his own future choices. In a practical sense, presidents, like legislatures, have great de facto power to adopt policies that shape the legal landscape for the future. A president might commit himself to a long-term project of defense pro- curement or infrastructure or foreign policy, narrowing his own future choices and generating new political coalitions that will act to defend the new rules or policies. More schematically, we may speak of formal and informal means of self-binding:

#### OLC prevents circumvention

Trevor W. Morrison, October 2010. Professor of Law, Columbia Law School. “STARE DECISIS IN THE OFFICE OF LEGAL COUNSEL,” Columbia Law Review, 110 Colum. L. Rev. 1448, Lexis.

On the other hand, an OLC that says "yes" too often is not in the client's long-run interest. n49 Virtually all of OLC's clients have their own legal staffs, including the White House Counsel's Office in the White House and the general counsel's offices in other departments and agencies. Those offices are capable of answering many of the day-to-day issues that arise in those components. They typically turn to OLC when the issue is sufficiently controversial or complex (especially on constitutional questions) that some external validation holds special value. n50 For example, when a department confronts a difficult or delicate constitutional question in the course of preparing to embark upon a new program or course of action that raises difficult or politically sensitive legal questions, it has an interest in being able to point to a credible source affirming the  [\*1462]  legality of its actions. n51 The in-house legal advice of the agency's general counsel is unlikely to carry the same weight. n52 Thus, even though those offices might possess the expertise necessary to answer at least many of the questions they currently send to OLC, in some contexts they will not take that course because a "yes" from the in-house legal staff is not as valuable as a "yes" from OLC. But that value depends on OLC maintaining its reputation for serious, evenhanded analysis, not mere advocacy. n53

The risk, however, is that OLC's clients will not internalize the long-run costs of taxing OLC's integrity. This is in part because the full measure of those costs will be spread across all of OLC's clients, not just the client agency now before it. The program whose legality the client wants OLC to review, in contrast, is likely to be something in which the client has an immediate and palpable stake. Moreover, the very fact that the agency has come to OLC for legal advice will often mean it thinks there is  [\*1463]  at least a plausible argument that the program is lawful. In that circumstance, the agency is unlikely to see any problem in a "yes" from OLC.

Still, it would be an overstatement to say that OLC risks losing its client base every time it contemplates saying "no." One reason is custom. In some areas, there is a longstanding tradition - rising to the level of an expectation - that certain executive actions or decisions will not be taken without seeking OLC's advice. One example is OLC's bill comment practice, in which it reviews legislation pending in Congress for potential constitutional concerns. If it finds any serious problems, it writes them up and forwards them to the Office of Management and Budget, which combines OLC's comments with other offices' policy reactions to the legislation and generates a coordinated administration position on the legislation. n54 That position is then typically communicated to Congress, either formally or informally. While no statute or regulation mandates OLC's part in this process, it is a deeply entrenched, broadly accepted practice. Thus, although some within the Executive Branch might find it frustrating when OLC raises constitutional concerns in bills the administration wants to support as a policy matter, and although the precise terms in which OLC's constitutional concerns are passed along to Congress are not entirely in OLC's control, there is no realistic prospect that OLC would ever be cut out of the bill comment process entirely. Entrenched practice, then, provides OLC with some measure of protection from the pressure to please its clients.

But there are limits to that protection. Most formal OLC opinions do not arise out of its bill comment practice, which means most are the product of a more truly voluntary choice by the client to seek OLC's advice. And as suggested above, although the Executive Branch at large has an interest in OLC's credibility and integrity, the preservation of those virtues generally falls to OLC itself. OLC's nonlitigating function makes this all the more true. Whereas, for example, the Solicitor General's aim of prevailing before the Supreme Court limits the extent to which she can profitably pursue an extreme agenda inconsistent with current doctrine, OLC faces no such immediate constraint. Whether OLC honors its oft-asserted commitment to legal advice based on its best view of the law depends largely on its own self-restraint.

2. Formal Requests, Binding Answers, and Lawful Alternatives. - Over time, OLC has developed practices and policies that help maintain its independence and credibility. First, before it provides a written opinion, n55 OLC typically requires that the request be in writing from the head or general counsel of the requesting agency, that the request be as specific and concrete as possible, and that the agency provide its own written  [\*1464]  views on the issue as part of its request. n56 These requirements help constrain the requesting agency. Asking a high-ranking member of the agency to commit the agency's views to writing, and to present legal arguments in favor of those views, makes it more difficult for the agency to press extreme positions.

Second, as noted in the Introduction, n57 OLC's legal advice is treated as binding within the Executive Branch until withdrawn or overruled. n58 As a formal matter, the bindingness of the Attorney General's (or, in the modern era, OLC's) legal advice has long been uncertain. n59 The issue has never required formal resolution, however, because by longstanding tradition the advice is treated as binding. n60 OLC protects that tradition today by generally refusing to provide advice if there is any doubt about whether the requesting entity will follow it. n61 This guards against "advice-shopping by entities willing to abide only by advice they like." n62 More broadly, it helps ensure that OLC's answers matter. An agency displeased with OLC's advice cannot simply ignore the advice. The agency might  [\*1465]  construe any ambiguity in OLC's advice to its liking, and in some cases might even ask OLC to reconsider its advice. n63 But the settled practice of treating OLC's advice as binding ensures it is not simply ignored.

In theory, the very bindingness of OLC's opinions creates a risk that agencies will avoid going to OLC in the first place, relying either on their general counsels or even other executive branch offices to the extent they are perceived as more likely to provide welcome answers. This is only a modest risk in practice, however. As noted above, legal advice obtained from an office other than OLC - especially an agency's own general counsel - is unlikely to command the same respect as OLC advice. n64 Indeed, because OLC is widely viewed as "the executive branch's chief legal advisor," n65 an agency's decision not to seek OLC's advice is likely to be viewed by outside observers with skepticism, especially if the in-house advice approves a program or initiative of doubtful legality.

OLC has also developed certain practices to soften the blow of legal advice not to a client's liking. Most significantly, after concluding that a client's proposed course of action is unlawful, OLC frequently works with the client to find a lawful way to pursue its desired ends. n66 As the OLC Guidelines put it, "when OLC concludes that an administration proposal is impermissible, it is appropriate for OLC to go on to suggest modifications that would cure the defect, and OLC should stand ready to work with the administration to craft lawful alternatives." n67 This is a critical component of OLC's work, and distinguishes it sharply from the courts. In addition to "providing a means by which the executive branch lawyer can contribute to the ability of the popularly-elected President and his administration to achieve important policy goals," n68 in more instrumental terms the practice can also reduce the risk of gaming by OLC's clients. And that, in turn, helps preserve the bindingness of OLC's opinions. n69

 [\*1466]  To be sure, OLC's opinions are treated as binding only to the extent they are not displaced by a higher authority. A subsequent judicial decision directly on point will generally be taken to supersede OLC's work, and always if it is from the Supreme Court. OLC's opinions are also subject to "reversal" by the President or the Attorney General. n70 Such reversals are rare, however. As a formal matter, Dawn Johnsen has argued that "the President or attorney general could lawfully override OLC only pursuant to a good faith determination that OLC erred in its legal analysis. The President would violate his constitutional obligation if he were to reject OLC's advice solely on policy grounds." n71 Solely is a key word here, especially for the President. Although his oath of office obliges him to uphold the Constitution, n72 it is not obvious he would violate that oath by pursuing policies that he thinks are plausibly constitutional even if he has not concluded they fit his best view of the law. It is not clear, in other words, that the President's oath commits him to seeking and adhering to a single best view of the law, as opposed to any reasonable or plausible view held in good faith. Yet even assuming the President has some space here, it is hard to see how his oath permits him to reject OLC's advice solely on policy grounds if he concludes that doing so is indefensible as a legal matter. n73 So the President needs at least a plausible legal basis for  [\*1467]  disagreeing with OLC's advice, which itself would likely require some other source of legal advice for him to rely upon.

The White House Counsel's Office might seem like an obvious candidate. But despite recent speculation that the size of that office during the Obama Administration might reflect an intention to use it in this fashion, n74 it continues to be virtually unheard of for the White House to reverse OLC's legal analysis. For one thing, even a deeply staffed White House Counsel's Office typically does not have the time to perform the kind of research and analysis necessary to produce a credible basis for reversing an OLC opinion. n75 For another, as with attempts to rely in the first place on in-house advice in lieu of OLC, any reversal of OLC by the White House Counsel is likely to be viewed with great skepticism by outside observers. If, for example, a congressional committee demands to know why the Executive Branch thinks a particular program is lawful, a response that relies on the conclusions of the White House Counsel is unlikely to suffice if the committee knows that OLC had earlier concluded otherwise. Rightly or wrongly, the White House Counsel's analysis is likely to be treated as an exercise of political will, not dispassionate legal analysis. Put another way, the same reasons that lead the White House to seek OLC's legal advice in the first place - its reputation for  [\*1468]  providing candid, independent legal advice based on its best view of the law - make an outright reversal highly unlikely. n76

Of course, the White House Counsel's Office may well be in frequent contact with OLC on an issue OLC has been asked to analyze, and in many cases is likely to make it abundantly clear what outcome the White House prefers. n77 But that is a matter of presenting arguments to OLC in support of a particular position, not discarding OLC's conclusion when it comes out the other way. n78The White House is not just any other client, and so the nature of - and risks posed by - communications between it and OLC on issues OLC is analyzing deserve special attention. I take that up in Part III. n79 My point at this stage is simply that the prospect of literal reversal by the White House is remote and does not meaningfully threaten the effective bindingness of OLC's decisions.

### 1NC Trials

#### Plan causes Comstock for terrorists – Guts solvency

Wedel 11—JD Candidate @ Stanford Law School [Collin P. Wedel (Prospective Law Clerk to the Honorable Ruggero J. Aldisert, United States Court of Appeals for the Third Circuit), “War Courts: Terror's Distorting Effects on Federal Courts,” Legislation and Policy Brief, Volume 3 1 Issue 1, 1-6-2011]

Article III trials, therefore, seem to offer the greatest protection against arbitrary and indefinite detention. Regardless what process the courts followed, alleged terrorists would still receive a sentence matching the crime for which they were convicted. But a recent Supreme Court decision and a proposed rule from the Bureau of Prisons cast doubt on whether Article III trials—and, more importantly, Article III sentences—will continue to protect against indefinite detention.

The Supreme Court's ruling in United States v. Comstock sets a disturbing precedent for terrorist-detainees. 89 Comstock involved sentencing issues for sex offenders, a topic seemingly unrelated to terrorism. Yet the Court held that Congress may use its Necessary and Proper Clause powers to permanently detain dangerous sex offenders if they appear to pose a threat to the surrounding community upon release." That Congress may order the civil commitment of dangerous prisoners after completing their sentences sets the stage for transplanting an indefinite detention regime into the criminal sphere. The possibility that this reasoning would or could be extended to cover terrorists subject to Article III criminal sentencing is far from remote. Indeed, many commentators noticed instantly Comstock's potential impact on terror connected inmates.91

The statute at issue in Comstock authorizes a court to civilly commit a soon-to-be-released prisoner if he (1) previously "engaged or attempted to engage in sexually violent conduct or child molestation," (2) "suffers from a serious mental illness, abnormality, or disorder," and (3) as a result of the disorder, remains "sexually dangerous to others" such that "he would have serious difficulty in refraining from sexually violent conduct or child molestation if released." 92 If a court finds all of these factors, it may commit the prisoner to the Attorney General's custody, who must make "all reasonable efforts" to return the prisoner to the state in which he was tried or in which he is domiciled.9 3 If the Attorney General is unsuccessful in this endeavor, the prisoner is sent to a federal treatment facility and remains there until he is no longer dangerous.94

By its terms, this statute applies to sex criminals, not terrorists.

Nevertheless, this opinion, which garnered the support of seven justices, clears away any foreseeable barriers to Congress issuing a similar statute aimed at terrorists. After Comstock, Congress may authorize the Attorney General to detain "dangerous" criminals in perpetuity after the termination of their sentences under its Necessary and Proper Clause powers. A statute codifying that notion would alter terrorism prosecutions radically. Pg. 24

#### Turns case

Wedel 11—JD Candidate @ Stanford Law School [Collin P. Wedel (Prospective Law Clerk to the Honorable Ruggero J. Aldisert, United States Court of Appeals for the Third Circuit), “War Courts: Terror's Distorting Effects on Federal Courts,” Legislation and Policy Brief, Volume 3 1 Issue 1, 1-6-2011]

The combination of Comstock and the CMU regulations resembles a legally sanctioned Guantanamo-type detention regime set up lawfully within the United States. Suspected terrorists can be held in highly monitored and austere containment, indefinitely. This not only mirrors the military tribunal detention system, but in many ways, exacerbates its perceived infirmities. For, although the Obama Administration has acknowledged that it will indefinitely detain some terrorists even after they complete their tribunal-imposed sentences, 119 the range of those persons implicated by military tribunals is much smaller than the reach of Comstock and the CMU regulations. 12 The Government has conceded that the Authorization for Use of Military Force permits Executive (AUMF) detention only of non-citizen enemy combatants and unprivileged belligerents. 12 ' Thus, the biggest single exception to the Executive's broad military detention authority had been American citizens, precluded from military commission jurisdiction.2 2 Diplomatic concerns had further barred full tribunal trials for British, Australian, and Canadian citizens.12 Since a growing number of recent terror suspects have been American or British, 24 it appeared that indefinite and segregated Executive detention would have limited future application. But neither Comstock nor the CMU regulation is so limited: both would apply fully to American and foreign citizens alike. And because a criminal's offense conduct, which cannot be changed, serves as the underlying justification for Comstock and CMU detention, both have the capacity to last indefinitely.125 pg. 28

#### trials will just become Kangaroo Courts that facilitate indefinite detention. Fear of terror will turn them into the mirror image of military tribunals

Wedel 11—JD Candidate @ Stanford Law School [Collin P. Wedel (Prospective Law Clerk to the Honorable Ruggero J. Aldisert, United States Court of Appeals for the Third Circuit), “War Courts: Terror's Distorting Effects on Federal Courts,” Legislation and Policy Brief, Volume 3 1 Issue 1, 1-6-2011]

V. CONCLUSION

The pressure to convict "dangerous" terrorists against a backdrop of a decade-long war has taken its toll on the federal courts. Rather than vindicating the accused's constitutional rights in all circumstances, the federal courts have too often become complicit in distorting them.179 Federal courts have begun to resemble the military tribunal system that was once defined by how distinct it was from the Article III system. The past decade has seen federal courts' power to review executive detention heavily circumscribed. Federal prisons have begun to approximate Guantinamo Bay's indefinite detention regime, and federal criminal trial proceedings of terrorists at times bear an eerie resemblance to military commission norms.

As much as one may endorse the apparent move from military commissions to federal courts, that move should be rejected if it comes at the cost of scarring the Article III system. Therefore, both those in favor of military commissions and those in favor of federal court trials should pause. Regardless of whether it may be desirable that the criminal justice system has the flexibility to adjust to these wartime conditions, these developments have eviscerated the largest disparities between the tribunal and criminal spheres. Even persons in favor of a separate judicial system in the form of tribunals no longer have much justification for such a proposal.

Wars invariably have a corrosive effect on democratic institutions. 180 Courts are no different. Perhaps, as some have suggested, the solution would be to remove courts from the fast-paced business of trying terror with a common law process.18' However, that solution is too simplistic. It is apparent that, no matter where terrorists are tried, our societal fear of the threat they pose has led us to create mirror-image systems that tend toward kangaroo courts, state secrets, prolonged interrogation, and indefinite detention. Until we confront and deal with this inclination, any system in which we try terrorists is doomed to repeat these errors. Pg. 37-38

#### courts will give in to wartime pressures. Seepage will create bad law for nonterror cases

Wedel 11—JD Candidate @ Stanford Law School [Collin P. Wedel (Prospective Law Clerk to the Honorable Ruggero J. Aldisert, United States Court of Appeals for the Third Circuit), “War Courts: Terror's Distorting Effects on Federal Courts,” Legislation and Policy Brief, Volume 3 1 Issue 1, 1-6-2011]

Wars have a corrosive effect on courts. Many of the darkest moments in federal jurisprudential history have resulted from wartime cases. This is because, "[in an idealized view, our judicial system is insulated from the ribald passions of politics. [But] in reality, those passions suffuse the criminal justice system."26 Wars especially tend to excite passions to a fever pitch. As the D.C. Circuit has lamented,

[t]he common law process depends on incrementalism and eventual correction, and it is most effective where there are a significant number of cases brought before a large set of courts, which in turn enjoy the luxury of time to work the doctrine supple. None of those factors exist in the Guantinamo context .... [11n the midst of an ongoing war, time to entertain a process of trial and error is not a luxury we have.27

The war in Afghanistan, presenting a host of thorny legal issues, 28 is now the longest war in United States history.29 This means that thefederal courts have never endured wartime conditions for so long. As a result of this prolonged martial influence, it is clear that this war is corroding federal court jurisprudence. Court-watchers have long feared the danger of "seepage"—the notion that, if terrorists were tried in Article III courts, the pressure to convict would spur the creation of bad law that would "seep" into future non-terror trials."g In this Note, I argue that this hypothetical fear of seepage has become concrete. Indeed, judges already admit that the war has taken a regrettable toll on courts' opinions. In Al-Bihani v. Obama g1 a recent D.C. Circuit decision about Guantdnamo detention, habeas corpus review, and criminal procedure, the opinion's author admits how the courts have bent to accommodate the pressures of war:

War is a challenge to law, and the law must adjust. It must recognize that the old wineskins of international law, domestic criminal procedures, or other prior frameworks are ill-suited to the bitter wine of this new warfare. We can no longer afford diffidence. This war has placed us not just at, but already past the leading edge of a new and frightening paradigm, one that demands new rules be written. Falling back on the comfort of prior practices supplies only illusory comfort.32 pg. 13-14

#### They rollback due process rights for all cases

Mukasey 7—US district judge [MICHAEL B. MUKASEY, “Jose Padilla Makes Bad Law,” Wall Street Journal, August 22, 2007, pg. http://tinyurl.com/lmhup5x]

And third, consider the distortions that arise from applying to national security cases generally the rules that apply to ordinary criminal cases.

On one end of the spectrum, the rules that apply to routine criminals who pursue finite goals are skewed, and properly so, to assure that only the highest level of proof will result in a conviction. But those rules do not protect a society that must gather information about, and at least incapacitate, people who have cosmic goals that they are intent on achieving by cataclysmic means.

Khalid Sheikh Mohammed, the mastermind of the 9/11 attacks, is said to have told his American captors that he wanted a lawyer and would see them in court. If the Supreme Court rules -- in a case it has agreed to hear relating to Guantanamo detainees -- that foreigners in U.S. custody enjoy the protection of our Constitution regardless of the place or circumstances of their apprehension, this bold joke could become a reality.

The director of an organization purporting to protect constitutional rights has announced that his goal is to unleash a flood of lawyers on Guantanamo so as to paralyze interrogation of detainees. Perhaps it bears mention that one unintended outcome of a Supreme Court ruling exercising jurisdiction over Guantanamo detainees may be that, in the future, capture of terrorism suspects will be forgone in favor of killing them. Or they may be put in the custody of other countries like Egypt or Pakistan that are famously not squeamish in their approach to interrogation -- a practice, known as rendition, followed during the Clinton administration.

At the other end of the spectrum, if conventional legal rules are adapted to deal with a terrorist threat, whether by relaxed standards for conviction, searches, the admissibility of evidence or otherwise, those adaptations will infect and change the standards in ordinary cases with ordinary defendants in ordinary courts of law.

### 1NC Solvency

#### Restricting detention creates a perverse incentive for drone use—that’s worse and flips any legitimacy advantage

Gartenstein-Ross 12—Daveed Gartenstein-Ross, J.D. from NYU School of Law, is the Director of the Center for the Study of Terrorist Radicalization at the Foundation for Defense of Democracies, a Washington-based think tank. He frequently consults on counter-terrorism for various government agencies as well as the private sector [Dec 4 2012, “Gitmo's Troubling Afterlife: The Global Consequences of U.S. Detention Policy,” http://www.theatlantic.com/international/archive/2012/12/gitmos-troubling-afterlife-the-global-consequences-of-us-detention-policy/265862/]

One option, of course, is ending preventive detention entirely, which is favored by many of Obama's critics on the left. But that carries second-order consequences of its own, since al Qaeda has not ended its fight against the United States, nor is the broader problem of violent non-state actors going to disappear. If the U.S. doesn't employ preventive detention, doesn't this create a perverse incentive for killing rather than capturing the opponent? As Wittes writes, "The increasing prevalence of kill operations rather than captures is probably not altogether unrelated to the fundamental change in the incentive structure facing our fighters and covert operatives."

Moreover, if the U.S. tries to wash its hands of preventive detention, detainees will almost certainly end up in worse conditions as a result. The idea has seemingly taken hold that because detention of violent non-state actors by Western governments is unjustifiable and immoral, "local" detention is preferable. So, for example, the United States supported recent military efforts by African Union, Somali, and Ke

nyan forces to push back the al Qaeda-aligned Shabaab militant group in southern Somalia. The U.S. did not take the lead in detaining enemy fighters, and instead its Somali allies did so. But when one compares, say, detention conditions in Somalia to those in Gitmo, the latter is far more humane. If the U.S. and other Western countries eschew detention when fighting violent non-state actors, somebody is going to have to do it, and that alternative is almost certainly going to be worse for the detainees themselves.

What these second-order consequences point to is the fact that reform of U.S. detention policy is more vital than moving detainees to other facilities. William Lietzau, the deputy assistant secretary of defense for rule of law and detainee policy, has told me that the detention of violent non-state actors is an unsettled area of law. To Lietzau, defined and developed rules govern the prosecution of criminals, while the Geneva Conventions govern detention of privileged belligerents under the law of war. But for unprivileged belligerents, such as violent non-state actors, the applicable law is largely undefined. Lietzau has even designed a chart, which has become famous among his colleagues, illustrating the law's lack of development.

This is not to say that moving detainees from Guantánamo to the continental United States is necessarily a bad idea. One could argue that removing that symbol is important. Further, in the long run, moving the detainees may actually save money, since everything at Gitmo, from food to construction materials, must be imported at high cost. But the location of the detention does not address any substantive concerns.

Though it will not be easy, working with partners like the International Committee of the Red Cross to forge a better set of principles and procedures governing the detention of unprivileged belligerents is far more important than moving the Gitmo detainees elsewhere. Put simply, violent non-state actors will continue to challenge the nation-state, so nation-states need a way to deal with detention in this context. Our current policy of pretending that we have moved past noncriminal detention all but ensures we will be caught flat-footed the next time such detention is necessary in a large scale, and thus that the problems inherent to detaining unprivileged belligerents will have gone unaddressed.

#### Plan doesn’t solve – circumvention 2 warrants:

#### Congress

#### Backlash ensures decision fails

Vladeck 11—Professor of Law and Associate Dean for Scholarship @ American University [Stephen I. Vladeck, “Why Klein (Still) Matters: Congressional Deception and the War on Terrorism,” Journal of National Security Law, Volume 5, 6/16/2011, 9:38 AM

Six weeks later, Congress enacted the USA PATRIOT Act, which included a series of controversial revisions to immigration, surveillance, and other law enforcement authorities.34 But it would be over four years before Congress would again pass a key counterterrorism initiative, enacting the Detainee Treatment Act of 2005 (DTA)35 after—and largely in response to—the Supreme Court’s grant of certiorari in Hamdan v. Rumsfeld.36 In the five years since, Congress had enacted a handful of additional antiterrorism measures, including the Military Commissions Act (MCA) of 2006,37 as amended in 2009,38 the Protect America Act of 2007,39 and the 2008 amendments40 to the Foreign Intelligence Surveillance Act of 1978, known in shorthand as the FAA.41 And yet, although Congress has spoken in these statutes both to the substantive authority for military commissions and to the scope of the government’s wiretapping and other surveillance powers, it has otherwise left some of the central debates in the war on terrorism completely unaddressed.42 Thus, Congress has not revisited the scope of the AUMF since September 18, 2001, even as substantial questions have been raised about whether the conflict has extended beyond that which Congress could reasonably be said to have authorized a decade ago.43 Nor has Congress intervened, despite repeated requests that it do so, to provide substantive, procedural, or evidentiary rules in the habeas litigation arising out of the military detention of noncitizen terrorism suspects at Guantánamo.44

As significantly, at the same time as Congress has left some of these key questions unanswered, it has also attempted to keep courts from answering them. Thus, the DTA and the MCA purported to divest the federal courts of jurisdiction over habeas petitions brought by individuals detained at Guantánamo and elsewhere.45 Moreover, the 2006 MCA precluded any lawsuit seeking collaterally to attack the proceedings of military commissions,46 along with “any other action against the United States or its agents relating to any aspect of the detention, transfer, treatment, trial, or conditions of confinement of an alien who is or was detained by the United States and has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.”47 And although the Supreme Court in Boumediene invalidated the habeas-stripping provision as applied to the Guantánamo detainees,48 the same language has been upheld as applied elsewhere,49 and the more general non-habeas jurisdiction-stripping section has been repeatedly enforced by the federal courts in other cases.50

Such legislative efforts to forestall judicial resolution of the merits can also be found in the telecom immunity provisions of the FAA,51 which provided that telecom companies could not be held liable for violations of the Telecommunications Act committed in conjunction with certain governmental surveillance programs.52 Thus, in addition to changing the underlying substantive law going forward, the FAA pretermitted a series of then-pending lawsuits against the telecom companies.53

Analogously, Congress has attempted to assert itself in the debate over civilian trials versus military commissions by barring the use of appropriated funds to try individuals held at Guantánamo in civilian courts,54 and by also barring the President from using such funds to transfer detainees into the United States for continuing detention or to other countries, as well.55 Rather than enact specific policies governing criteria for detention, treatment, and trial, Congress’s modus operandi throughout the past decade has been to effectuate policy indirectly by barring (or attempting to bar) other governmental actors from exercising their core authority, be it judicial review or executive discretion.

Wasserman views these developments as a period of what Professor Blasi described as “constitutional pathology,” typified by “an unusually serious challenge to one or more of the central norms of the constitutional regime.” Nevertheless, part of how Wasserman defends the “Klein vulnerable” provisions of the MCA and FAA is by concluding that the specific substantive results they effectuate can be achieved by Congress, and so Klein does not stand in the way. But if Redish and Pudelski’s reading of Klein is correct, then the fact that Congress could reach the same substantive results through other means is not dispositive of the validity of these measures. To the contrary, the question is whether any of these initiatives were impermissibly “deceptive,” such that Congress sought to “vest the federal courts with jurisdiction to adjudicate but simultaneously restrict the power of those courts to perform the adjudicatory function in the manner they deem appropriate.”56 pg. 257-259

#### Restrictions cause showdowns – collapses SOP

Posner & Vermeule 7—Professor of Law @ The University of Chicago & Professor of Law @ Harvard Law School [Eric A. Posner & Adrian Vermeule, “Constitutional Showdown,” University of Chicago Law School, John M. Olin Law & Economics Working Paper NO. 348, July 2007, pg. http://ssrn.com/abstract\_id=1002996]

So far, we have explained why the president and Congress might disagree about when to terminate the war, but mere policy disagreement does not result in a showdown. Showdowns arise only when there is a disagreement about authority. If Congress believes that the president has the sole authority to terminate the war, then his view will prevail. Congress may try to pressure him or influence him by offering support for other programs desired by the president, or by trying to rile up the public, but these activities are part of normal politics, and do not provoke a constitutional showdown. Similarly, if the president believes that Congress has the sole authority to terminate the war, then Congress’s view will prevail. This outcome is shown in cell (3) in Table 1. Similarly, no showdown occurs when the two branches agree both about authority and policy—for example, that the president decides, and Congress agrees with his decision (cell (1)). The first column represents the domain of normal politics.

Showdowns can arise only when Congress and the president disagree about who decides. Here, there are two further possibilities. First, Congress and the president disagree about who decides but agree about the correct policy outcome (cell (2)). In these situations, which arise with some frequency, the two branches are often tempted to paper over their differences because an immediate policy choice is not at stake. But sometimes a showdown will occur. We will discuss this special case in Part II.B. Second, Congress and the president disagree about the policy outcome and about authority (cell (4)). In this case, showdowns are likely, because a policy decision must be made, and if the parties cannot agree about what it should be, then they cannot avoid resolving the question of authority. We focus on this case for now.

Why showdowns occur. In our war example, Congress and the president disagree about when the war should end, and who should make the decision. Let us suppose that they can both make reasonable constitutional arguments, and that the judiciary will not step in to resolve the dispute. What happens next? If each branch asserts its power, we have a full-blown constitutional crisis. No ordinary political or legal means exists for resolving the dispute. Consider how this crisis might play out. One possibility is that Congress enacts a law declaring the war at an end, and the president directs the military to disobey the law. The military would need to decide whether to obey the president or Congress. The military might make this decision on the basis of a good-faith legal analysis, or it might not. Whether or not it does, there is a further question whether soldiers would obey the decisions of the generals, and the public would support the decisions of the soldiers. The soldiers might fear that if the generals take an unlawful stance, the soldiers might subsequently be found guilty of committing crimes. And even if they do not, they might fear that the public might fault them for obeying (or disobeying) the generals. A great deal of delay and paralysis could result as people decide for themselves what they ought to do. But eventually only two outcomes are possible. One is that the nation divides into factions and a civil war erupts—a real possibility in many countries, but one sufficiently remote in the United States today that we can safely ignore it. The other is that through the mysterious process by which public opinion forms, the public will throw its weight behind one branch or the other, and the branch that receives public support will prevail. Pg. 14-15

#### Winning the showdown encourages aggrandizement. It will expand the President’s authority

Posner & Vermeule 07—Professor of Law @ The University of Chicago & Professor of Law @ Harvard Law School [Eric A. Posner & Adrian Vermeule, “Constitutional Showdown,” University of Chicago Law School, John M. Olin Law & Economics Working Paper NO. 348, July 2007, pg. http://ssrn.com/abstract\_id=1002996

Showdowns and aggrandizement. It is difficult to give evidence that showdowns can produce (not just prevent) aggrandizement, because there is no consensus on a normative benchmark. However, it can be shown, more narrowly, that relative to a wide range of such benchmarks, aggrandizing showdowns occur. Commentators who have very different accounts of the optimal distribution of powers across institutions have in common the belief that, relative to their own preferred accounts of the optimal distribution of powers, showdowns have produced aggrandizement. Consider Robert Bork’s view that the Supreme Court’s power grew alarmingly after it largely prevailed in the criminal-procedure showdowns of the 1960s, while Richard Epstein holds that the power of the President and Congress grew alarmingly when they prevailed over the Old Court in the constitutional showdowns of the later 1930s. Bork and Epstein have very different views about the optimal distribution of powers, but both agree that the showdowns to which they point produced a maldistribution of powers relative to their preferred benchmarks. Pg. 50-51

#### Guts solvency and results in violent drone proliferation – ensures war

Brooks 13—Professor of Law @ Georgetown University [Rosa Brooks (Senior Fellow @ New America Foundation, Former Counselor to the Undersecretary of Defense for Policy @ Department of Defense, Former Special Coordinator for Rule of Law and Humanitarian Policy @ DOD and Recipient of the Secretary of Defense Medal for Outstanding Public Service), “Mission Creep in the War on Terror” Foreign Policy | MARCH 14, 2013, pg. http://www.foreignpolicy.com/articles/2013/03/14/mission\_creep\_in\_the\_war\_on\_terror?page=0,0

With Option 3 -- lie, lie, lie -- off the table, and fudging and obfuscation growing harder to comfortably sustain, the thoughts of administration officials turn naturally to Option 2: change the law. Thus, as the Washington Post reported last weekend, some administration officials are apparently considering asking Congress for a new, improved "AUMF 2.0," one that would place U.S. drone policy on firmer legal footing.

Just who is behind this notion is unclear, but the idea of a revised AUMF has been gaining considerable bipartisan traction outside the administration. In a recent Hoover Institution publication, for instance, Bobby Chesney, who served in the Obama Justice Department, teams up with Brookings's Ben Wittes and Bush administration veterans Jack Goldsmith and Matt Waxman to argue for a revised AUMF -- one that can provide "a new legal foundation for next-generation terrorist threats."

I'm as fond of the rule of law as the next gal, so in a general sense, I applaud the desire to ensure that future executive branch counterterrorist activities are consistent with the laws passed by Congress. But "laws" and "the rule of law" are two different animals, and an expanded new AUMF is a bad idea.

Sure, legislative authorization for the use of force against "next generation" terrorist threats would give an additional veneer of legality to U.S. drone policy, and make congressional testimony less uncomfortable for John Brennan and Eric Holder. But an expanded AUMF would also likely lead to thoughtless further expansion of targeted killings. This would be strategically foolish, and would further undermine the rule of law.

#### B. President

#### 1. Political game

Scheppele 12—Professor of Sociology and Public Affairs @ Princeton University [Kim Lane Scheppele (Dir. of the Program in Law and Public Affairs @ Princeton University), “The New Judicial Deference,” Boston University Law Review, 92 B.U.L. Rev. 89, January 2012]

In this Article, I will show that American courts have often approached the extreme policies of the anti-terrorism campaign by splitting the difference between the two sides—the government and suspected terrorists. One side typically got the ringing rhetoric (the suspected terrorists), and the other side got the facts on the ground (the government). In major decisions both designed to attract public attention and filled with inspiring language about the reach of the Constitution even in times of peril, the Supreme Court, along with some lower courts, has stood up to the government and laid down limits on anti-terror policy in a sequence of decisions about the detention and trial of suspected terrorists. But, at the same time, these decisions have provided few immediate remedies for those who have sought the courts' protection. As a result, suspected terrorists have repeatedly prevailed in their legal arguments, and yet even with these court victories, little changed in the situation that they went to court to challenge. The government continued to treat suspected terrorists almost as badly as it did before the suspected terrorists "won" their cases. And any change in terrorism suspects' conditions that did result from these victorious decisions was slow and often not directly attributable to the judicial victories they won.

Does this gap between suspected terrorists' legal gains and their unchanged fates exist because administration officials were flouting the decisions of the courts? The Bush Administration often responded with sound and fury and attempted to override the Supreme Court's decisions or to comply minimally with them when they had to. n6 But, as this Article will show, these decisions did not actually require the government to change its practices very quickly. The decisions usually required the government to change only its general practices in the medium term. Judges had a different framework for analyzing the petitioners' situation than the petitioners themselves did; judges generally couched their decisions in favor of the suspected terrorists as critiques of systems instead of as solutions for individuals. In doing so, however, courts allowed a disjuncture between rights and remedies for those who stood before them seeking a vindication of their claims. Suspected terrorists may have won  [\*92]  in these cases—and they prevailed overwhelmingly in their claims, especially at the Supreme Court—but courts looked metaphorically over the suspects' heads to address the policies that got these suspects into the situation where the Court found them. Whether those who brought the cases actually got to benefit from the judgments, either immediately or eventually, was another question.

Bad though the legal plight of suspected terrorists has been, one might well have expected it to be worse. Before 9/11, the dominant response of courts around the world during wars and other public emergencies was to engage in judicial deference. n7 Deference counseled courts to stay out of matters when governments argued that national security concerns were central. As a result, judges would generally indicate that they had no role to play once the bullets started flying or an emergency was declared. If individuals became collateral damage in wartime, there was generally no judicial recourse to address their harms while the war was going on. As the saying goes, inter arma silent leges: in war, the law is mute. After 9/11, however, and while the conflict occasioned by those attacks was still "hot," courts jumped right in, dealing governments one loss after another. n8 After 9/11, it appears that deference is dead.

 [\*93]  But, I will argue, deference is still alive and well. We are simply seeing a new sort of deference born out of the ashes of the familiar variety. While governments used to win national security cases by convincing the courts to decline any serious review of official conduct in wartime, now governments win first by losing these cases on principle and then by getting implicit permission to carry on the losing policy in concrete cases for a while longer, giving governments a victory in practice. n9 Suspected terrorists have received  [\*94]  from courts a vindication of the abstract principle that they have rights without also getting an order that the abusive practices that have directly affected them must be stopped immediately. Instead, governments are given time to change their policies while still holding suspected terrorists in legal limbo. As a result, despite winning their legal arguments, suspected terrorists lose the practical battle to change their daily lives.

Courts may appear to be bold in these cases because they tell governments to craft new policies to deal with terrorism. But because the new policies then have to be tested to see whether they meet the new criteria courts have laid down, the final approval may take years, during which time suspected terrorists may still be generally subjected to the treatment that courts have said was impermissible. Because judicial review of anti-terrorism policies itself drags out the time during which suspected terrorists may be detained, suspected terrorists win legal victories that take a very long time to result in change that they can discern. As a result, governments win the policy on the ground until court challenges have run their course and the courts make decisions that contribute to the time that the litigation takes. This is the new face of judicial deference.

This Article will explore why and how American courts have produced so many decisions in which suspected terrorists appear to win victories in national security cases. As we will see, many judges have handled the challenges that terrorism poses for law after 9/11 by giving firm support, at least in theory, to both separation of powers and constitutional rights. Judges have been very active in limiting what the government can do, requiring substantial adjustments of anti-terrorism policy and vindicating the claims of those who have been the targets. But the solutions that judges have crafted—often bold, ambitious, and brave solutions—nonetheless fail to address the plights of the specific individuals who brought the cases.

This new form of judicial deference has created a slow-motion brake on the race into a constitutional abyss. But these decisions give the government leeway to tackle urgent threats without having to change course right away with respect to the treatment of particular individuals. New deference, then, is a mixed bag. It creates the appearance of doing something—an appearance not entirely false in the long run—while doing far less in the present to bring counter-terrorism policy back under the constraint of constitutionalism.

#### 2. Nullification – independently destroys court legitimacy

Fallon 9—Professor of Law @ Harvard Law School [Richard H. Fallon, Jr., “Article: Constitutional Constraints,” California Law Review, 97 Calif. L. Rev. 975, August 2009]

1. Inefficacy or Nullity Under Applicable Rules of Recognition

Judges and justices are constrained by the prospect that some decisions they might imaginably render would be treated as nullities or otherwise prove inefficacious. n189 While some rules of recognition tell justices how to identify valid law, others, applicable to other officials, characteristically direct those other officials to accept judicial interpretations as binding—even when those other officials think the judges made mistakes. n190 But there are limits. For example, as I have said before, a judicial directive purporting to raise or lower interest rates solely for policy reasons would not be recognized as legally authoritative. n191

This conclusion may appear trivial, but I do not believe that it is. As Fred Schauer has documented, the Supreme Court's docket typically includes few of the issues that most American regard as most pressing. n192 Matters of war and peace, economic boom and bust, and priorities in the provision of public services seldom come within the province of judicial decision-making. In light of familiar assumptions that unchecked power tends to expand, n193 we might ask why this is so. Part of the answer lies in the justices' awareness of external constraints.

 [\*1016]  As a historical matter, the prospect of judicial pronouncements being treated as nullities or otherwise proving inefficacious is hardly hypothetical. n194 President Thomas Jefferson and Secretary of State James Madison credibly threatened to defy the Supreme Court if it awarded mandamus relief to William Marbury in Marbury v. Madison. n195 Abraham Lincoln directed his subordinates to ignore the ruling of Chief Justice Taney in Ex parte Merryman. n196

Another example may come from the World War II case of Ex parte Quirin, n197 in which the Court upheld executive authority to try alleged Nazi saboteurs before military tribunals rather than civilian courts. n198 While the case was pending, President Franklin D. Roosevelt made it known to the justices that if they ruled for the petitioners, he would order military trials and summary executions to proceed anyway. n199 In the wartime circumstances, military personnel would almost certainly have obeyed presidential orders to ignore a judicial ruling—a consideration that may well have affected the Court's decision to uphold the constitutionality of military trials. n200 The Court may also have framed its famous order that local schools boards should enforce the rights recognized in Brown v. Board of Education n201 "with all deliberate speed," n202 rather than posthaste, partly because it knew that a mandate of immediate desegregation might have proved inefficacious. n203

 [\*1017]  Without attempting to account systematically for all possible external constraints that arise from the prospect that judicial rulings might be null under the rules of recognition practiced by nonjudicial officials, or might otherwise provoke defiance, I offer three observations.

First, in cases in which the justices worry that executive officials or lower courts might defy their rulings, they may feel a tension between the direct normative constraints and the external constraints to which they are subject. In other words, they may believe that they have a legal duty to do what they may feel externally constrained from doing. In Quirin, for example, the justices might easily have believed that at least one of the alleged saboteurs—a U.S. citizen who had been apprehended within the United States—had a constitutional right to civilian trial. n204

As I noted above, however, it also seems plausible that in a case such as Quirin, external constraints might affect the justices' perceptions of their legal duties. For example, in reflecting upon precedents such as Marbury v. Madison n205 and Stuart v. Laird, n206 in which the Court bowed to political threats, the justices may have concluded that the "rule of recognition" authorizes them to avoid rulings that would likely provoke broadly supported defiance and thereby threaten the long-or short-term authority of the judicial branch. As I have written elsewhere:   
Looking at the Supreme Court's long-term pattern of decisions, I would surmise that the Justices have internalized the constraint that the Court must conduct itself in ways that the public will accept as lawful and practically tolerable ... : the Court's interpretations of the Constitution must be likely to be accepted and enforced by at least a critical mass of the officials normally counted on to implement judicial decisions, and they should not trigger a strong and enduring sense of mass outrage by political majorities that the Court has overstepped its constitutional powers. n207  
 [\*1018]  Second, while assent to judicial mandates is today the norm, and official defiance of court rulings the exception, some observers believe that nonjudicial officials should feel freer than they presently do to treat judicial rulings as not binding on them. In a much discussed book, Larry Kramer has argued that nonjudicial officials once regarded themselves as being entitled as judges to interpret the Constitution, even after the courts had spoken, and to treat judicial rulings as limited to the particular cases in which they were issued or even to ignore them. n208 Whatever historical practice may have been, the recognition practices of nonjudicial officials could change in the future, with official defiance of judicial rulings becoming more common. n209 The external constraints on judges and justices are thus potential variables.

Third, if we ask why elected officials, in particular, currently accede so readily to claims of judicial authority that are not clearly ultra vires, part of the answer can be traced to the external constraint that public expectations impose. The public expects governmental officials to obey the law, and the public has been socialized to believe that judicial interpretations are legally binding. n210 But reference to current norms only postpones the question of how a state of affairs developed in which judicial authority to resolve disputable constitutional questions is so widely accepted.

In addressing this question, it is just as important to recognize that the domain of recognized judicial authority is bounded—that there are some issues committed almost wholly to resolution by politically accountable officials—as it is to note that judicial authority is seldom seriously questioned within its sphere. In accounting for these phenomena, political scientists increasingly argue that the domain within which the Court possesses recognized authority is politically "constructed." n211 With respect to the kinds of issues concerning which the courts speak authoritatively, elected officials prefer that the courts do speak authoritatively. n212 Maintenance of a relatively independent judiciary within a limited sphere may be the preferred strategy of risk-averse political leaders who willingly forego some opportunities to exercise power while they  [\*1019]  hold office in order to prevent unbounded power by their political adversaries when the adversaries triumph at the polls. n213 Perhaps of even greater significance, politicians may find it to their electoral advantage to leave a range of contentious issues for judicial resolution. n214 Congress and the president may also be happy to see dominant national visions enforced against the states n215 and to delegate to the courts a number of issues possessing low political salience. n216

If political scientists are correct that the domain of judicial authority is politically constructed, however, there is no guarantee that the political forces that define that domain will remain in long-term equilibrium. From the perspective of some political scientists, every election is a potential external shock to the system. n217 Keith Whittington advances the more architectonic thesis that, from time to time, "reconstructive" presidents have confronted the Supreme Court, sometimes successfully, and have forced a redefinition of the substantive bounds within which acceptable judicial decision-making can occur. n218 According to Professor Whittington, Thomas Jefferson, Andrew Jackson, Abraham Lincoln, and Franklin Roosevelt all achieved this effect to greater or lesser degrees. n219 They did so partly by persuading the public to accept their visions of constitutional meaning and partly, having prevailed in the court of public opinion, by appointing justices who shared their constitutional visions. Thus, to take the starkest example, the prevailing constitutional understandings that emerged from the Roosevelt Revolution of the 1930s—in the country as well as on the Court—differed vastly from those of the 1920s, and the principal engine driving the change was Franklin Roosevelt. n220

 [\*1020]  In order for external constraints to be effective, judges and justices need not respond to them self-consciously, "for the constitutional understandings shared by those affiliated" with the dominant political coalition or "regime"—including jurists who have been nominated and confirmed with their constitutional visions in mind—"will be entrenched and assumed." n221 Nevertheless, the external constraints that define the domain of politically acceptable judicial action can exert important influence as parts of the process through which current and future judges identify and internalize legal norms. As Thomas Keck puts it, "The justices' ostensibly political preferences have themselves been constituted in part by legal ideas, and those legal ideas, in turn, have been derived in large part from ongoing debates in the broader political system." n222

2. Concurrent Agreement or Acquiescence Requirements  
 The Supreme Court "is a they, not an it." n223 In considering constraints on the Court as an institution, it is easy to forget that the Court is comprised of nine justices, each of whom is constrained individually by the need to secure the agreement of at least four colleagues in order to render legally efficacious constitutional rulings. n224 Judges of courts of appeals are similarly constrained by the need to muster majority support for their conclusions. Unlike Supreme Court justices, lower court judges are of course further constrained by the Supreme Court's power to reverse their decisions. n225

 [\*1021]  As I have noted, nonjudicial officials can defy or refuse to implement judicial decisions. Indeed, they have sometimes done so. n226 The courts, however, are virtually never constrained by the need to earn the formal approval or acquiescence of officials in another branch in order to act with the authority of law. The reason, I would speculate, is that the Constitution is written, and surrounding norms and expectations have developed, on the hypothesis that the judiciary is the least dangerous branch. n227 If the judiciary is assumed to be relatively impotent to inflict affirmative damage, and if the other branches are more threatening, it may be more desirable to preserve an efficacious checking power for the judiciary than to establish concurrent agreement or acquiescence requirements as formal checks against judicial action.

Having said this, I hasten to add that there may be circumstances under which the exercise of a judicial negative does indeed do affirmative harm—for example, if the Court unwisely invalidates legislation that would further important public interests or protect moral rights. n228 Perceptions that the Court has done so partly explain some of the instances in which "reconstructive" presidents—including Abraham Lincoln and Franklin Roosevelt—have mounted successful attacks on previously prevailing visions of appropriate judicial authority under the Constitution. n229

3. Sanctions  
The Constitution insulates the Supreme Court, as it does all federal judges, against certain kinds of sanctions. The justices cannot be removed from office during good behavior, nor can Congress reduce their salaries. n230 All judges, justices included, also enjoy immunity from suits for civil damages based on their official acts. n231

Despite these safeguards of judicial independence, the Constitution provides for some sanctions against Supreme Court justices. Most formally and conspicuously, justices can be impeached and removed from office. n232 They are  [\*1022]  also subject to the criminal law, including its prohibitions against bribery and extortion.

Less formally, justices confront the possibility of sanctioning by their colleagues. If the justices thought one of their number to be reckless or cavalier in her constitutional judgments, they could deprive the wayward colleague of the privilege of speaking authoritatively for the Court simply by refusing to join her opinions. Or they could vote to rehear any case in which that colleague cast the decisive vote—as apparently happened with the aged William O. Douglas. n233 The justices' capacity to write opinions exposing their colleagues' constitutionally faithless reasoning (if such were ever to occur), and thus to hold up offenders to contempt or ridicule, may also qualify as a constitutionally authorized, albeit informal, sanction. n234

Beyond the sanctions available against Supreme Court justices, the Constitution provides mechanisms for the imposition of institutional sanctions, directed not against individual justices but the Court as a whole. The Constitution permits Congress to withdraw at least some cases from the Court's jurisdiction. n235 If so minded, Congress and the president could also "pack" the Court and thereby not only reduce the power of incumbent justices, but also diminish the Court's prestige. n236

Lower federal court judges are vulnerable to virtually the same sanctions as Supreme Court justices, but with one conspicuous addition. Unlike the justices, lower court judges are subject to being reversed, and potentially to being upbraided, on appeal. n237

 [\*1023]  Insofar as threats of sanctions function as a constraint on judicial action, their directive force could sometimes create a tension with applicable normative constraints. n238 This prospect appears most visibly in the case of state judges, who may incur electoral or other political sanctions if their decisions displease a majority of voters. n239 But it is at least imaginable that an irate or partisan Congress might sanction federal judges by impeaching them and removing them from office for rendering unpopular but legally correct decisions. n240

This possibility—which exemplifies the age-old dilemma of who should guard the guardians—is almost surely an unhappy one. But the threat has seldom if ever come to fruition. There are at least three lessons to be drawn.

First, nonjudicial actors within the American political system, including the public, have largely internalized a norm against attempts to interfere with the exercise of independent judgment by the federal judiciary, and especially the Supreme Court. Early in American constitutional history, the Jeffersonian Republicans threatened to impeach judges as an instrument of ideological discipline, but the effort foundered before it gained momentum. n241 More than a century later, when Franklin Roosevelt sought authority to "pack" a Supreme Court that had appeared poised to scuttle hugely popular New Deal policies, Congress and public opinion rallied against the president. n242 Similarly, although members of Congress have recurrently introduced legislation that would curb the authority of the federal courts to rule on controversial issues, n243 such proposals have generally collapsed in the face of protests that they would violate the Constitution's spirit if not its letter. n244

 [\*1024]  Second, as I have noted already, other powerful political actors have good reasons to wish to maintain a relatively powerful, relatively independent judiciary. n245 Granted, "reconstructive" presidents have sometimes sought to challenge the prevailing ideologically inflected assumptions through which the Constitution has predominantly come to be viewed. But even reconstructive presidents and their normal allies have either had normative compunctions about subjecting the Supreme Court to significant sanctions or have encountered external resistance when they attempted to do so.

Third, saying that the sanctioning of federal judges and especially the Supreme Court has occurred infrequently is different from saying that the prospect of sanctions has had no effect. As I have noted, judicial decision-making in the United States has long exhibited a streak of prudentialism, through which the Court has avoided not only particular decisions that might provoke defiance, but also broader patterns of rulings that could arouse political majorities to impose sanctions. n246 Although I would stop considerably short of Judge Richard Posner's conclusion that "constitutional law is a function ... of ideology" checked principally if not exclusively by the justices' "awareness, conscious or unconscious, that they cannot go "too far' without inviting reprisals by the other branches of government spurred on by an indignant public," n247 it seems only commonsensical to assume that sanctions or other external constraints have some effect.

#### Loss of legitimacy destroys the environment

Stein 5—Former Judge of the New South Wales Court of Appeal and the New South Wales Land and Environment Court [Justice Paul Stein (International Union for Conservation of Nature (IUCN) Specialist Group on the Judiciary), “Why judges are essential to the rule of law and environmental protection,” Judges and the Rule of Law: Creating the Links: Environment, Human Rights and Poverty, IUCN Environmental Policy and Law Paper No. 60, Edited by Thomas Greiber, 2006]

The Johannesburg Principles state:

“We emphasize that the fragile state of the global environment requires the judiciary, as the guardian of the Rule of Law, to boldly and fearlessly implement and enforce applicable international and national laws, which in the field of environment and sustainable development will assist in alleviating poverty and sustaining an enduring civilization, and ensuring that the present generation will enjoy and improve the quality of life of all peoples, while also ensuring that the inherent rights and interests of succeeding generations are not compromised.”

There can be no argument that environmental law, and sustainable development law in particular, are vibrant and dynamic areas, both internationally and domestically. Judge Weeramantry (of the ICJ) has reminded us that we judges, as custodians of the law, have a major obligation to contribute to its development. Much of sustainable development law is presently making the journey from soft law into hard law. This is happening internationally but also it is occurring in many national legislatures and courts.

Fundamental environmental laws relating to water, air, our soils and energy are critical to narrowing the widening gap between the rich and poor of the world. Development may be seen as the bridge to narrow that gap but it is one that is riddled with dangers and contradictions. We cannot bridge the gap with materials stolen from future generations. Truly sustainable development can only take place in harmony with the environment. Importantly we must not allow sustainable development to be duchessed and bastardized.

A role for judges?

It is in striking the balance between development and the environment that the courts have a role. Of course, this role imposes on judges a significant trust. The balancing of the rights and needs of citizens, present and future, with development, is a delicate one. It is a balance often between powerful interests (private and public) and the voiceless poor. In a way judges are the meat in the sandwich but, difficult as it is, we must not shirk our duty. Pg. 53-54

#### Extinction

Barry 13—Political ecologist with expert proficiencies in old forest protection, climate change, and environmental sustainability policy [Dr. Glen Barry (Ph.D. in "Land Resources" and Masters of Science in "Conservation Biology and Sustainable Development” from the University of Wisconsin-Madison), “ECOLOGY SCIENCE: Terrestrial Ecosystem Loss and Biosphere Collapse,” Forests.org, February 4, 2013, pg. http://forests.org/blog/2013/02/ecology-science-terrestrial-ec.asp

Blunt, Biocentric Discussion on Avoiding Global Ecosystem Collapse and Achieving Global Ecological Sustainability

Science needs to do a better job of considering worst-case scenarios regarding continental- and global-scale ecological collapse. The loss of biodiversity, ecosystems, and landscape connectivity reviewed here shows clearly that ecological collapse is occurring at spatially extensive scales. The collapse of the biosphere and complex life, or eventually even all life, is a possibility that needs to be better understood and mitigated against. A tentative case has been presented here that terrestrial ecosystem loss is at or near a planetary boundary. It is suggested that a 66% of Earth's land mass must be maintained in terrestrial ecosystems, to maintain critical connectivity necessary for ecosystem services across scales to continue, including the biosphere. Yet various indicators show that around 50% of Earth's terrestrial ecosystems have been lost and their services usurped by humans. Humanity may have already destroyed more terrestrial ecosystems than the biosphere can bear. There exists a major need for further research into how much land must be maintained in a natural and agroecological state to meet landscape and bioregional sustainable development goals while maintaining an operable biosphere.

It is proposed that a critical element in determining the threshold where terrestrial ecosystem loss becomes problematic is where landscape connectivity of intact terrestrial ecosystems erodes to the point where habitat patches exist only in a human context. Based upon an understanding of how landscapes percolate across scale, it is recommended that 66% of Earth's surface be maintained as ecosystems; 44% as natural intact ecosystems (2/3 of 2/3) and 22% as agroecological buffer zones. Thus nearly half of Earth must remain as large, connected, intact, and naturally evolving ecosystems, including old-growth forests, to provide the context and top-down ecological regulation of both human agroecological, and reduced impact and appropriately scaled industrial activities.

Given the stakes, it is proper for political ecologists and other Earth scientists to willingly speak bluntly if we are to have any chance of averting global ecosystem collapse. A case has been presented that Earth is already well beyond carrying capacity in terms of amount of natural ecosystem habitat that can be lost before the continued existence of healthy regional ecosystems and the global biosphere itself may not be possible. Cautious and justifiably conservative science must still be able to rise to the occasion of global ecological emergencies that may threaten our very survival as a species and planet.

Those knowledgeable about planetary boundaries—and abrupt climate change and terrestrial ecosystem loss in particular—must be more bold and insistent in conveying the range and possible severity of threats of global ecosystem collapse, while proposing sufficient solutions. It is not possible to do controlled experiments on the Earth system; all we have is observation based upon science and trained intuition to diagnose the state of Earth's biosphere and suggest sufficient ecological science–based remedies.

If Gaia is alive, she can die. Given the strength of life-reducing trends across biological systems and scales, there is a need for a rigorous research agenda to understand at what point the biosphere may perish and Earth die, and to learn what configuration of ecosystems and other boundary conditions may prevent her from doing so. We see death of cells, organisms, plant communities, wildlife populations, and whole ecosystems all the time in nature—extreme cases being desertification and ocean dead zones. There is no reason to dismiss out of hand that the Earth System could die if critical thresholds are crossed. We need as Earth scientists to better understand how this may occur and bring knowledge to bear to avoid global ecosystem and biosphere collapse or more extreme outcomes such as biological homogenization and the loss of most or even all life. To what extent can a homogenized Earth of dandelions, rats, and extremophiles be said to be alive, can it ever recover, and how long can it last?

The risks of global ecosystem collapse and the need for strong response to achieve global ecological sustainability have been understated for decades. If indeed there is some possibility that our shared biosphere could be collapsing, there needs to be further investigation of what sorts of sociopolitical responses are valid in such a situation. Dry, unemotional scientific inquiry into such matters is necessary—yet more proactive and evocative political ecological language may be justified as well. We must remember we are speaking of the potential for a period of great dying in species, ecosystems, humans, and perhaps all being. It is not clear whether this global ecological emergency is avoidable or recoverable. It may not be. But we must follow and seek truth wherever it leads us.

Planetary boundaries have been quite anthropocentric, focusing upon human safety and giving relatively little attention to other species and the biosphere's needs other than serving humans. Planetary boundaries need to be set that, while including human needs, go beyond them to meet the needs of ecosystems and all their constituent species and their aggregation into a living biosphere. Planetary boundary thinking needs to be more biocentric.

I concur with Williams (2000) that what is needed is an Earth System–based conservation ethic—based upon an "Earth narrative" of natural and human history—which seeks as its objective the "complete preservation of the Earth's biotic inheritance." Humans are in no position to be indicating which species and ecosystems can be lost without harm to their own intrinsic right to exist, as well as the needs of the biosphere. For us to survive as a species, logic and reason must prevail (Williams 2000).

Those who deny limits to growth are unaware of biological realities (Vitousek 1986). There are strong indications humanity may undergo societal collapse and pull down the biosphere with it. The longer dramatic reductions in fossil fuel emissions and a halt to old-growth logging are put off, the worse the risk of abrupt and irreversible climate change becomes, and the less likely we are to survive and thrive as a species. Human survival—entirely dependent upon the natural world—depends critically upon both keeping carbon emissions below 350 ppm and maintaining at least 66% of the landscape as natural ecological core areas and agroecological transitions and buffers. Much of the world has already fallen below this proportion, and in sum the biosphere's terrestrial ecosystem loss almost certainly has been surpassed, yet it must be the goal for habitat transition in remaining relatively wild lands undergoing development such as the Amazon, and for habitat restoration and protection in severely fragmented natural habitat areas such as the Western Ghats.

The human family faces an unprecedented global ecological emergency as reckless growth destroys the ecosystems and the biosphere on which all life depends. Where is the sense of urgency, and what are proper scientific responses if in fact Earth is dying? Not speaking of worst-case scenarios—the collapse of the biosphere and loss of a living Earth, and mass ecosystem collapse and death in places like Kerala—is intellectually dishonest. We must consider the real possibility that we are pulling the biosphere down with us, setting back or eliminating complex life.

The 66% / 44% / 22% threshold of terrestrial ecosystems in total, natural core areas, and agroecological buffers gets at the critical need to maintain large and expansive ecosystems across at least 50% of the land so as to keep nature connected and fully functional. We need an approach to planetary boundaries that is more sensitive to deep ecology to ensure that habitable conditions for all life and natural evolutionary change continue. A terrestrial ecosystem boundary which protects primary forests and seeks to recover old-growth forests elsewhere is critical in this regard. In old forests and all their life lie both the history of Earth's life, and the hope for its future. The end of their industrial destruction is a global ecological imperative.

Much-needed dialogue is beginning to focus on how humanity may face systematic social and ecological collapse and what sort of community resilience is possible. There have been ecologically mediated periods of societal collapse from human damage to ecosystems in the past (Kuecker and Hall 2011). What makes it different this time is that the human species may have the scale and prowess to pull down the biosphere with them. It is fitting at this juncture for political ecologists to concern themselves with both legal regulatory measures, as well as revolutionary processes of social change, which may bring about the social norms necessary to maintain the biosphere. Rockström and colleagues (2009b) refer to the need for "novel and adaptive governance" without using the word revolution. Scientists need to take greater latitude in proposing solutions that lie outside the current political paradigms and sovereign powers.

Even the Blue Planet Laureates' remarkable analysis (Brundtland et al. 2012), which notes the potential for climate change, ecosystem loss, and inequitable development patterns neither directly states nor investigates in depth the potential for global ecosystem collapse, or discusses revolutionary responses. UNEP (2012) notes abrupt and irreversible ecological change, which they say may impact life-support systems, but are not more explicit regarding the profound human and ecological implications of biosphere collapse, or the full range of sociopolitical responses to such predictions. More scientific investigations are needed regarding alternative governing structures optimal for pursuit and achievement of bioregional, continental, and global sustainability if we are maintain a fully operable biosphere forever. An economic system based upon endless growth that views ecosystems necessary for planetary habitability primarily as resources to be consumed cannot exist for long.   
Planetary boundaries offer a profoundly difficult challenge for global governance, particularly as increased scientific salience does not appear to be sufficient to trigger international action to sustain ecosystems (Galaz et al. 2012). If indeed the safe operating space for humanity is closing, or the biosphere even collapsing and dying, might not discussion of revolutionary social change be acceptable? Particularly, if there is a lack of consensus by atomized actors, who are unable to legislate the required social change within the current socioeconomic system. By not even speaking of revolutionary action, we dismiss any means outside the dominant growth-based oligarchies.

In the author's opinion, it is shockingly irresponsible for Earth System scientists to speak of geoengineering a climate without being willing to academically investigate revolutionary social and economic change as well. It is desirable that the current political and economic systems should reform themselves to be ecologically sustainable, establishing laws and institutions for doing so. Yet there is nothing sacrosanct about current political economy arrangements, particularly if they are collapsing the biosphere. Earth requires all enlightened and knowledgeable voices to consider the full range of possible responses now more than ever.

One possible solution to the critical issues of terrestrial ecosystem loss and abrupt climate change is a massive and global, natural ecosystem protection and restoration program—funded by a carbon tax—to further establish protected large and connected core ecological sustainability areas, buffers, and agro-ecological transition zones throughout all of Earth's bioregions. Fossil fuel emission reductions must also be a priority. It is critical that humanity both stop burning fossil fuels and destroying natural ecosystems, as fast as possible, to avoid surpassing nearly all the planetary boundaries.

In summation, we are witnessing the collective dismantling of the biosphere and its constituent ecosystems which can be described as ecocidal. The loss of a species is tragic, of an ecosystem widely impactful, yet with the loss of the biosphere all life may be gone. Global ecosystems when connected for life's material flows provide the all-encompassing context within which life is possible. The miracle of life is that life begets life, and the tragedy is that across scales when enough life is lost beyond thresholds, living systems die.

### AT: EU Impact

#### SQ solves US-EU dialogue and Europe is too interdependent to dump us over drone policy

Anthony Dworkin 7-3-2013; Senior Policy Fellow working on human rights, international justice and international humanitarian law at the European Council on foreign relations “Drones and targeted killing: defining a European position” http://ecfr.eu/publications/summary/drones\_and\_targeted\_killing\_defining\_a\_european\_position211

Torn between an evident reluctance to accuse Obama of breaking international law and an unwillingness to endorse his policies, divided in part among themselves and in some cases bound by close intelligence relationships to the US, European countries have remained essentially disengaged as the era of drone warfare has dawned. Yet, as drones proliferate, such a stance seems increasingly untenable. Moreover, where in the past the difference between US and European conceptions of the fight against al-Qaeda seemed like an insurmountable obstacle to agreement on a common framework on the use of lethal force, the evolution of US policy means that there may now be a greater scope for a productive dialogue with the Obama administration on drones.

## 2NC

### 2NC Solvency

#### The CP creates executive credibility through informal self-binding --- any president would face serious reputational costs if they reversed the decision to publish OLC decisions.

Eric A. Posner and Adrian Vermeule, Summer 2007. Kirkland & Ellis Professor of Law, The University of Chicago Law School; and Professor of Law, Harvard Law School. “The Credible Executive,” University of Chicago Law Review, http://lawreview.uchicago.edu/sites/lawreview.uchicago.edu/files/uploads/74.3/74\_3\_Posner\_Vermeule.pdf.

Many of our mechanisms are unproblematic from a legal perspective, as they involve presidential actions that are clearly lawful. But a few raise legal questions; in particular, those that involve selfbinding. 75 Can a president bind himself to respect particular first-order policies? With qualifications, the answer is yes, at least to the same extent that a legislature can. Formally, a duly promulgated executive rule or order binds even the executive unless and until it is validly abrogated, thereby establishing a new legal status quo. 76 The legal authority to establish a new status quo allows a president to create inertia or political constraints that will affect his own future choices. In a practical sense, presidents, like legislatures, have great de facto power to adopt policies that shape the legal landscape for the future. A president might commit himself to a long-term project of defense procurement or infrastructure or foreign policy, narrowing his own future choices and generating new political coalitions that will act to defend the new rules or policies. More schematically, we may speak of formal and informal means of self-binding: 1. The president might use formal means to bind himself. This is possible in the sense that an executive order, if otherwise valid, legally binds the president while it is in effect and may be enforced by the courts. It is not possible in the sense that the president can always repeal the executive order if he can bear the political and reputational costs of doing so. 2. The president might use informal means to bind himself. This is not only possible but frequent and important. Issuing an executive rule providing for the appointment of special prosecutors, as Nixon did, is not a formal self-binding. 77 However, there may be large political costs to repealing the order. This effect does not depend on the courts’ willingness to enforce the order, even against Nixon himself. Court enforcement makes the order legally binding while it is in place, but only political and reputational enforcement can protect it from repeal. Just as a dessert addict might announce to his friends that he is going on a nodessert diet in order to raise the reputational costs of backsliding and thus commit himself, so, too, the executive’s issuance of a self-binding order can trigger reputational costs. In such cases, repeal of an executive order may be seen as a breach of faith even if no other institution ever enforces it.

### S – USC

#### Hathaway = transfer authority to federal courts – the CP shifts ID jurisdiction it’s only a question whether the restriction the aff places need be by the courts or congress OR whether the authority is perceived as a loss.

Oona **Hathaway**, Professor, International Law, Yale Law School, Samuel Adelsberg, Spencer Amdur, Philip Levitz, Freya Pitts and Sirine Shebaya, “The Power to Detain: Detention of Terrorism Suspects after 9/11,” YALE JOURNAL OF INTERNATIONAL LAW v. 38, Winter 20**13**, p. 161-167.

The United States is still actively engaged in hostilities with global terrorist organizations, but there are indications that "we're within reach of strategically defeating al-Qaeda." n227 This development, combined with the growing distance from the national trauma of September 11, has reinvigorated the debate surrounding the detention and prosecution of suspected terrorists both outside of and within the United States. Even though Congress has recently expanded military detention and prosecution, n228 prosecution in federal court offersseveral key advantagesover law-of-war detention, including predictability, legitimacy, greater cooperation by defendants and international partners, and flexibility. n229 These advantages have led a diverse set of actors - from current Department of Defense and counterterrorism officials, n230 to [\*162] former Bush Administration officials, n231 to the Washington Post editorial board n232 - to support the prosecution and detention of individuals through the federal courts, despite Congress's recently expressed preference for law-of-war detention. In some cases, prosecution in federal court is theonly availableoption for prosecuting an accused terrorist. Federal antiterrorism statutes are extensive and provide statutory authority to prosecute individuals who are part of or supporting terrorist groups without direct ties to forces associated with al-Qaeda or the Taliban (and therefore outside the scope of the 2001 AUMF or the NDAA), n233 and independently operating terrorists who are inspired by, but are not part of or associated with, al-Qaeda or the Taliban. n234 These statutes also reach persons or citizens who, because they are apprehended in the United States, cannot be tried under the MCA. The following sections discuss the contours and limitations of such criminal prosecution and detention in the terrorism context. Even where detention under the law of war is available, the criminal justice system offers some key advantages for the detention and prosecution of suspected terrorists**.** We thus aim here to offer a correction to the recent trend toward favoring law-of-war detention over criminal prosecution and detention. In the vast majority of cases, criminal prosecution and detention is the most effective and legitimate way to address the terrorist threat**.** A. The Advantages of Criminal Prosecution and Detention The least contested bases for detention authority in any context are post-conviction criminal detention and pre-verdict detention for those who pose a risk of flight. It is often assumed that such criminal detention is ill-suited to terrorists. However, with very little fanfare, federal district court dockets have been flush with terrorism cases over the past decade. Strikingly, efforts to measure the conviction rate in these cases place it between 86 and 91 percent**.** n235 Far from being ineffective, then, trying suspected terrorists in criminal courts is remarkably effective. It also offers the advantages of predictability, legitimacy, and strategic benefits in the fight against terrorism. **1.** Predictability Post-conviction detention of terrorists after prosecution in federal court provides predictability that is currently absent in the military commission system. Federaldistrict courts have years of experience trying complex cases and convicting dangerous criminals, including international terrorists, and the rules arewell established and understood. The current military commission system, on the other hand, is a comparatively untested adjudicatory regime. n236 As already noted, conviction rates in terrorism trials have been close to ninety percent since 2001, and those rates have remained steady in the face of large increases in the number of prosecutions. The military commissions, by contrast, have - as of this writing - convicted seven people since 2001, five of whom pled guilty. n237 Charges have been dropped against several defendants, n238 [\*164] and other defendants have been charged but not tried. n239 The commission procedures have been challenged at every stage, and it is unclear what final form they will ultimately take. Even their substantive jurisdiction remains unsettled. In October 2012, the Court of Appeals for the D.C. Circuit overturned Salim Hamdan's military commission conviction for providing material support to terrorism. n240 The Court held that the Military Commissions Act of 2006, which made material support for terrorism a war crime that could be prosecuted in the commissions, was not retroactively applicable to Hamdan's conduct prior to enactment of the statute. n241 Moreover, the Court explained that material support for terrorism was not a recognized war crime under international law. n242 As a result, his conviction for material support for terrorism in the commission could not stand. n243 It is uncertain how this will affect other trials of detainees, but this decision clearly illustrates the unsettled nature of the commissions. n244 2. Legitimacy Federal courts are also generally considered more legitimate than military commissions. The stringent procedural protections reduce the risk of error and generate trust and legitimacy. n245 The federal courts, for example, provide more robust hearsay protections than the commissions. n246 In addition, jurors are [\*165] ordinary citizens, not U.S. military personnel. Indeed, some of the weakest procedural protections in the military commission system have been successfully challenged as unconstitutional. n247 Congress and the Executive have responded to these legal challenges - and to criticism of the commissions from around the globe - by significantly strengthening the commissions' procedural protections. Yet the remaining gaps - along with what many regard as a tainted history - continue to raise doubts about the fairness and legitimacy of the commissions. The current commissions, moreover, have been active for only a short period - too brief a period for doubts to be confirmed or put to rest. n248 Federal criminal procedure, on the other hand, is well-established and widely regarded as legitimate. Legitimacy of the trial process is important not only to the individuals charged but also to the fight against terrorism**.** As several successful habeas corpus petitions have demonstrated, insufficient procedural protections create a real danger of erroneous imprisonment for extended periods. n249 Such errors can generateresentment and distrust of the United States that undermine the effectiveness of counterterrorism efforts. Indeed, evidence suggests that populations are more likely to cooperate in policing when they believe they have been treated fairly**.** n250 The understanding that a more legitimate detention regime will be a more effective one is reflected in recent statements from the Department of Defense and the White House. n251 **3.** Strategic Advantages There is clear evidence that other countries recognize and respond to the difference in legitimacy between civilian and military courts and that they are, indeed, more willing to cooperate with U.S. counterterrorism efforts when terrorism suspects are tried in the criminal justice system. Increased international cooperation is therefore another advantage of criminal prosecution.Many key U.S. allies have been unwilling to cooperate in cases involving law-of-war detention or prosecution but have cooperated in criminal [\*166] prosecutions. In fact, many U.S. extradition treaties, including those with allies such as India and Germany, forbid extradition when the defendant will not be tried in a criminal court. n252 This issue has played out in practice several times. An al-Shabaab operative was extradited from the Netherlands only after assurances from the United States that he would be prosecuted in criminal court. n253 Two similar cases arose in 2007. n254 In perhaps the most striking example, five terrorism suspects - including Abu Hamza al-Masr, who is accused of providing material support to al-Qaeda by trying to set up a training camp in Oregon and of organizing support for the Taliban in Afghanistan - were extradited to the United States by the United Kingdom in October 2012. n255 The extradition was made on the express condition that they would be tried in civilian federal criminal courts rather than in the military commissions. n256 And, indeed, both the European Court of Human Rights and the British courts allowed the extradition to proceed after assessing the protections offered by the U.S. federal criminal justice system and finding they fully met all relevant standards. n257 An insistence on using military commissions may thus hinder extradition and other kinds of international prosecutorial cooperation, such as the sharing of testimony and evidence. Finally, the criminal justice system is simply a more agile and versatile prosecution forum. Federal jurisdiction offers an extensive variety of antiterrorism statutes that can be marshaled to prosecute terrorist activity committed outside the **U**nited **S**tates, and subsequently to detain those who are convicted. n258 This greater variety of offenses - military commissions can only [\*167] punish an increasingly narrow set of traditional offenses against the laws of war n259 - offers prosecutorsimportant flexibility**.** For instance, it might be very difficult to prove al-Qaeda membership in an MCA prosecution or a law-of-war habeas proceeding; but if the defendant has received training at a terrorist camp or participated in a specific terrorist act, federal prosecutors may convict under various statutes tailored to more specific criminal behavior**.** n260 In addition, military commissions can no longer hear prosecutions for material support committed before 2006. n261 Due in part to the established track record of the federal courts, the federal criminal justice system also allows for more flexible interactions between prosecutors and defendants. Proffer and plea agreements are powerful incentives for defendants to cooperate, and often lead tovaluable intelligence-gathering**,** producing more intelligence over the course of prosecution. n262

#### Their best evidence is Glaser which is normative – DOESN’T make a comparative argument between tribunals and Article III courts – there is NONE. Fear of terror will force them to forgo protections

Wedel 11—JD Candidate @ Stanford Law School [Collin P. Wedel (Prospective Law Clerk to the Honorable Ruggero J. Aldisert, United States Court of Appeals for the Third Circuit), “War Courts: Terror's Distorting Effects on Federal Courts,” Legislation and Policy Brief, Volume 3 1 Issue 1, 1-6-2011]

This debate about whether Article III courts are indeed superior to tribunals is quickly becoming moot. Proponents of Article III trials fatefully assumed that federal courts would adhere to procedural and constitutional guidelines unwaveringly, as opposed to the arbitrary and subjective "kangaroo courts" of the tribunal system.23 If this assumption were true, Article III courts' heavy terrorism caseload would seem to signal victory for federal court proponents. But simply hearing a large number of terror cases in federal courts was never meant to be an end in itself: Article III terror trials were but a means to secure the constitutional

In a trend that should alarm both tribunal proponents and detractors alike, these once-antagonistic systems are becoming twins. While efforts to improve the military tribunal system to match constitutional and international legal norms have enjoyed a fair level of success, 24 long-entrenched Article III standards are deteriorating at a pace that mirrors the pace of tribunals' improvements. A cluster of recent cases, proposed bills, and regulatory actions have narrowed the gap between Article III courts and military tribunals considerably. When viewed as a whole, these blurred lines between the military and domestic spheres draw the federal courts into disquieting congruity with the tribunal system. Specifically, these decisions and bills have altered (1) habeas jurisprudence, (2) detention policy, and (3) criminal investigatory procedure in ways that suggest a disturbing trend. This trend suggests, in turn, that so long as there remains a pressure to convict and permanently incapacitate alleged terrorists—or, to state the contrapositive, so long as there exists trepidation about releasing alleged terrorists for fear that they may be still dangerous—no court system will be immune from the invariably pervasive effects of such pressure. Pg. 12

#### Congressional threats will force Article III courts to crackdown on terrorist

Wedel 11—JD Candidate @ Stanford Law School [Collin P. Wedel (Prospective Law Clerk to the Honorable Ruggero J. Aldisert, United States Court of Appeals for the Third Circuit), “War Courts: Terror's Distorting Effects on Federal Courts,” Legislation and Policy Brief, Volume 3 1 Issue 1, 1-6-2011]

As increasing numbers of would-be terrorists reveal themselves to be American citizens, 135 this bill attempts to remedy the Miranda "problem" by abandoning the criminal justice system altogether and by trying all terrorists in military tribunals.136 In fact, Congress has proposed ten bills to strengthen military tribunals during the 111th Congress alone. Three bills would mandate military commission trials for certain suspected classes of terrorists.137 One proposal would bar any proceeding, including a military tribunal, from taking place on American soil (thereby foreclosing Article III review and ensuring a tribunal at Guantdnamo).13 Three bills would strip the Department of Justice's funding and permission to prosecute terrorists in Article III courts, and a fourth, in a similar vein, would require the President to secure approval from the Secretaries of Defense and Homeland Security before prosecuting a terrorist for a crime in an Article III court. 139 A final bill purports to give the President unilateral authority to determine which detainees were subject to trial by tribunal.1 40

Neither courts nor the White House could ignore these proposals to strip Article III courts of jurisdiction and funding. In response to these proposals, the White House agreed to work on legislation that would relax Miranda requirements, a position diametrically opposed to the one it announced in the immediate aftermath of the Times Square incident. 141 Surprisingly, however, the Supreme Court also modified its interpretation of Miranda protections in a way that may mollify Congress but that comes at too great a cost. Pg. 31-32

#### Article III courts are just military commissions that convict

Wedel 11—JD Candidate @ Stanford Law School [Collin P. Wedel (Prospective Law Clerk to the Honorable Ruggero J. Aldisert, United States Court of Appeals for the Third Circuit), “War Courts: Terror's Distorting Effects on Federal Courts,” Legislation and Policy Brief, Volume 3 1 Issue 1, 1-6-2011]

In this Note, I argue that courts have already begun to heed Judge Brown's advice and are writing new rules in three key areas of criminal justice. More specifically, I contend that, as a result of a decade of federal courts accommodating the government's campaign against terror, the criminal justice system is beginning to resemble the very military tribunals that once were the antithesis of Article III courts. In Part II, I discuss how the federal judiciary's perspective on habeas corpus review has shifted dramatically even since the beginning of the global war on terror. In Part III, I argue that recent court decisions and administrative agency action have created an Article III-sanctioned indefinite detention system that is almost indistinguishable from Guantinamo Bay. In Part IV, I observe that courts have relaxed their threshold evidentiary requirements to a point that is strikingly similar to those of military tribunals. In short, courts are becoming military commissions that convict. Pg. 14

### Perm do the CP

#### Statutory = Congress

Kershner 10 (Joshua, Articles Editor, Cardozo Law Review. J.D. Candidate (June 2011), Benjamin N. Cardozo School of Law, “Political Party Restrictions and the Appointments Clause: The Federal Election Commission's Appointments Process Is Constitutional” Cardozo Law Review de novo 2010 Cardozo L. Rev. De Novo 615)

n17 The phrase "statutory restrictions" is used hereinafter to mean statutory language that restricts the President's powers of nomination and appointment to those individuals meeting specific criteria. Examples include gender, state of residence, and most importantly political party. n18 Since 1980, more than one hundred Presidential signing statements have specifically mentioned the Appointments Clause. See The Public Papers of the Presidents, AM. PRESIDENCY PROJECT, http://www.presidency.ucsb.edu/ws (search for "Appointments Clause"). n19 These signing statements typically invoke the authority of the Appointments Clause to argue that statutory restrictions on appointment or removal of Officers of the United States are merely advisory. For numerous examples, see id. See also infra note 175. n20 The phrase "hyper-partisan atmosphere" has been frequently used by the news media and commentators to describe the political gridlock in Washington during the first years of the Obama administration. See, e.g., Eric Moskowitz, Hundreds Brave Cold to Hear From Scott Brown, THE BOSTON GLOBE, Jan. 29, 2010, http://www.boston.com/news/local/breaking\_news/2010/01/scores\_wait\_for.html (reporting on then Senator-Elect Scott Brown explaining that "he felt the hyper-partisan atmosphere in Washington was already changing as a result of his election" ten days earlier); Editorial, Bayh Bailout No Cause to Mourn Moderation, ORANGE COUNTY REG., Feb. 17, 2010, at H, available at http://www.ocregister.com/opinion/bayh-234673-sen-one.html (describing Senator Bayh's verbal attacks on the operation of the Senate after announcing his decision not to run for reelection as "using the occasion to decry the hyperpartisan atmosphere in Washington"). n21 As political battles over delays in approving Presidential nominations continue to be the norm, it is progressively more likely that Presidents will seek to bypass the Senate in the nomination process. This could include recess appointments bypassing both the "advice and consent" of the Senate, as well as any statutory restrictions. See, e.g., Scott Wilson, Obama Considers Recess Appointments, WASH. POST, Feb. 9, 2010 ("President Obama is considering recess appointments to fill some or all of the nominations held up in the Senate. President Bush used a recess appointment to make John Bolton the U.S. ambassador to the United Nations bypassing Democrats."). n22 Statutory restrictions date back to the first Congress and continue today. See infra notes 116, 118, 122. n23 See discussion infra Part I.D and note 128. n24 The phrase "political party restrictions" is used hereinafter to mean statutory restrictions on the President's powers of nomination and appointment by political party.

#### Judicial relates to the judicial branch of the USFG

WEBSTER’S DICTIONARY OF LAW 01 [Merriam-Webster's Dictionary of Law, <http://research.lawyers.com/glossary/judicial.html>]

Judicial

Definition - adj

[Latin judicialis, from judicium judgment, from judic- judex judge, from jus right, law + dicere to determine, say]

1 a : of or relating to a judgment, the function of judging, the administration of justice, or the judiciary

b : of, relating to, or being the branch of government that is charged with trying all cases that involve the government and with the administration of justice within its jurisdiction

compare administrative executive legislative

2 : created, ordered, or enforced by a court <a ~ foreclosure>

compare conventional legal

### OLC Circumvent

#### Internal checks like the OLC create strong dis-incentives for executive circumvention.

Peter Raven-Hansen, Spring 2009. Glen Earl Weston Research Professor of Law at George Washington University Law School. “EXECUTIVE SELF-CONTROLS: MADISON'S OTHER CHECK ON NATIONAL SECURITY INITIATIVES BY THE EXECUTIVE,” St. John's Journal of Legal Commentary, 23 St. John's J.L. Comm. 987, Lexis.

Agency culture is another internal check, perhaps the most important, but at the same time, the most nebulous. I am referring to an institutional self-  [\*990]  awareness, almost an institutional ego about the quality of its products (decisions, opinions, etc.) and about how its professional personnel differ from (are better than) everybody else in the Executive Branch. A classic example with which most of us (lawyers) are familiar is the "officer-of-the-Court" culture of Solicitor General's Office. [n5](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.118659.91777635997&target=results_DocumentContent&returnToKey=20_T18154883038&parent=docview&rand=1379299329197&reloadEntirePage=true#n5) The Office of the Legal Adviser to the State Department also has a distinctive culture. [n6](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.118659.91777635997&target=results_DocumentContent&returnToKey=20_T18154883038&parent=docview&rand=1379299329197&reloadEntirePage=true#n6) The Legal Adviser is the highest authority in international law. The Adviser is a representative of international law in the U.S. government - a voice not just for interpreting but, consistent with U.S. national interests, for advocating international law. [n7](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.118659.91777635997&target=results_DocumentContent&returnToKey=20_T18154883038&parent=docview&rand=1379299329197&reloadEntirePage=true#n7) The Office of Legal Counsel [hereinafter "OLC"] notoriously in the loop in the torture debate and other major national security initiatives by this Administration, historically had a distinctive culture, too, to which I will turn shortly.

The bedrock attributes of all these agency cultures is what I would call the lawyer culture. What is it? Well, we've all in this room been trained in it, so you can answer this for yourself. But as both a long-time trainer and long-past trainee, I can attest that the number one principle that we bring out without fail in every class in every law school in the United States is competency. It's no accident that the first rule of the ABA Model Rules of Professional Conduct is that "[a] lawyer shall provide competent representation to a client." [n8](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.118659.91777635997&target=results_DocumentContent&returnToKey=20_T18154883038&parent=docview&rand=1379299329197&reloadEntirePage=true#n8)

A competent lawyer researches thoroughly. She anticipates contrary arguments. She deals carefully with precedent. She analyzes and advises objectively. Thus, OLC alumnae declared as first principle that the OLC provide "accurate and honest appraisals of applicable law." [n9](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.118659.91777635997&target=results_DocumentContent&returnToKey=20_T18154883038&parent=docview&rand=1379299329197&reloadEntirePage=true#n9) The competent lawyer looks at the bad precedent, as well as the good, and tells the client about both. Business clients may hate their lawyers for being "nay-sayers,"  [\*991]  but the opposite of nay-sayer is "yes-man." Nay-saying objectivity is especially important in the small inner circle of presidential decision-making to counter the tendency towards groupthink and a vulnerability to sycophancy. Finally, a competent lawyer also respects precedent, at least so far as to explain it away when the client contemplates a departure. In national security law, where there are fewer relevant judicial precedents, prior OLC opinions may substitute, and respect for this "precedent" requires explaining away or distinguishing them. The drag of precedent may well make legal analysis inherently conservative, but that is just another way of saying that it serves as an internal check on government conduct informed by such analysis.

Fourth (and appropriately last because this is really an internal check that only comes into play when the rest have failed), is the check provided by threats to "go public" by leaking embarrassing information or publicly resigning. After 9/11, we have seen a series of leaks of OLC and Department of Defense legal analyses, and of details of legally controversial national security initiatives, such as the Terrorist Surveillance Program and coercive interrogation. While we have had almost no public protest resignations by senior government officers since the Saturday night massacre in the Watergate era, the press reported that then-Deputy Attorney General James Comey and thirty other Justice Department lawyers successfully threatened to resign in order to get the Terrorist Surveillance Program changed. [n10](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.118659.91777635997&target=results_DocumentContent&returnToKey=20_T18154883038&parent=docview&rand=1379299329197&reloadEntirePage=true" \l "n10)

But do these kinds of internal checks really work? The internal checks on Congress of bicameralism and majority voting are both rooted in the text of the Constitution. The internal checks on the courts of the case and controversy requirement, the requirement for public trials, and the right to jury trial are also rooted in the text of the Constitution. But the internal checks on the Executive of inter-agency and intra-agency processes, office and lawyer culture, and even "going public" are not rooted in constitutional text. They are imposed - or, in the case of leaks, regulated - by the President or his designates. In other words, they are in substantial part dependent on the very persons they are designed to check. If President Bush or Vice President Cheney, or their delegates, imposes these checks, can't they just as easily remove or relax them?

Calling this the Dick Cheney objection is a shorthand for the assumption that the Vice President, in fact, did remove them or ignore them,  [\*992]  presumably acting with the President's approval. Key national security decisions were made in a small circle, centered on the Vice President's office. Jack Goldsmith, who was briefly in charge of Office of Legal Counsel during the Bush Administration, has asserted that a "War Council" of just five lawyers made some of the most controversial decisions, largely ignoring both the interagency process and any kind of thorough and effective intra-agency process as well. [n11](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.118659.91777635997&target=results_DocumentContent&returnToKey=20_T18154883038&parent=docview&rand=1379299329197&reloadEntirePage=true" \l "n11) For example, they excluded even the National Security Advisor and Secretary of State Collin Powell from the decision to issue a military order authorizing military detention and trial by military commission; Powell reportedly first read about the military order in the newspapers, like the rest of us. [n12](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.118659.91777635997&target=results_DocumentContent&returnToKey=20_T18154883038&parent=docview&rand=1379299329197&reloadEntirePage=true" \l "n12) Even when they were drafting that order and allegedly consulted some JAG experts, War Council lawyers reportedly showed the penultimate draft of the order only to the lead JAG lawyer, who was allowed to review it for only thirty minutes and was told "don't copy it or take it from the room." His recommendations were completely ignored in the final order. [n13](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.118659.91777635997&target=results_DocumentContent&returnToKey=20_T18154883038&parent=docview&rand=1379299329197&reloadEntirePage=true" \l "n13) Similarly, Goldsmith reports that the senior lawyers in Justice were initially bypassed in the authorization of the Terrorist Surveillance Program. [n14](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.118659.91777635997&target=results_DocumentContent&returnToKey=20_T18154883038&parent=docview&rand=1379299329197&reloadEntirePage=true" \l "n14) Indeed, Goldsmith reports that junior OLC lawyer and War Council member, John Yoo, sometimes even circumvented his own boss, the Attorney General. [n15](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.118659.91777635997&target=results_DocumentContent&returnToKey=20_T18154883038&parent=docview&rand=1379299329197&reloadEntirePage=true#n15)

Moreover, such by-passing or short-circuiting of the internal check of inter-agency and intra-agency review was intentional. It reflected a theory of unitary executive power developed in response to what some would call an anachronistic view of a weakened and beleaguered presidency, tracing its roots to the post-Watergate era in which Vice President Cheney served as Chief of Staff to President Ford (after serving in the Nixon White House). The ruthless application of the unitary executive theory - in part by blowing through [n16](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.118659.91777635997&target=results_DocumentContent&returnToKey=20_T18154883038&parent=docview&rand=1379299329197&reloadEntirePage=true#n16) contrary laws and internal checks - resulted in what one scholar calls the "unitary-executive-on-steroids," [n17](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.118659.91777635997&target=results_DocumentContent&returnToKey=20_T18154883038&parent=docview&rand=1379299329197&reloadEntirePage=true#n17) and what the Vice  [\*993]  President's lawyer, Dick Addington, himself described as, "push and push and push until some larger force makes us stop." [n18](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.118659.91777635997&target=results_DocumentContent&returnToKey=20_T18154883038&parent=docview&rand=1379299329197&reloadEntirePage=true#n18)

To rephrase the objection, then, if the President or Vice President can so easily blow through the internal checks on the Executive Branch that I've catalogued, how effective are they? Let me offer three brief answers.

First, neither the President nor the Vice President can systematically bypass such internal checks because neither actually does anything. They are only "Deciders." The President, after all, is not charged by the Constitution with executing the law, although we often say that in a sloppy paraphrase of the actual text. He's charged with "taking care that the laws be faithfully executed." [n19](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.118659.91777635997&target=results_DocumentContent&returnToKey=20_T18154883038&parent=docview&rand=1379299329197&reloadEntirePage=true#n19) The Decider is inevitably dependent on others to carry out his decision. He can issue a military order ordering trial by military commission for enemy combatants, but he must use the JAG lawyers ultimately to develop the procedures by which the commissions operate and to operate the commissions. He can order surveillance, but has to use career lawyers in the Justice Department to implement FISA, or even to circumvent it to operate the Terrorist Surveillance Program. The result is that he necessarily is going to run into some of the internal checks I have described, no matter how bent he is on blowing through them.

Secondly, while the President or Vice President, or their delegates, can try to change the architecture of decision making, (alter the inter-agency process), they cannot change the agency or lawyer culture nearly as quickly. The lawyer culture is implanted in law school and nurtured in practice, taking years and years to develop. As a result, it also takes years and years to root it out.

Take the torture memorandum [n20](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.118659.91777635997&target=results_DocumentContent&returnToKey=20_T18154883038&parent=docview&rand=1379299329197&reloadEntirePage=true#n20) written by John Yoo as an example. It is now notorious for its alleged role in promoting or justifying coercive interrogation. But it is also independently problematical to good lawyers because it arguably violates the first rule of lawyer culture; it is not competent. It ignores applicable laws and regulations. It fails to cite, let alone distinguish, the Steel Seizure Case[n21](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.118659.91777635997&target=results_DocumentContent&returnToKey=20_T18154883038&parent=docview&rand=1379299329197&reloadEntirePage=true#n21) when discussing an exclusive Commander-in-Chief power and the power of Congress to legislate on certain subjects. It ignores substantive due process case law on torture and police brutality that would have been more pertinent than the Medicare  [\*994]  regulations on which it relies. Dean Koh called it "perhaps the most clearly erroneous legal opinion I have ever read," [n22](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.118659.91777635997&target=results_DocumentContent&returnToKey=20_T18154883038&parent=docview&rand=1379299329197&reloadEntirePage=true#n22) and he's read a lot, both as an OLC alumnus himself and as a law professor. Another OLC alumnus says it is "dangerously flawed advice," "universally condemned," and "an extreme example of poor lawyering." [n23](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.118659.91777635997&target=results_DocumentContent&returnToKey=20_T18154883038&parent=docview&rand=1379299329197&reloadEntirePage=true#n23)

If you dismiss these criticisms as the views of cheese-eating, latte-sipping liberals, consider instead the opinion of a self-proclaimed legal conservative who served as head of the OLC for the Bush Administration. Jack Goldsmith looked at the torture memo and decided that he had to withdraw it. Not because he was uncomfortable exploring the contours of torture law. Not because torture is repugnant. Not because he rejected the necessity for enhanced interrogation. He had to withdraw it and a successor memo because they "were deeply flawed: sloppily reasoned, overbroad, and incautious in asserting extraordinary constitutional authorities on behalf of the President." [n24](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.118659.91777635997&target=results_DocumentContent&returnToKey=20_T18154883038&parent=docview&rand=1379299329197&reloadEntirePage=true#n24) That is, they violated the bedrock rule of lawyer competency. They also violated the OLC culture. Goldsmith said, "they lacked the tenor of detachment and caution that usually characterizes OLC work ... ." [n25](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.118659.91777635997&target=results_DocumentContent&returnToKey=20_T18154883038&parent=docview&rand=1379299329197&reloadEntirePage=true#n25) They were "wildly broader than was necessary to support what was actually being done."[n26](http://www.lexisnexis.com.proxy.library.emory.edu/lnacui2api/frame.do?tokenKey=rsh-20.118659.91777635997&target=results_DocumentContent&returnToKey=20_T18154883038&parent=docview&rand=1379299329197&reloadEntirePage=true#n26)

Of course, you could still object that the lawyer culture did not stop their issuance, let alone any coercive interrogation that they could be read to authorize. You could say that their withdrawal came too late. You could say the memos that replaced them were not much better. You could say Jack Goldsmith is trying to have it both ways. But I think what you'd also have to say is that, if the damage was done despite the internal checks, it didn't stay done, thanks, in part, to the same checks.

A final answer to the Cheney objection is that many of the internal checks are imposed by the Executive in its own self-interest - the interest of avoiding an external check. The intra-agency FISA procedures which I summarized are driven by the prospect of FISC disapproval. The Executive uses the process in part to earn deference from the court. Other inter-agency and intra-agency procedures are driven by the possibility of  [\*995]  due process review. They anticipate procedures that courts might impose. Internal checks are also put in place and enforced to forestall new legislation, should Congress eventually examine the initiatives that result. It gives the President the argument that, "We vetted this carefully and oversaw it closely, so there is no need for new legislation [that is, a statutory check]."

### 2NC XOs Avoid Politics

#### The PC differential between the plan and the counterplan is tangible

William Howell 5, Harvard University, The Last One Hundred Days, users.polisci.wisc.edu/kmayer/Professional/Last%20100%20Days.pdf

In our estimation, this misconstrues things. By ignoring important policy options outside of the legislative process, scholars have exaggerated the frailty of outgoing presidents and underestimated the inﬂuence they continue to wield. Presidential power does not reduce to bargaining, negotiating, and convincing members of Congress to do things that the president cannot accomplish on his own. Presidents can (and regularly do) act alone, setting public policy without having to rally Congress’s attention, nor even its support (Cooper 2002; Howell 2003; Mayer 2001). With executive orders, proclamations, executive agreements, national security directives, and memoranda, presidents have ample resources to effectuate policy changes that stand little chance of overcoming the collective action problems and multiple veto points that plague the legislative process. And having “lost the attention of the permanent government,” outgoing presidents have every reason to strike out on their own, set new policy, and leave it to the incoming administration to try and steer an alternative course.

#### Specific to Obama

Anita Kumar 13, McClatchy Newspapers. Obama turning to executive power to get what he wants, www.mcclatchydc.com/2013/03/19/186309/obama-turning-to-executive-power.html#.UiPy2zaTg0Y

Now, as he launches his second term, Obama has grown more comfortable wielding power to try to move his own agenda forward, particularly when a deeply fractured, often-hostile Congress gets in his way. He’s done it with a package of tools, some of which date to George Washington and some invented in the modern era of an increasingly powerful presidency. And he’s done it with a frequency that belies his original campaign criticisms of predecessor George W. Bush, invites criticisms that he’s bypassing the checks and balances of Congress and the courts, and whets the appetite of liberal activists who want him to do even more to advance their goals. While his decision to send drones to kill U.S. citizens suspected of terrorism has garnered a torrent of criticism, his use of executive orders and other powers at home is deeper and wider. He delayed the deportation of young illegal immigrants when Congress wouldn’t agree. He ordered the Centers for Disease Control and Prevention to research gun violence, which Congress halted nearly 15 years ago. He told the Justice Department to stop defending the Defense of Marriage Act, deciding that the 1996 law defining marriage as between a man and a woman was unconstitutional. He’s vowed to act on his own if Congress didn’t pass policies to prepare for climate change. Arguably more than any other president in modern history, he’s using executive actions, primarily orders, to bypass or pressure a Congress where the opposition Republicans can block any proposal. “It’s gridlocked and dysfunctional. The place is a mess,” said Rena Steinzor, a law professor at the University of Maryland. “I think (executive action) is an inevitable tool given what’s happened.” Now that Obama has showed a willingness to use those tactics, advocacy groups, supporters and even members of Congress are lobbying him to do so more and more. The Center for Progressive Reform, a liberal advocacy group composed of law professors, including Steinzor, has pressed Obama to sign seven executive orders on health, safety and the environment during his second term. Seventy environmental groups wrote a letter urging the president to restrict emissions at existing power plants. Sen. Barbara Mikulski, D-Md., the chairwoman of the Appropriations Committee, sent a letter to the White House asking Obama to ban federal contractors from retaliating against employees who share salary information. Gay rights organizations recently demonstrated in front of the White House to encourage the president to sign an executive order to bar discrimination based on sexual orientation or gender identity by companies that have federal contracts, eager for Obama to act after nearly two decades of failed attempts to get Congress to pass a similar bill. “It’s ridiculous that we’re having to push this hard for the president to simply pick up a pen,” said Heather Cronk, the managing director of the gay rights group GetEQUAL. “It’s reprehensible that, after signing orders on gun control, cybersecurity and all manner of other topics, the president is still laboring over this decision.” The White House didn’t respond to repeated requests for comment. In January, Obama said he continued to believe that legislation was “sturdier and more stable” than executive actions, but that sometimes they were necessary, such as his January directive for the federal government to research gun violence. “There are certain issues where a judicious use of executive power can move the argument forward or solve problems that are of immediate-enough import that we can’t afford not to do it,” the former constitutional professor told The New Republic magazine. Presidents since George Washington have signed executive orders, an oft-overlooked power not explicitly defined in the Constitution. More than half of all executive orders in the nation’s history – nearly 14,000 – have been issued since 1933. Many serve symbolic purposes, from lowering flags to creating a new military medal. Some are used to form commissions or give federal employees a day off. Still others are more serious, and contentious: Abraham Lincoln releasing political prisoners, Franklin D. Roosevelt creating internment camps for Japanese-Americans, Dwight Eisenhower desegregating schools. “Starting in the 20th century, we have seen more and more that have lawlike functions,” said Gene Healy, a vice president of the Cato Institute, a libertarian research center, who’s the author of “The Cult of the Presidency: America’s Dangerous Devotion to Executive Power.”

#### Congressional backlash to XOs is all bark no bite

Graham G. Dodds 13, Associate Professor, pol sci, Concordia. Take Up Your Pen: Unilateral Presidential Directives in American Politics, 3

Thus, even though the president’s executive order initially elicited so much outrage, and even after more and more controversial details emerged, nothing changed. and it was quickly back to business as usual. It was almost as if controversial unilateral presidential policymaking itself were just business as usual, which is exactly what this book argues ii is.

The Argument of the Book

The above episode is emblematic of a much broader puzzle in U.S. constitutional polities and interbranch relations, as presidents have often used unilateral directives such as executive orders and proclamations to impose controversial policies, and Congress and the courts have at times complained but have seldom offered much in the way of real resistance. This book seeks to explain how we got to this point and why ii matters. The basic argument of the book may be summarized as follows.

#### Executive orders don’t require political capital --- bypasses legislative process.

Benjamin Sovacool and Kelly Sovacool, 2009. PhD, Research Fellow in the Energy Governance Program at the Centre on Asia and Globalization; and Senior Research Associate at the Lee Kuan Yew School of Public Policy at the National University of Singapore. “Preventing National Electricity-Water Crisis Areas in the United States,” Columbia Journal of Environmental Law , 34 Colum. J. Envtl. L. 333.

Executive Orders also save time in a second sense. The President does not have to expend scarce political capital trying to persuade Congress to adopt his or her proposal. Executive Orders thus save presidential attention for other topics. Executive Orders bypass congressional debate and opposition, along with all of the horsetrading and compromise such legislative activity entails. 292 Speediness of implementation can be especially important when challenges require rapid and decisive action. After the September 11, 2001 attacks on the Pentagon and World Trade Center, for instance, the Bush Administration almost immediately passed Executive Orders forcing airlines to reinforce cockpit doors and freezing the U.S. based assets of individuals and organizations involved with terrorist groups. 293 These actions took Congress nearly four months to debate and subsequently endorse with legislation. Executive Orders therefore enable presidents to rapidly change law without having to wait for congressional action or agency regulatory rulemaking.

#### Executive orders don’t cost capital.

Shirley Anne Warshaw, Spring 2006. Prof of Pol. Science @ Gettysburg College. “Administrative Strategies of President George W. Bush,” Extensions Journal, <http://www.ou.edu/special/albertctr/extensions/spring2006/Warshaw.pdf>.

However, in recent administrations, particularly since the Reagan administration, presidents have often bypassed Congress using administrative actions. They have opted for a strategy through administrative actions that is less time-consuming and clearly less demanding of their political capital. Using an array of both formal and informal executive powers, presidents have effectively directed the executive departments to implement policy without any requisite congressional authorization. In effect, presidents have been able to govern without Congress. The arsenal of administrative actions available to presidents includes the power of appointment, perhaps the most important of the arsenal, executive orders, executive agreements, proclamations, signing statements, and a host of national security directives.1 More than any past president, George W. Bush has utilized administrative actions as his primary tool for governance.

#### Legislative process costs capital --- executive actions avoid.

Phillip J. Cooper, 2002. Professor of Liberal Arts @ University of Vermont. By Order of the President: The Use and Abuse of Executive Direct Action, p. 58-9.

Executive orders are often used because they are quick, convenient, and relatively easy mechanisms for moving significant policy initiatives. Though it is certainly true that executive orders are employed for symbolic purposes, enough has been said by now to demonstrate that they are also used for serious policymaking or to lay the basis for important actions to be taken by executive branch agencies under the authority of the orders. Unfortunately, as is true of legislation, it is not always possible to know from the title of orders which are significant and which are not, particularly since presidents will often use an existing order as a base for action and then change it in ways that make it far more significant than its predecessors. The relative ease of the use of an order does not merely arise from the fact that presidents may employ one to avoid the cumbersome and time-consuming legislative process. They may also use this device to avoid sometimes equally time-consuming administrative procedure, particularly the rulemaking processes required by the Administrative Procedure Act.

### Ext Wedel—Comstock

#### 2. The President will just have to classify them as dangerous

Wedel 11—JD Candidate @ Stanford Law School [Collin P. Wedel (Prospective Law Clerk to the Honorable Ruggero J. Aldisert, United States Court of Appeals for the Third Circuit), “War Courts: Terror's Distorting Effects on Federal Courts,” Legislation and Policy Brief, Volume 3 1 Issue 1, 1-6-2011]

The obvious and ominous portent of the Comstock decision is that the government may obtain a conviction for a suspected terrorist on a relatively minor charge carrying a light sentence and then, after the conclusion of the sentence, declare the prisoner to be "dangerous" and thus subject to indefinite detention. Indeed, Obama Administration officials have admitted that part of the government's unwillingness to release Guantanamo inmates to criminal authorities is driven by the perceived difficulty the government will have in obtaining an adequately long sentence for "known" terrorists if sufficient evidence is lacking.0 1 If a conviction for a lesser crime could be obtained, Comstock's logic would offer an attractive avenue for closing Guantanamo while detaining its former inmates indefinitely. Pg. 25

#### Adaptations by Article III courts will seep into ordinary cases law. The plan is net reduction in rights

Weisselberg 08—Professor of Law @ UC Berkley [Charles D. Weisselberg, “Terror in the courts: Beginning to assess the impact of terrorism-related prosecutions on domestic criminal law and procedure in the USA,” Crime, Law and Social Change, September 2008, Volume 50, Issue 1-2, pp 25-46

The problem is often framed as a trade-off between liberty and security. Our civilian criminal courts are frequently offered as the gold standard for the sort of transparent, rigorous and accurate procedures that should be afforded an individual before he or she may be deprived of liberty or life. Many argue that these civilian courts, primarily our federal courts, are the appropriate tribunals to hear allegations against enemy combatants and terrorism-related criminal suspects. On the other side, many worry that the risk of conducting open trials in civilian courts poses too great a risk to the security of our country. They suggest that terrorism-related cases be handled by military commissions or perhaps by special courts set up for that purpose.

I hope to shed some light on a concern that I think should be at least part of the debate. I ask how domestic criminal law or procedures might be influenced by civilian prosecutions of terrorism-related suspects, even if these defendants can be prosecuted to a verdict in our courts. Do these cases have the potential to remake domestic law and practice? If these prosecutions may adversely affect the development of our own domestic law or distort existing law, there may be reasons why even some rights advocates might prefer that such influences be cabined to military commissions or special courts (if that is possible to accomplish). And do prosecutors and judges treat these cases differently even as they ostensibly apply the same law and procedures that govern other criminal cases? If so, convening prosecutions in our civilian courts might in fact not be providing the gold standard of process that many think is due.

I am not alone in raising these concerns. Shortly before he was nominated to serve as US Attorney General, Michael B. Mukasey observed in the Wall Street Journal:

[I]f conventional legal rules are adapted to deal with a terrorist threat, whether by relaxed standards for conviction, searches, the admissibility of evidence or otherwise, those adaptations will infect and change the standards in ordinary cases with ordinary defendants in ordinary courts of law [32].

John Parry has voiced a similar worry that terrorism-related prosecutions may produce “doctrinal changes that many people would find undesirable” ([24], p. 366).

### 2NC No Solve

#### Parker is also about drones.

Tom Parker, 9/17/2012. Former Policy Director for Terrorism, Counterterrorism and Human Rights at Amnesty International. U.S. Tactics Threaten NATO, nationalinterest.org/commentary/us-tactics-threaten-nato-7461

A growing chasm in operational practice is opening up between the United States and its allies in NATO. This rift is putting the Atlantic alliance at risk. Yet no one in Washington seems to be paying attention.

The escalating use of unmanned aerial vehicles to strike terrorist suspects in an increasing number of operational environments from the Arabian Peninsula to Southeast Asia, coupled with the continued use of military commissions and indefinite detention, is driving a wedge between the United States and its allies.

#### 2) No intel coop now

Villadsen 6/21/13( first recipient of the Walter L. Pforzheimer Award, which the Center for the Study of Intelligence will present annually for the best article on an intelligence-related subject written by a US graduate or undergraduate student. The award has been instituted to honor Mr. Pforzheimer, the founder of the Historical Intelligence Collection at the CIA Library, the Intelligence Community's greatest resource of literature on intelligence. Since he retired in 1974, he has continued to serve as a source of information and perspective to Directors of Central Intelligence, scholars, and many others on the past, present, and future of intelligence. He was named one of the CIA50 Trailblazers in 1997., “Prospects for a European Common Intelligence Policy”, <https://www.cia.gov/library/center-for-the-study-of-intelligence/csi-publications/csi-studies/studies/summer00/art07.html>)

Looking back, future European scholars and officials are likely to regard the 1990s as the critical turning point in the formation and structure of a European common intelligence policy (CIP). Just as the 1950s laid the foundation for the creation of the European Single Market and common currency, the 1990s laid the foundation for the creation of a European intelligence policy as well as its probable structure. From the 1991 Treaty of Maastricht, which established the European Union (EU), to the December 1999 EU summit in Helsinki, Finland, European leaders increasingly highlighted the need for Europe to develop intelligence collection and analysis capabilities autonomous of the United States as a necessary component of a European common defense and security policy. Contemporary scholars should be primarily concerned not with whether a European common intelligence policy will develop, but how it will develop and in what form.

Despite the existence of motivating factors for increased cooperation, obstacles such as concerns over sovereignty, the fear of damaging privileged NATO relationships, and institutional limitations, probably will prevent the creation of a supranational European intelligence authority. While European intelligence cooperation will improve in important ways, it is likely to remain decentralized and primarily reactive, and is unlikely to pose any serious competition to NATO in the near term.

#### PRISM and detention are massive alt-causes

Archick 9/4—Kristin Archick, European affairs specialist at CRS [September 4, 2013, “U.S.-EU Cooperation Against Terrorism,” Congressional Research Service, http://www.fas.org/sgp/crs/row/RS22030.pdf]

Although the United States and the EU both recognize the importance of sharing information in an effort to track and disrupt terrorist activity, data privacy has been and continues to be a key U.S.-EU sticking point. As noted previously, the EU considers the privacy of personal data a basic right; EU data privacy regulations set out common rules for public and private entities in the EU that hold or transmit personal data, and prohibit the transfer of such data to countries where legal protections are not deemed “adequate.” In the negotiation of several U.S.-EU informationsharing agreements, from those related to Europol to SWIFT to airline passenger data, some EU officials have been concerned about whether the United States could guarantee a sufficient level of protection for European citizens’ personal data. In particular, some Members of the European Parliament (MEPs) and many European civil liberty groups have long argued that elements of U.S.-EU information-sharing agreements violate the privacy rights of EU citizens. In light of the public revelations in June 2013 of U.S. National Security Agency (NSA) surveillance programs and news reports alleging that U.S. intelligence agencies have monitored EU diplomatic offices and computer networks, many analysts are worried about the future of U.S.-EU information-sharing arrangements. As discussed in this section, many of these U.S.-EU information-sharing agreements require the approval of the European Parliament, and many MEPs (as well as many officials from the European Commission and the national governments) have been deeply dismayed by the NSA programs and other spying allegations. In response, the Parliament passed a resolution expressing serious concerns about the U.S. surveillance operations and established a special working group to conduct an in-depth investigation into the reported programs.17 In addition, led by the European Commission and the U.S. Department of Justice, the United States and the EU have convened a joint expert group on the NSA’s surveillance operations, particularly the so-called PRISM program (in which the NSA reportedly collected data from leading U.S. Internet companies), to assess the “proportionality” of such programs and their implications for the privacy rights of EU citizens.18 U.S. officials have sought to reassure their EU counterparts that the PRISM program and other U.S. surveillance activities operate within U.S. law and are subject to oversight by all three branches of the U.S. government. Some observers note that the United States has been striving to demonstrate that it takes EU concerns seriously and is open to improving transparency, in part to maintain European support for existing information-sharing accords, such as SWIFT (which will be up for renewal in 2015), and the U.S.-EU Passenger Name Record agreement (up for renewal in 2019). Nevertheless, many experts predict that the revelations of programs such as PRISM will make the negotiation of future U.S.-EU information-sharing arrangements more difficult, and may make the European Parliament even more cautious and skeptical about granting its approval.

### 2NC Yes Coop—Intel Sharing

#### They need us more than we need them

Perry and Dodds 13—Nick Perry, AP Correspondent for New Zealand and the South Pacific, and Paisley Dodds, London Bureau Chief for AP [July 16, 2013, “Experts Say US Spy Alliance Will Survive Snowden,” http://www.military.com/daily-news/2013/07/16/experts-say-us-spy-alliance-will-survive-snowden.html]

WELLINGTON, New Zealand—Britain needed U.S. intelligence to help thwart a major terror attack. New Zealand relied on it to send troops to Afghanistan. And Australia used it to help convict a would-be bomber. All feats were the result of a spying alliance known as Five Eyes that groups together five English-speaking democracies, and they point to a vital lesson: American information is so valuable, experts say, that no amount of global outrage over secret U.S. surveillance powers would cause Britain, Canada, Australia and New Zealand to ditch the Five Eyes relationship. The broader message is that the revelations from NSA leaker Edward Snowden are unlikely to stop or even slow the global growth of secret-hunting—an increasingly critical factor in the security and prosperity of nations. "Information is like gold," Bruce Ferguson, the former head of New Zealand's foreign spy agency, the Government Communications Security Bureau, told The Associated Press. "If you don't have it, you don't survive." The Five Eyes arrangement underscores the value of this information—as well as the limitations of the information sharing. The collaboration began during World War II when the allies were trying to crack German and Japanese naval codes and has endured for more than 70 years. The alliance helps avoid duplication in some instances and allows for greater penetration in others. The five nations have agreed not to spy on each other, and in many outposts around the world, Five Eyes agencies work side by side, allowing for information to be shared quickly. But Richard Aldrich, who spent a decade researching a book on British surveillance, said some Five Eyes nations have spied on each other, violating their own rules. The five countries "generally know what's in each other's underwear drawers so you don't need to spy, but occasionally there will be issues when they don't agree"—and when that happens they snoop, Aldrich said. In Five Eyes, the U.S. boasts the most advanced technical abilities and the biggest budget. Britain is a leader in traditional spying, thanks in part to its reach into countries that were once part of the British Empire. Australia has excelled in gathering regional signals and intelligence, providing a window into the growing might of Asia. Canadians, Australians and New Zealanders can sometimes prove useful spies because they don't come under the same scrutiny as their British and American counterparts. "The United States doesn't share information," said Bob Ayers, a former CIA officer, "without an expectation of getting something in return." Britain is home to one of the world's largest eavesdropping centers, located about 300 kilometers (186 miles) northwest of London at Menwith Hill. It's run by the NSA but hundreds of British employees are employed there, including analysts from Britain's eavesdropping agency, the Government Communications Headquarters—or GCHQ. Australia is home to Pine Gap, a sprawling satellite tracking station located in the remote center of the country, where NSA officials work side-by-side with scores of locals. The U.S. also posts three or four analysts at a time in New Zealand, home to the small Waihopai and Tangimoana spy stations. The intelligence-sharing relationship enabled American and British security and law enforcement officials to thwart a major terror attack in 2006—the trans-Atlantic liquid bomb plot to blow up some 10 airliners. The collaboration, sometimes called ECHELON, takes place within strict parameters. Two U.S. intelligence officials, who spoke on condition of anonymity because they weren't authorized to speak about the program to the news media, said only U.S. intelligence officers can directly access their own vast database. A Five Eyes ally can ask to cross-check, say, a suspicious phone number it has independently collected to see if there is any link to the U.S., the officials said. But the ally must first show the request is being made in response to a potential threat to Western interests. Ferguson said that in New Zealand, cooperation with the U.S. improved markedly after the Sept. 11, 2001, terrorist attacks. Still, he said, his agency was kept on a need-to-know basis. He said he never knew what information was being provided to other Five Eyes nations, and none of the countries would have shared all their intelligence anyway. Ferguson said a small country like New Zealand benefited by a ratio of about five-to-one in the information it received compared to what it provided. He said that as chief of the defense force, a role he held before taking over the spy agency in 2006, he could never have sent troops to Afghanistan without the on-the-ground intelligence provided by the U.S. and other allies. He said New Zealand continues to rely on Five Eyes information for most of its overseas deployments, from peacekeeping to humanitarian efforts. The intelligence is vital, he added, for thwarting potential cyber threats. In Australia, prosecutors in 2009 used evidence from a U.S. informant who had been at a terrorist training camp in Pakistan to help convict one of nine Muslim extremists found guilty of planning to bomb an unspecified Sydney target. The Australian Security Intelligence Organisation wrote in an email to The AP that "intelligence sharing between countries is critical to identifying and preventing terrorism and other transnational security threats." Canada's Department of National Defence had a similar response, saying it "takes an active role in building relationships with allies. Collaborating with the personnel of the Five Eyes community in support of mutual defense and security issues is part of this relationship building." Both agencies declined requests to provide more specific information. In the decades since World War II, the allies have formed various other intelligence allegiances, although few as comprehensive or deep as Five Eyes. While the Snowden revelations will test the relationship, it has survived tests in the past. New Zealand has long asserted an independent foreign policy by banning nuclear ships, and some are now calling for the country to go further and opt out of Five Eyes. Lawmaker Russel Norman, co-leader of New Zealand's Green Party, is one of many people calling for a public review of the relationship. "I want to live in a free society, not a total surveillance state," he said. "The old Anglo-American gang of five no longer runs the world." But John Blaxland, a senior fellow at the Australian National University's Strategic and Defence Studies Centre, said politicians Down Under have often criticized the security relationship until they've gotten into power and been briefed on its benefits. Then, he said, they tend to go silent. "The perception is that the advantages are so great, they'd be crazy to give it up," he said.

### British Terror

#### Klein eivdnec which is their internal link says that any Isolated bombing or attacking soft targets takes out their internal link – tons of those have happened since 2007 – 10 independent acts by Paulo Lapbhyn should take out the internal link. Their ev that says it collapses consumer confidence is about POLITICAL impacts of a terror attack Not the plan.

Klein 7 (“The Costs of Terror: The Economic Consequences of Global Terrorism” Adam, Facts and Findings. Konrad-Adenauer-Stiftung” http://www.kas.de/wf/doc/kas\_10991-544-2-30.pdf?131022171614¶ 3. FUTURE SCENARIOS AND LEVEL OF ECONOMIC THREAT

.¶ Future attacks could range from isolated bombings perpetrated by relative amateurs to catastrophic WMD attacks planned and executed by experienced al Qaeda operatives. The various possible scenarios vary in likelihood and potenti- al economic consequences—political leaders must weigh both factors when assessing the vulnerability of our econo- mies to the terrorist threat.¶ 3.1. Isolated, conventional, non-catastrophic attacks on infrastructure and civilian “soft targets.”¶ Examples of such attacks include the London and Madrid bombings and the failed train bombings in North-Rhine Westphalia. These plots are difficult to detect and stop, and relatively easy to prepare and execute. Securing all vulnerable “soft targets” and infrastructure would be impossible. Furthermore, such attacks are within the capabilities of relatively unsophisticated groups of “terrorist entrepreneurs” with only minimal outside guidance and expertise. There- fore, periodic attacks on this scale will be a fact of life for the foreseeable future.¶ While such attacks cause great mayhem and fear, and can have significant political impact, their economic impact is limited. There are two notable potential exceptions. A serious incident in the aviation sector – for example, a success- ful surface-to-air missile attack on a commercial jetliner – could deeply reduce customer confidence in post-9/11 security improvements and badly harm the industry. Alter- natively, even a moderately successful attack on a key node in the global petroleum delivery infrastructure (e.g. the Saudi export terminal at Ras Tanura) could, at least tempo- rarily, sharply increase the price of oil.¶ Other examples include the foiled 2000 “Millennium Plot” against Los Angeles Airport, the 1995 “Bojinka” plot to simultaneously explode 12 US airliners over the Pacific, the 2006 plot to bomb up to 12 flights from London to the United States using liquid explosives, and the 1993 attempt to destroy the World Trade Center with a massive under- ground truck bomb.¶ Although spectacular large-scale attacks are difficult to carry out, requiring expertise, detailed planning and sufficient financial resources, they remain central in the imagination of al Qaeda and al Qaeda-inspired groups. The 9/11 attacks reflected bin Laden’s conviction that the US could be brought down with a Hiroshima-type shock of catastrophic propor- tions. The symbolic value of such attacks is also an impor- tant goal of terrorist planners.¶ The potential economic impact of such attacks is great. The massive psychological shock of 9/11 resulted in reduced economic growth and drastically changed business conditions in certain sectors. Nevertheless, even such a massive attack did not succeed in inflicting long-term structural economic damage.

### 2NC No Terror Ipmact

#### No nuclear terrorism – no capability nor intent reject their alarmism

* Many reasons to doubt both the capability and interest of terrorists getting nuclear devices
* Dangers of a loose nuke from Russia is far over-stated
* Even if a terrorist group got a nuclear weapon using it would be very difficult
* Terrorists and connections between rogue states is exaggerates
* Iran and North Korea are not going to give terrorists nukes because their arsenals are small
* What can go wrong will go wrong – multiple intensifying and compounding probability make terrorist failure inevitable
* Their evidence uses worst case scenarios which is alarmist and false
* Insider documents within Al-Qaeda show they don’t want nuclear weapons and prefer convention weapons
* Their evidence about them wanting nukes is wrong the 90s and out of date
* Even if they did want a nuke it was only to deter a U.S. invasion

Gavin 2010, Francis J. Gavin is Tom Slick Professor of International Affairs and Director of the Robert S. Strauss Center¶ for International Security and Law, Lyndon B. Johnson School of Public Affairs, University of Texas at Austin, 2010, International Security, Vol. 34, No. 3 (Winter 2009/10), pp. 7–37¶ © 2010 by the President and Fellows of Harvard College and the Massachusetts Institute of Technology, “Same As It Ever Was ¶ Nuclear Alarmism, Proliferation, and the¶ Cold War”, http://www.mitpressjournals.org/doi/pdf/10.1162/isec.2010.34.3.7

Nuclear Terrorism. The possibility of a terrorist nuclear attack on the¶ United States is widely believed to be a grave, even apocalyptic, threat and a¶ likely possibility, a belief supported by numerous statements by public¶ ofªcials. Since the collapse of the Soviet Union, “the inevitability of the spread¶ of nuclear terrorism” and of a “successful terrorist attack” have been taken for¶ granted.48¶ Coherent policies to reduce the risk of a nonstate actor using nuclear weapons clearly need to be developed. In particular, the rise of the Abdul Qadeer¶ Khan nuclear technology network should give pause.49 But again, the news is¶ not as grim as nuclear alarmists would suggest. Much has already been done¶ to secure the supply of nuclear materials, and relatively simple steps can produce further improvements. Moreover, there are reasons to doubt both the capabilities and even the interest many terrorist groups have in detonating a¶ nuclear device on U.S. soil. As Adam Garªnkle writes, “The threat of nuclear¶ terrorism is very remote.”50¶ Experts disagree on whether nonstate actors have the scientific, engineering,¶ financial, natural resource, security, and logistical capacities to build a nuclear¶ bomb from scratch. According to terrorism expert Robin Frost, the danger of a¶ “nuclear black market” and loose nukes from Russia may be overstated. Even¶ if a terrorist group did acquire a nuclear weapon, delivering and detonating it¶ against a U.S. target would present tremendous technical and logistical¶ difficulties.51 Finally, the feared nexus between terrorists and rogue regimes¶ may be exaggerated. As nuclear proliferation expert Joseph Cirincione argues,¶ states such as Iran and North Korea are “not the most likely sources for terrorists since their stockpiles, if any, are small and exceedingly precious, and hence¶ well-guarded.”52 Chubin states that there “is no reason to believe that Iran today, any more than Sadaam Hussein earlier, would transfer WMD [weapons of¶ mass destruction] technology to terrorist groups like al-Qaida or Hezbollah.”53¶ Even if a terrorist group were to acquire a nuclear device, expert Michael¶ Levi demonstrates that effective planning can prevent catastrophe: for nuclear terrorists, what “can go wrong might go wrong, and when it comes to¶ nuclear terrorism, a broader, integrated defense, just like controls at the source¶ of weapons and materials, can multiply, intensify, and compound the possibilities of terrorist failure, possibly driving terrorist groups to reject nuclear terrorism altogether.” Warning of the danger of a terrorist acquiring a nuclear¶ weapon, most analyses are based on the inaccurate image of an “infallible tenfoot-tall enemy.” This type of alarmism, writes Levi, impedes the development¶ of thoughtful strategies that could deter, prevent, or mitigate a terrorist attack:¶ “Worst-case estimates have their place, but the possible failure-averse, conservative, resource-limited ªve-foot-tall nuclear terrorist, who is subject not only¶ to the laws of physics but also to Murphy’s law of nuclear terrorism, needs to¶ become just as central to our evaluations of strategies.”54¶ A recent study contends that al-Qaida’s interest in acquiring and using nuclear weapons may be overstated. Anne Stenersen, a terrorism expert, claims¶ that “looking at statements and activities at various levels within the al-Qaida network, it becomes clear that the network’s interest in using unconventional¶ means is in fact much lower than commonly thought.”55 She further states that¶ “CBRN [chemical, biological, radiological, and nuclear] weapons do not play a¶ central part in al-Qaida’s strategy.”56 In the 1990s, members of al-Qaida debated whether to obtain a nuclear device. Those in favor sought the weapons¶ primarily to deter a U.S. attack on al-Qaida’s bases in Afghanistan. This assessment reveals an organization at odds with that laid out by nuclear alarmists of¶ terrorists obsessed with using nuclear weapons against the United States regardless of the consequences. Stenersen asserts, “Although there have been¶ various reports stating that al-Qaida attempted to buy nuclear material in the¶ nineties, and possibly recruited skilled scientists, it appears that al-Qaida central have not dedicated a lot of time or effort to developing a high-end CBRN¶ capability.... Al-Qaida central never had a coherent strategy to obtain¶ CBRN: instead, its members were divided on the issue, and there was an¶ awareness that militarily effective weapons were extremely difficult to obtain.”57 Most terrorist groups “assess nuclear terrorism through the lens of¶ their political goals and may judge that it does not advance their interests.”58¶ As Frost has written, “The risk of nuclear terrorism, especially true nuclear terrorism employing bombs powered by nuclear fission, is overstated, and that¶ popular wisdom on the topic is significantly fiawed.”59

### A/C

#### U.S. cred is gone—surveillance scandals

Eades 7/17/13—Mark C. Eades is an American writer and educator currently residing in Shanghai, China. He has taught at both Shanghai International Studies University and Fudan University [July 17, 2013, “Western Governments Lose Credibility as Global Surveillance Scandal Grows,” http://www.atlantic-community.org/-/western-governments-lose-credibility-as-global-surveillance-scandal-grows]

As revelations of secret surveillance programs by Western governments appear almost daily and the drama of American whistleblower Edward Snowden's bid for freedom continues to unfold, the governments of the US and its Western allies are quickly losing credibility globally. In order to regain credibility, the West must come clean about its global surveillance activities, take steps to cease or at least significantly reduce such activities, and end persecution of whistleblowers such as Snowden.

Ongoing reveals from former US National Security Agency (NSA) analyst Edward Snowden implicate the US and other Western governments in spying and surveillance activities that appear to violate the rights of citizens and go far beyond the bounds of national security interests. These revelations, and America's relentless pursuit of Snowden with the acquiescence of European governments, have severely damaged the credibility of Western governments internally and externally.

### AT: Loose Nukes

**Pakistani nukes are safe. They are conscious of the security threat and take appropriate safeguards.**

**Siddiqi, 10** (Shahid R., Axis of Logic Columnist, former Paki Air Force and former Bureau Chief – Pakistan & Gulf Economist, “Critical Analysis Are Pakistan’s Strategic Nuclear Assets Threatened by Terrorists?” 2-22, <http://axisoflogic.com/artman/publish/Article_58619.shtml>)

"This is all overblown rhetoric. Even if the country's leadership were to be incapacitated, Pakistan's protections are so strong that the arsenal could never slip from the hands of the country's National Command Authority”, General Kidwai told David Sangers of New York Times. Pakistan has successfully put its strategic weapons program under formalized institutional control and oversight. National Command Authority effectively controls, manages and monitors strategic organizations, prevents tangible and intangible transfers

or leakage of sensitive technologies and material - measures in line with IAEA safeguards. An over 8000-men strong Security Division secures nuclear assets and materials and guards against malevolent activities. Supported by the strategic forces, it is fully capable of ensuring nuclear security of components even in transit. Prevention of theft of nuclear assets or fissile material Like other nuclear states, Pakistan also faces the security challenge of preventing Non-State Actors and terror groups from gaining access to nuclear assets. Its preventive measures are no less effective than those of others. Commenting on security of nuclear weapons, Congressional Research Service Report (RL-31589) on Nuclear Threat Reduction Measures for India and Pakistan; observes, “Fissile material components (pits) are thought to be kept separately from the rest of the warhead. Such a physical separation helps deter unauthorized use and complicates theft”. Pakistan is believed to have incorporated certain technical safety features into the weapon design which coupled with de-mated status of the weapons, wherein the warhead and the fissile core are stored in separate locations, discourages and denies seizure or theft of an intact nuclear device, guards against accidental or unauthorized launch and prevents diversion of fissile material in the form of weapon components. Pakistan’s nuclear controls also include the functional equivalent to the two-man rule and Permissive Action Links (PALs) that most nuclear states rely on to protect against loss of control, inadvertent weapons use, accidents, and other mishaps. Pakistan’s nuclear material or radioactive sources have remained safe from theft or pilferage nor has there been any attempt by terrorist elements to gain access to weapons or materials. Lamenting the Western attitude Peter Lavoy (National Intelligence for Analysis) states, “Since the 1998 tests, various pronouncements, publications in the Western press, and events in the region have eroded the credibility of Pakistan’s nuclear command and control, overshadowing the efforts that have been made since 1999 to harness a coherent command system to ensure management of its nuclear capabilities….” Guarav Kampani of Center for Nonproliferation Studies says, “Despite such speculative scenario building among policy and security analysts, there is little public evidence to suggest that the safety or the security of Pakistan’s nuclear installations or its nuclear command and control mechanism was ever in jeopardy from internal political instability or Islamists or terrorists forces inside Pakistan or nearby in Afghanistan, either during the American ‘War against Terrorism‘ in Afghanistan or during the 2001-2002 India-Pakistan military standoff. In their analysis of threats from Islamic fundamentalism, Scott Parrish and William C. Potter of the WMD Commission opined, “……. while many states may view Islamic fundamentalism as a significant threat, there appears to be much less agreement on the nature of that threat and its relationship to nuclear terrorism or proliferation”.

#### Multiple safeguards check Pakistani loose nukes

Tepperman, 9/7/2009 (John - journalist based in New York City, Why obama should learn to love the bomb, Newsweek, p.lexis)

As for Pakistan, it has taken numerous precautions to ensure that its own weapons are insulated from the country's chaos, installing **complicated firing mechanisms** to prevent a launch by lone radicals, for example, and instituting special training and screening for its nuclear personnel to ensure they're not infiltrated by extremists. Even if the Pakistani state did **collapse** entirely--the nightmare scenario--the chance of a Taliban bomb would still be **remote**. Desch argues that the idea that terrorists "could use these weapons radically underestimates the difficulty of actually operating a modern nuclear arsenal. These things **need constant maintenance and they're very easy to disable**. So the idea that these things could be stuffed into a gunnysack and smuggled across the Rio Grande is preposterous."

#### Pakistani nukes are secure – separated and scattered

Innocent ‘10 - foreign policy analyst at the Cato Institute (Malou, “Away from McChrystal and Back to the Basics,” Huffington Post, 6/28, http://www.cato.org/pub\_display.php?pub\_id=11934)

Pakistan has an elaborate command and control system in place that complies with strict Western standards, and the country's warheads, detonators, and missiles are not stored fully-assembled, but are scattered and physically separated throughout the country. In short, the danger of militants seizing Pakistan's nuclear weapons in some Rambo-like scenario remains highly unlikely.

#### The Chinese Cultural Revolution proves nukes would be secure

Tepperman, 9/7/2009 (John - journalist based in New York CIty, Why obama should learn to love the bomb, Newsweek, p.lexis)

A much greater threat is that a nuclear North Korea or Pakistan could collapse and lose control of its weapons entirely. Yet here again history offers some comfort. China acquired its first nuke in 1964, just two years before it descended into the mad chaos of the Cultural Revolution, when **virtually every Chinese institution was threatened**--except for its nuclear infrastructure, which **remained secure**. "It was nearly a coup," says Desch, "yet **with all the unrest**, nobody ever thought that there might be an unauthorized nuclear use." The Soviets' weapons were also kept largely safe (with U.S. help) during the breakup of their union in the early '90s. And in recent years Moscow has greatly upped its defense spending (by 20 to 30 percent a year), using some of the cash to modernize and protect its arsenal.

#### Pakistani nukes are secure—parts are kept separate and have tons of protection

Arms Control Today09(“Pakistani Nuclear Stocks Safe, Officials Say.” Peter Crall. Arms Control Association. http://www.armscontrol.org/act/2009\_6/Pakistan)

Pakistani and U.S. officials have sought to allay increasing concerns in recent months that instability in Pakistan might threaten the security of Islamabad's nuclear weapons. Pakistani security forces have been engaged in open conflict with militant factions that now control large areas of the country's northwestern territories. Adm. Michael Mullen, chairman of the U.S. Joint Chiefs of Staff, told reporters May 4, "I remain comfortable that the nuclear weapons in Pakistan are secure." He added, however, that the potential that such weapons could fall into the hands of militants "is a strategic concern we all share." Pakistani officials have rejected outright any such concern. Husain Haqqani, Pakistan's ambassador to the United States, was quoted May 3 in the London Guardian as saying, "The specter of extremist Taliban taking over a nuclear-armed Pakistan is not only a gross exaggeration, it could also lead to misguided policy prescriptions from Pakistan's allies." It is not the first time that Pakistani officials have criticized questions about Islamabad's ability to secure its nuclear arsenal. In January 2008, Pakistan called comments by International Atomic Energy Agency (IAEA) Director-General Mohamed ElBaradei expressing concerns that Pakistani nuclear arms may be acquired by extremists groups "unwarranted and irresponsible." (See ACT, March 2008.) Pakistan has an estimated nuclear arsenal of up to 60 warheads. For security purposes, the nuclear cores of these warheads are stored separately from the conventional explosives package, which initiates the nuclear explosion. The warhead components are also kept separate from the jet fighters and ballistic missiles that would be used to deliver them. Islamabad claims to be developing a nuclear-capable cruise missile as well. Pakistan appears to have instituted an additional level of security to prevent unauthorized use of its nuclear arms. The director-general of Pakistan's Strategic Plans Division, Lt. Gen. Khalid Kidwai, stated during a lecture at the U.S. Naval Postgraduate School in 2006 that Pakistani nuclear weapons incorporate "some functional equivalent to the two-men rule and Permissive Action Links that the [United States] and some other nuclear-weapon states rely on to protect against loss of control." Lt. Gen. Michael Maples, director of the Defense Intelligence Agency, told the Senate Armed Services Committee March 10, "Pakistan has taken important steps to safeguard its nuclear weapons, although vulnerabilities still exist."

#### No chance extremists ever get the weapons, regardless of Pakistan’s political future

Qadir 08 (1/12, Shaukat, Retired Brig General and former VP and Founder of the Islamabad Policy Research Institute, Daily Times, “VIEW: Are our nukes safe?”, http://www.dailytimes.com.pk/default.asp?page=2008%5C01%5C12%5Cstory\_12-1-2008\_pg3\_4)

While there is considerable cause for concern regarding Pakistan’s insecure political future, increasing poverty, lack of public utilities — especially power, religious extremism and growing insurgencies, there is absolutely no cause for concern regarding the safety of Pakistan’s nuclear arsenal The safety of Pakistan’s nukes has been questioned consistently in the international media and policy circles. It has become a hot topic again in the United States; presidential hopeful Hillary Clinton has expressed her concern by stating that a joint US-UK effort should be made to ensure the safety of Pakistan’s nuclear arsenal. The suggestion that only relatively ill-informed analysts raise this question is, perhaps, an accurate one. However, it does not logically answer the question itself, nor does it address the reason why this question arises with such regularity. Let us address the second question first. After all, there are religious extremists across the border in India who have demonstrated their willingness to ethnically cleanse India of Muslims; there are Jewish fundamentalists who would like nothing better than to exterminate the Palestinians and the Lebanese; and the neo-cons in the US who have proposed bombing the Muslims back to the Stone Age. And yet the only country considered genuinely vulnerable to such an eventuality is Pakistan. Why? Part of the problem certainly has to do with ‘image’. Over the years, Pakistan has become synonymous with religious extremism, considered the hub of terrorist activity and, while it is recognized as a victim, it is also viewed as a part of the problem. Also crucial is the issue of proliferation, which has only further tarnished Pakistan’s image, even though it has no bearing on the safety of the nuclear arsenal. However, neither of these reasons, individually or together, would suffice as an explanation for the current international concern. Over the last few years, in his desire to establish his indispensability, President Musharraf has, very subtly, been building the impression that he alone stands between the religious extremists and Pakistan’s nuclear arsenal. The international community appears to have bought this frivolous and unreasonable argument and, therefore, now that Musharraf is politically insecure, the question has again arisen whether Pakistan’s nuclear arsenal is in safe hands. Apparently, Senator Lieberman has been convinced of the nukes’ safety and has promised to carry that message back to the US. However, it is difficult to explain Musharraf’s hypocritical irritation that the issue has arisen. It is time for a dispassionate view on the safety of Pakistan’s nuclear weapons. Let us attempt to reason with the possibility of our nuclear arsenal slipping into unsafe hands. Of course, the actual safeguards in place are not being considered here. There are three levels to this question. First, is it possible for religious extremists to politically win the majority and assume control of the nuclear arsenal by virtue of being the government? While Pakistanis are aware of the impossibility of such an eventuality, many foreigners are not. Our religious political parties have gone to great lengths to establish that they have neither connections, nor sympathy for the extremists; so much so that when the Lal Masjid was re-opened for Friday prayers to the public, representatives of the religious political parties were literally booted out of the mosque and, if that does not suffice, Maulana Fazlur Rahman, leader of the largest religious political party of Pakistan, has been threatened with a suicide bombing attack. What is more, it is highly unlikely that the Maulana’s party will win as many seats in the national assembly as it did in the last elections. The Pakistani people have rejected the rule of the cleric, even while yearning for Sharia. Second, can the nukes be stolen or not? The answer is that Pakistan’s nuclear weapons are as vulnerable to theft as those of any other country. If our security measures, which are fairly sophisticated, are not at the same level as those of some other country, our thieves are also less sophisticated than the thieves of that country. It is common in movies for thieves to penetrate the most sophisticated security systems on the planet and run off with treasures, or even nuclear weapons. Admittedly, they are just movies, but they do show that it can be done. If despite that the US guarantees that its weapons are safe, then Pakistan can also offer as questionable a guarantee. Third, can rogue elements in Pakistan sympathetic to religious extremists steal fissile material that can be used by a Pakistani scientist to produce a suitcase bomb? The answer to this question is yes, just like it can happen anywhere else. However, why go through so much trouble to steal fissile material when it is available in the markets of Central Asia, from where the US is desperately trying to buy it out before it falls into the wrong hands. And why employ a Pakistani scientist who may insist on being paid millions for his services when Russian scientists are available for $60 to $100 dollars a month? Finally, it is a well known fact that since the death of Zulfikar Ali Bhutto, the nuclear programme and the arsenal have been under the control of the army, even though the Strategic Plans Division (SPD) ostensibly functions under the JSHQ, and the National Command Authority apparently functions under the prime minister. Why should General Ashfaq Pervez Kayani be considered less competent than Musharraf in ensuring the safety of these weapons? Or why should the institution of the army suddenly be considered less competent in ensuring their safety, just because Musharraf is not COAS anymore? While there is considerable cause for concern regarding Pakistan’s insecure political future, increasing poverty, lack of public utilities — especially power, religious extremism and growing insurgencies, there is absolutely no cause for concern regarding the safety of Pakistan’s nuclear arsenal.

### AT: German Coop

#### Enhancing US-German cooperation is critical to greater German involvement in Afghanistan reconstruction.

Miko 4 Francis T. Miko, Specialist in International Relations, Foreign Affairs, Defense, and Trade Division, CRS Report for Congress, Received through the CRS Web, Order Code RL32710, 12-27

This could mean, for instance, that Germany might be better positioned to take on a greater role in long-term reconstruction efforts in countries like Afghanistan. Some argue that with a better understanding of the potential complementary roles the two countries can play based on the strengths and advantages of each, new opportunities for enhanced cooperation in the global war on terrorism might be found. The final report of the U.S. 9/11 Commission suggests that long-term success in the war against terrorism demands the use of all elements of national power, including “soft power” instruments such as diplomacy, intelligence, and foreign aid. A key question is to what degree differences are likely to hamper U.S.-German cooperation against terrorism. It could be argued that U.S. and German security in the near and mid-term are likely to be affected far more by what Germany does to cooperate with the United States in terms of domestic security and bilaterally than by Germany’s stance on other international issues.

# Round 3 v. Kansas BC

## 1NC

### 1NC

#### Legitimacy is a weapon for the national-security apparatus. Legal restrictions enable the U.S. to wage more precisely regulated and brutal forms of war. Causes colonial violence and turns the case

Francisco J. CONTRERAS Prf. Philosophy of Law @ Seville AND Ignacio de la RASILLA Ph.D. candidate in international law, Graduate Institute of International Studies, Geneva, 8 [“On War as Law and Law as War” Leiden Journal of International Law Vol. 21 Issue 3 p. 770-773]

Kennedy begins by coldly contradicting those opponents of the Bush administration ‘that have routinely claimed that the United States has disregarded these rules’ (p. 40) by pointing out that both opponents and supporters of the Iraq war as well as both opponents and supporters of the great panoply of US legal measures related to the war on terror ‘were playing with the same deck’ (p. 40) in presenting ‘professional arguments about how recognised rules and standards, as well as recognised exceptions and jurisdictional limitations, should be interpreted’ (p. 40). The author’s only concession with reference to the Bush administration’s legal advisers is to point out that ‘as professionals, these lawyers failed to advise their client adequately about the consequences of the interpretations they proposed, and about the way others would read the same texts – and their memoranda’ (p. 39).Thus Kennedy does not adopt any legal position to the detriment of any other, as his assessment does not seemingly pretend to persuade his reader at the level of the world of legal validity presented in the vocabulary of the UN Charter. The extent to which that excludes the author from the category of being a ‘true jus-internationalist’, according to A. Canc¸ado Trindade’s understanding of those who actually ‘comply with the ineluctable duty to stand against the apology of the use of force which is manifested in our days through distinct “doctrinal” elaborations’,42 is not for us to judge. Suffice it to note that the starting point of Kennedy’s convoluted perspective on the matter is that ‘the law of force’ is a form of ‘vocabulary for assessing the legitimacy’ (p. 41) of a form of conduct (e.g. amilitary campaign) or ‘for defending as well as attacking the “legality”’ (p. 41) of an act (e.g. distinguishing legitimate from illegitimate targets) in which the same law of force becomes a two-edged sword, everybody’s and no one’s strategic partner in a contemporary world where ‘legitimacy has become the currency of power’ (p. 45). For the author, in today’s age of ‘lawfare’ (p. 12), ‘to resist war in the name of law . . . is to misunderstand the delicate partnership of war and law’ (p. 167). In Kennedy’s view, therefore, ‘there is little comfort in knowing that law has become the vernacular for evaluating the legitimacy of war and politics where it has done so by itself becoming a strategic instrument of war and the continuation of politics by similar means’ (p. 132). 3. LAW AS A MODERN LEGAL INSTITUTION Of War and Law seems, indeed, to be animated by a certain philosophical perplexity regarding the ambiguous relation between the apparently antithetical nature of the terms appearing in its title. Since antiquity both jurists and philosophers have taught that the law’s raison d’eˆ tre is that of making social peace possible, of overcoming what would later be commonly known as the Hobbesian state of nature: bellum omnium contra omnes. Kant noted that law should be perceived first and foremost as a pacifying tool – in other words, ‘the establishment of peace constitutes, not a part of, but the whole purpose of the doctrine of law’43 – and Lauterpacht projected that same principle onto the international sphere: ‘the primordial duty’ of international law is to ensure that ‘there shall be no violence among states’.44 The paradox lies, of course, in that law performs its pacifying function not by means of edifying advice, but by the threat of the use of force. In this sense, as Kennedy points out, ‘to use law is also to invoke violence, at least the violence that stands behind legal authority’ (p. 22). Hobbes himself never concealed the fact that the state, ‘that mortal god, to which we owe under the immortal God our peace and defence’,would succeed in eradicating inter-individual violence precisely due to its ability to ‘inspire terror’;45 but Weber – ‘the State is a human community that (successfully) claims the monopoly of the legitimate use of physical force within a given territory’46 – Godwin,47 and Kelsen48 have also provided support for the same proposition. This ambivalent and paradoxical relationship between law and violence,which is obvious in the domestic or intra-state realm, becomes even more obvious in the interstate domain with its classical twin antinomy of ubi jus, ibi pax and inter arma leges silent until the law in war emerges as a bold normative sector which dares to defy this conceptual incompatibility; even war can be regulated, be submitted to conditions and limitations. The hesitations of Kant in addressing jus in bello49 or the very fact that the Latin terms jus ad bellum and jus in bello were coined, as R. Kolb has pointed out,50 at relatively recent dates, seem to confirm that this has never been per se an evident aspiration.51 Kennedy explains his own calling as international lawyer as being partly inspired by his will to participate in the law’s civilizing mission (p. 29)52 as something utterly distinct from war: We think of these rules [law in war] as coming from ‘outside’ war, limiting and restricting the military. We think of international law as a broadly humanist and civilizing force, standing back from war, judging it as just or unjust, while offering itself as a code of conduct to limit violence on the battlefield. (p. 167) The author notes how this virginal confidence in the pacifying efficiency of international law – its presumed ability to forbid, limit, humanize war ‘from outside’ – becomes progressively nuanced, eroded, almost discredited by a series of considerations. The disquieting image of the ‘delicate partnership of war and law’ becomes more and more evidenced; the lawyer who attempts to regulate warfare inevitably also becomes its accomplice. As Kennedy puts it, The laws of force provide the vocabulary not only for restraining the violence and incidence of war – but also for waging war and deciding to go to war. . . . [L]aw no longer stands outside violence, silent or prohibitive. Law also permits injury, as it privileges, channels, structures, legitimates, and facilitates acts of war. (p. 167) Unable to suppress all violence, law typifies certain forms of violence as legally admissible, thus ‘privileging’ them with regard to others and investing some agents with a ‘privilege to kill’ (p. 115). Law thereby becomes, in Kennedy’s view, a tool not so much for the restriction of war as for the legal construction of war.53 Elsewhere we have labeled Kennedy ‘a relative outsider’54 who, peering from the edge of the vocabulary of international law, tries to ‘highlight its inherent structural limits, gaps, dogmas, blind spots and biases’, as someone ‘specialised in speaking the unspeakable, disclosing ambivalences and asking awkward questions’.55 The ‘unspeakable’, in the case of the ‘law of force’, is precisely, in Kennedy’s view, this process of involuntary complicity with the very phenomenon one supposedly wants to prohibit. Prepared to ‘stain his hands’ a` la Sartre, in his attempt to humanize the military machine from within, to walk one step behind the soldier reminding him constantly, as an imaginary CNN camera, of the legal limits of the legitimate use of force, the lawyer starts to realize, in the author’s view, that he is becoming but an accessory to the war machine. Kennedy maintains that law, in its attempt to subject war to its rule, has been absorbed by it and has now become but another war instrument (p. 32);56 law has been weaponized (p. 37).57 Contemporary war is by definition a legally organized war: ‘no ship moves, no weapon is fired, no target selected without some review for compliance with regulation – not because the military has gone soft, but because there is simply no other way to make modern warfare work. Warfare has become rule and regulation’ (p. 33).War ‘has become a modern legal institution’ (p. 5), with the result that the international lawyer finds himself before an evident instance of Marxian reification, in other words ‘the consolidation of our own products as a material power erected above us beyond our control that raises a wall in front of our expectations and destroys our calculations’.58 Ideas and institutions develop ‘a life of their own’, an autonomous, perverted dynamism.

#### Thus the alternative is a challenge to conceptual framework of national security.

#### Only our alternative displaces the source of executive overreach. Legal restraint without conceptual change is futile.

Aziz RANA Law at Cornell 11 [“Who Decides on Security?” Cornell Law Faculty Working Papers, Paper 87, http://scholarship.law.cornell.edu/clsops\_papers/87 p. 45-51]

The prevalence of these continuities between Frankfurter’s vision and contemporary judicial arguments raise serious concerns with today’s conceptual framework. Certainly, Frankfurter’s role during World War II in defending and promoting a number of infamous judicial decisions highlights the potential abuses embedded in a legal discourse premised on the specially-situated knowledge of executive officials and military personnel. As the example of Japanese internment dramatizes, too strong an assumption of expert understanding can easily allow elite prejudices—and with it state violence—to run rampant and unconstrained. For the present, it hints at an obvious question: How skeptical should we be of current assertions of expertise and, indeed, of the dominant security framework itself? One claim, repeated especially in the wake of September 11, has been that regardless of normative legitimacy, the prevailing security concept—with its account of unique knowledge, insulation, and hierarchy—is simply an unavoidable consequence of existing global dangers. Even if Herring and Frankfurter may have been wrong in principle about their answer to the question “who decides in matters of security?” they nevertheless were right to believe that complexity and endemic threat make it impossible to defend the old Lockean sensibility. In the final pages of the article, I explore this basic question of the degree to which objective conditions justify the conceptual shifts and offer some initial reflections on what might be required to limit the government’s expansive security powers. VI. CONCLUSION: THE OPENNESS OF THREATS The ideological transformation in the meaning of security has helped to generate a massive and largely secret infrastructure of overlapping executive agencies, all tasked with gathering information and keeping the country safe from perceived threats. In 2010, The Washington Post produced a series of articles outlining the buildings, personnel, and companies that make up this hidden national security apparatus. According to journalists Dana Priest and William Arkin, there exist “some 1271 government organizations and 1931 private companies” across 10,000 locations in the United States, all working on “counterterrorism, homeland security, and intelligence.”180 This apparatus is especially concentrated in the Washington, D.C. area, which amounts to “the capital of an alternative geography of the United States.”181 Employed by these hidden agencies and bureaucratic entities are some 854,000 people (approximately 1.5 times as many people as live in Washington itself) who hold topsecret clearances.182 As Priest and Arkin make clear, the most elite of those with such clearance are highly trained experts, ranging from scientists and economists to regional specialists. “To do what it does, the NSA relies on the largest number of mathematicians in the world. It needs linguists and technology experts, as well as cryptologists, known as ‘crippies.’”183 These professionals cluster together in neighborhoods that are among the wealthiest in the country—six of the ten richest counties in the United States according to Census Bureau data.184 As the executive of Howard County, Virginia, one such community, declared, “These are some of the most brilliant people in the world. . . . They demand good schools and a high quality of life.”185 School excellence is particularly important, as education holds the key to sustaining elevated professional and financial status across generations. In fact, some schools are even “adopting a curriculum . . . that will teach students as young as 10 what kind of lifestyle it takes to get a security clearance and what kind of behavior would disqualify them.”186 The implicit aim of this curriculum is to ensure that the children of NSA mathematicians and Defense Department linguists can one day succeed their parents on the job. In effect, what Priest and Arkin detail is a striking illustration of how security has transformed from a matter of ordinary judgment into one of elite skill. They also underscore how this transformation is bound to a related set of developments regarding social privilege and status—developments that would have been welcome to Frankfurter but deeply disillusioning to Brownson, Lincoln, and Taney. Such changes highlight how one’s professional standing increasingly drives who has a right to make key institutional choices. Lost in the process, however, is the longstanding belief that issues of war and peace are fundamentally a domain of common care, marked by democratic intelligence and shared responsibility. Despite such democratic concerns, a large part of what makes today’s dominant security concept so compelling are two purportedly objective sociological claims about the nature of modern threat. As these claims undergird the current security concept, by way of a conclusion I would like to assess them more directly and, in the process, indicate what they suggest about the prospects for any future reform. The first claim is that global interdependence means that the U.S. faces near continuous threats from abroad. Just as Pearl Harbor presented a physical attack on the homeland justifying a revised framework, the American position in the world since has been one of permanent insecurity in the face of new, equally objective dangers. Although today these threats no longer come from menacing totalitarian regimes like Nazi Germany or the Soviet Union, they nonetheless create of world of chaos and instability in which American domestic peace is imperiled by decentralized terrorists and aggressive rogue states.187 Second, and relatedly, the objective complexity of modern threats makes it impossible for ordinary citizens to comprehend fully the causes and likely consequences of existing dangers. Thus, the best response is the further entrenchment of Herring’s national security state, with the U.S. permanently mobilized militarily to gather intelligence and to combat enemies wherever they strike—at home or abroad. Accordingly, modern legal and political institutions that privilege executive authority and insulated decisionmaking are simply the necessary consequence of these externally generated crises. Regardless of these trade-offs, the security benefits of an empowered presidency (one armed with countless secret and public agencies as well as with a truly global military footprint)188 greatly outweigh the costs. Yet, although these sociological views have become commonplace, the conclusions that Americans should draw about security requirements are not nearly as clear cut as the conventional wisdom assumes. In particular, a closer examination of contemporary arguments about endemic danger suggests that such claims are not objective empirical judgments but rather are socially complex and politically infused interpretations. Indeed, the openness of existing circumstances to multiple interpretations of threat implies that the presumptive need for secrecy and centralization is not self-evident. And as underscored by high profile failures in expert assessment, claims to security expertise are themselves riddled with ideological presuppositions and subjective biases. All this indicates that the gulf between elite knowledge and lay incomprehension in matters of security may be far less extensive than is ordinarily thought. It also means that the question of who decides—and with it the issue of how democratic or insular our institutions should be—remains open as well. Clearly technological changes, from airpower to biological and chemical weapons, have shifted the nature of America’s position in the world and its potential vulnerability. As has been widely remarked for nearly a century, the oceans alone cannot guarantee our permanent safety. Yet, in truth they never fully ensured domestic tranquility. The nineteenth century was one of near continuous violence, especially with indigenous communities fighting to protect their territory from expansionist settlers.189 But even if technological shifts make doomsday scenarios more chilling than those faced by Hamilton, Jefferson, or Taney, the mere existence of these scenarios tells us little about their likelihood or how best to address them. Indeed, these latter security judgments are inevitably permeated with subjective political assessments, assessments that carry with them preexisting ideological points of view—such as regarding how much risk constitutional societies should accept or how interventionist states should be in foreign policy. In fact, from its emergence in the 1930s and 1940s, supporters of the modern security concept have—at times unwittingly—reaffirmed the political rather than purely objective nature of interpreting external threats. In particular, commentators have repeatedly noted the link between the idea of insecurity and America’s post-World War II position of global primacy, one which today has only expanded following the Cold War. In 1961, none other than Senator James William Fulbright declared, in terms reminiscent of Herring and Frankfurter, that security imperatives meant that “our basic constitutional machinery, admirably suited to the needs of a remote agrarian republic in the 18th century,” was no longer “adequate” for the “20th- century nation.”190 For Fulbright, the driving impetus behind the need to jettison antiquated constitutional practices was the importance of sustaining the country’s “preeminen[ce] in political and military power.”191 Fulbright held that greater executive action and war-making capacities were essential precisely because the United States found itself “burdened with all the enormous responsibilities that accompany such power.”192 According to Fulbright, the United States had both a right and a duty to suppress those forms of chaos and disorder that existed at the edges of American authority. Thus, rather than being purely objective, the American condition of permanent danger was itself deeply tied to political calculations about the importance of global primacy. What generated the condition of continual crisis was not only technological change, but also the belief that the United States’ own ‘national security’ rested on the successful projection of power into the internal affairs of foreign states. The key point is that regardless of whether one agrees with such an underlying project, the value of this project is ultimately an open political question. This suggests that whether distant crises should be viewed as generating insecurity at home is similarly as much an interpretative judgment as an empirically verifiable conclusion.193 To appreciate the open nature of security determinations, one need only look at the presentation of terrorism as a principal and overriding danger facing the country. According to the State Department’s Annual Country Reports on Terrorism, in 2009 “[t]here were just 25 U.S. noncombatant fatalities from terrorism worldwide” (sixteen abroad and nine at home).194 While the fear of a terrorist attack is a legitimate concern, these numbers—which have been consistent in recent years—place the gravity of the threat in perspective. Rather than a condition of endemic danger—requiring everincreasing secrecy and centralization—such facts are perfectly consistent with a reading that Americans do not face an existential crisis (one presumably comparable to Pearl Harbor) and actually enjoy relative security. Indeed, the disconnect between numbers and resources expended, especially in a time of profound economic insecurity, highlights the political choice of policymakers and citizens to persist in interpreting foreign events through a World War II and early Cold War lens of permanent threat. In fact, the continuous alteration of basic constitutional values to fit ‘national security’ aims highlights just how entrenched Herring’s old vision of security as pre-political and foundational has become, regardless of whether other interpretations of the present moment may be equally compelling. It also underscores a telling and often ignored point about the nature of modern security expertise, particularly as reproduced by the United States’ massive intelligence infrastructure. To the extent that political assumptions—like the centrality of global primacy or the view that instability abroad necessarily implicates security at home—shape the interpretative approach of executive officials, what passes as objective security expertise is itself intertwined with contested claims about how to view external actors and their motivations. This means that while modern conditions may well be complex, the conclusions of the presumed experts may not be systematically less liable to subjective bias than judgments made by ordinary citizens based on publicly available information. It further underscores that the question of who decides cannot be foreclosed in advance by simply asserting deference to elite knowledge. If anything, one can argue that the presumptive gulf between elite awareness and suspect mass opinion has generated its own very dramatic political and legal pathologies. In recent years, the country has witnessed a variety of security crises built on the basic failure of ‘expertise.’195 At present, part of what obscures this fact is the very culture of secret information sustained by the modern security concept. Today, it is commonplace for government officials to leak security material about terrorism or external threat to newspapers as a method of shaping the public debate.196 These ‘open’ secrets allow greater public access to elite information and embody a central and routine instrument for incorporating mass voice into state decision-making. But this mode of popular involvement comes at a key cost. Secret information is generally treated as worthy of a higher status than information already present in the public realm—the shared collective information through which ordinary citizens reach conclusions about emergency and defense. Yet, oftentimes, as with the lead up to the Iraq War in 2003, although the actual content of this secret information is flawed,197 its status as secret masks these problems and allows policymakers to cloak their positions in added authority. This reality highlights the importance of approaching security information with far greater collective skepticism; it also means that security judgments may be more ‘Hobbesian’—marked fundamentally by epistemological uncertainty as opposed to verifiable fact—than policymakers admit. If both objective sociological claims at the center of the modern security concept are themselves profoundly contested, what does this mean for reform efforts that seek to recalibrate the relationship between liberty and security? Above all, it indicates that the central problem with the procedural solutions offered by constitutional scholars—emphasizing new statutory frameworks or greater judicial assertiveness—is that they mistake a question of politics for one of law. In other words, such scholars ignore the extent to which governing practices are the product of background political judgments about threat, democratic knowledge, professional expertise, and the necessity for insulated decision-making. To the extent that Americans are convinced that they face continuous danger from hidden and potentially limitless assailants—danger too complex for the average citizen to comprehend independently—it is inevitable that institutions (regardless of legal reform initiatives) will operate to centralize power in those hands presumed to enjoy military and security expertise. Thus, any systematic effort to challenge the current framing of the relationship between security and liberty must begin by challenging the underlying assumptions about knowledge and security upon which legal and political arrangements rest. Without a sustained and public debate about the validity of security expertise, its supporting institutions, and the broader legitimacy of secret information, there can be no substantive shift in our constitutional politics. The problem at present, however, is that no popular base exists to raise these questions. Unless such a base emerges, we can expect our prevailing security arrangements to become ever more entrenched.

### 1NC

#### Statutory Restrictions include one of 5 things—they aren’t those

KAISER 80—the Official Specialist in American National Government, Congressional Research Service, the Library of Congress [Congressional Action to Overturn Agency Rules: Alternatives to the Legislative Veto; Kaiser, Frederick M., 32 Admin. L. Rev. 667 (1980)]

In addition to direct statutory overrides, there are a variety of statutory and nonstatutory techniques that have the effect of overturning rules, that prevent their enforcement, or that seriously impede or even preempt the promulgation of projected rules. For instance, a statute may alter the jurisdiction of a regulatory agency or extend the exemptions to its authority, thereby affecting existing or anticipated rules. Legislation that affects an agency's funding may be used to prevent enforcement of particular rules or to revoke funding discretion for rulemaking activity or both. Still other actions, less direct but potentially significant, are mandating agency consultation with other federal or state authorities and requiring prior congressional review of proposed rules (separate from the legislative veto sanctions). These last two provisions may change or even halt proposed rules by interjecting novel procedural requirements along with different perspectives and influences into the process.

It is also valuable to examine nonstatutory controls available to the Congress:

1. legislative, oversight, investigative, and confirmation hearings;

2. establishment of select committees and specialized subcommittees to oversee agency rulemaking and enforcement;

3. directives in committee reports, especially those accompanying legislation, authorizations, and appropriations, regarding rules or their implementation;

4. House and Senate floor statements critical of proposed, projected, or ongoing administrative action; and

5. direct contact between a congressional office and the agency or office in question.

Such mechanisms are all indirect influences; unlike statutory provisions, they are neither self-enforcing nor legally binding by themselves. Nonetheless, nonstatutory devices are more readily available and more easily effectuated than controls imposed by statute. And some observers have attributed substantial influence to nonstatutory controls in regulatory as well as other matters.3

It is impossible, in a limited space, to provide a comprehensive and exhaustive listing of congressional actions that override, have the effect of overturning, or prevent the promulgation of administrative rules. Consequently, this report concentrates upon the more direct statutory devices, although it also encompasses committee reports accompanying bills, the one nonstatutory instrument that is frequently most authoritatively connected with the final legislative product. The statutory mechanisms surveyed here cross a wide spectrum of possible congressional action:

1. single-purpose provisions to overturn or preempt a specific rule;

2. alterations in program authority that remove jurisdiction from an agency;

3. agency authorization and appropriation limitations;

4. inter-agency consultation requirements; and

5. congressional prior notification provisions.

#### AND—The Aff isn’t topical—relying on treaties to create restrictions aren’t statutory or judicial

YOO 2—Professor of Law, School of Law, University of California, Berkeley [John C. Yoo, RESPONSE ESSAY: Rejoinder: Treaty Interpretation and the False Sirens of Delegation, California Law Review, July, 2002, 90 Calif. L. Rev. 1305]

Professor Van Alstine's argument, however, turns on the assumption that Congress also enjoys equally sweeping power to delegate rulemaking power to the federal judiciary. He claims that if Congress can delegate such power to the judiciary by statute, then the treatymakers must similarly be able to delegate it by treaty. n174 However, the underlying assumption is flawed. Delegation of rulemaking power by Congress to the judiciary differs from delegation to the executive in several crucial respects. First, unlike the executive branch, the judiciary cannot claim to be democratically accountable. n175 Second, the judiciary does not possess technocratic expertise in specific regulatory areas, at least not in the way contemplated by Chevron v. NRDC. n176 Since Congress's delegation power is not what Professor Van Alstine presumes it to be, the analogy between Congress and the treatymakers fails.

Regardless of whether such broad statutory delegation to the judiciary is constitutionally appropriate, Professor Van Alstine makes a fundamental error when he equates delegations by statute to delegations by treaty. As its placement in Article II suggests, and as I have argued above, the treaty power is an executive power and was widely understood as such during the Framing period. n177 Professor Van Alstine cannot demonstrate that an executive power has ever been delegated outside the executive branch. Perhaps the closest he could come would be Morrison v. Olson, n178 in which the Court upheld the exercise of prosecutorial power by an independent counsel who could be removed only for cause. Yet, even in that case, the Court emphasized that the independent counsel continued to be an executive-branch official responsible to the Attorney General and the President. n179 As far as I know, there is no example where any branch has successfully delegated part of the executive power to another branch of government and, certainly, no example where such power was delegated to the judicial branch. Delegations, when they occur, run in only one direction, from Congress to either the executive branch or, in limited circumstances, to the courts.

#### Vote neg for Predictable Limits—allowing treaties creates new topics in a new literature base—destroying preparedness.

### 1NC

#### The United States Executive Branch should apply the “Charming Betsy” Canon in the area of indefinite detention to repudiate Al-Bihani v. Obama.

#### The United States Congress should apply the “Charming Betsy” Canon, specifically in opposition to Al-Bihani v. Obama and in favor of climate change treaties.

#### We’ll clarify.

#### Court ILAW rulings cause massive Congressional backlash that turns the case

Eric Posner 8, professor at the University of Chicago Law School, Medellin and America's Ability To Comply With International Law, www.slate.com/content/slate/blogs/convictions/2008/03/25/medellin\_and\_america\_s\_ability\_to\_comply\_with\_international\_law.html

There is an academic theory that holds that the type of litigation (sometimes called "transnational legal process") exemplified by the Medellin case would eventually bring the United States into greater and greater compliance with international law. But with the benefit of hindsight, we see that the opposite has been the case. The U.S. government reacted to this litigation by withdrawing from the protocol that gave the ICJ jurisdiction over these cases, and the U.S. Supreme Court has reacted to this litigation by weakening the domestic effect of treaties, expressing discomfort with international adjudication and making clear that the president lacks the power to compel the states to comply with treaties. The United States will violate or withdraw from international law when its national government wants to, and sometimes it will do so even when its national government does not want to.

#### Turns treaty cred

J. Harvie Wilkinson 4, Circuit Judge for the 4th Circuit, DEBATE: THE USE OF INTERNATIONAL LAW IN JUDICIAL DECISIONS, 27 Harv. J.L. & Pub. Pol'y 423

So of course international law should play a part in American judicial reasoning. It would be odd if it did not. In some areas, foreign and international law is made relevant by our Constitution, by statute or treaty, by the well-developed principles of common law, by overwhelming considerations of comity, or simply by private commercial agreement of the parties. But when judges, on their own motion and without any direction by Congress or the Constitution decide to make such precedents relevant, we are dealing with an entirely different question.

So judges must not wade, **sua sponte**, into international law's deep blue sea. Rather, we ought to ask: How does American law make foreign or international standards relevant? Why should we ask this threshold question? Because it is important that the United States speak with one, not multiple, voices in foreign affairs. The Constitution is explicit on this: Article I, Section 10 says that "no State shall enter into any Treaty [or] Alliance" with a foreign power. 9 The Constitution leaves the conduct of foreign and military affairs largely to the political branches -- not the courts. The diplomatic credibility of the United States would plummet if the actions and pronouncements of the executive and legislative branches in foreign and military matters were later repudiated and contradicted by judicial decree.

Where courts go too far, in my view, is where they rely upon international (and mostly European) precedents when resolving important and contentious social issues. This "internationalization" of the Constitution on domestic social issues raises three types of problems.

#### And causes a Congressional backlash against international law—turns all their ilaw good impacts

**Kuhner, 03** (Timothy, 13 Duke J. Comp. & Int'l L. 419, “HUMAN RIGHTS TREATIES IN U.S. LAW: THE STATUS QUO, ITS UNDERLYING BASES, AND PATHWAYS FOR CHANGE”, Spring, lexis)

The basic spectrum of possible approaches to reservations contrary to the object and purpose of the treaty could thus be summarized as follows: (1) the "gotcha" approach, whereby invalid reservations are stripped and the state is held to the treaty's full terms; [n232](http://www.lexisnexis.com.proxy.library.emory.edu/us/lnacademic/frame.do?reloadEntirePage=true&rand=1260182161131&returnToKey=20_T8088606336&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.665351.4165724592#n232) (2) the "one-size fits all" approach, whereby each treaty would be accompanied by a "guide to reservations practice" stipulating acceptable reservations practice; [n233](http://www.lexisnexis.com.proxy.library.emory.edu/us/lnacademic/frame.do?reloadEntirePage=true&rand=1260182161131&returnToKey=20_T8088606336&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.665351.4165724592#n233) (3) the "custom tailoring" approach, whereby reservations objected to by States Parties are respected and the relevant articles simply cease to operate vis-a-vis the reserving and objecting states; [n234](http://www.lexisnexis.com.proxy.library.emory.edu/us/lnacademic/frame.do?reloadEntirePage=true&rand=1260182161131&returnToKey=20_T8088606336&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.665351.4165724592#n234) and (4) the "boot" approach, whereby a party's membership in a treaty is revoked.

The "gotcha" approach contradicts the principles of treaty law as understood by the United States. The Supreme Court in Foster and Percheman, affirmed that the mutual intent of the parties determines whether a given provision of a treaty is self-executing. [n235](http://www.lexisnexis.com.proxy.library.emory.edu/us/lnacademic/frame.do?reloadEntirePage=true&rand=1260182161131&returnToKey=20_T8088606336&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.665351.4165724592#n235) Similarly, such an approach is at odds with one of the two most basic principles of treaty law - consent to be bound. [n236](http://www.lexisnexis.com.proxy.library.emory.edu/us/lnacademic/frame.do?reloadEntirePage=true&rand=1260182161131&returnToKey=20_T8088606336&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.665351.4165724592#n236) If clearly expressed, the negotiated conditions that define the voluntary obligations a country assumes, are understood to be a precondition to the continued existence of said obligations. Since the U.S.' intent is clearly expressed and on the record (a precondition to ratification), a reviewing court would not have to examine the treaty's text. Other states could not have intended the treaty to be self-executing as it applies to the United States if they were apprised of the clear impossibility of the  [\*467]  same. [n237](http://www.lexisnexis.com.proxy.library.emory.edu/us/lnacademic/frame.do?reloadEntirePage=true&rand=1260182161131&returnToKey=20_T8088606336&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.665351.4165724592#n237)

Advocates of the "gotcha" approach must bear in mind the unintended consequences of enforcing upon a state obligations to which it did not consent, or could not reasonably be construed as having consented. For example, the United States might cease to advocate for human rights treaties and fail to join future treaties. This latter implication, however, seems increasingly irrelevant as U.S. "exceptionalism" grows. [238](http://web.lexis-nexis.com.proxy.library.emory.edu/universe/document?_m=b8a4ff650f79f44145818652834d27b2&_docnum=1&wchp=dGLbVlz-zSkVA&_md5=b36c2660517a24251b72c7e94cd573ed#n238) Nevertheless, even strong human rights proponents, such as Professor Louis Henkin, maintain that in a multilateral treaty, a reservation or understanding embodies the intent of the party and this intent is used to interpret what obligations that party undertook. [239](http://web.lexis-nexis.com.proxy.library.emory.edu/universe/document?_m=b8a4ff650f79f44145818652834d27b2&_docnum=1&wchp=dGLbVlz-zSkVA&_md5=b36c2660517a24251b72c7e94cd573ed#n239)

The "gotcha" approach seeks to steamroll over the disjuncture between the Senate power as understood by the Senate and, presumably, the Supreme Court, and the official interpretation of applicable rights and duties under international law. The approach is only useful, insofar as its execution constitutes judicial notice of a problem in need of resolution and reminds the political branches that the Constitution  [\*468]  makes international law "our law." [240](http://web.lexis-nexis.com.proxy.library.emory.edu/universe/document?_m=b8a4ff650f79f44145818652834d27b2&_docnum=1&wchp=dGLbVlz-zSkVA&_md5=b36c2660517a24251b72c7e94cd573ed#n240)

### 1NC

#### Independent judicial interpretation of international law undermines Congressional treaty power

GeraldNeuman 4, professor of jurisprudence at Columbia University, 98 A.J.I.L. 82, “THE UNITED STATES CONSTITUTION AND INTERNATIONAL LAW: The Uses of International Law in Constitutional Interpretation”, January, lexis

Normative reasoning borrowed from international human rights sources will not necessarily prevail in the process of constitutional interpretation. Other normative considerations omitted there may be relevant, and consensual and institutional factors may also come into play. The Court may conclude that the normatively compelling interpretation of a right cannot be adopted at the constitutional level but, rather, should await political implementation. I emphasize again that the international human rights regime does not call for implementation at the constitutional level, only compliance. Thus, the Supreme Court has reason to examine international human rights norms and decisions interpreting them for the normative and functional insights that they may provide on analogous issues of constitutional right. They certainly cannot control constitutional interpretation, but they may inform it.

The use of human rights treaties as an aid in construing constitutional rights might seem superficially in tension with the Supreme Court's reassurance in Reid v. Covert that the treaty power cannot be employed to violate constitutional rights. 31 That appearance should dissolve on closer examination. The treaty makers cannot override constitutional norms, and they cannot order the Supreme Court to alter its interpretation of a constitutional provision. 32 But treaties, like legislation, can contribute to a shift in the factual, institutional, and normative environment within which the Court carries on its task of constitutional interpretation. The resulting doctrinal evolution is unavoidable in any candid account of U.S. constitutional history. Nothing in Reid v. Covert and its progeny precludes this indirect influence of treaty making on constitutional law. Treaties and the case law arising under them thus become data available for the Court's consideration in elaborating the contemporary meaning of constitutional norms. The political branches can neither require the Court to follow international or foreign law in interpreting the Constitution nor prohibit the Court from considering international or foreign law. Under current circumstances, the Supreme Court correctly does not engage in the practice, pursued by some other constitutional courts, of construing constitutional rights for the purpose of judicially implementing the positive international obligations of the nation under human rights treaties. The positive effect of treaty norms differs from the moral or functional insight that they may provide. Human rights treaties do not require implementation at the constitutional level, and in the U.S. legal system. Congress retains ultimate control over the means of implementing--or breaching--a treaty. Entrenching positive human rights standards as  [\*89]  constitutional interpretation, for the purpose of ensuring compliance with the treaty as such, would deprive the political branches of their authority to choose methods of treaty implementation, and would not be consistent with current constitutional understandings. 33

#### Plan creates unlimited legislative role for the Courts in treaty enforcement---collapses effective international political responses to environment, terrorism, rogues, and collapses the economy and trade---it also kills the cred of informal treaties which will solve the case in the SQ

John Yoo 8, Cal Berkeley law prof, The Powers of War and Peace, 244-9

Non-self-execution provides a ready means to solve some of the tensions between the treaty and legislative powers. International events now inﬂuence numerous areas of life that were formerly the preserve of regular legislation, while domestic conduct has produced effects on problems of an international scope. Correspondingly, the scope of international agreements has broadened, which has expanded the potential reach of the treaty power. Meanwhile, nationalization of the American economy and society has produced an expansion in the powers of Congress, particularly through its commerce and spending powers. International efforts to regulate areas such as the environment, arms control, the economy, or human rights, therefore, will come into conﬂict with Congress’s constitutional powers, just as treaties threatened to do—albeit in more limited subject-matter areas—during the framing and early National Period. In short, the globalization of affairs produces substantial tension with a constitutional system that maintains a strong distinction between the power to make treaties and the power to legislate. ¶ Non-self-execution provides a means to solve this tension. It prevents international political commitments, entered through treaties, from automatically imposing domestic legal obligations on the government until the political branches have determined the manner in which to implement them. It reserves to the most popular branch of government, Congress, its authority over the domestic regulation of individual citizens and their pri- vate activity, while also creating a presumption that protects the normal regulatory prerogatives of the states under our federal system of govern- ment. It also preserves the discretion of the president and/or Congress¶ 245¶ to choose to disregard international rules without violating the domestic Constitution. ¶ The values served by non-self-execution become clearer when we ex- amine two different sets of issues raised by globalization: the multilater- alization of the use of force and the death penalty. Turning ﬁrst to the use of force, it will be recalled that the U.N. Charter prohibits the use of force unless in self-defense or on authorization by the Security Council. The United States ratiﬁed the U.N. Charter as a treaty at the end ofWorld WarII.Thus,someargue,inratifyingthechartertheUnitedStatesgaveup its right to initiate hostilities unless in conformity with its terms. Because a treaty is part of the “law of the land” under the Supremacy Clause, and hence on a par with the Constitution and other federal law, the president has a constitutional obligation, in seeing that the laws are faithfully exe- cuted, not to order the use of force that would violate the U.N. Charter. If a Congress funds a presidential war at odds with the U.N. Charter, one imagines that Congress is acting unconstitutionally as well. “By adhering to the Charter,” according to Professor Henkin, “the United States has given up the right to go to war at will.”78 ¶ Two disruptions of the constitutional structure ﬂow from this position. First, it renders any presidential use of force that is not taken in self- defense or authorized by the Security Council not only illegal, but un- constitutional. Presidential discretion to use force in foreign affairs, as envisioned by the Framers and established in the constitutional text and structure, is unarguably reduced as a result. Under this approach to trea- ties, the violation of international law by the United States and its allies in Kosovo also amounted to a violation of the Constitution by President Clinton. After all, the United States could not claim seriously—nor did it try—that Serbia was armed with weapons of mass destruction and their delivery systems and that it posed a threat sufﬁcient to trigger the U.S. national right of self-defense. Due to Russia’s veto, the Security Coun- cil never issued a resolution authorizing the use of force. In using force againstKosovo,theUnitedStatesviolatedtheU.N.CharterandPresident Clinton,under a self-execution theory,failed to perform his constitutional duty to enforce the laws of the land. Second,equating treaties with statutes has the effect of transferring the authority to decide whether to use force in international relations to an international organization. Under the Constitution’s original design, the president and Congress decide on war through the interaction of their constitutional powers. Putting to one side the use of force in self-defense, many scholars believe both that the United States cannot wage war with- out Security Council permission, and that if the Security Council autho- rizes war—as it did in the 1991 Persian GulfWar—the United States must use force to meet the goals set out by the Council. In other words, the SecurityCouncilhastheauthorityunderthechartertoimposebothaneg- ative duty (not to attack) and an afﬁrmative duty—to use force to enforce council resolutions. The Constitution’s usual procedure of relying on the president and Congress to make these decisions, under this approach, is effectively within the control of the Security Council. In those cases,how- ever, where the United States can make an actual claim of self-defense, as inAfghanistan and probably Iraq in 2003,the United States—and thus the president and Congress—would still have their usual room for deci- sionmaking. ¶ Of course,the United States has used force many times since the end of WorldWar II,and not all of those cases met the requirements of the U.N. Charter. In fact,in only two instances has the use of force been authorized by the Security Council, in Korea in 1950 and in the Persian Gulf four decades later. During this period,some conﬂicts undoubtedly qualiﬁed as national exercises of the right to self-defense under international law— Afghanistan being the easiest example. Others,however,may not have— such as the uses of force in Kosovo,Bosnia,and Lebanon—although there is usually a healthy debate over each one.79 Non-self-execution explains why these interventions did not violate the Constitution. If we consider treaties to be diplomatic commitments in the realm of international pol- itics, rather than automatic laws enforceable in the United States, then the president has no constitutional obligation to enforce the U.N. Char- ter,nor does Congress have any obligation to fund actions to comply with it. Rather, the political branches can decide whether and how the nation should obey a Security Council resolution,or they can even decide to vio- late the charter, as in Kosovo. Non-self-execution also precludes any real delegation of authority to the United Nations, as the decisions of that in- ternational organization remain—from the perspective of the American constitutional system—only the demands of international politics. Secu- rity Council decisions may bind the United States as a matter of inter-¶ national law, but the president and Congress decide how they are to be implemented, if at all. It should come as no surprise that the federal courts have adopted this approach in cases involving the decisions of the organs of the United Nations. In Diggs v. Richardson (1976), for example, the U.S. Court of Appeals for the District of Columbia Circuit confronted a Security Coun- cil resolution sanctioning South Africa because of its occupation of Na- mibia.80 Plaintiffs sought an injunction,based on the Security Council res- olution, ordering the U.S. government to cease economic relations with SouthAfrica involving goods from Namibia. Dismissing the case,the D.C. Circuit held that the resolution was not self-executing and was not en- forceable federal law. In Committee of United States Citizens Living in Nicaragua v. Reagan (1988), the D.C. Circuit faced a suit demanding that the Reagan administration cease all aid to the contra resistance in Nic- aragua, as the United States had been ordered to do by the International CourtofJustice(ICJ).81TheD.C.Circuitagaindismissedthecase,holding that ICJ decisions are not self-executing,and that any requirement in the UN Charter to obey ICJ decisions was similarly non-self-executing. Recent litigation over the death penalty raises the same tensions and ultimately may require the same solution.Aliens arrested and tried in the United States for capital murder sometimes have not received notiﬁca- tion, at the time of their arrest, that they have the right of access to con- sular representatives from their countries, as guaranteed by the Vienna Convention on Consular Relations. In two cases, one involving a citizen of Paraguay, the other two brothers from Germany, all convicted of mur- der and sentenced to death, the International Court of Justice ordered the United States to “take all measures at its disposal” to stop their exe- cution. In refusing to order a stay of execution in the ﬁrst case,Breard,the Supreme Court suggested that the ICJ order was not self-executing fed- eral law,and found that 1996 changes to the federal death penalty statute had overridden any treaty obligations.82 In the second case, LaGrande, the Court also refused to issue a stay, with the executive branch inform- ing the Court that the ICJ decision was not binding federal law, but was instead a matter of international politics.83 In yet a third case, decided in 2004, the ICJ ordered the United States to stay the execution of ﬁfty-one Mexicans on death row and to provide them a judicial forum for review and reconsideration of their convictions.84¶ According to some scholars, failure to obey the ICJ’s decision consti- tuted a violation of federal law. In regard to the Breard case, Professor Henkin argues that the ICJ order was self-executing federal law.85 Pro- fessor Vázquez similarly argued that if the ICJ order was binding it must alsobeself-executing,aviewsharedbyAnne-MarieSlaughter.Ifthiswere correct, then the Supreme Court violated federal law by refusing to issue a stay of execution,and the president failed to uphold his duty to enforce federal law by not ordering Virginia or Oklahoma to stop the execution. Indeed, this view conceivably would have the president send in federal marshals to stop state prison ofﬁcials from carrying out the sentences, as his authority to execute federal law would preempt the state law imposing the death penalty. It would also expand the powers of the federal govern- ment at the expense of the states,because without the ICJ order there was no basis,under the Bill of Rights or the federal habeas statute,to halt the executions. Presidents are not about to issue unilateral orders to state prisons halt- ing the executions of foreign nationals duly convicted of capital murder. And the Supreme Court has not (at least not yet) issued stays of execu- tions when the only violation of federal law asserted is a failure to notify a defendant of his rights under theVienna Convention. Contrary to lead- ing academic views, however, this does not constitute a violation of the Constitution. Rather, it is a recognition of the manner in which non-self- execution works as a practical matter to allow the political branches of government to decide how to implement our international obligations, with due regard for constitutional principles of the separation of powers and federalism. By treating theVienna Convention and the U.N. Charter provisions concerning the ICJ as nonbinding,the Supreme Court leaves it to the president and Congress to decide whether and how to obey ICJ orders. The president and Congress simply chose not to exercise their powers to enforce these orders. Non-self-execution also preserves the Court’s own authority to interpret, as a ﬁnal matter, all species of federal law, rather than allowing that power to be transferred to the ICJ. Finally, non-self-execution in this context protects the prerogatives of the states, which have the primary responsibility for enforcing criminal laws such as murder. ¶ A presumption that treaties are non-self-executing thus plays two important roles. First, as William Eskridge and Philip Frickey have argued, such presumptions allow the judiciary to avoid difﬁcult constitutional questions and to protect the constitutional structure, without having to block actions by the political branches.86 While protecting the constitutional line between the executive treaty power and legislation, it also leaves to the political branches the ﬂexibility to decide whether and how to implement the nation’s international obligations. Second, a clear statement rule helps contain the potential for unlimited lawmaking at a time when the line between domestic and international affairs is disappearing. Globalization, plus the interaction of several broad doctrines about the unbounded subject matter of treaties, their freedom from the restraints of the separation of powers and federalism, and their alleged interchange- ability with statutes, threatens to give the treaty makers a legislative power with few limits. Non-self-execution ensures that treaties, like the Constitution itself and all other species of federal law, are true to the notion that the national government is one of limited and separated powers.¶ 251¶ This striking divergence between the constitutional text on the one hand, and practice supported by academic opinion on the other, is not just a matter of intellectual curiosity. International agreements today are¶ 252¶ assuming center stage in efforts to regulate areas such as national security, the environment, trade and ﬁnance, and human rights. As interna- tional agreements increasingly assume the function of statutes, the treaty power threatens to supplant the domestic lawmaking process, even in areas within Congress’s Article I, Section 8 competencies. At the same time, interchangeability raises the prospect that statutes could fully re- placetreaties,which raises the problem that Congress could exercise executive powers in areas where treaties have force beyond domestic statutes. While this may not have presented much of a practical problem in an era when the reach of the Commerce Clause was thought to be virtually limit- less,the Supreme Court’s recent federalism decisions make clear that sig- niﬁcant areas still exist where treaties may provide the sole constitutional source for national regulatory power. Interchangeability would permit statutes to evade the restrictions on Congress’s ArticleI, Section8 powers, just as globalization threatens to allow the treaty power to supplant the domestic lawmaking process. ¶ Explaining the constitutionality of the congressional-executive agree- ment is a matter not just of intellectual coherence, but of practical eco- nomic and political importance. Today, about one-quarter of the gross national product arises from international trade, whose rules are set by the North American Free Trade Agreement (NAFTA) and the World Trade Organization (WTO) agreement. If all international agreements must undergo the supermajority treaty process, America’s ability to participate in a new world of international cooperation will be hampered. On the other hand, use of a constitutionally illegitimate method would throw America’s participation in the world trading system into doubt. Not only would constitutional questions undermine the validity of current congressional-executive agreements, they also would raise problems for America’s ability to engage in ever more intensive international co-operation. Uncertainty about the constitutionality of the congressional- executive agreement may undermine novel efforts to craft international solutions in response to the effects of globalization on areas such as ﬁnance and economics, security, the environment, and human rights.

#### The impact is trade war

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Continuing calls for curbs on the flow of finance and trade will inspire the United States and other nations to spew forth protectionist legislation like the notorious Smoot-Hawley bill. Introduced at the start of the Great Depression, it triggered a series of tit-for-tat economic responses, which many commentators believe helped turn a serious economic downturn into a prolonged and devastating global disaster. But if history is any guide, those lessons will have been long forgotten during the next collapse. Eventually, fed by a mood of desperation and growing public anger, restrictions on trade, finance, investment, and immigration will almost certainly intensify. Authorities and ordinary citizens will likely scrutinize the cross-border movement of Americans and outsiders alike, and lawmakers may even call for a general crackdown on nonessential travel. Meanwhile, many nations will make transporting or sending funds to other countries exceedingly difficult. As desperate officials try to limit the fallout from decades of ill-conceived, corrupt, and reckless policies, they will introduce controls on foreign exchange. Foreign individuals and companies seeking to acquire certain American infrastructure assets, or trying to buy property and other assets on the cheap thanks to a rapidly depreciating dollar, will be stymied by limits on investment by noncitizens. Those efforts will cause spasms to ripple across economies and markets, disrupting global payment, settlement, and clearing mechanisms. All of this will, of course, continue to undermine business confidence and consumer spending. In a world of lockouts and lockdowns, any link that transmits systemic financial pressures across markets through arbitrage or portfolio-based risk management, or that allows diseases to be easily spread from one country to the next by tourists and wildlife, or that otherwise facilitates unwelcome exchanges of any kind will be viewed with suspicion and dealt with accordingly. The rise in isolationism and protectionism will bring about ever more heated arguments and dangerous confrontations over shared sources of oil, gas, and other key commodities as well as factors of production that must, out of necessity, be acquired from less-than-friendly nations. Whether involving raw materials used in strategic industries or basic necessities such as food, water, and energy, efforts to secure adequate supplies will take increasing precedence in a world where demand seems constantly out of kilter with supply. Disputes over the misuse, overuse, and pollution of the environment and natural resources will become more commonplace. Around the world, such tensions will give rise to **full-scale military encounters,** often with minimal provocation. In some instances, economic conditions will serve as a convenient pretext for conflicts that stem from cultural and religious differences. Alternatively, nations may look to divert attention away from domestic problems by channeling frustration and populist sentiment toward other countries and cultures. Enabled by cheap technology and the waning threat of American retribution, terrorist groups will likely boost the frequency and scale of their horrifying attacks, bringing the threat of random violence to a whole new level. Turbulent conditions will encourage aggressive saber rattling and interdictions by rogue nations running amok. Age-old clashes will also take on a new, more heated sense of urgency. China will likely assume an increasingly belligerent posture toward Taiwan, while Iran may embark on overt colonization of its neighbors in the Mideast. Israel, for its part, may look to draw a dwindling list of allies from around the world into a growing number of conflicts. Some observers, like John Mearsheimer, a political scientist at the University of Chicago, have even speculated that an “intense confrontation” between the United States and China is “inevitable” at some point. More than a few disputes will turn out to be almost wholly ideological. Growing cultural and religious differences will be transformed from wars of words to battles **soaked in blood**. Long-simmering resentments could also degenerate quickly, spurring the basest of human instincts and triggering genocidal acts. Terrorists employing biological or nuclear weapons will vie with conventional forces using jets, cruise missiles, and bunker-busting bombs to cause widespread destruction. Many will interpret stepped-up conflicts between Muslims and Western societies as the beginnings of a new world war.

#### Effective presidential treaty power key to solve rogue-prolif and terrorism---but, there’s no risk of their overreach impacts

John Yoo 8, Cal Berkeley law prof, The Powers of War and Peace, 204-5

Events such as the Neutrality Proclamation, the termination of the Mutual Defense Treaty with Taiwan, or even the Reagan-era struggle over the SDI program may seem of limited relevance to today’s challenges of rogue nations, the proliferation of weapons of mass destruction, and terrorism. Recent efforts, however, designed to respond to such problems only highlight again the centrality of treaties to the conduct of foreign affairs. Treaty termination and interpretation has proven central in the debate over how to respond to the proliferation of nuclear weapons and ballistic missiles, and the legal status of al Qaeda and Taliban ﬁghters captured in Afghanistan and throughout the world. On these questions, the Constitution’s ﬂexibility toward the distribution of the foreign affairs power has given the president the tools to promote U.S. foreign policy, but at the same time has ensured that Congress has the ability to block policies with which it disagrees.

#### Extinction

Kroenig 12 – Matthew Kroenig is an Assistant Professor of Government at Georgetown University and a Stanton Nuclear Security Fellow on the Council on Foreign Relations, May 26th, 2012, “The History of Proliferation Optimism: Does It Have A Future?” <http://www.npolicy.org/article.php?aid=1182&tid=30>

What’s Wrong with Proliferation Optimism?

**The proliferation optimist position**, while having a distinguished pedigree, **has several major flaws**. Many of these weaknesses have been chronicled in brilliant detail by Scott Sagan and other contemporary proliferation pessimists.34 Rather than repeat these substantial efforts, I will use this section to offer some original critiques of the recent incarnations of proliferation optimism.¶ First and foremost, proliferation optimists do not appear to understand contemporary deterrence theory. I do not say this lightly in an effort to marginalize or discredit my intellectual opponents. Rather, I make this claim with all due caution and sincerity. A careful review of the contemporary proliferation optimism literature does not reflect an understanding of, or engagement with, the developments in academic deterrence theory over the past few decades in top scholarly journals such as the American Political Science Review and International Organization.35 While early optimists like Viner and Brodie can be excused for not knowing better, the writings of contemporary proliferation optimists **ignore much of the past fifty years of academic research on nuclear deterrence theory.**¶In the 1940s, Viner, Brodie, and others argued that the advent of Mutually Assured Destruction (MAD) rendered war among major powers obsolete, but nuclear deterrence theory soon advanced beyond that simple understanding.36 After all, great power political competition does not end with nuclear weapons. And nuclear-armed states still seek to threaten nuclear-armed adversaries. States cannot credibly threaten to launch a suicidal nuclear war, but they still want to coerce their adversaries. This leads to a credibility problem: “how can states credibly threaten a nuclear-armed opponent? Since the 1960s academic nuclear deterrence theory has been devoted almost exclusively to answering this question.37 And, unfortunately for proliferation optimists, the answers do not give us reasons to be optimistic.¶ Thomas Schelling was the first to devise a rational means by which states can threaten nuclear-armed opponents.38 He argued that leaders cannot credibly threaten to intentionally launch a suicidal nuclear war, but they can make a “threat that leaves something to chance.”39 They can engage in a process, the nuclear crisis, which increases the risk of nuclear war in an attempt to force a less resolved adversary to back down. As states escalate a nuclear crisis there is an increasing probability that the conflict will spiral out of control and result in an inadvertent or accidental nuclear exchange. As long as the benefit of winning the crisis is greater than the incremental increase in the risk of nuclear war, threats to escalate nuclear crises are inherently credible. In these games of nuclear brinkmanship, the state that is willing to run the greatest risk of nuclear war before backing down will win the crisis as long as it does not end in catastrophe. It is for this reason that Thomas Schelling called great power politics in the nuclear era a “competition in risk taking.”¶ 40 This does not mean that states eagerly bid up the risk of nuclear war. Rather, they face gut-wrenching decisions at each stage of the crisis. They can quit the crisis to avoid nuclear war, but only by ceding an important geopolitical issue to an opponent. Or they can the escalate the crisis in an attempt to prevail, but only at the risk of suffering a possible nuclear exchange.¶ Since 1945 there were have been many high stakes nuclear crises (by my count, there have been twenty) in which “rational” states like the United States run a frighteningly-real risk of nuclear war.41 By asking whether states can be deterred or not, therefore, proliferation optimists ask the wrong question. The right question to ask is: what risk of nuclear war is a specific state willing to run against a particular opponent in a given crisis? Optimists are likely correct when they assert that Iran will not intentionally commit national suicide by launching a bolt-from-the-blue nuclear attack on the United States or Israel. This does not mean that Iran will never use nuclear weapons, however. Indeed, it is almost inconceivable to think that a nuclear-armed Iran would not, at some point, find itself in a crisis with another nuclear-armed power. It is also inconceivable that in those circumstances, Iran would not be willing to run any risk of nuclear war in order to achieve its objectives. If a nuclear-armed Iran and the United States or Israel have a geopolitical conflict in the future, over, for example, the internal politics of Syria, an Israeli conflict with Iran’s client Hezbollah, the U.S. presence in the Persian Gulf, passage through the Strait of Hormuz, or some other issue, do we believe that Iran would immediately capitulate? Or is it possible that Iran would push back, possibly even brandishing nuclear weapons in an attempt to coerce its adversaries? If the latter, there is a real risk that proliferation to Iran could result in nuclear war.¶ An optimist might counter that nuclear weapons will never be used, even in a crisis situation, because states have such a strong incentive, namely national survival, to ensure that nuclear weapons are not used. But, this objection ignores the fact that **leaders operate under competing pressures.** Leaders in nuclear-armed states also have very strong incentives to convince their adversaries that nuclear weapons could very well be used. Historically we have seen that leaders take actions in crises, such as **placing nuclear weapons on** high alert **and** delegating **nuclear** launch authority **to low level commanders**, to purposely increase the risk of accidental nuclear war in an attempt to force less-resolved opponents to back down.

### 1NC Charming Betsy

#### Court interference in national security decks effective executive responses to prolif, terror, and the rise of hostile powers---link threshold is low

Robert Blomquist 10, Professor of Law, Valparaiso University School of Law, THE JURISPRUDENCE OF AMERICAN NATIONAL SECURITY PRESIPRUDENCE, 44 Val. U.L. Rev. 881

Supreme Court Justices--along with legal advocates--need to conceptualize and prioritize big theoretical matters of institutional design and form and function in the American national security tripartite constitutional system. By way of an excellent introduction to these vital issues of legal theory, the Justices should pull down from the library shelf of the sumptuous Supreme Court Library in Washington, D.C. (or more likely have a clerk do this chore) the old chestnut, The Legal Process: Basic Problems in the Making and Application of Law by the late Harvard University law professors Henry M. Hart and Albert M. Sacks. n7 Among the rich insights on institutional design coupled with form and function in the American legal system that are germane to the Court's interpretation of national security law-making and decision-making by the President are several pertinent points. First, "Hart and Sacks' intellectual starting point was the interconnectedness of human beings, and the usefulness of law in helping us coexist peacefully together." n8 By implication, therefore, the Court should be mindful of the unique [\*883] constitutional role played by the POTUS in preserving peace and should prevent imprudent judicial actions that would undermine American national security. Second, Hart and Sacks, continuing their broad insights of social theory, noted that legal communities establish "institutionalized[] procedures for the settlement of questions of group concern" n9 and regularize "different procedures and personnel of different qualifications . . . appropriate for deciding different kinds of questions" n10 because "every modern society differentiates among social questions, accepting one mode of decision for one kind and other modes for others-e.g., courts for 'judicial' decisions and legislatures for 'legislative' decisions" n11 and, extending their conceptualization, an executive for "executive" decisions. n12 Third, Professors Hart and Sacks made seminal theoretical distinctions between rules, standards, principles, and policies. n13 While all four are part of "legal arrangements [\*884] in an organized society," n14 and all four of these arrangements are potentially relevant in judicial review of presidential national security decisions, principles and policies n15 are of special concern because of the sprawling, inchoate, and rapidly changing nature of national security threats and the imperative of hyper-energy in the Executive branch in responding to these threats. n16

The Justices should also consult Professor Robert S. Summers's masterful elaboration and amplification of the Hart and Sacks project on enhancing a flourishing legal system: the 2006 opus, Form and Function in a Legal System: A General Study. n17 The most important points that [\*885] Summers makes that are relevant to judicial review of American national security presiprudence are three key considerations. First, a "conception of the overall form of the whole of a functional [legal] unit is needed to serve the founding purpose of defining, specifying, and organizing the makeup of such a unit so that it can be brought into being and can fulfill its own distinctive role" n18 in synergy with other legal units to serve overarching sovereign purposes for a polity. The American constitutional system of national security law and policy should be appreciated for its genius in making the POTUS the national security sentinel with vast, but not unlimited, powers to protect the Nation from hostile, potentially catastrophic, threats. Second, "a conception of the overall form of the whole is needed for the purpose of organizing the internal unity of relations between various formal features of a functional [legal] unit and between each formal feature and the complementary components of the whole unit." n19 Thus, Supreme Court Justices should have a thick understanding of the form of national security decision-making conceived by the Founders to center in the POTUS; the ways the POTUS and Congress historically organized the processing of national security through institutions like the National Security Council and the House and Senate intelligence committees; and the ways the POTUS has structured national security process through such specific legal forms as Presidential Directives, National Security Decision Directives, National Security Presidential Decision Directives, Presidential Decision Directives, and National Security Policy Directives in classified, secret documents along with typically public Executive Orders. n20 Third, according to Summers, "a conception of the overall form of the whole functional [legal] unit is needed to organize further the mode of operation and the instrumental capacity of the [legal] unit." n21 So, the Supreme Court should be aware that tinkering with national security decisions of the POTUS--unless clearly necessary to counterbalance an indubitable violation of the text of the Constitution--may lead to unforeseen negative second-order consequences in the ability of the POTUS (with or without the help of Congress) to preserve, protect, and defend the Nation. n22

[\*886] B. Geopolitical Strategic Considerations Bearing on Judicial Interpretation

Before the United States Supreme Court Justices form an opinion on the legality of national security decisions by the POTUS, they should immerse themselves in judicially-noticeable facts concerning what national security expert, Bruce Berkowitz, in the subtitle of his recent book, calls the "challengers, competitors, and threats to America's future." n23 Not that the Justices need to become experts in national security affairs, n24 but every Supreme Court Justice should be aware of the following five basic national security facts and conceptions before sitting in judgment on presiprudential national security determinations.

(1) "National security policy . . . is harder today because the issues that are involved are more numerous and varied. The problem of the day can change at a moment's notice." n25 While "[y]esterday, it might have been proliferation; today, terrorism; tomorrow, hostile regional powers" n26, the twenty-first century reality is that "[t]hreats are also more likely to be intertwined--proliferators use the same networks as narco-traffickers, narco-traffickers support terrorists, and terrorists align themselves with regional powers." n27

(2) "Yet, as worrisome as these immediate concerns may be, the long-term challenges are even harder to deal with, and the stakes are higher. Whereas the main Cold War threat--the Soviet Union--was brittle, most of the potential adversaries and challengers America now faces are resilient." n28

(3) "The most important task for U.S. national security today is simply to retain the strategic advantage. This term, from the world of military doctrine, refers to the overall ability of a nation to control, or at least influence, the course of events." n29 Importantly, "[w]hen you hold [\*887] the strategic advantage, situations unfold in your favor, and each round ends so that you are in an advantageous position for the next. When you do not hold the strategic advantage, they do not." n30

(4) While "keeping the strategic advantage may not have the idealistic ring of making the world safe for democracy and does not sound as decisively macho as maintaining American hegemony," n31 maintaining the American "strategic advantage is critical, because it is essential for just about everything else America hopes to achieve--promoting freedom, protecting the homeland, defending its values, preserving peace, and so on." n32

(5) The United States requires national security "agility." n33 It not only needs "to refocus its resources repeatedly; it needs to do this faster than an adversary can focus its own resources." n34

[\*888] As further serious preparation for engaging in the jurisprudence of American national security presiprudence in hotly contested cases and controversies that may end up on their docket, our Supreme Court Justices should understand that, as Walter Russell Mead pointed out in an important essay a few years ago, n35 the average American can be understood as a Jacksonian pragmatist on national security issues. n36 "Americans are determined to keep the world at a distance, while not isolating ourselves from it completely. If we need to take action abroad, we want to do it on our terms." n37 Thus, recent social science survey data paints "a picture of a country whose practical people take a practical approach to knowledge about national security. Americans do not bother with the details most of the time because, for most Americans, the details do not matter most the time." n38 Indeed, since the American people "do know the outlines of the big picture and what we need to worry about [in national security affairs] so we know when we need to pay greater attention and what is at stake. This is the kind of knowledge suited to a Jacksonian." n39

Turning to how the Supreme Court should view and interpret American presidential measures to oversee national security law and policy, our Justices should consider a number of important points. First, given the robust text, tradition, intellectual history, and evolution of the institution of the POTUS as the American national security sentinel, n40 and the unprecedented dangers to the United States national security after 9/11, n41 national security presiprudence should be accorded wide latitude by the Court in the adjustment (and tradeoffs) of trading liberty and security. n42 Second, Justices should be aware that different presidents [\*889] institute changes in national security presiprudence given their unique perspective and knowledge of threats to the Nation. n43 Third, Justices should be restrained in second-guessing the POTUS and his subordinate national security experts concerning both the existence and duration of national security emergencies and necessary measures to rectify them. "During emergencies, the institutional advantages of the executive are enhanced", n44 moreover, "[b]ecause of the importance of secrecy, speed, and flexibility, courts, which are slow, open, and rigid, have less to contribute to the formulation of national policy than they do during normal times." n45 Fourth, Supreme Court Justices, of course, should not give the POTUS a blank check--even during times of claimed national emergency; but, how much deference to be accorded by the Court is "always a hard question" and should be a function of "the scale and type of the emergency." n46 Fifth, the Court should be extraordinarily deferential to the POTUS and his executive subordinates regarding questions of executive determinations of the international laws of war and military tactics. As cogently explained by Professors Eric Posner and Adrian Vermeule, n47 "the United States should comply with the laws of war in its battle against Al Qaeda"--and I would argue, other lawless terrorist groups like the Taliban--"only to the extent these laws are beneficial to the United States, taking into account the likely response of [\*890] other states and of al Qaeda and other terrorist organizations," n48 as determined by the POTUS and his national security executive subordinates.

#### Treaties serve bureaucracy not interests of the state—crushes any benefit

**Drezner 1** [Daniel W., Assistant Professor of Political Science, University of Chicago, \*Advised by Jack Goldsmith, “ARTICLE AND RESPONSE: On the Balance Between International Law and Democratic Sovereignty,” Chicago Journal of International Law, 2 Chi. J. Int'l L. 321]

Perhaps the most pernicious effect of recent trends in international law is the proliferation of international and national bureaucracies. When the United States fashions a new international organization as a vehicle for advancing new rules and regulations, that institution persists. International organizations rarely die, even if and when they outlive their utility. This is particularly true for those organizations with secretariats and physical assets under their control. One observer notes, "The [\*335] UN Charter's slogan of 'we the people of the world' still only thinly disguises a reality of 'we the bureaucrats the world.'" 44 The result is, at best, a lot of bureaucratic deadwood on the international stage, draining countries of resources, time, and patience. At worst, these organizations become well-connected advocacy groups with little to no accountability to anyone, expecting to be treated like states. The result is a situation where a significant share of an international organization's membership is made up of other international organizations. For example, 35 percent of the Financial Stability Forum's membership consists of other international institutions, groupings, and committees. Furthermore, regulatory coordination often leads to the creation of new bureaucracies at the national level in order to implement multilateral agreements. 45 A certain degree of regulation is necessary for any economy, but the recent wave of international law lets a thousand regulatory agencies bloom. The deleterious effects of such bureaucratic proliferation for a democratic society are legion, and have been discussed elsewhere. 46 And as difficult as it is to shut down international organizations, eliminating established national bureaucracies is next to impossible.

**US adherence to treaties does not bind other nations to international norms**

**Posner 3** [Eric A., Federal Circuit Court Judge, Kirkland & Ellis Professor of Law, University of Chicago, Matthew Adler, Brian Bix, Jack Goldsmith, David Golove, Michael Moore, David Strauss, Ed Swaine, Adrian Vermeule, Alex Wendt, The Sarah Scaife Foundation Fund, and The Lynde and Harry Bradley Foundation Fund, Do States Have a Moral Obligation to Obey International Law?, The Board of Trustees of Leland Stanford Junior University, Stanford Law Review, 55 Stan. L. Rev. 1901]

We thus expect that states would violate legal obligations more often than individuals do. International law scholars like to say that states almost always obey the law. 28 Franck even argues that international law prevents states from shooting down civilian airliners - the Soviet Union's destruction of Korean Airlines flight 007 only shows how frequently it and other states respect the law. 29 But states would gain nothing by shooting down civilian airplanes. The most plausible reason why states do not violate international law more often than they do is that the law is so **exceedingly weak** - the rules are **vague**, states can **withdraw** from treaties, and so forth - and when the law is not weak, states **frequently violate it**. 30 Imagine a society where there are only a few, weak laws that already reflect people's interests - you must eat at least once every day, you must wear clothes on cold days. The observation that people in this society frequently obey the law is of **little value**. Perhaps, they have an obligation to obey their own laws, but if we know that they would violate laws that impose significant costs - tax laws, for example - then their obligations would extend **only to the weak laws** that are generally respected and not the strong laws that are routinely flouted. International law scholars confuse two separate ideas: (1) a moral obligation on the part of states to promote the good of all individuals in the world, regardless of their citizenship; and (2) a moral obligation to comply with international law. The two are not the same; indeed, they are in tension as long as governments focus their efforts on helping their own citizens (or their own [\*1915] supporters or officers). If all states did have the first obligation (which is an attractive but utopian idea), and they did comply with that obligation, then they would agree to treaties that implement, and engage in customary practices that reflect, the world good; and then they might have an obligation to comply with international law in the same rough sense that individuals have an obligation to comply with laws issued by a good government, or most of them. But this is not our world. In our world, we cannot say that if a particular state complies with international law - regardless of the normative value of the law, and regardless of what other states do, and maybe regardless of the interests of its own citizens, and so forth - or even treated compliance as a presumptive duty, the world would be a better place. 31 It should be clear by now that my argument is confined to the existing international system, where powerful states have more influence than weak states and **compliance is rare**. I do not argue that there is no alternative international system that could generate moral obligations on the part of individuals or states. Indeed, one interpretation of international-law scholarship, and perhaps some veins of political-science scholarship, is that states should comply with international law because doing so would create a culture of international legality, one in which international cooperation would flourish. If states entered into more treaties with stronger and more precise obligations; if they yielded more of their sovereignty to international organizations; if they submitted to multilateral rather than bilateral obligations; and if they relied on better and more transparent international decisionmaking procedures; then international law would be stronger as well as better, and compliance would be deeper and more uniform. I do not have the space to discuss this larger project, but it is worth noting because so much criticism these days is directed at the United States for not entering treaties (like the International Criminal Court treaty) or for (legally) withdrawing from treaties (like the Anti-Ballistic Missile treaty), rather than for violating treaties. It needs to be understood that the assumption that respect for international law, whether in the sense of complying with it or in the sense of creating more of it, will create a culture of international legality does not have [\*1916] any **empirical support**. A government that takes its responsibility to be that of protecting the national interest, and even one that cares about the well-being of citizens in other nations, would be **ill advised to comply** with laws that do neither in the hope that the compliance by itself would help create a culture of international legality.

#### No one will follow—they can’t solve the legitimacy or capacity deficit

Buzan 10—Professor of International Relations @ London School of Economics [Barry Buzan (Senior Fellow @ IDEAS, Honorary professor @ Universities of Copenhagen and Fellow of the British Academy), “The End of Leadership?—Constraints on the World Role of Obama’s America,” IDEAS reports—special reports, 2010

INTRODUCTION

It is appealing to think of the Obama administration as a return to normalcy after the deviance, unilateralist arrogance and damaging mistakes of the Bush years. In this view, we should expect a¶ return to business as usual, with the US picking up the signature themes of multilateralism and the¶ market that have underpinned its world role since the end of the Second World War. Although by no means universally loved, the US was an effective leader through the Cold War and beyond not only¶ because it promoted liberal economic and political values that were attractive to many others, but also¶ because it was prepared to bind its own power in multilateral rules and institutions sufficiently that¶ its followers could contain their fear of its overwhelming power. Does Obama’s liberal stance mean that we should expect a return to the leadership role that the US has exercised for more than half a¶ century? I argue that this is unlikely to happen because there are now three powerful constraints that¶ will largely block a return to US leadership. The first is that the US has lost much of its followership. The second is that the capacity of the US to lead is now much weakened even if it still retains the will¶ to do so. The third is that there is a general turn within international society against hegemony and¶ therefore against the global leadership role itself.

LOST FOLLOWERSHIP

If the US remains willing to lead, will anyone follow? There are two issues here: the growing range of policy disagreements on specific issues between the US and others; and the decline of shared values and visions between the US and its former followers. A good symbol of the weakening relationship¶ between the US and its followers is the replacement of talk about ‘friends and allies’ or ‘the free¶ world’ with a much harsher and still basically unchanged, line about ‘coalitions of the willing’. There¶ is some hope that under Obama differences over policy might improve in specific areas, particularly¶ the environment, but even on that issue Obama will be lucky just to get the US seen as not part of¶ the problem. Domestic constraints on carbon pricing and accepting binding international standards¶ will make it difficult for the US to lead. Many other areas of disagreement remain, some deep. The US has failed to make the war on terrorism into¶ anything like the binding cause that underpinned¶ its leadership during the Cold War, and its policies¶ continue to erode its liberal credentials. By its use¶ of torture, and even moreso the public advocacy¶ of such interrogation techniques by senior Bush administration figures, and by its rejection of the¶ Geneva Conventions on prisoners or war, it exposed¶ itself to ridicule and contempt as an advocate for¶ human rights. That China is still plausibly able to criticise the US on human rights and environment¶ issues is a marker of how far Washington’s reputation has fallen. US policy in the Middle East, particularly¶ on Israel, has few followers, and the repercussions of¶ the disastrous interventions in Iraq and Afghanistan¶ continue to rattle on. Unless China turns quite nasty, the inclination of many in the US to see China¶ as a challenger to its unipolar position is unlikely¶ to attract much sympathy. The financial chaos of 2008-9 has undermined Washington’s credibility as¶ an economic leader.

Anti-Americanism, though obviously not newbecame exceptionally strong under Bush, and is now more culturally based, and more corrosive of shared identities. It questions whether the ‘American way of life’ is an appropriate model for the rest of the world, and whether the US economic model is either sustainable or desirable. It looks at health; at a seeming US inclination to use force as the first choice policy instrument, with its domestic parallel of gun culture; at the influence of religion and special interest lobbies in US domestic politics; at a US government which was openly comfortable with the use of torture and was re-elected; and at a federal environmental policy until recently in denial about global warming; and asks not just whether the US is a questionable model, but whether it has become a serious part of the problem. While some of this was specific to the Bush administration, and is being turned around by Obama, some of the deeper issues are more structural. The US is much more culturally conservative, religious, individualistic, and anti-state than most other parts of the West. America’s religion and cultural conservatism and anti-statism set it apart from most of Europe, where disappointment with Obama is already palpable. America’s individualism and anti-statism set it apart from Asia, where China is anyway disinclined to be a follower. This kind of anti-Americanism rests on very real differences, and raises the possibility that the idea of ‘the West’ was just a passing epiphenomenon of the Cold War. The Bush administration asset-stripped half-a-century of respect for, goodwill towards and trust in US leadership, and it reflected, and helped to consolidate, a shift in the centre of gravity of US politics. The Obama administration cannot just go back to the late 1990s and pick up from where Clinton left off.

LOST CAPACITY

In addition to having less common ground with its¶ followers the US also has less capacity, both material and ideological, to play the role of leader. The rise¶ of China, and also India, Brazil and others, means¶ that the US now operates in a world in which the¶ distribution of power is becoming more diffuse, and in which several centres of power are not closely linked to it, and some are opposed. In this context, the Bush legacy of a crashed economy and an enormous debt severely constrain the leadership¶ options of the Obama administration. The economic¶ crisis of 2008-9 not only hamstrung the US in terms of material capability, but also stripped away the Washington consensus as the ideological legitimizer for US leadership. The collapse of neoliberal ideology¶ might yet be seen as an ideational event on the same¶ scale as the collapse of communism in 1989.

Since the late 1990s, and very sharply since 2003,¶ the US has in many ways become the enemy of its own 20th century project and thus of its own¶ capacity to lead. Not surprisingly this has deepened¶ a longstanding disjuncture between how the US¶ perceives itself and how the rest of the world sees it. The deeply established tendency of the US to see itself as an intrinsic force for good because it stands for a right set of universal values, makes it unable easily, or possibly at all, to address the disjuncture between its self-perception and how others see it. Self-righteous unilateralism does not acquire legitimacy¶ abroad. To the extent that celebrations of US power as a good in itself (because the US is good) dominate¶ American domestic politics, this does not inspire the US to seek grounds for legitimating its position abroad. A contributing factor here is the US tendency to demand nearly absolute security for itself. The problem for the US of transcending its own self-image is hardly new, but it has become both more difficult and more important in managing its position in the more complex world in which the US is neither so clearly on the right side of a great struggle, nor so dominant in material terms. It is unclear at this point whether Obama will be able to transcend this aspect of American politics, though it is clear that the nature of American¶ politics makes it difficult for any president to do so.

THE TURN AGAINST HEGEMONY

The third constraint stems not from any particular characteristic of the US, but from the fact of unipolarity itself. Since decolonisation global international society has developed a growing disjuncture between a¶ defining principle of legitimacy based on sovereign equality, and a practice that is substantially rooted in¶ the hegemony of great powers. The problem is the absence of a consensual principle of hegemony with¶ which international society might bridge this gap between its principles and its practices. A concentration¶ of power in one actor disrupts the ideas of balance and equilibrium which are the traditional sources and¶ conditions for legitimacy in international society. This problem would arise for any unipolar power, but it¶ connects back to the more US-specific aspects of the legitimacy deficit. Under the Bush administration, the US lost sight of what Adam Watson calls raison de systeme (‘the belief that it pays to make the system¶ work’), and this exacerbated the illegitimacy of hegemony in itself. Since the US looks unlikely to abandon its attachment to its own hegemony, this problem is not going to go away.

If hegemony itself is illegitimate, and the US now lacks both the capabilities and attractiveness to overcome this, what lies on the near horizon is a world with no global leader. Such a world would still have several great powers influential within and beyond their regions: the EU, Russia, China, Japan, the US, possibly¶ India and Brazil. It would also have many substantial regional powers such as South Africa, Turkey and Iran. Whether one sees a move towards a more polycentric, pluralist, and probably regionalised, world political order as desirable or worrying is a matter of choice. In such a world, global hegemony by any one power or culture will be unacceptable. Obama may hasten or delay the US exit from leadership. But the waning of the Western tide, and the re-emergence of a more multi-centred (in terms of power and wealth) and more multicultural (albeit with substantial elements of Westernization) world, mean that hegemonic global leadership whether by a single power or the West collectively is no longer going to be acceptable. The question is whether such a new world order can find the foundations for collective great power management,¶ and whether the US can learn to live in a more pluralist international society where it is no longer the sole¶ superpower but merely the first among equals. Pg. 4-6

#### They can’t solve for fragmented US politics—attempts to lead will not be credible.

Victor 8—Director of Laboratory on International Law and Regulation @ UC—San Diego [David G. Victor, “Blowhard in Chief,” The Daily Beast, Apr 30, 2008 8:00 PM EDT, pg. http://www.thedailybeast.com/newsweek/2008/04/30/blowhard-in-chief.html]

Leadership matters when it comes to greenery because solving most environmental issues requires a change in direction. Leaders can send signals and forge new paths. But in the area where the world thinks a single leader towers above all—namely the choice of the next American president—leadership actually matters a lot less. America's president is powerful, to be sure, but American politics has been fragmenting over the last few decades. Alone, the president often has a weak impact on real American policies that affect the environment.

The U.S. record on international environmental issues is highly uneven for reasons that have little to do with George W. Bush's leadership. His administration has been tarred across the planet for reckless leadership on international environmental issues. (Its actual record, while dreadful, is not a uniform failure. It has done useful things in a few areas, such as a thoughtful initiative to help conserve forests in the Congo Basin.) But the signature of Bush's reckless foreign policy in this area, his decision to withdraw from the Kyoto treaty barely three months after taking office, actually has its roots in the Clinton administration. Clinton was highly committed to environmental issues and his vice president, Al Gore, was an even more passionate leader. Their zealous diplomats negotiated a treaty that was larded with commitments that the United States never could have honored. The promise to cut U.S. emissions 7 percent below 1990 levels is a good example. Because actual emissions were rising steadily, it would have been impractical to turn them around in time to meet the 2012 Kyoto deadline. The U.S. Congress never could have passed the requisite legislation, and no leader in the White House could have changed that voting arithmetic. The U.S. withdrawal from the Kyoto Protocol was inevitable.

What does this mean for America's credibility in the world? When the American president promises, should anyone listen?

Increasingly, other countries are learning that the answer is no—because American leaders have a habit of promising a lot more than they can deliver. Environmental issues are particularly prone to overpromising, and not just by the United States. Europe, too, is fresh with unrealistic claims by political leaders. The European Union, for example, has launched negotiations for the post-Kyoto agreement by claiming that Europeans will cut greenhouse-gas emissions 20 percent to 30 percent by 2020—an outrageous goal considering that most of Europe (with the exception mainly of Britain and Germany) will fail to meet their existing targets, and emissions are actually rising. Europe as a whole would blow through its Kyoto targets if not for its generous use of a scheme that lets them take credit for overseas investment in low-carbon technologies—despite mounting evidence that many of those overseas credits don't actually deliver real reductions in emissions. Smart politicians know that the benefits lie mainly in the promising today and not in the delivery long in the future.

Ironically, the more enthusiastic the leader, the less credibility he or she has. While the Clinton administration was busy negotiating the Kyoto treaty, the U.S. Senate was passing a resolution, 95 to 0, to signal that it would reject any treaty that didn't contain specific commitments by developing countries to control their effluent of greenhouse gases. Since the developing countries had already rejected that outcome the Clinton administration had little room to maneuver. The great reversal in U.S. "leadership" on global warming over the last year—signaled by President Bush's speech three weeks ago embracing the need for limits on greenhouse gases—came from the people rather than top leaders. Public concern about global warming is rising (though it will be checked by the even more acute worries on the economy and war). The Bush speech was more a recognition that serious efforts to develop climate legislation are already well underway without his stamp. Many states are already planning to regulate greenhouse gases. The Senate has a serious bill on this subject scheduled for floor debate starting June 2. Its sponsors are Joe Lieberman (the former running mate of Al Gore but now alienated from the Democratic Party for his overly independent views) and John Warner (a Republican who has no former track record on global warming). These are ideal leaders for this issue because often it takes the fresh faces focused on building bipartisan majorities to get things done in America.

Perhaps the most interesting signal that American presidents are losing the ability to lead is an effort to rewrite the rules that would govern environmental treaties under American law. Committed environmentalists have rightly noted that America's Constitution requires a two-thirds vote for treaties in the Senate. That standard is nearly impossible to meet because one third of the Senate is usually opposed to anything interesting. Serious efforts are now underway to reinterpret environmental "treaties" as agreements between Congress and the president, which would require only a majority vote. Most trade agreements, for example, travel under this more lax standard and also have special voting rules that require Congress to approve the agreement as a whole package rather than pick it apart piece by piece. Rebranding and changing voting rules makes it easier to approve agreements, boosting the credibility of the president to negotiate agreements that serve the country's interest.

Even then, changing U.S. law requires a majority vote in both houses of Congress. Any legislation that is controversial—which is pretty much anything in today's fractious political environment—actually requires the nod of 60 Senators (that is, 60 percent of the vote). As American politics becomes more hotly contested, it has become easier for any senator who opposes a rule to get 39 others to block it. When the rest of the world looks to U.S. leadership, they should eye the 60th senator perhaps as much as the U.S. president.

When a sharp change in course is needed, former White House occupants might be more important than presidents. On global warming, Al Gore has done much more for the cause than he probably would have achieved as president. Not needing to focus on the messy task of actually running a government—with the minutia of isolating 33 or 40 blocking senators and their equally intransigent counterparts in the House—has liberated him to focus American minds on what is really at stake with unchecked global warming. He has been much more influential on that beat than in the areas where a real president would be held to task. His Nobel Prize reflects passion on the dangers of global warming rather than any coherent game plan for actually solving the global-warming problem. Jimmy Carter is perhaps the best ex-president in American history, focusing attention on important humanitarian causes. Former president Bill Clinton has rallied to these issues and used membership in his Clinton Global Inititiative to spur business leaders to do more than they would otherwise.

The silence of the president's father, George H.W. Bush, has probably improved familial relations but has hurt the country on important issues, including global warming. When sober, conservation-oriented Republicans rally around environmental issues, it is much easier for the country to make credible policies. Most of the bedrock of U.S. environmental law arose when Republicans (notably Nixon) were nominally the country's leaders but Democrats and Republicans worked together to forge consensus. The high-water mark for U.S. international leadership on environmental issues arose when Ronald Reagan's administration brokered the United Nations treaty on the ozone layer. That's because it is the ability to work in bipartisan ways that matters much more in America than the proper names of its particular leaders. Leadership comes from credibility, and that requires centrism and consensus, not just presidents.

#### Structural leadership can’t solve.

Karlsson et al. 11—Professor of Political Science @ Uppsala University [Dr. Christer Karlsson, Charles Parker (Professor of Political Science @ Uppsala University), Mattias Hjerpe (Professor in the Centre for Climate Science and Policy Research @ Linköping University & Björn-Ola Linnér (Professor in Water and Environmental Studies and director of the Centre for Climate Science and Policy Research at Linköping University), “Looking for Leaders: Perceptions of Climate Change Leadership among Climate Change Negotiation Participants,” Global Environmental Politics 11:1, Feb 2011

It is also noteworthy that the structural position and the aggregate power held by different actors do not seem to be particularly important explanatory¶ factors with regard to the leadership perceptions of prospective followers. For example, the US has the greatest combined power resources, and its position as one of the two largest GHG emitters makes it a key player in the field of climate change. At present, of the various leadership contenders, the US has the greatest potential to exercise structural leadership. Nevertheless, the US is only recognized as a leader by roughly a quarter of all respondents. This indicates that diplomatic engagement and perceptions concerning an actor’s commitment to addressing the climate issue matters. An actor’s structural position and its potential for exercising resource-based leadership are simply not sufficient for it to be widely recognized as a leader. The lack of active participation by the Bush administration in the UN global climate change process seems to have profoundly impacted the extent to which COP-14 participants regarded the US as a leader¶ on climate change. Pg. 97

#### Obama’s messaging will be incoherent and weak—they can’t change perceptions about US environmental policy.

Romm 11—Senior Fellow @ American Progress [Dr. Joe Romm (PhD in physics from MIT), “Relax, climate hawks, it’s not about the science. The White House is just lousy at messaging in general,” Think Progress, Mar 2, 2011 at 4:41 pm, pg. http://thinkprogress.org/climate/2011/03/02/207617/obama-white-house-messaging/]

Yes, my sources say the White House communications shop muzzled the Office of Science and Technology Policy from offering a robust defense of climate science after Climategate.  And yes, Obama has utterly failed to offer a strong, coherent message on climate science and related energy policy (see “Obama calls for massive boost in low-carbon energy, but doesn’t mention carbon, climate or warming“).

I’ve been as critical of Obama about this as anybody, and like you, have come to the conclusion that he doesn’t appear to get the dire nature of the situation we’re in.  But, in ‘fairness’ to the President, it must be pointed out that the White House sucks at messaging in general.

Look at their signature health care initiative.  Please tell me what their message is?  (see “[Can Obama deliver health and energy security with a half (assed) message?](http://climateprogress.org/2009/09/06/obama-health-energy-security-message/)“)  Yet, health care is an issue that everybody in the White House cares about, unlike, say, climate, which beyond Obama and Holdren and, formerly, Browner, is of little political interest to almost all other senior WH staff.

Based on my discussions with leading journalists, as well as current and former Administration staff, this White House is the worst at communications in the past three decades.  Indeed, the Obama WH is the worst of both possible worlds.  They are dreadful at messaging BUT they think they are terrific at messaging, so much so that they shut down anybody else in the administration that might actually be good at messaging.

And that brings me to Washington Post columnist Ruth Marcus and her op-ed today, “[President Waldo](http://www.washingtonpost.com/wp-dyn/content/article/2011/03/01/AR2011030105489.html):  Barack Obama is often strangely absent from the most important debates.”  Here are some highlights (lowlights?):

On health care, for instance, he took on a big fight without being able to articulate a clear message or being willing to set out any but the broadest policy prescriptions. Lawmakers, not to mention the public, were left guessing about what, exactly, the administration wanted to see in the measure and where it would draw red lines. That was not an isolated case. Where, for example, is the president on the verge of a potential government shutdown — if not this week, then a few weeks from now?

Aside from a short statement from the Office of Management and Budget threatening a presidential veto of the House version of the funding measure, the White House—much to the frustration of some congressional Democrats—has been unclear in public and private about what cuts would and would not be acceptable.

By contrast, a few weeks before the shutdown in 1995, Clinton administration aides had dispatched Cabinet members and other high-ranking officials to spread the message that cuts in education, health care and housing would harm families and children. Obama seems more the passive bystander to negotiations between the House and Senate than the chief executive leading his party….

The president has faltered, though, when called on to translate that rhetoric to more granular levels of specificity: What change, exactly, does he want people to believe in? How, even more exactly, does he propose to get there? “[Winning the future](http://projects.washingtonpost.com/obama-speeches/speech/548/)” doesn’t quite do it….

Where’s Obama? No matter how hard you look, sometimes he’s impossible to find.

And Marcus is a progressive.

See, climate hawks, even on really important stuff that is central to his reelection, stuff that the entire White House cares about, stuff that they have probably done a dozen polls on, the President and his team have no simple, persuasive message — when they have a message at all, that is.

The ‘good news’, then, is that we shouldn’t rush to judgment on what the President actually believes on climate change based on his general silence and/or mis-messaging on the subject.  It’s just the way he is.

The bad news is that folks I know who have worked with him say, he’s unlikely to change.  Obama is a good speechmaker — and thankfully presidential elections are graded on a curve, so Obama only has to outshine the GOP contender, which is unlikely to be hard in 2012.  But he is no message maker.  He is no Ronald Reagan, much as he aspires to be.

#### US holds the high cards—credibility is not important.

Walt 11—Professor of international relations @ Harvard University [Stephen M. Walt, “[Does the U.S. still need to reassure its allies?](http://walt.foreignpolicy.com/posts/2011/12/05/us_credibility_is_not_our_problem),” Foreign Policy, Monday, December 5, 2011—3:24 PM, pg. http://walt.foreignpolicy.com/posts/2011/12/05/us\_credibility\_is\_not\_our\_problem

A perennial preoccupation of U.S. diplomacy has been the perceived need to reassure allies of our reliability. Throughout the Cold War, U.S. leaders worried that any loss of credibility might cause dominoes to fall, lead key allies to "bandwagon" with the Soviet Union, or result in some form of "Finlandization." Such concerns justified fighting so-called "credibility wars" (including Vietnam), where the main concern was not the direct stakes of the contest but rather the need to retain a reputation for resolve and capability. Similar fears also led the United States to deploy thousands of nuclear weapons in EurUS ope, as a supposed counter to Soviet missiles targeted against our NATO allies.

The possibility that key allies would abandon us was almost always exaggerated, but U.S. leaders remain overly sensitive to the possibility. So Vice President Joe Biden has been [out on the road](http://www.nytimes.com/2011/12/05/world/europe/biden-tries-to-reassure-allies-of-us-support.html?ref=world) this past week, telling various U.S. allies that "the United States isn't going anywhere."  (He wasn't suggesting we're stuck in a rut, of course, but saying that the imminent withdrawal from Iraq doesn't mean a retreat to isolationism or anything like that.)

There's nothing really wrong with offering up this sort of comforting rhetoric, but I've never really understood why U.S. leaders were so worried about the credibility of our commitments to others. For starters, given our remarkably secure geopolitical position, whether U.S. pledges are credible is first and foremost a problem for those who are dependent on U.S. help. We should therefore take our allies' occasional hints about realignment or neutrality with some skepticism; they have every incentive to try to make us worry about it, but in most cases little incentive to actually do it.

Don't get me wrong: having allies around the world is useful and some attention needs to be paid to preserving intra-alliance solidarity, especially when the ally in question does have important things that we want or need. But an excessive concern for credibility encourages and enables allies to free-ride (something most of them have done for decades), and it can lead Washington to keep pouring resources into shaky endeavors lest allies elsewhere doubt our resolve.

This logic is wrong-headed, because squandering billions on fruitless endeavors (see under: Afghanistan) ultimately leaves one weaker overall and eventually diminishes public support for active engagement abroad. By contrast, liquidating a costly burden enables you to rebuild and regroup and puts you in a better position to respond in places that matter. The real message that Biden and other U.S. representatives should be telling their listeners is that getting out of Iraq (and eventually Afghanistan) is going to improve America's ability to protect its real interests, and that important U.S. allies need not be that concerned.

More importantly, worrying a bit less about our credibility and "playing hard to get" on occasion would have real benefits. If other states were a bit less confident that the United States would come to their aid if asked, they would be willing to do more to ensure that we would. If key U.S. allies are not entirely convinced of U.S. support no matter what they did, they would be less likely to engage in dangerous or provocative acts of their own. Moreover, playing "hard to get" reduces the likelihood that the United States will be perceived as a trigger-happy global policeman. As the cases of the Balkans in the 1990s and the recent Libyan intervention illustrate, when Washington is more reluctant to take on collective burdens, it ends up being appreciated (and less feared) when it finally does get involved. Thus, worrying a bit less about U.S. credibility is a way to get others to do more, and to resent what we do less.

To be clear: I'm not saying the United States should cultivate a reputation for unreliability or capriciousness. It should make commitments that are consistent with its interests and, so long as those interests do not change, it should do its best to fulfill the pledges it has made. But it ought to be hardheaded about this process, and proceed from the clear understanding that most of our allies need us more than we need them (at least most of the time). There will still be hard bargaining on occasion, a need for constructive and empathetic diplomacy, and there is little to be gained from treating our allies with visible disdain. But the United States still holds a lot of high cards, and we should expect allies to spend as much time reassuring us that they are worth the effort as we do reassuring them.

### 1NC Warming Offense

#### China and US are both eager to be the green leader—they risk a competition between the two.

Karlsson et al. 11—Professor of Political Science @ Uppsala University [Dr. Christer Karlsson, Charles Parker (Professor of Political Science @ Uppsala University), Mattias Hjerpe (Professor in the Centre for Climate Science and Policy Research @ Linköping University & Björn-Ola Linnér (Professor in Water and Environmental Studies and director of the Centre for Climate Science and Policy Research at Linköping University), “Looking for Leaders: Perceptions of Climate Change Leadership among Climate Change Negotiation Participants,” *Global Environmental Politics* 11:1, Feb 2011]

The list of possible leadership contenders may even be extended as to include countries such as China and Brazil. China’s recent behavior suggests that¶ it is less willing to observe former paramount leader Deng Xiaoping’s wellknown proscription to “never take the lead” and instead is increasingly focusing on his exhortation, contained in the second half of that same famous quote, “to do something big.” 25 China may be coming to the realization that doing something big will require leadership and that its growing structural power now¶ makes this a viable option.

We do not at this point have the full story on why COP-15 failed to produce an ambitious successor agreement to the Kyoto Protocol. It is clear, however, that China’s negotiating preferences were pivotal in shaping the final outcome in Copenhagen. Time will tell if China is indeed aiming for a climate¶ change leadership role, but, by virtue of its economic size and its growing international clout, China already plays a key role in determining the fate of international climate cooperation and may very well emerge as a future leader, particularly among developing countries.

There is apparently no shortage of leadership contenders in the field of climate change. Ever since its decision to save the Kyoto Protocol the EU has strived to portray itself as a leader on climate change. More recently, since President Obama took office, the US is once again eager to be seen as a leader on climate change. Alongside these self-proclaimed leaders, which historically also have been the main movers in the shaping of the climate change regime, we find less obvious but still possible candidates as future leaders. Now, the key question is if the current leadership candidates have managed to become recognized as leaders by the prospective followers? The next step in our effort to identify leaders in the climate change regime will be to examine the demand side of the¶ leadership equation. Pg. 95

#### That impedes US-China green cooperation

Larson 9—Journalist focusing on international environmental issues, based in Beijing and Washington, D.C [[Christina Larson](http://e360.yale.edu/author/Christina_Larson/12/), [[Christina Larson](http://blog.foreignpolicy.com/blog/4714) “[Let's call off the green energy space race with China](http://blog.foreignpolicy.com/posts/2009/04/26/paging_houston_call_off_the_green_space_wars),” Foreign Policy, Monday, April 27, 2009—11:00 AM, pg. http://blog.foreignpolicy.com/posts/2009/04/26/paging\_houston\_call\_off\_the\_green\_space\_wars]

Lastly, and most importantly, I think that highlighting the competition angle could ultimately be counter-productive, as fun as it is to envision a U.S. vs China jolly green smackdown. Stressing a rivalry could ultimately lead -- not necessarily in Osnos’s hands, but in looser, more politically-minded interpretations -- to the impression that the race for green energy is somehow a zero-sum game. That any progress made by China (again, let’s be careful to avoid exaggeration here) is somehow threatening to the U.S. Like if the Soviets got to the moon first; oh no. It’s us or them; only one racer breaks the ribbon; get off our green lunar pathway!

Some might argue that Americans do best when their competitive instincts are aroused. But I tend to agree with Charles McElwee, an environmental lawyer in Shanghai whom Osnos cites and whose insights I've long found valuable: Fanning the flames of us-vs-them-ism -- in the context of global issue that isn't so much a race to win as to survive -- could backfire. It could undercut political support on Capitol Hill for cooperative efforts, technology sharing, and perhaps even climate-treaty negotiations.

#### Extinction

Wittner 11—Professor of History @ State University of New York-Albany [Lawrence S. Wittner, “Is a Nuclear War with China Possible?” Huntington News, Monday, November 28, 2011, http://www.huntingtonnews.net/14446]

While nuclear weapons exist, there remains a danger that they will be used. After all, for centuries national conflicts have led to wars, with nations employing their deadliest weapons. The current deterioration of U.S. relations with China might end up providing us with yet another example of this phenomenon.

The gathering tension between the United States and China is clear enough. Disturbed by China’s growing economic and military strength, the U.S. government recently challenged China’s claims in the South China Sea, increased the U.S. military presence in Australia, and deepened U.S. military ties with other nations in the Pacific region. According to Secretary of State Hillary Clinton, the United States was “asserting our own position as a Pacific power.” But need this lead to nuclear war?

Not necessarily. And yet, there are signs that it could. After all, both the United States and China possess large numbers of nuclear weapons. The U.S. government threatened to attack China with nuclear weapons during the Korean War and, later, during the conflict over the future of China’s offshore islands, Quemoy and Matsu. In the midst of the latter confrontation, President Dwight Eisenhower declared publicly, and chillingly, that U.S. nuclear weapons would “be used just exactly as you would use a bullet or anything else.”

Of course, China didn’t have nuclear weapons then. Now that it does, perhaps the behavior of national leaders will be more temperate. But the loose nuclear threats of U.S. and Soviet government officials during the Cold War, when both nations had vast nuclear arsenals, should convince us that, even as the military ante is raised, nuclear saber-rattling persists.

Some pundits argue that nuclear weapons prevent wars between nuclear-armed nations; and, admittedly, there haven’t been very many—at least not yet. But the Kargil War of 1999, between nuclear-armed India and nuclear-armed Pakistan, should convince us that such wars can occur. Indeed, in that case, the conflict almost slipped into a nuclear war. Pakistan’s foreign secretary threatened that, if the war escalated, his country felt free to use “any weapon” in its arsenal. During the conflict, Pakistan did move nuclear weapons toward its border, while India, it is claimed, readied its own nuclear missiles for an attack on Pakistan.

At the least, though, don’t nuclear weapons deter a nuclear attack? Do they? Obviously, NATO leaders didn’t feel deterred, for, throughout the Cold War, NATO’s strategy was to respond to a Soviet conventional military attack on Western Europe by launching a Western nuclear attack on the nuclear-armed Soviet Union. Furthermore, if U.S. government officials really believed that nuclear deterrence worked, they would not have resorted to championing “Star Wars” and its modern variant, national missile defense. Why are these vastly expensive—and probably unworkable—military defense systems needed if other nuclear powers are deterred from attacking by U.S. nuclear might?

Of course, the bottom line for those Americans convinced that nuclear weapons safeguard them from a Chinese nuclear attack might be that the U.S. nuclear arsenal is far greater than its Chinese counterpart. Today, it is estimated that the U.S. government possesses over five thousand nuclear warheads, while the Chinese government has a total inventory of roughly three hundred. Moreover, only about forty of these Chinese nuclear weapons can reach the United States. Surely the United States would “win” any nuclear war with China.

But what would that “victory” entail? A nuclear attack by China would immediately slaughter at least 10 million Americans in a great storm of blast and fire, while leaving many more dying horribly of sickness and radiation poisoning. The Chinese death toll in a nuclear war would be far higher. Both nations would be reduced to smoldering, radioactive wastelands. Also, radioactive debris sent aloft by the nuclear explosions would blot out the sun and bring on a “nuclear winter” around the globe—destroying agriculture, [and] creating worldwide famine, and generating chaos and destruction.

Moreover, in another decade the extent of this catastrophe would be far worse. The Chinese government is currently expanding its nuclear arsenal, and by the year 2020 it is expected to more than double its number of nuclear weapons that can hit the United States. The U.S. government, in turn, has plans to spend hundreds of billions of dollars “modernizing” its nuclear weapons and nuclear production facilities over the next decade.

To avert the enormous disaster of a U.S.-China nuclear war, there are two obvious actions that can be taken. The first is to get rid of nuclear weapons, as the nuclear powers have agreed to do but thus far have resisted doing. The second, conducted while the nuclear disarmament process is occurring, is to improve U.S.-China relations. If the American and Chinese people are interested in ensuring their survival and that of the world, they should be working to encourage these policies.

### 1NC Ozone

No intnerlal ink to ozone – Montreal protocol proves consensus exists – US legitimacy isn’t necessary to convince other states

**No impact – expected to fully recover in the next 30 years**

**Reynolds and Dixon 10** [Mark and Sara, “HOORAY, THE **OZONE LAYER** IS SAFE,” 9-21, Lexis]

It is on the mend and skin cancer will be cut

LEADING scientists say the ozone layer is starting to repair itself and will eventually give us much greater protection from skin cancer.

They say that phasing out almost 100 substances once used in such products as refrigerators and aerosols has stopped the layer from further depletion.

Ozone in the stratosphere is important because it absorbs most of the sun's dangerous ultraviolet radiation, which can lead to skin cancer and eye damage. Although it is not yet increasing again, the ozone layer outside the polar regions is, by the year 2048, expected to recover to the levels it was at 30 years ago.

The United Nations report, Scientific Assessment Of Ozone Depletion 2010, paints a much more optimistic picture than previous assessments and is the first comprehensive update in four years.

It argues that action taken through the Montreal Protocol, which began in 1987 and has introduced the reduction of harmful emissions, has helped to halt the damage.

**Not rapidly disappearing – new losses are due to substances that have been banned**

**States News Service 11** [“MYSTERIES OF OZONE DEPLETION CONTINUE 25 YEARS AFTER THE DISCOVERY OF THE ANTARCTIC OZONE HOLE,” 8-29, Lexis Nexis]

We're no longer producing the primary chemicals chlorofluorocarbons (CFCs) that caused the problem, but CFCs have very long lifetimes in our atmosphere, and so we'll have ozone depletion for several more decades, said Solomon. There are still some remarkable mysteries regarding exactly how these chlorine compounds behave in Antarctica and it's amazing that we still have much to learn, even after studying ozone for so long. Susan Solomon, Ph.D., delivered the Kavli Foundation Lecture at the ACS 242nd National Meeting and Exposition. High-resolution version The ozone layer is crucial to life on Earth, forming a protective shield high in the atmosphere that blocks potentially harmful ultraviolet rays in sunlight. Scientists have known since 1930 that ozone forms and decomposes through chemical processes. The first hints that human activity threatened the ozone layer emerged in the 1970s, and included one warning from Paul Crutzen, Ph.D., that agricultural fertilizers might reduce ozone levels. Another hint was from F. Sherwood Rowland, Ph.D., and Mario Molina, Ph.D., who described how CFCs in aerosol spray cans and other products could destroy the ozone layer. The three shared a 1995 Nobel Prize in Chemistry for that research. In 1985, British scientists discovered a hole, a completely unexpected area of intense ozone depletion over Antarctica. Solomon's 1986 expedition to Antarctica provided some of the clinching evidence that underpinned a global ban on CFCs and certain otherozone-depleting gases. Evidence suggests that the ozone depletion has stopped getting worse. Ozone can be thought of as a patient in remission, but it's too early to declare recovery, said Solomon. And surprises, such as last winter's loss of 40% of the ozone over the Arctic still occur due to the extremely long lifetimes of ozone-destroying substances released years ago before the ban.

#### Newest evidence confirms the ozone threat was a sham. Depletion hasn’t occurred and effects have been minimal.

**Lieberman ‘7** (Ben, Senior Policy Analyst for Energy and Environment – Heritage Foundation, China Post, “MONTREAL PROTOCOL AND OZONE CRISIS THAT WASN'T”, 9-14, L/N)

Environmentalists have made many apocalyptic predictions over the past decades and, when they have not come to pass, have proclaimed that their preventive measures averted disaster -- as with the 1987 Montreal Protocol On Substances That Deplete The Ozone Layer (Montreal Protocol). The many lurid predictions of skin cancer epidemics, eco-system destruction and so on have not come true, and to Montreal Protocol proponents this is cause for self-congratulation. But in retrospect the evidence shows that ozone depletion was an exaggerated threat in the first place and that the parade of horribles never really was in the cards. As the parties to the treaty return to Montreal for their 20th anniversary this week it should be cause for reflection, not celebration, especially for those who see it as a success story to be repeated for climate change. The treaty came about over legitimate but overstated concerns that chlorofluorocarbons (CFCs, then a widely used refrigerant gas) and other compounds were rising to the stratosphere and destroying ozone molecules. These molecules, collectively known as the ozone layer, shield the earth from excessive ultraviolet-B radiation (UVB) from the sun. The 1987 Montreal Protocol led to a CFC ban in most developed nations by 1996, while Developing nations were given an extension but are under pressure to curtail it. So what do we know now? A 1998 World Meteorological Organization (WMO) report said that "since 1991, the linear [depletion] trend observed during the 1980s has not continued, but rather total column ozone has been almost constant ..." This was too soon to be attributable to the Montreal Protocol as that same report noted that the stratospheric concentrations of the offending compounds were still increasing at the time of writing. In fact, they did not begin to decline until the end of the 1990s. This lends credence to the view, widely derided at the time of the Montreal Protocol, that natural variations explain the fluctuations in the global ozone layer more than CFC usage. More importantly, the feared widespread increase in ground-level UVB radiation has also failed to materialize. Keep in mind that ozone depletion, in and of itself, is not of consequence to human health or the environment. It is the concern that an eroded ozone layer would allow more of the sun's damaging UVB rays to reach the earth that gave rise to the Montreal Protocol. But the WMO concedes that no statistically significant long-term trends have been detected, noting earlier this year that "outside the polar regions, ozone depletion has been relatively small, hence, in many places, increases in UV due to this depletion are difficult to separate from the increases caused by other factors, such as changes in cloud and aerosol." In other words, ozone depletion's impact on UVB over populated regions is so small as to be easily lost amidst the noise of background variability. Needless to say, if UVB has not gone up, then the fears are unfounded: indeed, the much hyped acceleration in skin cancer rates has not happened. For example, U.S. National Cancer Institute statistics show that malignant melanoma incidence and mortality, which had shown a long-term increase that pre-dated ozone depletion, had actually been leveling off during the time of the putative ozone crisis. Further, no eco-system or species was ever shown to be seriously harmed by ozone depletion. This is true even in Antarctica, where the largest seasonal ozone losses, the so-called Antarctic ozone hole, occur each year. Also forgotten is a long list of truly ridiculous claims, such as the one from Al Gore's 1992 book Earth in the Balance that, thanks to the Antarctic ozone hole, "hunters now report finding blind rabbits; fishermen catch blind salmon." The Montreal Protocol has not made these problems go away -- they never occurred in the first place.

#### Peer reviewed studies confirm.

**Schein et al ’95** (Oliver MD, Bealriz Mufioz MS, Sheila West PhD, Center for Prevenlive Opthamology – Johns Hopkins U., James Nethercott MD, Dept. Env. Health Science – Johns Hopkins U., Donald Duncan PhD, Applied Physics Laboratory – Johns Hopkins U., Cesar Vicencio MD, Juan Honeyman MD, U. Chile, Kirk Geiatt VMD, Dept. Small Animal Clinical Sciences – U. Florida, Hillel Karen PhD, US EPA Health Effects Research Laboratory, American Journal of Public Health, “Ocular and Dermatologic Health Effects of Ultraviolet Radiation Exposure from the Ozone Hole in Southern Chile”, 85(4), April, p. 549, Ebsco)

The recent expansion of the geographic area covered by the ozone hole over Antarctica has been accompanied by numerous lay reports of UV radiation related disease in humans and animals in the region. However, our pilot project provides no convincing evidence to support the reported acute adverse health effects. No increase in adverse ocular health effects known to be related to acute UV exposure was witnessed by the ophthalmologists practicing in Punta Arenas. More visits to the dermatologist for verrucae were found during time periods associated with increased irradiance, but since no accompanying increase for sunburn, photcidermatoses, or other sentinel diagnoses was documented, these visits were probably not related to increased UV irradiation. Moreover, while verrucae may be linked with a decline in cellmediated immunity,---' they arc usually associated with wet work and arc quite common, tjccurring in 5% to 10% of all persons.-' They also often involute and recur. The 4% to 1 \% frequency of visits for verrucae in a dermatologic patient pt)pulation is, therefore, not striking. The lack of unusual findings in the systematic chart review was further supported by direct ophthalmologic and dermatologic examinations of small sample populations of fishermen, shepherds, and hospital workers (data not shown). The former two populations were selected because of their outdoor occupational exposure, and the third was selected as a control group. No significant differences in (Kular or dermatologic findings were present by occupation. Tinea infeetions were noted in more than 50% of all subjects examined but were most common in the hospital workers, the group least exposed to UV radiation. The animal investigations were also not supportive of the lay reports. Although external ocular disease consistent with C psittaci was found in 69% of the sheep evaluated, the findings were not consistent with blindness, nor is this infectious agent known to be associated with UV exposure. The frequency of nonblinding cataract among sheep ranged from 3% to 24% at the five ranches. Unfortunately, comparison data do not exist from elsewhere in Chile or from other countries to put these findings into perspective. However, no bilateral blinding cataract was found. Our examination occurred soon after the ozone hole appeared, so it is unlikely that animal loss due to death or injury from blindness could explain our findings. The acute effects of UV-B exposure in cattle have been documented in experimental studies of infectious keratoconjunctivitis caused by Mycohacteriiim bovis, an infection not seen in the cattle examined in Chile. UV exposure has been linked to squamous cell carcinoma in Hereford cattle in the United States.'^ In the sample of Hereford cattle examined in Chile, the prevalenee of presumed squamous cell earcinoma was high (5 of 30 animals). However, a larger sample would need to be examined before this rate could be considered reliable. The lack of observed adverse health effects is consistent with our estimation of an excess annual UV-B exposure in the region of 1%. It is also important to assess the absolute level of exposure in the region. Using historical cloud cover data from Punta Arenas, ozone column density measurements from a Brewer MK4 speetroradiometer located in Punta Arenas, and the Green model for estimating UV-B irradianee,-" we estimated an annual exposure in Punta Arenas of approximately 2190 MEDs. This may be compared with the approximately 2500 MEDs estimated for Maryland in 1992.^^ Clearly, the cumulative UV-B exposure in Punta Arenas, even within the context of an ozone hole, is exceeded by that in many temperate climates and is far surpassed by that in tropical locations.

### 1NC Warming Defense

#### Tipping points theory is wrong---zero data can reliably identify specific tipping points

Andrew C. Revkin 9, senior fellow at Pace University's Pace Academy for Applied Environmental Studies, has taught at Columbia's Graduate School of Journalism and the Bard College Center for Environmental Policy, March 29, 2009, “Among Climate Scientists, a Dispute Over ‘Tipping Points’,” The New York Times, online: http://www.nytimes.com/2009/03/29/weekinreview/29revkin.html?\_r=1&pagewanted=print

But the idea that the planet is nearing tipping points — thresholds at which change suddenly becomes unstoppable — has driven a wedge between scientists who otherwise share deep concerns about the implications of a human-warmed climate. Environmentalists and some climate experts are increasingly warning of impending tipping points in their efforts to stir public concern. The term confers a sense of immediacy and menace to potential threats from a warming climate — dangers that otherwise might seem too distant for people to worry about. But other scientists say there is little hard evidence to back up specific predictions of catastrophe. They worry that the use of the term “tipping point” can be misleading and could backfire, fueling criticism of alarmism and threatening public support for reducing greenhouse gas emissions. “I think a lot of this threshold and tipping point talk is dangerous,” said Kenneth Caldeira, an earth scientist at Stanford University and the Carnegie Institution and an advocate of swift action to reduce carbon dioxide emissions. “If we say we passed thresholds and tipping points today, this will be an excuse for inaction tomorrow,” he said. While studies of climate patterns in the distant past clearly show the potential for drastic shifts, these scientists say, there is enormous uncertainty in making specific predictions about the future. In some cases, there are big questions about whether climate-driven disasters — like the loss of the Amazon or a rise in sea levels of several yards in a century — are even plausible. And even in cases where most scientists agree that rising temperatures could lead to unstoppable change, no one knows where the thresholds lie that would set off such shifts.

#### Mitigation and adapaptation solves.

Mendelsohn 09 (Robert O., the Edwin Weyerhaeuser Davis Professor, Yale School of Forestry and Environmental Studies, Yale University, June 2009, “Climate Change and Economic Growth,” online: http://www.growthcommission.org/storage/cgdev/documents/gcwp060web.pdf)

**The** heart of the **debate about climate change** comes from a number of warnings from scientists and others that **give the impression that human-induced climate change is an immediate threat to society** (IPCC 2007a,b; Stern 2006). Millions of people might be vulnerable to health effects (IPCC 2007b), crop production might fall in the low latitudes (IPCC 2007b), water supplies might dwindle (IPCC 2007b), precipitation might fall in arid regions (IPCC 2007b), extreme events will grow exponentially (Stern 2006), and between 20–30 percent of species will risk extinction (IPCC 2007b). Even worse, there may be catastrophic events such as the melting of Greenland or Antarctic ice sheets causing severe sea level rise, which would inundate hundreds of millions of people (Dasgupta et al. 2009). Proponents argue there is no time to waste. Unless greenhouse gases are cut dramatically today, economic growth and well‐being may be at risk (Stern 2006). **These statements are** largely alarmist and misleading. Although climate change is a serious problem that deserves attention, **society’s immediate behavior has an** extremely low probability **of leading to** catastrophic consequences. The **science and economics** of climate change **is quite clear that emissions over the next few decades will lead to only** mild consequences. The severe impacts predicted by alarmists require a century (or two in the case of Stern 2006) of no mitigation. Many of the **predicted impacts assume there will be no or little adaptation**. The net economic impacts from climate change over the next 50 years will be small regardless. Most of **the more severe impacts will take more than a century or even a millennium to unfold and many of these** “**potential” impacts** will never occur because people will adapt. **It is not at all apparent that immediate and dramatic policies need to be developed to thwart long‐range climate risks**. What is needed are long‐run balanced responses.

#### Climate change proves Oceans and marine bioD are resilient – alarmist predictions empirically denied

Taylor 10 (James M. Taylor is a senior fellow of The Heartland Institute and managing editor of Environment & Climate News., “Ocean Acidification Scare Pushed at Copenhagen,” Feb 10 http://www.heartland.org/publications/environment%20climate/article/26815/Ocean\_Acidification\_Scare\_Pushed\_at\_Copenhagen.html)

With global temperatures continuing their decade-long decline and United Nations-sponsored global warming talks falling apart in Copenhagen, alarmists at the U.N. talks spent considerable time claiming carbon dioxide emissions will cause catastrophic ocean acidification, regardless of whether temperatures rise. The latest scientific data, however, show no such catastrophe is likely to occur. Food Supply Risk Claimed The United Kingdom’s environment secretary, Hilary Benn, initiated the Copenhagen ocean scare with a high-profile speech and numerous media interviews claiming ocean acidification threatens the world’s food supply. “The fact is our seas absorb CO2. They absorb about a quarter of the total that we produce, but it is making our seas more acidic,” said Benn in his speech. “If this continues as a problem, then it can affect the one billion people who depend on fish as their principle source of protein, and we have to feed another 2½ to 3 billion people over the next 40 to 50 years.” Benn’s claim of oceans becoming “more acidic” is misleading, however. Water with a pH of 7.0 is considered neutral. pH values lower than 7.0 are considered acidic, while those higher than 7.0 are considered alkaline. The world’s oceans have a pH of 8.1, making them alkaline, not acidic. Increasing carbon dioxide concentrations would make the oceans less alkaline but not acidic. Since human industrial activity first began emitting carbon dioxide into the atmosphere a little more than 200 years ago, the pH of the oceans has fallen merely 0.1, from 8.2 to 8.1. Following Benn’s December 14 speech and public relations efforts, most of the world’s major media outlets produced stories claiming ocean acidification is threatening the world’s marine life. An Associated Press headline, for example, went so far as to call ocean acidification the “evil twin” of climate change. Studies Show CO2 Benefits Numerous recent scientific studies show higher carbon dioxide levels in the world’s oceans have the same beneficial effect on marine life as higher levels of atmospheric carbon dioxide have on terrestrial plant life. In a 2005 study published in the Journal of Geophysical Research, scientists examined trends in chlorophyll concentrations, critical building blocks in the oceanic food chain. The French and American scientists reported “an overall increase of the world ocean average chlorophyll concentration by about 22 percent” during the prior two decades of increasing carbon dioxide concentrations. In a 2006 study published in Global Change Biology, scientists observed higher CO2 levels are correlated with better growth conditions for oceanic life. The highest CO2 concentrations produced “higher growth rates and biomass yields” than the lower CO2 conditions. Higher CO2 levels may well fuel “subsequent primary production, phytoplankton blooms, and sustaining oceanic food-webs,” the study concluded. Ocean Life ‘Surprisingly Resilient’ In a 2008 study published in Biogeosciences, scientists subjected marine organisms to varying concentrations of CO2, including abrupt changes of CO2 concentration. The ecosystems were “surprisingly resilient” to changes in atmospheric CO2, and “the ecosystem composition, bacterial and phytoplankton abundances and productivity, grazing rates and total grazer abundance and reproduction were not significantly affected by CO2-induced effects.” In a 2009 study published in Proceedings of the National Academy of Sciences, scientists reported, “Sea star growth and feeding rates increased with water temperature from 5ºC to 21ºC. A doubling of current [CO2] also increased growth rates both with and without a concurrent temperature increase from 12ºC to 15ºC.” Another False CO2 Scare “Far too many predictions of CO2-induced catastrophes are treated by alarmists as sure to occur, when real-world observations show these doomsday scenarios to be highly unlikely or even virtual impossibilities,” said Craig Idso, Ph.D., author of the 2009 book CO2, Global Warming and Coral Reefs. “The phenomenon of CO2-induced ocean acidification appears to be no different.

#### No wars impact

Salehyan 07 (Idean, Professor of Political Science – University of North Texas, “The New Myth About Climate Change”, Foreign Policy, Summer, http://www.foreignpolicy.com/story/cms.php?story\_id=3922)

First, aside from a few anecdotes, there is little systematic empirical evidence that resource scarcity and changing environmental conditions lead to conflict. In fact, several studies have shown that an abundance of natural resources is more likely to contribute to conflict. Moreover, even as the planet has warmed, the number of civil wars and insurgencies has decreased dramatically. Data collected by researchers at Uppsala University and the International Peace Research Institute, Oslo shows a steep decline in the number of armed conflicts around the world. Between 1989 and 2002, some 100 armed conflicts came to an end, including the wars in Mozambique, Nicaragua, and Cambodia. If global warming causes conflict, we should not be witnessing this downward trend. Furthermore, if famine and drought led to the crisis in Darfur, why have scores of environmental catastrophes failed to set off armed conflict elsewhere? For instance, the U.N. World Food Programme warns that 5 million people in Malawi have been experiencing chronic food shortages for several years. But famine-wracked Malawi has yet to experience a major civil war. Similarly, the Asian tsunami in 2004 killed hundreds of thousands of people, generated millions of environmental refugees, and led to severe shortages of shelter, food, clean water, and electricity. Yet the tsunami, one of the most extreme catastrophes in recent history, did not lead to an outbreak of resource wars. Clearly then, there is much more to armed conflict than resource scarcity and natural disasters.

#### Climate change is not the root cause of refugees, and they don’t solve for the institutions that actually cause displacement

Hartmann 10 (Betsy professor of development studies and director of the Population and Development Program , B.A. from Yale University, Ph.D. from the London School of Economics 23 FEB 2010 Rethinking climate refugees and climate conflict: Rhetoric, reality and the politics of policy discourse <http://onlinelibrary.wiley.com/doi/10.1002/jid.1676/abstract>)

The narrative ignores basic elements of Sudanese political economy that helped create and sustain the conﬂict. These include gross inequalities in wealth and power between the elite in the capital and the rural population; government agricultural policies that favour large mechanised farms and irrigation schemes over rain-fed, small farmer agriculture, causing both political grievances and land degradation; forced migration, such as the 1990s removal of Nuba farmers from their lands into so-called ‘peace villages’ where they became a source of captive labour for mechanised farms; and what Alex de Waal calls ‘militarised tribalism’ (de Waal, 2007). In particular, the nationalisation of land in 1970, by which customary laws were set aside and people could obtain access only through lease agreements with the government, set the stage for widespread land-grabbing by elites and the marginalisation of pastoralists. As one scholar of the region notes, ‘. . .not all resource conﬂicts are based on a situation of resource scarcity; rather, they are political in nature and have to do with the workings of the Sudanese state’ (Manger, 2005, p. 135). The discovery but rather to heighten it, if the government controls the water for its own interests (Polgreen, 2007). The construction of Darfur as a climate conﬂict should serve as canary in the coal mine that something is amiss when environmental determinism overrides serious analysis of power relations. This is not to deny that environmental changes due to global warming could in some instances exacerbate already existing economic and political divisions. However, whether or not violent conﬂict and mass migrations result depends on so many other factors that it is far too simplistic to see climate change as a major cause or trigger. Moreover, such threat scenarios ignore the way many poorly resourced communities manage their affairs without recourse to violence. Brown et al. (2007) cite the case of the semi-arid regions of Northern Nigeria where conﬂicts between pastoralists and agricultural communities occur over water and fodder, but seldom spread because of the existence of traditional conﬂict resolution institutions. They argue that helping these communities adapt to climate change should involve strengthening such institutions.

#### No impact to warming

Idso and Idso 11 (Craig D., Founder and Chairman of the Board – Center for the Study of Carbon Dioxide and Global Change, and Sherwood B., President – Center for the Study of Carbon Dioxide and Global Change, “Carbon Dioxide and Earth’s Future Pursuing the Prudent Path,” February, http://www.co2science.org/education/reports/ prudentpath/prudentpath.pdf)

As presently constituted, earth’s atmosphere contains just slightly less than 400 ppm of the colorless and odorless gas we call carbon dioxide or CO2. That’s only four-hundredths of one percent. Consequently, even if the air's CO2 concentration was tripled, carbon dioxide would still comprise only a little over one tenth of one percent of the air we breathe, which is far less than what wafted through earth’s atmosphere eons ago, when the planet was a virtual garden place. Nevertheless, a small increase in this minuscule amount of CO2 is frequently predicted to produce a suite of dire environmental consequences, including dangerous global warming, catastrophic sea level rise, reduced agricultural output, and the destruction of many natural ecosystems, as well as dramatic increases in extreme weather phenomena, such as droughts, floods and hurricanes. As strange as it may seem, these frightening future scenarios are derived from a single source of information: the ever-evolving computer-driven climate models that presume to reduce the important physical, chemical and biological processes that combine to determine the state of earth’s climate into a set of mathematical equations out of which their forecasts are produced. But do we really know what all of those complex and interacting processes are? And even if we did -- which we don't -- could we correctly reduce them into manageable computer code so as to produce reliable forecasts 50 or 100 years into the future? Some people answer these questions in the affirmative. However, as may be seen in the body of this report, real-world observations fail to confirm essentially all of the alarming predictions of significant increases in the frequency and severity of droughts, floods and hurricanes that climate models suggest should occur in response to a global warming of the magnitude that was experienced by the earth over the past two centuries as it gradually recovered from the much-lower-than-present temperatures characteristic of the depths of the Little Ice Age. And other observations have shown that the rising atmospheric CO2 concentrations associated with the development of the Industrial Revolution have actually been good for the planet, as they have significantly enhanced the plant productivity and vegetative water use efficiency of earth's natural and agro-ecosystems, leading to a significant "greening of the earth." In the pages that follow, we present this oft-neglected evidence via a review of the pertinent scientific literature. In the case of the biospheric benefits of atmospheric CO2 enrichment, we find that with more CO2 in the air, plants grow bigger and better in almost every conceivable way, and that they do it more efficiently, with respect to their utilization of valuable natural resources, and more effectively, in the face of environmental constraints. And when plants benefit, so do all of the animals and people that depend upon them for their sustenance. Likewise, in the case of climate model inadequacies, we reveal their many shortcomings via a comparison of their "doom and gloom" predictions with real-world observations. And this exercise reveals that even though the world has warmed substantially over the past century or more -- at a rate that is claimed by many to have been unprecedented over the past one to two millennia -- this report demonstrates that none of the environmental catastrophes that are predicted by climate alarmists to be produced by such a warming has ever come to pass. And this fact -- that there have been no significant increases in either the frequency or severity of droughts, floods or hurricanes over the past two centuries or more of global warming -- poses an important question. What should be easier to predict: the effects of global warming on extreme weather events or the effects of elevated atmospheric CO2 concentrations on global temperature? The first part of this question should, in principle, be answerable; for it is well defined in terms of the small number of known factors likely to play a role in linking the independent variable (global warming) with the specified weather phenomena (droughts, floods and hurricanes). The latter part of the question, on the other hand, is ill-defined and possibly even unanswerable; for there are many factors -- physical, chemical and biological -- that could well be involved in linking CO2 (or causing it not to be linked) to global temperature. If, then, today's climate models cannot correctly predict what should be relatively easy for them to correctly predict (the effect of global warming on extreme weather events), why should we believe what they say about something infinitely more complex (the effect of a rise in the air’s CO2 content on mean global air temperature)? Clearly, we should pay the models no heed in the matter of future climate -- especially in terms of predictions based on the behavior of a non-meteorological parameter (CO2) -- until they can reproduce the climate of the past, based on the behavior of one of the most basic of all true meteorological parameters (temperature). And even if the models eventually solve this part of the problem, we should still reserve judgment on their forecasts of global warming; for there will yet be a vast gulf between where they will be at that time and where they will have to go to be able to meet the much greater challenge to which they aspire

#### Previous temperature spikes disprove the impact

Singer 11 (S. Fred, Robert M. and Craig, PhD physics – Princeton University and professor of environmental science – UVA, consultant – NASA, GAO, DOE, NASA, Carter, PhD paleontology – University of Cambridge, adjunct research professor – Marine Geophysical Laboratory @ James Cook University, and Idso, PhD Geography – ASU, “Climate Change Reconsidered,” 2011 Interim Report of the Nongovernmental Panel on Climate Change)

Research from locations around the world reveal a significant period of elevated air temperatures that immediately preceded the Little Ice Age, during a time that has come to be known as the Little Medieval Warm Period. A discussion of this topic was not included in the 2009 NIPCC report, but we include it here to demonstrate the existence of another set of real-world data that do not support the IPCC‘s claim that temperatures of the past couple of decades have been the warmest of the past one to two millennia. In one of the more intriguing aspects of his study of global climate change over the past three millennia, Loehle (2004) presented a graph of the Sargasso Sea and South African temperature records of Keigwin (1996) and Holmgren et al. (1999, 2001) that reveals the existence of a major spike in surface air temperature that began sometime in the early 1400s. This abrupt and anomalous warming pushed the air temperatures of these two records considerably above their representations of the peak warmth of the twentieth century, after which they fell back to pre-spike levels in the mid-1500s, in harmony with the work of McIntyre and McKitrick (2003), who found a similar period of higher-than-current temperatures in their reanalysis of the data employed by Mann et al. (1998, 1999).

#### Can’t solve developing countries

Socolow and Glaser 09 – Professor of Mechanical and Aerospace Engineering at Princeton University and Assistant Professor at the Woodrow Wilson School of Public and International Affairs and in the Department of Mechanical and Aerospace Engineering at Princeton University (Robert H. and Alexander, Fall. “Balancing risks: nuclear energy & climate change.” Dædalus Volume 138, Issue 4, pp. 31-44. MIT Press Journals.)

In this paper we consider a nuclear future where 1,500 GW of base load nuclear power is deployed in 2050. A nuclear fleet of this size would contribute about one wedge, if the power plant that would have been built instead of the nuclear plant has the average CO2 emissions per kilowatt hour of all operating plants, which might be half of the value for a coal plant. Base load power of 1,500 GW would contribute one fourth of total electric power in a business-as-usual world that produced 50,000 terawatt-hours (TWh) of electricity per year, two-and-a-half times the global power consumption. However, **in a world focused on climate change mitigation, one would expect massive global investments in energy efficiency–more efficient motors, compressors, lighting, and circuit boards–that by 2050 could cut total electricity demand in half, relative to business as usual**. In such a world, 1,500 GW of nuclear power would provide half of the power. We can get a feel for the geopolitical dimension of climate change mitigation from the widely cited scenarios by the International Energy Agency (iea) presented annually in its World Energy Outlook (weo), even though these now go only to 2030. The weo 2008 estimates energy, electricity, and CO2 emissions by region. Its 2030 world emits 40.5 billion tons of CO2, 45 percent from electric power plants. The countries of theOrganisation for Economic Co-operation and Development (oecd) emit less than one third of total global fossil fuel emissions and less than one third of global emissions from electric power production. By extrapolation, at midcentury the oecd could contribute only one quarter of the world’s greenhouse gas emissions. It is hard for Western analysts to grasp the importance of these numbers. **The focus of climate change mitigation today is on leadership from the OECD countries**, **which are wealthier and more risk averse. But within a decade, the targets under discussion today can be within reach only if mitigation is in full gear in those parts of the developing world that share production and consumption patterns with the industrialized world**. The map (see Figure 1) shows a hypothetical global distribution of nuclear power in the year 2050 based on a highnuclear scenario proposed in a widely cited mit report published in 2003. Three-fifths of the nuclear capacity in 2050 as stated in the mit report is located in the oecd, and more nuclear power is deployed in the United States in 2050 than in the whole world today. The worldview underlying these results is pessimistic about electricity growth rates for key developing countries, relative to many other sources. Notably, per capita electricity consumption in almost every developing country remains below 4,000 kWh per year in 2050, which is one-fifth of the assumed U.S. value for the same year. Such a ratio would startle many analysts today–certainly many in China. It is well within limits of credulity that nuclear power in 2050 could be nearly absent from the United States and the European Union and at the same time widely deployed in several of the countries rapidly industrializing today. Such a bifurcation could emerge, for example, if public opposition to nu clear power in the United States and Europe remains powerful enough to prevent nuclear expansion, while elsewhere, perhaps where modernization and geopolitical considerations trump other concerns, nuclear power proceeds vigorously. It may be that the United States and other countries of the oecd will have substantial leverage over the development of nuclear power for only a decade or so. Change will not happen overnight**. Since 2006, almost 50 countries that today have no nuclear power plants have approached the International Atomic Energy Agency (iaea) for assistance, and many of them have announced plans to build one or more reactors by 2020. Most of these countries, however, are not currently in a good position to do so. Many face important** technical and economic constraints**, such as grid capacity, electricity demand, or gdp. Many have too few trained nuclear scientists and engineers, or lack an adequate regulatory framework and related legislation, or have not yet had a public debate about the rationale for the project**. Overall, **the iaea has estimated that “for a State with little developed technical base the implementation of the first [nuclear power plant] would, on average, take about 15 years**.” 11 **This lead time constrains rapid expansion of nuclear energy today**. **A wedge of nuclear power is, necessarily, nuclear power deployed widely– including in regions that are politically unstable today. If nuclear power is suf-ficiently unattractive in such a deployment scenario,** nuclear power is not on the list of solutions **to climate change**.

#### Warming is irreversible

ANI 10 (“IPCC has underestimated climate-change impacts, say scientists”, 3-20, One India, http://news.oneindia.in/2010/03/20/ipcchas-underestimated-climate-change-impacts-sayscientis.html)

According to Charles H. Greene, Cornell professor of Earth and atmospheric science, "Even if all man-made greenhouse gas emissions were stopped tomorrow and carbon-dioxide levels stabilized at today's concentration, by the end of this century, the global average temperature would increase by about 4.3 degrees Fahrenheit, or about 2.4 degrees centigrade above pre-industrial levels, which is significantly above the level which scientists and policy makers agree is a threshold for dangerous climate change." "Of course, greenhouse gas emissions will not stop tomorrow, so the actual temperature increase will likely be significantly larger, resulting in potentially catastrophic impacts to society unless other steps are taken to reduce the Earth's temperature," he added. "Furthermore, while the oceans have slowed the amount of warming we would otherwise have seen for the level of greenhouse gases in the atmosphere, the ocean's thermal inertia will also slow the cooling we experience once we finally reduce our greenhouse gas emissions," he said. This means that the temperature rise we see this century will be largely irreversible for the next thousand years. "Reducing greenhouse gas emissions alone is unlikely to mitigate the risks of dangerous climate change," said Green.

## 2NC

### No Treaties—Overview

#### Statutory isn’t exclusively legislative

CASSIN 47 Justice of the Municipal Court of the City of New York [Edward Cassin, Constitutional Versus Legislative Courts, 16 Fordham L. Rev. 87 (1947).]

There is something else that should be discussed at this point. I refer to the inexact use of the word "statutory" as being synonymous with "legislative." 28 It is correct to say that all legislative courts are statutory courts but all statutory courts are not legislative courts. Nowhere has this been clearer put than in the minority opinion in the Rhode Island case:

"It is true that they are brought into existence by legislative enactment, and that, because of this fact, they may be loosely termed statutory courts, but when they are so instituted the judicial power of the state is vested in them by the Constitution, which makes them constitutional courts in the strict sense of the term." 29

#### Their interpretation of treaties as statutory is anti-constitutional.

YOO 2—Professor of Law, School of Law, University of California, Berkeley [John C. Yoo, RESPONSE ESSAY: Rejoinder: Treaty Interpretation and the False Sirens of Delegation, California Law Review, July, 2002, 90 Calif. L. Rev. 1305]

Conclusion

Politics as Law has had the good fortune to outlive its subject. It began by discussing whether the political consensus in favor of a national missile defense could survive the terms of the ABM Treaty. It argued that the President could deploy a system by exercising any number of treaty powers, ranging from termination to interpretation. As the latter had received limited scholarly attention, Politics as Law examined how the separation of powers applied in the treaty-interpretation context. Traditional methods for interpreting the Constitution, such as focusing on its text, structure, and history, made clear that the power to interpret treaties vested in the President alone. Thus, I concluded, if the President wanted to deploy a national missile defense, he could unilaterally interpret the ABM Treaty as not prohibiting a limited system designed to destroy a limited number of missiles launched by rogue states.

Although President Bush mooted the issue by terminating the ABM Treaty on December 13, 2001, n212 Professor Van Alstine's response demonstrates that the debate lives on. He argues that certain classes of treaties, such as those governing private commercial transactions, create individual rights and that their interpretation therefore lies within the province of the federal judiciary. In short, his response equates treaties to statutes and attributes to them all the rights and privileges that pertain to domestic legislation. As his discussion of private commercial law treaties shows, Professor Van Alstine would further allow this interpretive authority to flow from U.S. courts to foreign and international courts, all in the name of international harmonization. Professor Van Alstine seeks nothing less than the mother of all delegations.

As I have argued here, that vision of treaty interpretation suffers from serious flaws. Equating treaties with statutes does violence to the separation of powers and federalism, the Constitution's two fundamental structural limitations on the authority of government. It would allow the treatymakers to escape the Constitution's careful limitations on Congress's powers, and it would represent a serious invasion of the President's constitutional authority in foreign affairs. The shortcomings of his approach are amply demonstrated by its need to divest the President of his unilateral treaty-termination authority, which (as the lack of criticism of President Bush's termination of the ABM Treaty shows) is widely accepted. His [\*1341] justification of a plenary judicial treaty interpretation on the basis of the delegation doctrine similarly fails for textual and structural reasons. The Constitution simply has never been read to permit the delegation of an executive power to another branch of government. Finally, Professor Van Alstine's theory supporting the transfer of interpretive authority outside the American government has no basis whatsoever in the Constitution. Indeed, such delegation would violate the basic constitutional structures that regulate the exercise of power by the federal government.

#### The Impact is that they explode the topic—there are a CRAP LOAD of actions they can take that aren’t Topical—it’s important to be precise and clear with questions of authority.

KAISER 84—the Official Specialist in American National Government, Congressional Research Service, the Library of Congress [Frederick M. Kaiser, Congressional Control of Executive Actions in the Aftermath of the Chadha Decision, 6 Admin. L. Rev. 239 (1984)]

V. OTHER CONGRESSIONAL ACTIONS

The Supreme Court's ruling in Chadha (and implicitly, the summary affirmances that followed) found the legislative veto unconstitutional because it violated the Presentment Clauses of the Constitution, a holding that presumably invalidates all types of statutory congressional vetoes (i.e., those relying exclusively on Congress). Since that time, the House Rules Committee, which "has always had reservations about 'legislative veto' laws ... " has established a policy of returning bills that contain such provisions to the authorizing committees for redrafting.' 3 Yet certain legislative veto provisions may remain in force; and some may elicit compliance, because it is in the executive's own vested interest to do so. Moreover, as described above, certain types of congressional vetoes, especially committee vetoes in appropriations acts, have been ratified statutorily since Chadha. These possibilities notwithstanding, Congress still has other options for controlling specific executive actions, in addition to the statutory and nonstatutory mechanisms detailed above. What follows is neither a comprehensive listing of alternatives-although they range from major statutory initiatives to House rules changes-nor a ranking of them.

As the Court noted in Chadha, Congress has been inventive in developing its powers; -35 and the perceived benefit or feasibility of any particular approach depends upon many different factors that cannot be explored in depth here.

One often-cited remedy, however, is likely to languish or be of only marginal utility, because of practical and philosophical concerns underlying its assumptions. That is the all-purpose prescription that the establishing statutory authority for agencies and programs should be unambiguous, precisely and narrowly defined, and with clear, straightforward objectives. Otherwise, Congress, lacking will and resolve, so the reasoning goes, has abdicated its lawmaking responsibilities by "passing the buck to the executive. .. 136

The noble intent behind this solution, however, minimizes the reality behind contemporary laws: the changing nature and characteristics of political parties, the frequent split party control at the national level (in all but one of the past four Presidencies), the increase in number and political sophistication of organized interests and so-called "single issue" groups, the complexity and intense controversy surrounding many current issues, the truncated distribution of governmental authority under the Constitution, and the internal competing power structures within Congress and the executive. All of these conspire against such an over-arching solution and in favor of broad delegations of authority, vague language, and generalized statements of purpose in public laws. It may also be that proponents of such comprehensive solutions somewhat naively recall earlier periods that exhibited clear and precise legislation--e.g., the 1930 Smoot-Hawley Tariff or that from the 1880s, which Woodrow Wilson described as "Congressional Government" 37-while forgetting the serious problems of those systems and the criticisms of specific pieces of legislation. Finally, some may uncritically assume that those previous systems could be resurrected in the contemporary era.

The operating premise is that vague and broad delegations of statutory authority will continue as the rule, for a variety of reasons. Therefore, Congress will remain dependent upon a variety of means to nullify or neutralize specific executive actions, as it has in the past. But now Congress has the added incentive of replacing congressional vetoes by some of the following methods:

Formal legislation may be required before commencement of specific executive actions. Statutes might be drafted to incorporate a requirement that certain future actions shall not commence unless and until a regular bill, possibly under expedited procedures, is approved by both Houses of Congress and then signed by the President or his veto is overriden. Many of the same pro and con arguments applied to joint resolutions of approval apply here also.

Regular and frequent authorization periods may be mandated for agencies that are not already under a short cycle, thus improving Congress' ability to review, monitor, and clear executive actions, by providing more numerous opportunities for periodic review and leverage to ensure agency compliance. The House, in the immediate aftermath of the Chadha decision, did this when it reduced the CPSC reauthorization period from five to three years.' 38

Official "sunset" requirements, where a program, agency, or authority terminates after a specified time unless it is expressly reauthorized, may be advanced as control techniques. In fact, a "super sunset" bill, as termed by its sponsor, has been introduced in the House in the 98th Congress; it would repeal all authority previously delegated to the executive with a legislative veto after 180 days, unless Congress specifically reinstates such authority. 13 9

Time limitations on executive actions themselves might also be explored. The War Powers Resolution, as a prominent example, imposes a time limit on the commitment of U.S. Armed Forces into hostilities abroad, unless Congress has specifically authorized it to continue. 14

The controversy and political difficulties in operationalizing such authority regarding Lebanon (in contrast to Grenada), however, demonstrates its weaknesses when applied across-the-board to foreign military ventures. 4 ' There, the President's own constitutional authority expressly exceeds that granted by statute and his political power, at least in the short-run, exceeds that of Congress. But in other areas, such as regulations from independent commissions or contracting for specific construction or maintenance projects, Congress may impose time limits without encountering the same challenges.

Authorizations for less than a fiscal year are a variation of the same theme that "sunset" requirements and regular authorization periods score. In this case, the time permitted for a specific activity is shortened and the executive must seek supplemental authority from Congress during the fiscal year, if the activity is to continue.

The House Select Committee on Intelligence has held hearings on proposals, introduced by Rep. Fowler, that would halt funding for covert operations at a specified dollar amount without the express approval of both House and Senate Select Committees.'42 And the House and Senate, following the recommendation of the conferees from the Select Committees on Intelligence, approved funding for CIA covert operations in Nicaragua for less than the fiscal year (if such expenditures remain at their current rate). This limitation in the FY 1984 Intelligence Authorization, by setting an absolute ceiling and prohibiting transfers from other accounts, has compelled the Agency to seek congressional approval for additional amounts to continue its activities. 'I

House Rule XXI was changed in the 98th Congress to make it more difficult to offer floor amendments to appropriations. 4 4 If they are perceived as overly restrictive, the current rules might be eased or removed in order to facilitate appropriations limitations, via floor amendments, to check executive actions.

Other House and Senate rules affecting standing committee powers might be amended to preclude appropriating funds for a specific executive action unless and until the authorizing committee has expressly approved the planned action itself or a specified related contingency. The prior approval requirement could be under expedited procedures. Despite having the evident impact of a legislative veto, this change would directly affect only the internal Chamber Rules and, arguably, would be immune from judicial scrutiny.

Private laws, despite their "onerous burdens" (as characterized by the majority opinion in Chadha), 4 5 might be reactivated to control some deportation cases, as they are now in other immigration matters and for claims relief.

Sense of Congress resolutions-non-binding concurrent or simple resolutions that indicate a sense of Congress or of a single House--can be used to express a congressional opinion or view about a (proposed) specific executive action. In so doing, they also alert officials to the possibility of future legislative sanctions, if that sentiment is violated, but have no legal effect themselves.

Oversight powers in statute or in chamber rules may be modified to strengthen congressional control or at least provide further opportunity for it. In addition to the standard oversight powers that congressional committees now possess, their authority could be amended to require that committees be kept "fully and currently informed," even with regard to "significant anticipated activities," by heads of agencies under their jurisdiction. This would enhance their ability to monitor planned executive actions, by granting standing committees the same authority that the Select Committees on Intelligence hold excliisively. (Committees on their own, of course, may expand the consultation or prior notification directives in their reports on bills; and although these would not be legally binding on an agency, they may still elicit compliance.)

Select study committees or subcommittees (in House Government Operations and Senate Governmental Affairs) may be established jointly or in each House to be responsible for monitoring, reviewing, and corn- menting upon a range of (proposed) executive actions, such as "significant" regulations or foreign arms sales above a threshold dollar amount.

In so doing, the study panel could conduct oversight of executive actions under a specific and express mandate, similar to the "vigilant oversight" directive of the Select Committees on Intelligence. Since the panel's membership would not be identical to the appropriating or authorizing committees which have jurisdiction, it would not have previously sanctioned the powers, authority, duties, or officials (as Senate authorizing committees do for Presidential nominees) of the agencies whose actions they would oversee. By commenting upon proposed rules or regulations, for instance, the panel could alert Congress about suspect or objectionable ones and suggest options for corrective legislation, similar to a proposal that the House Rules Committee had advanced (in lieu of an across-the-board legislative veto).' 6

The Senate confirmation power, frequently criticized for being perfunctory, may be used to solicit pledges from Presidential nominees with regard to taking (or not taking) specific action and notifying or consulting with congressional committees in the future.

The likelihood of this approach being adopted by committees as a normal part of confirmation or being acceptable to the President, however, is remote. Recently, for instance, a number of Senators sought to require that William P. Clark, the successor to Interior Secretary Watt, pledge to change specified Department policies, prior to his confirmation. The attempt was made through an amendment to the FY 1984 Supplemental Appropriations Act, a day before Clark's scheduled confirmation vote, but was tabled, 48 to 42. In an analogous case, a Senate Appropriations subcommittee tried to obtain a commitment from the new head of the Agency for International Development to clear future plans about diverting economic aid to military purposes. The Administrator, intent on improving relations with Congress, was agreeable. Since the President and the Justice Department were not, however, the informal clearance procedure was abandoned and replaced by a formal provision in a later appropriations act.'47

Despite the evident disincentives against specific pledges from nominees, the confirmation hearings of EPA Administrator Ruckels- haus in 1983, " s and of FBI Director Webster in 1978,'19 demonstrate that there are circumstances and conditions, albeit rare, that permit committees to be insistent about obtaining certain commitments from them.

Increased judicial involvement may serve as a means of improving controls over executive action indirectly. Congress may enact legislation to ease standing to bring civil suits against an official action, grant broader review powers to Federal courts, or, in narrow areas, even establish new lower courts with the authority to rule directly on requests for planned or proposed action.

Some comprehensive regulatory reform bills include new judicial review procedures, as with the so-called Bumpers' Amendment;' 5 and the Foreign Intelligence Surveillance Court, operating under a 1978 enactment, is empowered to issue (or withhold) warrants for certain electronic surveillance operations requested by the Attorney General. '

Offices of inspector general may be given statutory authority to halt certain executive actions or projects and indirectly implement congressionally determined controls. Although none of the current 18 statutory IGs possesses such power, a former inspector general (for Foreign Assistance) did hold "authority to suspend all or any part of any project or operation (but not a country program)" that the office was inspecting, auditing, or reviewing.' 51

### AT: Authority / “WE RESTRICT WPA”

#### Authority is judicial or legislative precedent

BALLENTINE’S 10 [BALLENTINE'S LAW DICTIONARY, lexis]

TERM: authority.

TEXT: Judicial or legislative precedent; power; warrant; a duly constituted administrative agency, such as a port authority.

ALSO: See civil authority; color of authority; public authority; scope of authority.

### AT: Meet Statutory Restrictions

#### Congress enacts “statutory restrictions” the court imposes “judicial restrictions”

Peterson 91 (Todd D. Peterson, Associate Professor of Law, The George Washington University, National Law Center; B.A. 1973, Brown University; J.D. 1976, University of Michigan, Book Review: The Law And Politics Of Shared National Security Power -- A Review Of The National Security Constitution: Sharing Power After The Iran-Contra Affair by Harold Hongju Koh, New Haven, Conn.: Yale University Press. 1990. Pp. x, 330, March, 1991 59 Geo. Wash. L. Rev. 747)

Based on both case law and custom, it is hard to argue that Congress does not have substantial power to control the President's authority, even in the area of national security law. From the time of Little v. Barreme, n77 the Supreme Court has recognized Congress's power to regulate, through legislation, national security and foreign affairs. No Supreme Court case has struck down or limited Congress's ability to limit the President's national security power by passing a statute. n78 Although there may be some areas where the Court might not permit statutory regulation to interfere with the President's national security powers, these are relatively insignificant when compared to the broad authority granted to Congress by express provisions of the Constitution and the decisions of the Supreme Court. n79

Even in cases in which the Court has given the President a wide berth because of national security concerns, the Court has noted the absence of express statutory limitations. For example, in Department of the Navy v. Egan, n80 the Court refused to review the denial of a security clearance, but it concluded that "unless Congress specifically has provided otherwise, courts traditionally have been reluctant to intrude upon the authority of the Executive in military and national security [\*762] affairs." n81 In other cases, of course, such as Youngstown, n82 the Supreme Court has clearly stated that Congress may restrict the President's authority to act in matters related to national security.

Not even Koh's bete noire, the Curtiss-Wright case, n83 could reasonably be interpreted as a significant restriction on Congress's authority to limit the President's authority by statute. First, as Koh himself forcefully demonstrates, Curtiss-Wright involved the issue whether the President could act pursuant to a congressional delegation of authority that under the case law existing at the time of the decision might have been deemed excessively broad. n84 Thus, the question presented in Curtiss-Wright was the extent to which Congress could increase the President's authority, not decrease it. At most, the broad dicta of Curtiss-Wright could be used to restrict the scope of mandatory power sharing on the ground that the President's inherent power in the area of international relations "does not require as a basis for its exercise an act of Congress." n85

Even the dicta of Curtiss-Wright, however, give little support to those who would restrict permissive power sharing on the ground that Congress may not impose statutory restrictions on the President in the area of national security and foreign affairs. Justice Sutherland's claims with respect to exclusive presidential authority are comparatively modest when compared with his sweeping statements about the President's ability to act in the absence of any congressional prohibition. n86 He asserts that the President alone may speak for the United States, that the President alone negotiates treaties and that "[i]nto the field of negotiation the Senate cannot intrude; and Congress itself is powerless to invade it." n87 It is in this context of the President's power to be the communicator for the nation that Justice Sutherland cites John Marshall's famous statement that the President is the "sole organ of the nation" in relations with other nations. n88 This area of exclusive authority in which even permissive sharing is inappropriate is limited indeed. When he writes of the [\*763] need to "accord to the President a degree of discretion and freedom from statutory restriction which would not be admissible were domestic affairs alone involved," n89 Justice Sutherland refers to the permissibility of a broad delegation, not the constitutional impermissibility of a statutory restriction. Indeed, the Court specifically recognized that Congress could withdraw the authority of the President to act and prohibit him from taking the actions that were the subject of the case. n90

To be fair to Koh, he would not necessarily disagree with this reading of Curtiss-Wright; he clearly believes that Congress does have the authority to restrict the President's national security power. Nevertheless, Koh's emphasis on Curtiss-Wright still gives the case too much import. Oliver North's protestations to the contrary notwithstanding, there is no Supreme Court authority, including the dicta in Curtiss-Wright, that significantly restricts the power of Congress to participate by statutory edict in the national security area. Thus, contrary to Koh's model, Curtiss-Wright and Youngstown do not stand as polar extremes on a similar question of constitutional law. To be sure, they differ significantly in tone and in the attitude they take to presidential power, but the cases simply do not address the same issue. Therefore, it does Koh's own thesis a disservice to suggest that the cases represent different views on the scope of permissive power sharing. There simply is no Supreme Court precedent that substantially restricts Congress's authority to act if it can summon the political will.

The absence of judicial restrictions on permissive power sharing is particularly important because it means that the question of statutory restrictions on the President's national security powers should for the most part be a political one, not a constitutional one. Congress has broad power to act, and the Court has not restrained it from doing so. n91 The problem is that Congress has refused to take effective action.

### 2NC Impact – Shaikh

#### Colonialism is an unacceptable ethical violation. You should refuse to vote affirmative regardless of the good they claim to achieve.

Nermeen Shaikh, @ Asia Source, 7 [*Development* 50, “Interrogating Charity and the Benevolence of Empire,” Palgrave-Journals]

It would probably be incorrect to assume that the principal impulse behind the imperial conquests of the 18th and 19th centuries was charity. Having conquered large parts of Africa and Asia for reasons other than goodwill, however, countries like England and France eventually did evince more benevolent aspirations; the civilizing mission itself was an act of goodwill. As Anatol Lieven (2007) points out, even 'the most ghastly European colonial project of all, King Leopold of Belgium's conquest of the Congo, professed benevolent goals: Belgian propaganda was all about bringing progress, railways and peace, and of course, ending slavery'. Whether or not there was a general agreement about what exactly it meant to be civilized, it is likely that there was a unanimous belief that being civilized was better than being uncivilized—morally, of course, but also in terms of what would enable the most in human life and potential. But what did the teaching of this civility entail, and what were some of the consequences of changes brought about by this benevolent intervention? In the realm of education, the spread of reason and the hierarchies created between different ways of knowing had at least one (no doubt unintended) effect. As Thomas Macaulay (1935) wrote in his famous Minute on Indian Education, We must at present do our best to form a class who may be interpreters between us and the millions whom we govern; a class of persons, Indian in blood and colour, but English in taste, in opinions, in morals, and in intellect. To that class we may leave it to refine the vernacular dialects of the country, to enrich those dialects with terms of science borrowed from the Western nomenclature, and to render them by degrees fit vehicles for conveying knowledge to the great mass of the population. This meant, minimally, that English (and other colonial languages elsewhere) became the language of instruction, explicitly creating a hierarchy between the vernacular languages and the colonial one. More than that, it meant instructing an elite class to learn and internalize the culture—in the most expansive sense of the term—of the colonizing country, the methodical acculturation of the local population through education. As Macaulay makes it clear, not only did the hierarchy exist at the level of language, it also affected 'taste, opinions, morals and intellect'—all essential ingredients of the civilizing process. Although, as Gayatri Chakravorty Spivak points out, colonialism can always be interpreted as an 'enabling violation', it remains a violation: the systematic eradication of ways of thinking, speaking, and being. Pursuing this line of thought, Spivak has elsewhere drawn a parallel to a healthy child born of rape. The child is born, the English language disseminated (the enablement), and yet the rape, colonialism (the violation), remains reprehensible. And, like the child, its effects linger. The enablement cannot be advanced, therefore, as a justification of the violation. Even as vernacular languages, and all habits of mind and being associated with them, were denigrated or eradicated, some of the native population was taught a hegemonic—and foreign—language (English) (Spivak, 1999). Is it important to consider whether we will ever be able to hear—whether we should not hear—from the peoples whose languages and cultures were lost? The colonial legacy At the political and administrative levels, the governing structures colonial imperialists established in the colonies, many of which survive more or less intact, continue, in numerous cases, to have devastating consequences—even if largely unintended (though by no means always, given the venerable place of divide et impera in the arcana imperii). Mahmood Mamdani cites the banalization of political violence (between native and settler) in colonial Rwanda, together with the consolidation of ethnic identities in the wake of decolonization with the institution and maintenance of colonial forms of law and government. Belgian colonial administrators created extensive political and juridical distinctions between the Hutu and the Tutsi, whom they divided and named as two separate ethnic groups. These distinctions had concrete economic and legal implications: at the most basic level, ethnicity was marked on the identity cards the colonial authorities introduced and was used to distribute state resources. The violence of colonialism, Mamdani suggests, thus operated on two levels: on the one hand, there was the violence (determined by race) between the colonizer and the colonized; then, with the introduction of ethnic distinctions among the colonized population, with one group being designated indigenous (Hutu) and the other alien (Tutsi), the violence between native and settler was institutionalized within the colonized population itself. The Rwandan genocide of 1994, which Mamdani suggests was a 'metaphor for postcolonial political violence' (2001: 11; 2007), needs therefore to be understood as a natives' genocide—akin to and enabled by colonial violence against the native, and by the new institutionalized forms of ethnic differentiation among the colonized population introduced by the colonial state. It is not necessary to elaborate this point; for present purposes, it is sufficient to mark the significance (and persistence) of the colonial antecedents to contemporary political violence. The genocide in Rwanda need not exclusively have been the consequence of colonial identity formation, but does appear less opaque when presented in the historical context of colonial violence and administrative practices. Given the scale of the colonial intervention, good intentions should not become an excuse to overlook the unintended consequences. In this particular instance, rather than indulging fatuous theories about 'primordial' loyalties, the 'backwardness' of 'premodern' peoples, the African state as an aberration standing outside modernity, and so forth, it makes more sense to situate the Rwandan genocide within the logic of colonialism, which is of course not to advance reductive explanations but simply to historicize and contextualize contemporary events in the wake of such massive intervention. Comparable arguments have been made about the consolidation of Hindu and Muslim identities in colonial India, where the corresponding terms were 'native' Hindu and 'alien' Muslim (with particular focus on the nature and extent of the violence during the Partition) (Pandey, 1998), or the consolidation of Jewish and Arab identities in Palestine and the Mediterranean generally (Anidjar, 2003, 2007).

#### Their magnitude and escalation claims support an imperial paradigm of war against illiberal ways of life. Narratives of global vulnerability and extinction support recolonization by the global North.

Mark DUFFIELD Global Insecurities Centre & Politics @ Bristol (UK) 10 [“Global Insecurities Centre, Department of Politics Exploring the Global Life-Chance Divide” *Security Dialogue* 41 p. 67-69]

With the ending of the Cold War, the steady increase in humanitarian disasters plus the organizational imperative of a growing international rescue industry have helped justify a step-change in humanitarian, development and peace interventionism—indeed, in all forms of liberal interventionism. The permanent emergency of adaptive self-reliance provides a backdrop for the now well-rehearsed cartography of breakdown and anarchy in the global borderlands (Kaplan, 1994). It includes the discovery of livelihood wars fought by non-state actors on and through the modalities of subsistence, wars where the endemic abuse of human rights is part of the fabric of conflict itself (Le Billon, 2000). Such wars have generated their own narratives of state failure and state fragility (DFID, 2005), together with the associated fears of uncontrolled refugee surges (Cabinet Office, 2008). At the same time, these ‘ungoverned spaces’ are argued to lend themselves to capture and occupation by terrorist networks hostile to Western interests (Development Assistance Committee, 2003). This endemic reimagining of underdevelopment as dangerous, however, also renders self-reliance ambiguous. The liberal way of development privileges adaptive self-reliance. Importantly, however, this is a particular form of self-reliance, namely, those modes of existence and lines of change deemed to be safe or appropriate. Like beauty, sustainability is in the eye of the beholder. In practice, sustainability denotes internationally acceptable and pacific forms of self-reliance. It is the self-reliance of NGO-audited microcredit projects, legal forms of economic self-help, or the planting of commercial crops as substitutes for narcotics. These are approved forms of adaptive self-reliance. However, the reimagining of underdevelopment as dangerous in, for example, the literature on war economies (Kaldor, 1999) or descriptions of international criminal networks (Castells, 1998), points to another more challenging and edgy form of selfreliance. This is adaptive self-reliance as radical autonomy. It signals the discovery of effective means of existence beyond states and free of aid agencies. It includes novel forms of military self-provisioning, complete with radical means of global circulation and evasion. This is the self-reliance of constantly mutating transnational shadow economies, changing diaspora dynamics and complex adaptive systems that security actors worry are capable of sustaining adversary cultures (McFate, 2004). There is a tension between internationally acceptable forms of adaptive self-reliance and, arising from the impossibility (and for many the undesirability) of this form of existence, what could be called actually existing development (Duffield, 2002)—that is, those forms of adaptation, legitimacy and survival that exist despite, and often in opposition to, official aid efforts. This tension marks the point where the liberal way of development shades into what Dillon and Reid (2009) have described as the liberal way of war. It marks a stage where actually existing development tips from being acceptable into an unacceptable way of life. When forms of radical autonomy and emergence are deemed to be a risk to the system as a whole—indeed, to global-life itself—then the liberal way of war itself threatens to go global, unrestrained and unlimited in discharging its new security responsibilities (Reid, 2009). Connecting Mass Consumer Societies and Fragile States Given the circulatory powers of actually existing development, the struggle over acceptable and unacceptable ways of life in the global south interconnects with the security of the global north. Once war becomes a struggle over ways of life, and life itself is characterized by powers of emergence and radical interconnectivity (Duffield, 2002), then the old dichotomy between the national and the international, a division that still structures academic life, collapses within political imagination (Blair, 2001). While a Fortress Europe remains an essential perimeter defence, the geopolitics of immigration control now appears inadequate on its own. Since the end of the Cold War, the welfare bureaucracies and critical infrastructures of mass consumer society, essential for a developed-life, have been reimagined as sources of systemic vulnerability. Non-intentional disasters like foot and mouth disease in pigs, Creutzfeldt–Jakob disease in cattle, failures in the electricity grid, losses of computerized personal data, the fragility of just-in-time fuel deliveries and now swine flu are constant reminders of the integrated nature of these infrastructures and their problematic resilience (Cabinet Office, 2008). Contemporary disasters are made intelligible through enacting the possibility of catastrophic system-failure in terms of damage to one strategic node having a radiating impact on others with which it is networked to produce a complex (cumulative and multileveled) disaster having society-wide effects. When one factors in radical global interconnectivity—for example, refugee surges from failed states, geopolitical threats to fuel supplies, health pandemics emerging from inadequate infrastructure or, not least, the intentionality of terrorism (de Goede, 2008)—then mass consumer societies begin to appear inherently vulnerable. Their integrated critical infrastructures, vital to maintaining a developed but dependent way of life, become so many complex disasters waiting to happen. While the geopolitics of border control provides an important means of spatial ordering, new sovereign frontiers and biopolitical campaigns have opened within mass consumer societies and the global borderlands. Having its origins in decolonization, a global security framework has emerged that now works across the collapsed national–international, or inside–outside, dichotomy (Bigo, 2001). Struggles against potential enemies internal to mass consumer society and operations waged against external networks or the ungoverned spaces of the global borderland are now part of the same strategic terrain (IPPR, 2008). The overt geopolitical violence of the initial phase of the ‘War on Terror’ (Graham, 2006) has now given way to an unending war that, rather than extermination, privileges the biopolitical management and regulation of life within its appropriate social habitat (Gregory, 2008). Reconnecting with the turn to conflict resolution already evident in aid policy during the 1990s, the initial neoconservative excesses in Iraq and Afghanistan have now vectored into counterinsurgency (Gonzalez, 2007). With catastrophic violence having done its familiar job of redrawing spheres of influence and reasserting racial hierarchies (Duffield, 2007: 191–197), it’s now business as usual as the liberal way of development moves back to the political foreground.

#### Transplanting the liberal-legal model risks authoritarian abuse, and hurts internal bottom-up reforms.

Julie MERTUS Law @ Ohio Northern 99 [From Legal Transplants to Transformative Justice 14 Am. U. Int'l L. Rev. 1335, Lexis]

C. Legal Transplant Projects Problems with transnational civil society are further illustrated by NGOs at work on "legal transplant" projects. These projects, commonly termed "rule of law" endeavors, 211 attempt to transplant laws and, in some cases, entire legal systems from one place to another, usually from a country perceived as "working properly" to one deemed in great need. 212 The first wave of such projects occurred after World War II when the victorious allies rewrote the constitutions of the vanquished to conform to their own ideology. 213 The second wave occurred in the 1960s, a time optimistically labeled the Decade for Development by the United Nations. 214 During this period of decolonialism, "departing colonial powers hastily imposed carbon copies of their own documents [and laws], which evolved from different cultural and historical backgrounds." 215 At the same time, the "law and development" movement, crafted by American academics and private foundations, sent throes of American lawyers abroad, mainly to Latin America and Africa, to train problem-solving legal engineers 216 and promote a modern vision of law as an instrument of [\*1379] development policy along capitalist and democratic lines. 217 The primary goals of these programs were to attempt "to promote U.S.-style legal education and the use of law as a positive instrument of socio-political change...." 218 Within this context, American legal assistance also involved the transfer of American models of the lawyer and the law. The various models for transfer included: (1) direct transfer of legal institutions and instruments, (2) indirect transfer of legal concepts and models, (3) invited legal transfer, where the initiative and encouragement for the legal transfer process comes from the recipient legal culture, and (4) imposed or uninvited legal transfer at the initiative of the "exporting" legal culture ... (5) infused—"premeditated" or "planned"—processes of legal transfer, direct or indirect, wherein the initiative comes from the exporting legal culture, [and] (6) more occasional ad hoc borrowing... 219 A proliferation of expert-laden think tanks debated, deployed, and dissected these models. Ultimately, it was not an orchestrated political campaign to export any particular western model that influenced local and world politics, but individual experts ability "to employ, articulate, direct and interpret [the models], whatever their [political] attitudes might be." 220 None of these models worked well at fostering positive social change in Latin America, and, in short, James Gardner concludes, "the history of the law and development movement is rather sad." 221 It is a history of an attempt to transfer the American legal models that were themselves flawed. The professional model of the lawyer as pragmatic problem-solver and legal engineer is flawed by its technocratic character and its lack of any coherent ethical or conceptual content. Underlying models of legal thought are in crisis: the prevalent legal instrumentalism is particularly [\*1380] narrow in its perceptions of law and change interactions, and is vulnerable to authoritarian abuse. 222 One of the major shortcomings of the law and development movement was its failure to understand that multiple kinds of law can exist in society and locals act according to their own self-interest. Local people are actors and not mere subjects and they generally turn "American legal assistance to their own ends." 223 Moreover, the law and development movement in Latin America ultimately served to strengthen the hold of anti-democratic elites. 224 Whether the lessons of the law and development movement were heard is questionable. The fall of Soviet-dominated States in the late 1980s and early 1990s has ushered in a new wave of legal transplants 225 that duplicates wholesale the techniques of earlier times: sending in American lawyers in an attempt to reconstruct the local legal system in a manner more compatible with United States interests. 226 The earlier focus on transporting United States methods of legal education was retained, and a new and bolder emphasis on the wholesale rewriting of local law was added. [\*1381] The Central and East European Law Initiative ("CEELI") plays a central role in such efforts. 227 Funded by the United States Agency for International Development ("USAID"), the American Bar Association ("ABA") and other public and private organizations, CEELI supports law reform by sending volunteer lawyers to work with local parliamentarians, judges, law schools, and law offices on-site; organizing workshops, trainings, and exchanges of judges 228 and lawyers in-country and in the United States; providing legal assessments of draft legislation and of proposed structural changes in the legal system, with a focus on privatization and commercial law. In Bosnia-Herzegovina, a coalition of foreign lawyers, from CEELI, the European Union, OSCE, the United Nations, and the United States Information Agency ("USIA"), have focused on plans for structural changes in the criminal legal field. 229 Some commentators contend that these new efforts differ considerably from those employed in the law and development days because the recipient legal culture invites them to enter. 230 This claim cannot apply to Bosnia-Herzegovina, which is presently run like an undeclared protectorate under the mandate of the Dayton Peace Accord, and volition is negligible in this context. Other Eastern European States also have little choice but to accept an army of foreign legal experts, because international financial institutions and security groups de facto condition preferential treatment based on their presence. 231 Regardless of inducements by international financiers, local [\*1382] actors often believe that they must at least listen to the local American legal experts and adapt what they can to suit local needs. Such needs include: better resources for the legal system, better training for lawyers, a move from out-of-date legal doctrines, and a springboard into the international economy. 232 Many legal transplant efforts do not take root in Eastern Europe because "variations in the political, social and economic values which exist between the two societies make it hard to believe that many legal problems are the same for both except for on a technical level." 233 The targets of legal training programs, in particular local judges, are often "either unable or uninterested in making use of external technical assistance." 234 Problems faced by judges and lawyers in Eastern Europe are rooted in structural flaws that outside legal experts cannot or do not address: low salaries, especially for judges; inadequate classrooms, courtrooms, and record keeping equipment; "dead wood," that is, legal officers that simply refuse to change their ways; a lack of tenure for judges, and the inability to get rid of judges that are not able or willing to perform their jobs according to professional standards; a culture of high-level political interference in judicial matters, widespread corruption, and distrust of law; and weak political will regarding implementation of legal reforms. 235 While some of today's sojourners are better trained in the local languages and culture than their counterparts in the 1960s and 1970s, many are not, and their efforts are at best "a rather awkward mixture of goodwill, optimism, self-interest, arrogance, ethnocentricity, and a simple lack of understanding." 236 Energetic traveling American lawyers today, just as in the days of the law and development movement, often fail to see how their good faith efforts can easily serve to legitimate the interests of a regressive status quo. According to Thomas Carothers, "external assistance cannot create a will to reform on the part of the relevant authorities; nor can it substitute for a lack of will to reform." 237 Even the more self-aware traveling legal experts—and there are many—are likely to find themselves in the position of providing assistance for legal reform in a State where responsible legal authorities are not genuinely committed to reform. 238 Another problem with today's legal transplant projects is unrealistic desires to accomplish too much. Many of today's projects foster the development of civil society. While commercial legal transplants may find fertile ground for local adaptation, the civil society rule of law projects are likely to miss their mark. Laws that create the structural underpinnings for civil society—for example, by providing access to the legal process and mechanisms for voting—are necessary for the development of civil society, but they alone do not guarantee the existence of a functioning civil society. Rather, for civil society to work, the community in question must value and view it as legitimate. Rob Atkinson underscores this problem by stating that "creating a civil society by legal fiat is an impossible bootstrap operation, both practically and conceptually. In both liberal political theory and the history of liberal politics, the rule of law is the product of a prior, prelegal commitment to civil society." 239 The transplant of legal institutions designed to promote such values as participation and voluntary association will not work in the absence of a prior commitment to such values. 240 On the contrary, the local power [\*1384] structure will reject such a forced imposition as illegitimate and/or misused to serve its own needs. 241 This problem is endemic to the nature of social change and legal transplantation, and the most knowledgeable legal experts will be unable to solve it on their own.

### 2NC—K Prior

#### Framing war powers restrictions as a *means* to achieve greater national security quashes political alternatives to unilateral war-fighting.

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War’s ubiquity, its discontinuity, and the blurring of its outline are not without psychological and moral consequences in the military: ‘Experts have long observed that when warfare itself seems to have no clear beginning or end, no clear battlefield, no clear enemy, military discipline, as well as morale, breaks down’ (p. 119). This dispiriting confusion that affects soldiers also concerns the international lawyer, who sees the old rules of jus belli evaporate and be replaced by much vaguer ‘standards’. The last pages of Of War and Law convey, in fact, a clear feeling of defeat or loss, showing the demoralization of the international lawyer who still tries to take the law of war seriously: ‘How can ethical absolutes and instrumental calculations be made to lie down peacefully together? How can one know what to do, how to judge, whom to denounce?’ (p. 117). The former categorical imperatives (‘thou shalt not bomb cities’, ‘thou shalt not execute prisoners’, etc.) give way to an elastic and blurred logic of more and less, within which instrumental might triumphs definitively over the ethical (p. 132).89 As the new flexible ‘standards’ seem more susceptible to strategic exploitation and modulation than do the old strict rules, the various actors will play with the labels of jus belli—now definitively versatile—according to their strategic needs: Ending conflict, calling it occupation, calling it sovereignty—then opening hostilities, calling it a police action, suspending the judicial requirements of policing, declaring a state of emergency, a zone of insurgency—all these are also tactics in the conflict. . . . All these assertions take the form of factual or legal assessments, but we should also understand them as arguments, at once messages and weapons. (p. 122)90 Kennedy reiterates a new aspect of the ‘weaponization of the law’: the legal qualification of facts appears as a means of conveying messages to the enemy and to public opinion alike, because in the age of immediate media coverage, wars are fought as much in the press and opinion polls as they are on the battlefield. The skilled handling of jus belli categories will benefit one side and prejudice the other (p. 127);91 as the coinage of the very term ‘lawfare’ seems to reflect, the legal battle has already become an extension of the military one (p. 126).92 In cataloguing some of the dark sides of the law of war, Kennedy also stresses how the legal debate tends to smother and displace discussions which would probably be more appropriate and necessary. Thus the controversy about the impending intervention in Iraq, which developed basically within the discursive domain of the law of war, largely deprived lawyers of participating in an in-depth discussion on the neo-conservative project of a ‘great Middle East’—more democratic and Western-friendly and less prone to tyranny and terrorism—the feasibility of ‘regime change’, an adequate means of fostering democracy in the region, and so on: We never needed to ask, how should regimes in the Middle East . . . be changed? Is Iraq the place to start? Is military intervention the way to do it? . . .Had our debates not been framed by the laws of war, we might well have found other solutions, escaped the limited choices of UN sanctions, humanitarian aid, and war, thought outside the box. (p. 163) 6. CONCLUSIONS Those familiar with the author’s previous works93 will certainly have already identified the Derridean streak in Kennedy’s thought in the underlying claim that every discourse generates dark zones and silences or represses certain aspects, renders the formulation of certain questions impossible (a Foucauldian streak in the author could be suspected as well: every discourse—be it administrative, legal, medical, or psychiatric—implies simultaneously ‘knowledge’ and ‘power’; each discourse amounts somehow to a system of domination, insofar as it defines ‘conditions of admission’ into the realm of the legally valid, the ‘sane society’, etc.).94 In the picture resulting from the application of this analytical framework to the domain of the use of force, international lawyers and humanitarian professionals appear gagged, restricted by the language they try to utter effectively to themselves and others. As if the legal language had imposed on them its own logic, it now speaks through their voices and what is, evidently, once again, the Marxian-structuralist idea of cultural products gaining a life of their own and turning against their own creators. Kennedy, however, does not stop at noting that jurists have become ‘spoken’ by their language amidst a dramatically changing war scenario. More disquietingly, he stresses the evident corollary of the previous proposition: the evaporation of a sense of individual moral responsibility: [A]ll these formulations, encouraged by the language of law, displace human responsibility for the death and suffering of war onto others . . . . In all these ways, we step back from the terrible responsibility and freedom that comes with the discretion to kill. . . .Violence and injury have lost their author and their judge as soldiers, humanitarians, and statesmen [statespeople] have come to assess the legitimacy of violence in a common legal and bureaucratic vernacular. (pp. 168–9) While depersonalization and a lack of sense of personal responsibility are evidently also favoured by external structural factors, among which is the bureaucratic political complexity of modern states themselves (p. 17),96 Kennedy stresses that the language of international law would thus trivialize and conceal the gravity of decisions: In all these ways, we step back from the terrible responsibility and freedom that comes with the discretion to kill. . . . The problem is loss of the human experience of responsible freedom and free decision—of discretion to kill and let live. (p. 170)

### Links

#### Legal checks on the executive institutionalizes warfare – critique is the only way out

JOCHNICK AND NORMAND 94. Chris JOCHNICK Director of Projects, Center for Economic and Social Rights AND Roger NORMAND Director of Policy Center for Economic and Social Rights ’94 [“The Legitimation of Violence: A Critical History of the Laws of War” 35 Harv. Int'l L.J. 49 L/N]

While the laws of war impose no substantive restraints on pre-existing customary military practices, they nevertheless have an impact on war. The mere belief that law places humane limits on war, even if factually mistaken, has profound consequences for the way people view war, and therefore the way that war is conducted. The credibility of laws of war lends unwarranted legitimacy to customary military practices. Acts sanctioned by law enjoy a humanitarian cover that helps shield them from criticism. As one commentator warned, "precisely because aggression in its crudest form is now so universally condemned, many of the assaults that are made will be dressed up in some more respectable garb . . . . Because public opinion is itself so confused, [\*57] aggression may secure its fruits without paying the deserved penalty in international goodwill." n21 The "respectable garb" with which belligerents have dressed their assaults is precisely the laws themselves. By legitimating conduct, the laws serve to promote it. Law legitimates conduct on two levels. Because people generally view compliance with "the law" as an independent good, acts are validated by simply being legal. In particular, sovereign conduct that complies with the law will appear more legitimate than that which violates it. n22 Nations acknowledge the power of this form of legitimation by seeking to explain their actions by reference to law. n23 According to a former Legal Advisor to the U.S. State Department, "legal justification is part of the over-all defence [sic] of a public decision." n24 Proponents of Critical Legal Studies ("CLS") n25 identify a deeper sense of legitimation. n26 They argue that law functions ideologically to both reinforce "shared values" and to impress upon people a sense of obligation to the existing order. n27 More than simply supporting or deterring a particular act, law influences the public perception of an act by imbuing it with the psychic trappings of lawfulness. In this way, law helps condition people to accept the prevailing distribution of social and political power, which in turn reinscribes its hierarchies into the law. These effects are by their nature hidden; the contingent, malleable power relations that produce law are made to seem natural, neutral, and inevitable. n28 In essence, this legitimation theory involves a two [\*58] stage process in which law is internalized as belief and belief leads to compliance. Whereas national law legitimates the domestic social order, the international legal regime reflects and reifies the status, rights, and obligations of states. n29 Here again, law operates to shape discourse and lends credence and inevitability to existing arrangements. n30 In the context of war, the basic fact that nations purport to respect the rule of law helps protect the entire structure of war-making from more fundamental challenges. While the laws themselves speak to sovereign nations, their psycho-social effects are visited upon the public at large. A critical understanding of international law compels a reevaluation of the role of law in deterring wartime atrocities. By endorsing military necessity without substantive limitations, the laws of war ask only that belligerents act in accord with military self-interest. n31 Belligerents who meet this hollow requirement receive in return a powerful rhetorical tool to protect their controversial conduct from humanitarian challenges. n32 The notion that humanitarian rhetoric can subvert its stated purpose raises several important questions: How does the legal hierarchy of [\*59] sovereign over individual interests affect the perception of war? How does legal language influence popular attitudes towards wartime violence? How does the law's sanction affect public support for military conduct? Do these effects translate into more or less public pressure on belligerents to adhere to humanitarian standards? These questions have no clear, empirically based answers. n33 However, the importance of public support for war, coupled with the growing stature of international legal rhetoric, validates the search for a critical understanding of the legitimating effects of law. Moreover, the capacity of the laws of war to subvert their own humane rhetoric carries an implicit warning for future attempts to control wars: the promotion of supposedly humane laws may serve the purposes of unrestrained violence rather than of humanity.

#### Peace Treaties Link: The affirmative reduces the problem of executive authority to temporally distinct conjunctions of war and peace time—legal restrictions inevitably fail because they ignore the permanence of war in politics

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When President George W. Bush told the American people in September 2001 that the nation was at war, he drew upon an iconic American narrative. The onset of war, in American legal and political thought, is more than a catalytic moment. It is the opening of an era: a wartime. Wartime is thought to be an era of altered governance. It is not simply a time period when troops are sent into battle. It is also a time when presidential power expands, when individual rights are often compromised. An altered rule of law in wartime is thought to be tolerable because wartimes come to an end, and with them a government's emergency powers. That, at least, is the way law and wartime are understood.

War is thought to break time into pieces. War often marks the beginning of an era, the end of another, as in antebellum, postbellum, and simply "postwar" (meaning after World War II). War has its own time. During "wartime," regular, normal time is thought to be suspended. Wartime is when [\*1670] time is out of order.

Ideas about the temporality of war are embedded in American legal thought. A conception of time is assumed and not examined, as if time were a natural phenomenon with an essential nature, providing determined shape to human action and thought. This understanding of time is in tension with the experience of war in the twentieth century. The problem of time, in essence, clouds an understanding of the problem of war.

Much attention has been paid in recent years to wartime as a state of exception, n1 but not to wartime as a form of time. For philosopher Giorgio Agamben, a state of exception "is a suspension of the juridical order itself," marking law's boundaries. n2 Viewing war as an exception to normal life, however, leads us to ignore the longstanding persistence of war. If wartime is actually normal time, as this Essay suggests, rather than a state of exception, then law during war can be seen as the form of law we in fact practice, rather than a suspension of an idealized understanding of law.

In scholarship on law and war, time is seen as linear and episodic. There are two different kinds of time: wartime and peacetime. Historical progression consists of moving from one kind of time to another (from wartime to peacetime to wartime, etc.). Law is thought to vary depending on what time it is. The relationship between citizen and state, the scope of rights, and the extent of government power depend on whether it is wartime or peacetime. A central metaphor is the swinging pendulum - swinging from strong protection of rights and weaker government power to weaker protection of rights and stronger government power. n3 Moving from one kind of time to the next is thought to swing the pendulum in a new direction.

This conceptualization is embedded in scholarship in law and legal history, n4 it is written into judicial opinions, n5 it is part of popular culture. n6 Even [\*1671] works that seek to be revisionist aim largely for a different way to configure the pendulum, leaving the basic conceptual structure in place. n7 But the conception of time that has been embedded in thinking about law and war is in tension with the practice of war in the twentieth century. This understanding of time no longer fits experience, but it has continued to shape our thinking. n8

There are three significant impacts of viewing wartime as exceptional, or viewing history as divided into different zones of time based on peace and war. First, there is a policy problem: war-related time zones cause us to think that war-related laws and policies are temporary. Second, there is a historiography problem: time zones can cause scholars to fail to look for war-related impacts on American law outside of the time zone of war. Finally, the model of the swinging pendulum does not lend itself to a broader analysis of the relationship between war and rights over time, or to the way rights are impacted by war-related state-building, which tends to endure. n9

[\*1672] This Essay explores the role of wartime in legal thought. The starting point is an examination of time itself. Scholarship on time shows that "time" does not have an essential nature. n10 Instead, as sociologist Emile Durkheim and others have argued, our understanding of time is a product of social life. This helps us to see that "wartime," like other kinds of time, does not have an essential character, but is historically contingent.

The Essay then turns to the way wartime is characterized in scholarship on law and war, arguing that a particular understanding of war and time is a feature of this literature. The idea of wartime found in twentieth-century legal thought is in tension with the American experience with war. To examine this dynamic, the Essay takes up an iconic twentieth-century war, World War II, finding that this war is harder to place in time than is generally assumed, in part because the different legal endings to the war span over a period of seven years.

Next, the Essay considers the way that scholarship on the history of rights during war attempts to periodize World War II, and finds that the fuzziness in the war's timing repeats itself in scholarship on law and war. Scholars who believe themselves to be writing about the same wartime are not always studying the same span of years.

The difficulty in confining World War II in time is an illustration of a broader feature of the twentieth century: wartimes bleed into each other, and it is hard to find peace on the twentieth-century American timeline. Meanwhile, although the Pearl Harbor attack was on the Territory of Hawaii, all twentieth-century military engagement occurred outside the borders of American states. Because of this, a feature of American military strategy has been to engage of the American people in a war at some times, n11 and at other times to insulate them from war. Isolation from war in the late twentieth century, through the use of limited war and advanced technology, enabled the nation to participate in war without most citizens perceiving themselves to be in a wartime. n12

The Essay closes with a discussion of the way the tension between war's seamlessness and our conception of temporally distinct wartimes surfaces in contemporary cases relating to Guantanamo detainees. In these cases, Supreme Court Justices first attempted to fit the post-September 11 era into the traditional and confined understanding of wartime. But ultimately, anxiety about war's temporality informed Justice Kennedy's argument for judicial [\*1673] review in Boumediene v. Bush. n13

My aim in this Essay is to critique the way that the concept of wartime affects thinking about war and rights, but not to argue that war itself has no impact. One reason that wartime has so much power as a way of framing history is that the outbreak of war is often experienced as ushering in a new era, particularly when war follows a dramatic event like Pearl Harbor. n14 After that attack, for example, Supreme Court Justice Felix Frankfurter said to his law clerk: "Everything has changed, and I am going to war." n15 The onset of war is seen, however, not as a discrete event, but as the beginning of a particular era that has temporal boundaries on both sides. I do not wish to question the power of these catalytic moments, but rather to call attention to the way they bring into being a set of assumptions about their endings, because they are seen as the onset of a temporally confined war. Pearl Harbor, for example, was thought to launch the United States into an era - World War II - that would, by definition, come to an end. Unpacking war's temporality can be a path toward a more satisfactory understanding of the ongoing relationship between war and American law and politics.

#### Security-driven lawfare create the enabling conditions for war and executive overreach—means it’s try or die and we turn the case

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LATE MODERN TRANSFORMATIONS are often conceived in terms of the sociopolitical and economic manifestations of change emergent from a globalized arena. What is less apparent is how late modernity as a distinct era has impacted upon our conceptions of the social sphere, our lived experience, and our reflections upon the discourses and institutions that form the taken-for-granted backdrop of the known and the knowable. The paradigmatic certainties of modernity – the state, citizenship, democratic space, humanity’s infinite capacity for progress, the defeat of dogma and the culmination of modernity’s apotheosis in the free-wheeling market place – have in the late modern era come face to face with uncertainty, unpredictability and the gradual erosion of the modern belief that we could indeed simply move on, assisted by science and technology, towards a condition where instrumental rationality would become the linchpin of government and human interaction irrespective of difference. Progress came to be associated with peace, and both were constitutively linked to the universal, the global, the human, and therefore the cosmopolitan. What shatters such illusions is the recollection of the 20th century as the ‘age of extremes’ (Hobsbawm, 1995), and the 21st as the age of the ever-present condition of war. While we might prefer a forgetting of things past, a therapeutic anamnesis that manages to reconfigure history, it is perhaps the continuities with the past that act as antidote to such righteous comforts.

How, then, do we begin to conceptualize war in conditions where distinctions disappear, where war is conceived, or indeed articulated in political discourse, in terms of peace and security, so that the political is somehow banished in the name of governmentalizing practices whose purview knows no bounds, whose remit is precisely the banishment of limits, of boundaries and distinctions. Boundaries, however, do not disappear. Rather, they become manifest in every instance of violence, every instance of control, every instance of practices targeted against a constructed other, the enemy within and without, the all-pervasive presence, the defences against which come to form the legitimizing tool of war.

Any scholarly take on the present juncture of history, any analysis of the dynamics of the present, must somehow render the narrative in measured tones, taking all factors into account, lest the narrator is accused of exaggeration at best and particular political affiliations at worst. When the late modern condition of the West, of the European arena, is one of camps, one of the detention of groups of people irrespective of their individual needs as migrants, one of the incarceration without due process of suspects, one of overwhelming police powers to stop, search and detain, one of indefinite detention in locations beyond law, one of invasion and occupation, then language itself is challenged in its efforts to contain the description of what is. The critical scholarly take on the present is then precisely to reveal the conditions of possibility in relation to how we got here, to unravel the enabling dynamics that led to the disappearance of distinctions between war and criminality, war and peace, war and security. When such distinctions disappear, impunity is the result, accountability shifts beyond sight, and violence comes to form the linchpin of control. We can reveal the operations of violence, but far more critical is the revelation of power and how power operates in the present. As the article argues, such an exploration raises fundamental questions relating to the relationship of power and violence, and their mutual interconnection in the complex interstices of disrupted time and space locations. Power and violence are hence separable analytical categories, separable practices; they are at the same time connected in ways that work on populations and on bodies – with violence often targeted against the latter so that the former are reigned in, governed. Where Michel Foucault sought, in his later writings, to distinguish between power and violence, to reveal the subtle workings of power, now, in the present, this article will venture, perhaps the distinction is no longer viable when we witness the indistinctions I highlight above.

The article provides an analysis of the place of war in late modern politics. In particular, it concentrates on the implications of war for our conceptions of the liberty–security problematique in the context of the modern liberal state. The first section of the article argues the case for the figure of war as analyser of the present. The second section of the article reveals the conditions of possibility for a distinctly late modern mode of war and its imbrications in politics. The final section of the article concentrates on the political implications of the primacy of war in late modernity, and in particular on possibilities of dissent and articulations of political agency. The aim throughout is to provide the theoretical and conceptual tools that might begin to meet the challenges of the present and to open an agenda of research that concentrates on the politics of the present, the capacities or otherwise of contestation and accountability, and the institutional locations wherein such political agency might emerge.

The Figure of War and the Spectre of Security

The so-called war against terrorism is constructed as a global war, transcending space and seemingly defiant of international conventions. It is distinguished from previous global wars, including the first and the second world wars, in that the latter two have, in historiography, always been analysed as interstate confrontations, albeit ones that at certain times and in particular locations peripherally involved non-state militias. Such distinctions from the old, of course, will be subject to future historical narratives on the present confrontation and its various parameters. What is of interest in the present discussion is the distinctly global aspect of this war, for it is the globality1 of the war against terrorism that renders it particularly relevant and pertinent to investigations that are primarily interested in the relationship between war and politics, war and the political processes defining the modern state. The initial premise of the present article is that war, rather than being confined to its own time and space, permeates the normality of the political process, has, in other words, a defining influence on elements considered to be constitutive of liberal democratic politics, including executive answerability, legislative scrutiny, a public sphere of discourse and interaction, equal citizenship under the law and, to follow liberal thinkers such as Habermas, political legitimacy based on free and equal communicative practices underpinning social solidarity (Habermas, 1997). War disrupts these elements and is a time of crisis and emergency. A war that has a permanence to it clearly normalizes the exceptional, inscribing emergency into the daily routines of social and political life. While the elements of war – conflict, social fragmentation, exclusion – may run silently through the assemblages of control in liberal society (Deleuze, 1986), nevertheless the persistent iteration of war into politics brings these practices to the fore, and with them a call for a rethinking of war’s relationship to politics.

The distinctly global spatiality of this war suggests particular challenges that have direct impact on the liberal state, its obligations towards its citizenry, and the extent to which it is implicated in undermining its own political institutions. It would, however, be a mistake to assume that the practices involved in this global war are in any way anathema to the liberal state. The analysis provided here would argue that while it is crucial to acknowledge the transformative impact of the war against terrorism, it is equally as important to appreciate the continuities in social and political life that are the enabling conditions of this global war, forming its conditions of possibility. These enabling conditions are not just present or apparent at global level, but incorporate local practices that are deep-rooted and institutionalized. The mutually reinforcing relationship between global and local conditions renders this particular war distinctly all-pervasive, and potentially, in terms of implications, far more threatening to the spaces available for political contestation and dissent.

Contemporary global politics is dominated by what might be called a ‘matrix of war’2 constituted by a series of transnational practices that variously target states, communities and individuals. These practices involve states as agents, bureaucracies of states and supranational organizations, quasi-official and private organizations recruited in the service of a global machine that is highly militarized and hence led by the United States, but that nevertheless incorporates within its workings various alliances that are always in flux. The crucial element in understanding the matrix of war is the notion of ‘practice’, for this captures the idea that any practice is not just situated in a system of enablements and constraints, but is itself constitutive of structural continuities, both discursive and institutional. As Paul Veyne (1997: 157) writes in relation to Foucault’s use of the term, ‘practice is not an agency (like the Freudian id) or a prime mover (like the relation of production), and moreover for Foucault, there is no agency nor any prime mover’. It is in this recursive sense that practices (of violence, exclusion, intimidation, control and so on) become structurated in the routines of institutions as well as lived experience (Jabri, 1996). To label the contemporary global war as a ‘war against terrorism’ confers upon these practices a certain legitimacy, suggesting that they are geared towards the elimination of a direct threat. While the threat of violence perpetrated by clandestine networks against civilians is all too real and requires state responses, many of these responses appear to assume a wide remit of operations – so wide that anyone interested in the liberties associated with the democratic state, or indeed the rights of individuals and communities, is called upon to unravel the implications of such practices.

When security becomes the overwhelming imperative of the democratic state, its legitimization is achieved both through a discourse of ‘balance’ between security and liberty and in terms of the ‘protection’ of liberty.3 The implications of the juxtaposition of security and liberty may be investigated either in terms of a discourse of ‘securitization’ (the power of speech acts to construct a threat juxtaposed with the power of professionals precisely to so construct)4 or, as argued in this article, in terms of a discourse of war. The grammars involved are closely related, and yet that of the latter is, paradoxically, the critical grammar, the grammar that highlights the workings of power and their imbrications with violence. What is missing from the securitization literature is an analytic of war, and it is this analytic that I want to foreground in this article.

The practices that I highlight above seem at first hand to constitute different response mechanisms in the face of what is deemed to be an emergency situation in the aftermath of the events of 11 September 2001. The invasion and occupation of Iraq, the incarceration without due process of prisoners in camps from Afghanistan to Guantánamo and other places as yet unidentified, the use of torture against detainees, extra-judicial assassination, the detention and deportation – again without due process – of foreign nationals deemed a threat, increasing restrictions on refugees, their confinement in camps and detention centres, the construction of the movement of peoples in security terms, and restrictions on civil liberties through domestic legislation in the UK, the USA and other European states are all represented in political discourse as necessary security measures geared towards the protection of society. All are at the same time institutional measures targeted against a particular other as enemy and source of danger.

It could be argued that the above practices remain unrelated and must hence be subject to different modes of analysis. To begin with, these practices involve different agents and are framed around different issues. Afghanistan and Iraq may be described as situations of war, and the incarceration of refugees as encompassing practices of security. However, what links these elements is not so much that they constitute a constructed taxonomy of differentiated practices. Rather, what links them is the element of antagonism directed against distinct and particular others. Such a perspective suggests that the politics of security, including the production of fear and a whole array of exclusionary measures, comes to service practices that constitute war and locates the discourse of war at the heart of politics, not just domestically, but, more crucially in the present context, globally. The implications for the late modern state and the distinctly liberal state are monumental, for a perpetual war on a global scale has implications for political structures and political agency, for our conceptions of citizenship and the role of the state in meeting the claims of its citizens,5 and for the workings of a public sphere that is increasingly global and hence increasingly multicultural.

The matrix of war is centrally constituted around the element of antagonism, having an association with existential threat: the idea that the continued presence of the other constitutes a danger not just to the well-being of society but to its continued existence in the form familiar to its members, hence the relative ease with which European politicians speak of migrants of particular origins as forming a threat to the ‘idea of Europe’ and its Christian origins.6 Herein lies a discourse of cultural and racial exclusion based on a certain fear of the other. While the war against specific clandestine organizations7 involves operations on both sides that may be conceptualized as a classical war of attrition, what I am referring to as the matrix of war is far more complex, for here we have a set of diffuse practices, violence, disciplinarity and control that at one and same time target the other typified in cultural and racial terms and instantiate a wider remit of operations that impact upon society as a whole.

The practices of warfare taking place in the immediate aftermath of 11 September 2001 combine with societal processes, reflected in media representations and in the wider public sphere, where increasingly the source of threat, indeed the source of terror, is perceived as the cultural other, and specifically the other associated variously with Islam, the Middle East and South Asia. There is, then, a particularity to what Agamben (1995, 2004) calls the ‘state of exception’, a state not so much generalized and generalizable, but one that is experienced differently by different sectors of the global population. It is precisely this differential experience of the exception that draws attention to practices as diverse as the formulation of interrogation techniques by military intelligence in the Pentagon, to the recent provisions of counter-terrorism measures in the UK,8 to the legitimizing discourses surrounding the invasion of Iraq. All are practices that draw upon a dis- course of legitimization based on prevention and pre-emption. Enemies constructed in the discourses of war are hence always potential, always abstract even when identified, and, in being so, always drawn widely and, in consequence, communally. There is, hence, a ‘profile’ to the state of exception and its experience. Practices that profile particular communities, including the citizens of European states, create particular challenges to the self-understanding of the liberal democratic state and its capacity, in the 21st century, to deal with difference.

While a number of measures undertaken in the name of security, such as proposals for the introduction of identity cards in the UK or increasing surveillance of financial transactions in the USA, might encompass the population as a whole, the politics of exception is marked by racial and cultural signification. Those targeted by exceptional measures are members of particular racial and cultural communities. The assumed threat that underpins the measures highlighted above is one that is now openly associated variously with Islam as an ideology, Islam as a mode of religious identification, Islam as a distinct mode of lifestyle and practice, and Islam as a particular brand associated with particular organizations that espouse some form of a return to an Islamic Caliphate. When practices are informed by a discourse of antagonism, no distinctions are made between these various forms of individual and communal identification. When communal profiling takes place, the distinction between, for example, the choice of a particular lifestyle and the choice of a particular organization disappears, and diversity within the profiled community is sacrificed in the name of some ‘precautionary’ practice that targets all in the name of security.9 The practices and language of antagonism, when racially and culturally inscribed, place the onus of guilt onto the entire community so identified, so that its individual members can no longer simply be citizens of a secular, multicultural state, but are constituted in discourse as particular citizens, subjected to particular and hence exceptional practices. When the Minister of State for the UK Home Office states that members of the Muslim community should expect to be stopped by the police, she is simply expressing the condition of the present, which is that the Muslim community is particularly vulnerable to state scrutiny and invasive measures that do not apply to the rest of the citizenry.10 We know, too, that a distinctly racial profiling is taking place, so that those who are physically profiled are subjected to exceptional measures.

Even as the so-called war against terrorism recognizes no boundaries as limits to its practices – indeed, many of its practices occur at transnational, often indefinable, spaces – what is crucial to understand, however, is that this does not mean that boundaries are no longer constructed or that they do not impinge on the sphere of the political. The paradox of the current context is that while the war against terrorism in all its manifestations assumes a boundless arena, borders and boundaries are at the heart of its operations. The point to stress is that these boundaries and the exclusionist practices that sustain them are not coterminous with those of the state; rather, they could be said to be located and perpetually constructed upon the corporeality of those constructed as enemies, as threats to security. It is indeed the corporeal removal of such subjects that lies at the heart of what are constructed as counter-terrorist measures, typified in practices of direct war, in the use of torture, in extra-judicial incarceration and in judicially sanctioned detention. We might, then, ask if such measures constitute violence or relations of power, where, following Foucault, we assume that the former acts upon bodies with a view to injury, while the latter acts upon the actions of subjects and assumes, as Deleuze (1986: 70–93) suggests, a relation of forces and hence a subject who can act. What I want to argue here is that violence is imbricated in relations of power, is a mode of control, a technology of governmentality. When the population of Iraq is targeted through aerial bombardment, the consequence goes beyond injury and seeks the pacification of the Middle East as a political region.

When legislative and bureaucratic measures are put in place in the name of security, those targeted are categories of population. At the same time, the war against terrorism and the security discourses utilized in its legitimization are conducted and constructed in terms that imply the defence or protection of populations. One option is to limit policing, military and intelligence efforts through the targeting of particular organizations. However, it is the limitless construction of the war against terrorism, its targeting of particular racial and cultural communities, that is the source of the challenge presented to the liberal democratic state. In conditions constructed in terms of emergency, war permeates discourses on politics, so that these come to be subject to the restraints and imperatives of war and practices constituted in terms of the demands of security against an existential threat. The implications for liberal democratic politics and our conceptions of the modern state and its institutions are far-reaching,11 for the liberal democratic polity that considers itself in a state of perpetual war is also a state that is in a permanent state of mobilization, where every aspect of public life is geared towards combat against potential enemies, internal and external.

One of the most significant lessons we learn from Michel Foucault’s writings is that war, or ‘the distant roar of battle’ (Foucault, 1977: 308), is never quite so distant from liberal governmentality. Conceived in Foucaultian terms, war and counter-terrorist measures come to be seen not as discontinuity from liberal government, but as emergent from the enabling conditions that liberal government and the modern state has historically set in place. On reading Foucault’s renditions on the emergence of the disciplinary society, what we see is the continuation of war in society and not, as in Hobbes and elsewhere in the history of thought, the idea that wars happen at the outskirts of society and its civil order. The disciplinary society is not simply an accumulation of institutional and bureaucratic procedures that permeate the everyday and the routine; rather, it has running through its interstices the constitutive elements of war as continuity, including confrontation, struggle and the corporeal removal of those deemed enemies of society. In Society Must Be Defended (Foucault, 2003) and the first volume of the History of Sexuality (Foucault, 1998), we see reference to the discursive and institutional continuities that structurate war in society. Reference to the ‘distant roar of battle’ suggests confrontation and struggle; it suggests the ever-present construction of threat accrued to the particular other; it suggests the immediacy of threat and the construction of fear of the enemy; and ultimately it calls for the corporeal removal of the enemy as source of threat. The analytic of war also encompasses the techniques of the military and their presence in the social sphere – in particular, the control and regulation of bodies, timed precision and instrumentality that turn a war machine into an active and live killing machine. In the matrix of war, there is hence the level of discourse and the level of institutional practices; both are mutually implicating and mutually enabling. There is also the level of bodies and the level of population. In Foucault’s (1998: 152) terms: ‘the biological and the historical are not consecutive to one another . . . but are bound together in an increasingly complex fashion in accordance with the development of the modern technologies of power that take life as their objective’.

What the above suggests is the idea of war as a continuity in social and political life. The matrix of war suggests both discursive and institutional practices, technologies that target bodies and populations, enacted in a complex array of locations. The critical moment of this form of analysis is to point out that war is not simply an isolated occurrence taking place as some form of interruption to an existing peaceful order. Rather, this peaceful order is imbricated with the elements of war, present as continuities in social and political life, elements that are deeply rooted and enabling of the actuality of war in its traditional battlefield sense. This implies a continuity of sorts between the disciplinary, the carceral and the violent manifestations of government.

#### The multilateral vision of American leadership is no less Orientalist – they still divide the world between liberal democracies and illiberal peoples. Rejecting the aff’s justifications is a pre-requisite for genuine change.

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The transition to a regulated structure of world order is underway and is assured unless a catastrophic breakdown occurs, due to ecological, economic, or political collapse. That is, the Westphalian form of world order, based on the state system, while resilient, is essentially being displaced from above and below. It is not only the case that the main struggle since 9/11 is being waged by a global state on the one side and a loosely linked headless network on the other side; the impact of multi-dimensional globalization is also making borders less important in most respects (although more important in some-for instance, restricting transnational migrants). And normative developments are now associated with international accountability for gross violations of human rights and for the commission of such crimes as genocide, torture, and ethnic cleansing. Much of the literature that recognizes this emergent global governance stresses the inevitability of American leadership. The mainstream debate is whether this leadership will take a cooperative, economic form as it did in the 1990s or move in direction of the unilateralist, coercive form of the early years of the twenty-first century.36 The outcome of the November 2004 American presidential elections, together with the impact of the purported transfer of sovereignty to Iraq on June 30, 2004, as well as the anti-war outcome of the 2006 congressional elections seemed to supply a short-term answer. The main argument being made seems likely to be unaffected by a change in the elected leadership of the United States, although the 2008 presidential elections might produce some tactical adjustments associated with the high costs of continuing the Iraq War. Either foreign policy path is essentially Orientalist in the sense of building a future world order on the basis of American interests, an American worldview, and an American model of constitutional democracy. Neither is sensitive, in the slightest, to the ordeal of the Palestinian people, and thus bitter resentments directed at the United States will be kept alive, especially in the Arab world. International law will continue to play a double role, facilitating the pretensions of the American model of "democracy" as an expression of a commitment to the realization of international human rights and offering opponents of this model legal standards and principles by which to validate their anti-imperial, antiAmerican resistance. In my view, only a non-Orientalist reshaping of global governance can be beneficial for the peoples of the world and sustainable over time. In that process, the de-Orientalizing of the normative order is of paramount importance, providing positive images of accountability, participation, and justice that do not universalize the mythic or existential realities of the American experience and that draw fully upon the creative energies and cultural worldviews of the diverse civilizations that together constitute the world. Such expectations may presently seem utopian , but that is only because our horizons are now clouded by warmongering "realists" and global imperialists.

To dream freely of a benevolent future is the only way to encourage the moral and political imagination of people throughout the world to take responsibility for their own future, thereby repudiating in the most decisive way the deforming impacts of Orientalism in all of its sinister forms.

### AT: Treaty Peace

#### Democratic/liberal peace theory ignores the violence that goes into creating pliant regimes willing to trade with the US---naturalizes mass violence in the interim and makes long term collapse inevitable

Herman 12—professor emeritus of finance at the Wharton School, University of Pennsylvania (Edward, 7/25/12, Reality Denial : Steven Pinker's Apologetics for Western-Imperial Volence, http://www.zcommunications.org/reality-denial-steven-pinkers-apologetics-for-western-imperial-volence-by-edward-s-herman-and-david-peterson-1)

Pinker’s establishment ideology kicks-in very clearly in his comparative treatment of communism, on the one hand, and democracy and capitalism, on the other. He is explicit that whereas communism is a “utopian” and dangerous “ideology” from which most of the world’s serious violence allegedly flowed during the past century, democracy, capitalism, “markets,” “gentle commerce,” and the like, are all tied to liberalism—or more exactly to “classical liberalism.”[133] These institutional forms are not the result of ideologies, much less utopian and dangerous; they are the historically more advanced permutations of the Leviathan that help to elicit those components of the neurobiology of peaceableness (or “better angels” as opposed to “inner demons”) for which the human brain has been naturally selected over evolutionary time. Hence, they are sources of the alleged decline in violence, and their spread is a force for positive and more peaceful change in the world.[134]¶ Not so communism. At the outset of Chapter 6, “The New Peace,” Pinker approvingly quotes Aleksandr Solzhenitsyn’s line that, unlike the communists, “Shakespeare’s evildoers stopped short at a dozen corpses [b]ecause they had no ideology” driving them. (295) In discussing the alleged mental traits of the members of a society mobilized to commit genocide, he argues that “Utopian creeds that submerge individuals into moralized categories may take root in powerful regimes and engage their full destructive might,” and highlights “Marxism during the purges, expulsions, and terror-famines in Stalin’s Soviet Union, Mao’s China, and Pol Pot’s Cambodia.” (328) In his 2002 book, The Blank Slate: The Modern Denial of Human Nature, he devoted several pages to what he called the “Marxist genocides of the twentieth century,” and noted that “Historians are currently debating whether the Communists’ mass-executions, forced marches, slave labor, and man-made famines led to one hundred million deaths or ‘only’ twenty-five million.”[135] And in the section of the current book titled “The Trajectory of Genocide,” Pinker cites the authority of the “democratic peace” theorist and “atrocitologist” Rudolph Rummel, who in his 1994 book Death By Government wrote that whereas “totalitarian communist governments slaughter their people by the tens of millions[,]…many democracies can barely bring themselves to execute serial murderers.”[136] (357)¶ As we have seen, Pinker rewrites history to accommodate this familiar establishment perspective, so that the Cold War was rooted in communist expansionism and U.S. efforts at containment, and the several million deaths in the Korean and Vietnam wars were attributable to the communists’ fanatical unwillingness to surrender to superior force, not to anti-communist and racist attitudes that facilitated the U.S. military’s mass killings of distant peoples. He deals with U.S. state-capitalism’s support and sponsorship of the corrupt open-door dictatorships of Suharto, Marcos, Mobutu, Pinochet, Diem, the Greek Colonels, and the National Security States of Latin America (among many others), and the “burgeoning” of torture following the end of the Cold War, by eye aversion. ¶ In Pinker’s view, the Third World’s troubled areas are suffering from their failure to absorb the civilizing lessons modeled for them in the United States and other advanced countries. He ignores the eight-decades-long massive U.S. investment in the military and ideological training, political takeovers, and subsequent support of Third World dictators in numerous U.S. client terror states, including Guatemala, transformed from a democracy to terror state in 1954, Brazil, shifted from a democracy to military dictatorship in 1964, the Philippines in 1972, and Chile the same in 1973, among many others. A tabulation by one of the present authors in 1979 found that 26 of the 35 states in that era that used torture on an administrative basis were U.S. clients, all of them recipients of U.S. military and economic aid.[137] These clients were capitalist in structure, but threatened and employed force to keep the lower orders disorganized and more serviceable to the local elites and transnational corporations investing there. One Latin American Church document of that period spoke of the local U.S.-supported regimes as imposing an economic model so repressive that it “provoked a revolution that did not exist.”[138] This was a deliberate “decivilizing” process, with the civilized serving as co-managers.¶ We have seen that Pinker finds the modern era peaceful by focusing on the absence of war between the major powers, downplaying the many murderous wars carried out by the West (and mainly the United States) against small countries, and falsely suggesting that the lesser-country conflicts are home-grown, even where, as in the cases of Iraq and Afghanistan, it was U.S. military assaults that precipitated the internal armed conflicts, with the United States then actively participating in them. The Israeli occupation and multi-decade ethnic cleansing of Palestine he misrepresents as a “cycle of deadly revenge,” with only Israel fighting against “terrorism” in this cycle. He speaks of Islamic and communist ideology as displaying violent tendencies, and congratulates the U.S. military for allegedly overcoming the kind of racist attitudes reported at the time of the Vietnam war (U.S. soldiers referring to Vietnamese as “gooks,” slopes,” and the like)—but the military’s new humanism is another piece of Pinker misinformation and pro-war propaganda. And he fails to cite the numerous instances of Israeli leaders referring to Palestinians as “grasshoppers,” “beasts walking on two legs,” “crocodiles,” “insects,” and a “cancer,” or Israeli rabbis decrying them as the “Amalekites” of the present era, calling for extermination of these unchosen people.[139]¶ As regards Israel, Pinker never mentions the Israeli belief in a “promised land” and “chosen people” who may be fulfilling God’s will in dispossessing Palestinians.[140] Although the lack of angelic behavior in these assaults and this language, ethnic cleansing, and dispossession process is dramatic, and has had important effects on the attitudes and behavior of Islamic peoples, it fails to fit Pinker’s ideological system and political agenda, and therefore is not a case of conflict with ideological roots. ¶ For Pinker, there is also nothing ideological in the “miracle of the market” (Reagan), no “stark utopia” in Friedrich von Hayek’s assertion that the “particulars of a spontaneous order cannot be just or unjust,”[141] no ideology in the faith that an unconstrained free market will not produce intolerable inequalities and majority resistance that in turn require the likes of Pinochet, Suharto, or Hitler to reassert the requisite “stability.” It is simply outside of Pinker’s orbit of thought that liberalism and neoliberalism in the post-Soviet world are ideologies that have serviced an elite in a class war; that the major struggles and crises that we have witnessed, over climate change, the massive upward redistribution of income and wealth, the global surge of disposable workers, and the enlargement of NATO and the police-and-surveillance state, are features of a revitalized consolidation of class power, under more angelic names like “reform,” “free markets,” “flexibility,” “stability,” and “fiscal discipline.” For Pinker, the huge growth of the prison population shows the lack of “self-control” of the incarcerated savages still with us; and it is one merit of the liberal state that it gets the bad guys off the streets. ¶ Another device that Pinker uses when weighing capitalism versus communism is to take notorious state abuses committed in the name of communism (e.g., under Joseph Stalin), not as perversions of communism, but as inherent in its ideology, and flowing directly from it. Many historians and leftists have long argued that Stalinism constituted a radical betrayal and perversion of genuine communism, and that it emerged out of crises and stresses that made anything approaching genuine communism unreachable.[142] Pinker never addresses this kind of explanation and exemption of real-world communism, but he does this implicitly for real-world degenerate forms of capitalism. Thus, Nazi Germany and its mass murders are not credited to capitalism’s account, even though Germany under the Nazis was still capitalist in economic form and surely a variant of capitalism arising under stress and threat from below, with important business support.[143] Suharto’s Indonesia and Pinochet’s Chile could be said to fit this same pattern. Rightwing believers in the crucial importance of free markets, such as Friedrich von Hayek and Milton Friedman, approved of Pinochet’s rule, which ended political freedom and freedom of thought, but worked undeviatingly for corporate interests and rights. But it took only one decade of the Chicago Boys’ privatizations and other “reforms” for Chile’s economy and financial system to collapse. In the harsh depression that ensued, the banks were re-nationalized and their foreign creditors bailed-out in a process sometimes called the “Chicago Road to Socialism,” but then shortly thereafter they were re-privatized all over again, at bargain-basement prices.[144] (Pinochet does not show up in Pinker’s index; Chile does, but never as a free market state loved by von Hayek, Friedman, and the Chicago School of Economics, and supported by the United States.)¶ In one of his book’s more outlandish moments, Pinker even allocates Nazism and the holocaust to communism. He writes that since “Hitler read Marx in 1913,” Marxism led definitively if “more circuitously” to the “[dekamegamurders] committed by the Nazi regime in Germany.”[145] (343) But while there is no evidence that Hitler really examined Marx or accepted any of his or his fellow Marxist writers’ ideas,[146] it is incontestable fact that Hitler held Marxism in contempt, and that communism and communists ranked very high among Hitler’s and the Nazi’s demons and targets (along with Jews) when they held power in Germany.[147] So is the fact that racist theories and “mismeasure of man” literature in the Houston Stewart Chamberlain tradition—of which Richard Herrnstein and Charles Murray arguably are heirs—were fanatically embraced by Hitler, and therefore linked to Nazism—and not very “circuitously,” either. ¶ Pinker not only doesn’t credit the Nazi holocaust to capitalism, he also fails to give capitalism credit for the extermination of the Native Americans in the Western Hemisphere and the huge death tolls from the Slave Trades,[148] which should have been prevented by the rising “better angels.” As noted, he also ignores democratic capitalism’s responsibility for the surge of colonialism in the 18th and 19th centuries, the associated holocausts,[149] and the death-dealing and exploitation of the Western-sponsored terror states in Indonesia, the Philippines, Latin America and elsewhere. He also fails to address the huge toll of structural violence under capitalism flowing from its domestic and global dispossession processes, and, interestingly, intensifying with the post-1979 transformation of China and the breakup of the Soviet bloc and Soviet Union (1989-1991), which reduced any need on the part of Western capitalism to show concern for the well-being of its own working class majority. This helps explain the significant global increases in inequality and dispossession and slum-city enlargement over the past two decades, a period that Pinker calls the “New Peace” and depicts as an age of accelerating “Civilization”!¶ Pinker refers to the deaths during China’s Great Leap Forward (1958-1961) as a “Mao masterminded…famine that killed between 20 million and 30 million people.”[150] (331) For Pinker, clearly, the dead were victims of a deliberate policy that demonstrates the evil behind communist ideology. But as the development economists Jean Drèze and Amartya Sen have pointed out, China under Mao installed a massive and effective system of public medical services, as well as literacy and nutrition programs that greatly benefitted the general population in the years prior to the famine—a fact that is difficult to reconcile with the allegation that Mao regarded mass starvation as an acceptable means to some other end. Instead, Drèze and Sen blamed this tragedy on the lack of democracy in China, with the absence of pressure from below and a lack of timely knowledge of policy failure significantly offsetting the life-saving benefits of communist China’s medical and other social welfare programs.[151] ¶ Drèze and Sen also compared the number of deaths caused by this famine under Mao with the number of deaths caused by what they called the “endemic undernutrition and deprivation” that afflicts India’s population year-in and year-out. “Estimates of extra mortality [from China’s famine] vary from 16.5 million to 29.5 million,” they wrote, “arguably the largest in terms of total excess mortality in recorded history.”[152] But “despite the gigantic size of excess mortality in the Chinese famine,” they continued, the “extra mortality in India from regular deprivation in normal times vastly overshadows the former. Comparing India’s death rate of 12 per thousand with China’s 7 per thousand, and applying that difference to India’s population of 781 million in 1986, we get an estimate of excess normal mortality in India of 3.9 million per year. This implies that every eight years or so more people die in India because of its higher death rate than died in China in the gigantic famine….India seems to manage to fill its cupboard with more skeletons every eight years than China put there in its years of famine.”[153] Indeed, by 2005, some 46 percent (or 31 million) of India’s children were underweight, and 79 percent suffered anemia. “Forty years of efforts to raise how much food-grains Indians are able to eat has been destroyed by a mere dozen years of economic reform,” Jawaharal Nehru University economist Utsa Patnaik observes.[154]

### AT: Longitudinal Analasys

#### Liberal institutionalism is an imperial ideology disguised by the language of science. Liberal institutionalism requires the elimination of non-liberal forms of life to achieve national security

Tony SMITH Poli Sci @ Tufts 12 [*Conceptual Politics of Democracy Promotion* eds. Hobson and Kurki p. 206-210]

Writing in 1952, Reinhold Niebuhr expressed this point in what remains arguably the single best book on the United States in world affairs, The Irony of American History. 'There is a deep layer of Messianic consciousness in the mind of America,' the theologian wrote. Still, 'We were, as a matter of fact, always vague, as the whole liberal culture is fortunately vague, about how power is to be related to the allegedly universal values which we hold in trust for mankind' (Niebuhr 2008: 69). 'Fortunate vagueness', he explained, arose from the fact that 'in the liberal version of the dream of managing history, the problem of power is never fully elaborated' (Niebuhr 2008: 73). Here was a happy fact that distinguished us from the communists, who assumed, thanks to their ideology, that they could master history, and so were assured that the end would justify the means, such that world revolution under their auspices would bring about universal justice, freedom , and that most precious of promises, peace. In contrast, Niebuhr could write: On the whole, we have as a nation learned the lesson of history tolerably well. We have heeded the warning 'let not the wise man glory in his wisdom, let not the mighty man glory in his strength.' Though we are not without vainglorious delusions in regard to our power, we are saved by a certain grace inherent in common sense rather than in abstract theories from attempting to cut through the vast ambiguities of our historic situation and thereby bringing our destiny to a tragic conclusion by seeking to bring it to a neat and logical one ... This American experience is a refutation in parable of the whole effort to bring the vast forces of history under the control of any particular will, informed by a particular ideal ... [speaking of the communists] All such efforts are rooted in what seems at first glance to be a contradictory combination of voluntarism and determinism. These efforts are on the one hand excessively voluntaristic, assigning a power to the human will and the purity to the mind of some men which no mortal or group of mortals possesses. On the other, they are excessively deterministic since they regard most men as merely the creatures of an historical process. (Niebuhr 2008: 75, 79) The Irony of American History came out in January 1952, only months after the publication of Hannah Arendt's The Origins of Totalitarianism, a book that reached a conclusion similar to his. Fundamentalist political systems of thought, Arendt (1966: 467-9) wrote, are known for their scientific character; they combine the scientific approach with results of philosophical relevance and pretend to be scientific philosophy . .. Ideologies pretend to know the mysteries of the whole historical process—the secrets of the past, the intricacies of the present, the uncertainties of the future—because of the logic inherent in their respective ideas ... they pretend to have found a way to establish the rule of justice on earth ... All laws have become laws of movement. And she warned: Ideologies are always oriented toward history .... The claim to total explanation promises to explain all historical happenings ... hence ideological thinking becomes emancipated from the reality that we perceive with our five senses, and insists on a ' truer' reality concealed behind all perceptible things, dominating them from this place of concealment and requiring a sixth sense that enables us to become aware of it. ... Once it has established its premise, its point of departure, experiences no longer interfere with ideological thinking, nor can it be taught by reality. (Arendt 1966: 470) For Arendt as for Niebuhr, then, a virtue of liberal democracy was its relative lack of certitude in terms of faith in an iron ideology that rested on a pseudoscientific authority that its worldwide propagation would fulfill some mandate of history, or to put it more concretely, that the United States had been selected by the logic of historical development to expand the perimeter of democratic government and free market capitalism to the ends of the earth, and that in doing so it would serve not only its own basic national security needs but the peace of the world as well. True, in his address to the Congress asking for a declaration of war against Germany in 1917, Wilson had asserted, 'the world must be made safe for democracy. Its peace must be planted upon the tested foundations of political liberty.' (Link 1982: 533). Yet just what this meant and how it might be achieved were issues that were not resolved intellectually—at least not before the 1990s. Reinhold Niebuhr died in 1971, Hannah Arendt in 1975, some two decades short of seeing the 'fortunate vagueness' Niebuhr had saluted during their prime be abandoned by the emergence of what can only be called a ' hard liberal internationalist ideology', one virtually the equal of Marxism- Leninism in its ability to read the logic of History and prescribe how human events might be changed by messianic intervention into a world order where finally justice, freedom , and peace might prevail. The authors of this neo-liberal, neo-Wilsonianism: left and liberal academics. Their place of residence: the United States, in leading universities such as Harvard, Yale, Princeton, and Stanford. Their purpose: the instruction of those who made foreign policy in Washington in the aftermath of the Cold War. Their ambition: to help America translate its 'unipolar moment' into a 'unipolar epoch' by providing American leaders with a conceptual blueprint for making the world safe for democracy by democratising the world, thereby realizing through 'democratic globalism' the century-old Wilsonian dream—the creation of a structure of world peace. Their method: the construction of the missing set of liberal internationalist concepts whose ideological complexity, coherence, and promise would be the essential equivalence of MarxismLeninism, something most liberal internationalists had always wanted to achieve but only now seemed possible. Democratic globalism as imperialism in the 1990s The tragedy of American foreign policy was now at hand. Rather than obeying the strictures of a ' fortunate vagueness' which might check its ' messianic consciousness', as Niebuhr had enjoined, liberal internationalism became possessed of just what Arendt had hoped it might never develop, 'a scientific character ... of philosophic relevance' that 'pretend[s] to know the mysteries of the whole historical process,' that 'pretend[s] to have found a way to establish the rule of justice on earth ' (Niebuhr 2008: 74; Arendt 1966: 470). Only in the aftermath of the Cold War, with the United States triumphant and democracy expanding seemingly of its own accord to many comers of the world—from Central Europe to different countries in Asia (South Korea and Taiwan), Africa (South Africa), and Latin America (Chile and Argentina)—had the moment arrived for democracy promotion to move into a distinctively new mode, one that was self-confidently imperialist. Wilsonians could now maintain that the study of history revealed that it was not so much that American power had won the epic contest with the Soviet Union as that the appeal of liberal internationalism had defeated proletarian internationalism. The victory was best understood, then, as one of ideas, values, and institutions—rather than of states and leaders. In this sense, America had been a vehicle of forces far greater than itself, the sponsor of an international convergence of disparate class, ethnic, and nationalist forces converging into a single movement that had created an historical watershed of extraordinary importance. For a new world, new ways of thinking were mandatory. As Hegel has instructed us, 'Minerva's owl flies out at dusk' , and liberal scholars of the 1990s applied themselves to the task of understanding the great victories of democratic government and open market economies over their adversaries between 1939 and 1989. What, rather exactly, were the virtues of democracy that made these amazing successes possible? How, rather explicitly, might the free world now protect, indeed expand, its perimeter of action? A new concept of power and purpose was called for. Primed by the growth of think-tanks and prestigious official appointments to be 'policy relevant' , shocked by murderous outbreaks witnessed in the Balkans and Central Africa, believing as the liberal left did that progress was possible, Wilsonians set out to formulate their thinking at a level of conceptual sophistication that was to be of fundamental importance to the making of American foreign policy after the year 2000.6 The jewel in the crown of neo-liberal internationalism as it emerged from the seminar rooms of the greatest American universities was known as ' democratic peace theory'. Encapsulated simply as ' democracies do not go to war with one another', the theory contended that liberal democratic governments breed peace among themselves based on their domestic practices of the rule of law, the increased integration of their economies through measures of market openness, and their participation in multilateral organisations to adjudicate conflicts among each other so as to keep the peace. The extraordinary success of the European Union since the announcement of the Marshall Plan in 1947, combined with the close relations between the United States and the world's other liberal democracies, was taken as conclusive evidence that global peace could be expanded should other countries join ' the pacific union ', ' the zone of democratic peace'. A thumb-nail sketch cannot do justice to the richness of the argument. Political scientists of an empirical bent demonstrated conclusively to their satisfaction that 'regime type matters ', that it is in the nature of liberal democracies to keep the peace with one another, especially when they are integrated together economically. Theoretically inclined political scientists then argued that liberal internationalism could be thought of as ' non-utopian and non-ideological ', a scientifically validated set of concepts that should be recognized not only as a new but also a dominant form of conceptual ising the behaviour of states (Moravcsik 1997). And liberal political philosophers could maintain on the basis of democratic peace theory that a Kantian (or Wilsonian) liberal world order was a morally just goal for progressives worldwide to seek so that the anarchy of states, the Hobbesian state of nature, could be superseded and a Golden Age of what some dared call 'post-history' could be inaugurated (Rawls 1999). Yet if it were desirable that the world's leading states be democratised, was it actually possible to achieve such a goal? Here a second group of liberal internationalists emerged, intellectuals who maintained that the transition from authoritarian to democratic government had become far easier to manage than at earlier historical moments. The blueprint of liberal democracy was now tried and proven in terms of values, interests, and institutions in a wide variety of countries. The seeds of democracy could be planted by courageous Great Men virtually anywhere in the world. Where an extra push was needed, then the liberal world could help with a wide variety of agencies from the governmental (such as the Agency for International Development or the National Endowment for Democracy in the United States) to the non-governmental (be it the Open Society Institute, Human Rights Watch, Amnesty International, or Freedom House). With the development of new concepts of democratic transition, the older ideas in democratization studies of 'sequences' and ' preconditions' could be jettisoned. No longer was it necessary to count on a long historical process during which the middle class came to see its interests represented in the creation of a democratic state, no longer did a people have to painfully work out a social contract of tolerance for diversity and the institutions of limited government under the rule of law for democracy to take root. Examples as distinct as those of Spain, South Korea, Poland, and South Africa demonstrated that a liberal transformation could be made with astonishing speed and success. When combined, democratic peace theory and democratic transition theory achieved a volatile synergy that neither alone possessed. Peace theory argued that the world would benefit incalculably from the spread of democratic institutions, but it could not say that such a development was likely. Transition theory argued that rapid democratisation was possible, but it could not establish that such changes would much matter for world politics. Combined, however, the two concepts came to be the equivalent of a Kantian moral imperative to push what early in the Clinton years was called ' democratic enlargement' as far as Washington could while it possessed the status of the globe's sole superpower. The result would be nothing less than to change the character of world affairs that gave rise to war—international anarchy system and the character of authoritarian states—into an order of peace premised on the character of democratic governments and their association in multilateral communities basing their conduct on the rule of law that would increasingly have a global constitutional character. The arrogant presumption was, in short, that an aggressively liberal America suddenly had the possibility to change the character of History itself toward the reign of perpetual peace through democracy promotion. Enter the liberal jurists. In their hands a 'right to intervene' against states or in situations where gross and systematic human rights were being violated or weapons of mass destruction accumulated became a 'duty to intervene' in the name of what eventually became called a state 's 'responsibility to protect.' (lCISS 200 I). The meaning of 'sovereignty' was now transformed. Like pirate ships of old, authoritarian states could be attacked by what Secretary of State Madeleine Albright first dubbed a 'Community of Democracies', practicing ' muscular multilateralism' in order to reconstruct them around democratic values and institutions for the sake of world peace. What the jurists thus accomplished was the redefinition not only of the meaning of sovereignty but also that of 'Just War'. Imperialism to enforce the norms a state needed to honor under the terms of its 'responsibility to protect' (or 'R2P' as its partisans liked to phrase it) was now deemed legitimate. And by moving the locus of decision-making on the question of war outside the United Nations (whose Security Council could not be counted on to act to enforce the democratic code) to a League, or Community, or Concert of Democracies (the term varied according to the theorist), a call to arms for the sake of a democratising crusade was much more likely to succeed.

### Warm

#### Externally makes extinction inevitable

Crist 07 [Eileen Crist, Associate Professor of Science and Technology in Society at Virginia Tech University, 2007, “Beyond the Climate Crisis: A Critique of Climate Change Discourse,” *Telos*, Volume 141, Winter, Available Online to Subscribing Institutions via Telos Press, p. 49-51]

If mainstream environmentalism is catching up with the solution promoted by Teller, and perhaps harbored all along by the Bush administration, it would certainly be ironic. But the irony is deeper than incidental politics. The projected rationality of a geoengineering solution, stoked by apocalyptic fears surrounding climate change, promises consequences (both physical and ideological) that will only quicken the real ending of wild nature: "here we encounter," notes Murray Bookchin, "the ironic perversity of a 'pragmatism' that is no different, in principle, from the problems it hopes to resolve."58 Even if they work exactly as hoped, geoengineering solutions are far more similar to anthropogenic climate change than they are a counterforce to it: their implementation constitutes an experiment with the biosphere underpinned by technological arrogance, unwillingness to question or limit consumer society, and a sense of entitlement to transmogrifying the planet that boggles the mind. It is indeed these elements of techno-arrogance, unwillingness to advocate radical change, and unlimited entitlement, together with the profound erosion of awe toward the planet that evolved life (and birthed us), that constitute the apocalypse underway—if that is the word of choice, though the words humanization, colonization, or occupation of the biosphere are far more descriptively accurate. Once we grasp the ecological crisis as the escalating conversion of the planet into "a shoddy way station,"59 it becomes evident that inducing "global dimming" in order to offset "global warming" is not a corrective action but another chapter in the project of colonizing the Earth, of what critical theorists called world domination. Domination comes at a huge cost for the human spirit, a cost that may or may not include the scale of physical imperilment and suffering that apocalyptic fears conjure. Human beings pay for the domination of the biosphere—a domination they are either bent upon or resigned to—with alienation from the living Earth.60 This alienation manifests, first and [end page 50] foremost, in the invisibility of the biodiversity crisis: the steadfast denial and repression, in the public arena, of the epochal event of mass extinction and accelerating depletion of the Earth's biological treasures. It has taken the threat of climate change (to people and civilization) to allow the tip of the biodepletion iceberg to surface into public discourse, but even that has been woefully inadequate in failing to acknowledge two crucial facts: first, the biodiversity crisis has been occurring independently of climate change, and will hardly be stopped by windmills, nuclear power plants, and carbon sequestering, in any amount or combination thereof; and second, the devastation that species and ecosystems have already experienced is what largely will enable more climate-change-driven damage to occur. Human alienation from the biosphere further manifests in the recalcitrance of instrumental rationality, which reduces all challenges and problems to variables that can be controlled, fixed, managed, or manipulated by technical means. Instrumental rationality is rarely questioned substantively, except in the flagging of potential "unintended consequences" (for example, of implementing geoengineering technologies). The idea that instrumental rationality (in the form of technological fixes for global warming) might save the day hovers between misrepresentation and delusion: firstly, because instrumental rationality has itself been the planet's nemesis by mediating the biosphere's constitution as resource and by condoning the transformation of Homo sapiens into a user species; and secondly, because instrumental rationality tends to invent, adjust, and tweak technical means to work within given contexts—when it is the given, i.e., human civilization as presently configured economically and culturally, that needs to be changed.

#### the aff’s use of environmental crisis rhetoric causes eco-authoritarianism and political apathy---turns the case

Buell 03 (Frederick—cultural critic on the environmental crisis and a Professor of English at Queens College and the author of five books, From Apocalypse To Way of Life, pages 185-186)

Looked at critically, then, crisis discourse thus suffers from a number of liabilities. First, it seems to have become a political liability almost as much as an asset. It calls up a fierce and effective opposition with its predictions; worse, its more specific predictions are all too vulnerable to refutation by events. It also exposes environmentalists to being called grim doomsters and antilife Puritan extremists. Further, concern with crisis has all too often tempted people to try to find a “total solution” to the problems involved— a phrase that, as an astute analyst of the limitations of crisis discourse, John Barry, puts it, is all too reminiscent of the Third Reich’s infamous “final solution.”55 A total crisis of society—environmental crisis at its gravest—threatens to translate despair into inhumanist authoritarianism; more often, however, it helps keep merely dysfunctional authority in place. **It** thus **leads**, Barry suggests, **to the belief that only elite- and expert-led solutions are possible**.56 **At the same time** it depoliticizes people, inducing them to accept their impotence as individuals; this is something that has made many people today feel, ironically and/or passively, that **since it makes no difference at all what any individual does on his or her own**, one might as well go along with it. Yet another pitfall for the full and sustained elaboration of environmental crisis is, though least discussed, perhaps the most deeply ironic. A problem with deep cultural and psychological as well as social effects, it is embodied in a startlingly simple proposition: the worse one feels environmental crisis is, the more one is tempted to turn one’s back on the environment. This means, preeminently, turning one’s back on “nature”—on traditions of nature feeling, traditions of knowledge about nature (ones that range from organic farming techniques to the different departments of ecological science), **and traditions of nature-based activism**. If nature is thoroughly wrecked these days, people need to delink from nature and live in postnature—a conclusion that, as the next chapter shows, many in U.S. society drew at the end of the millenium. Explorations of how deeply “nature” has been wounded and how intensely vulnerable to and dependent on human actions it is can thus lead, ironically, to further indifference to nature-based environmental issues, not greater concern with them. But what quickly becomes evident to any reflective consideration of the difficulties of crisis discourse is that all of these liabilities are in fact bound tightly up with **one specific notion of environmental crisis—with** 1960s- and 1970s-style environmental apocalypticism. Excessive concern about them does not recognize that crisis discourse as a whole has significantly changed since the 1970s. They remain inducements to look away from serious reflection on environmental crisis only if one does not explore how environmental crisis has turned of late from apocalypse to dwelling place. **The apocalyptic mode** **had a number of prominent features**: it was preoccupied with running out and running into walls; with **scarcity** and with the imminent rupture of limits; with **actions that promised and temporally predicted imminent total meltdown; and with** (often, though not always) **the need for immediate “**total solution**.” Thus doomsterism was its reigning mode;** eco-authoritarianism was a grave temptation; and as crisis was elaborated to show more and more severe deformations of nature, temptation increased to refute it, or give up, or even cut off ties to clearly terminal “nature.”

## 1NR

### 2nc—Charming Betsy

#### No one will follow—they can’t solve the legitimacy or capacity deficit

Buzan 10—Professor of International Relations @ London School of Economics [Barry Buzan (Senior Fellow @ IDEAS, Honorary professor @ Universities of Copenhagen and Fellow of the British Academy), “The End of Leadership?—Constraints on the World Role of Obama’s America,” IDEAS reports—special reports, 2010

INTRODUCTION

It is appealing to think of the Obama administration as a return to normalcy after the deviance, unilateralist arrogance and damaging mistakes of the Bush years. In this view, we should expect a¶ return to business as usual, with the US picking up the signature themes of multilateralism and the¶ market that have underpinned its world role since the end of the Second World War. Although by no means universally loved, the US was an effective leader through the Cold War and beyond not only¶ because it promoted liberal economic and political values that were attractive to many others, but also¶ because it was prepared to bind its own power in multilateral rules and institutions sufficiently that¶ its followers could contain their fear of its overwhelming power. Does Obama’s liberal stance mean that we should expect a return to the leadership role that the US has exercised for more than half a¶ century? I argue that this is unlikely to happen because there are now three powerful constraints that¶ will largely block a return to US leadership. The first is that the US has lost much of its followership. The second is that the capacity of the US to lead is now much weakened even if it still retains the will¶ to do so. The third is that there is a general turn within international society against hegemony and¶ therefore against the global leadership role itself.

LOST FOLLOWERSHIP

If the US remains willing to lead, will anyone follow? There are two issues here: the growing range of policy disagreements on specific issues between the US and others; and the decline of shared values and visions between the US and its former followers. A good symbol of the weakening relationship¶ between the US and its followers is the replacement of talk about ‘friends and allies’ or ‘the free¶ world’ with a much harsher and still basically unchanged, line about ‘coalitions of the willing’. There¶ is some hope that under Obama differences over policy might improve in specific areas, particularly¶ the environment, but even on that issue Obama will be lucky just to get the US seen as not part of¶ the problem. Domestic constraints on carbon pricing and accepting binding international standards¶ will make it difficult for the US to lead. Many other areas of disagreement remain, some deep. The US has failed to make the war on terrorism into¶ anything like the binding cause that underpinned¶ its leadership during the Cold War, and its policies¶ continue to erode its liberal credentials. By its use¶ of torture, and even moreso the public advocacy¶ of such interrogation techniques by senior Bush administration figures, and by its rejection of the¶ Geneva Conventions on prisoners or war, it exposed¶ itself to ridicule and contempt as an advocate for¶ human rights. That China is still plausibly able to criticise the US on human rights and environment¶ issues is a marker of how far Washington’s reputation has fallen. US policy in the Middle East, particularly¶ on Israel, has few followers, and the repercussions of¶ the disastrous interventions in Iraq and Afghanistan¶ continue to rattle on. Unless China turns quite nasty, the inclination of many in the US to see China¶ as a challenger to its unipolar position is unlikely¶ to attract much sympathy. The financial chaos of 2008-9 has undermined Washington’s credibility as¶ an economic leader.

Anti-Americanism, though obviously not newbecame exceptionally strong under Bush, and is now more culturally based, and more corrosive of shared identities. It questions whether the ‘American way of life’ is an appropriate model for the rest of the world, and whether the US economic model is either sustainable or desirable. It looks at health; at a seeming US inclination to use force as the first choice policy instrument, with its domestic parallel of gun culture; at the influence of religion and special interest lobbies in US domestic politics; at a US government which was openly comfortable with the use of torture and was re-elected; and at a federal environmental policy until recently in denial about global warming; and asks not just whether the US is a questionable model, but whether it has become a serious part of the problem. While some of this was specific to the Bush administration, and is being turned around by Obama, some of the deeper issues are more structural. The US is much more culturally conservative, religious, individualistic, and anti-state than most other parts of the West. America’s religion and cultural conservatism and anti-statism set it apart from most of Europe, where disappointment with Obama is already palpable. America’s individualism and anti-statism set it apart from Asia, where China is anyway disinclined to be a follower. This kind of anti-Americanism rests on very real differences, and raises the possibility that the idea of ‘the West’ was just a passing epiphenomenon of the Cold War. The Bush administration asset-stripped half-a-century of respect for, goodwill towards and trust in US leadership, and it reflected, and helped to consolidate, a shift in the centre of gravity of US politics. The Obama administration cannot just go back to the late 1990s and pick up from where Clinton left off.

LOST CAPACITY

In addition to having less common ground with its¶ followers the US also has less capacity, both material and ideological, to play the role of leader. The rise¶ of China, and also India, Brazil and others, means¶ that the US now operates in a world in which the¶ distribution of power is becoming more diffuse, and in which several centres of power are not closely linked to it, and some are opposed. In this context, the Bush legacy of a crashed economy and an enormous debt severely constrain the leadership¶ options of the Obama administration. The economic¶ crisis of 2008-9 not only hamstrung the US in terms of material capability, but also stripped away the Washington consensus as the ideological legitimizer for US leadership. The collapse of neoliberal ideology¶ might yet be seen as an ideational event on the same¶ scale as the collapse of communism in 1989.

Since the late 1990s, and very sharply since 2003,¶ the US has in many ways become the enemy of its own 20th century project and thus of its own¶ capacity to lead. Not surprisingly this has deepened¶ a longstanding disjuncture between how the US¶ perceives itself and how the rest of the world sees it. The deeply established tendency of the US to see itself as an intrinsic force for good because it stands for a right set of universal values, makes it unable easily, or possibly at all, to address the disjuncture between its self-perception and how others see it. Self-righteous unilateralism does not acquire legitimacy¶ abroad. To the extent that celebrations of US power as a good in itself (because the US is good) dominate¶ American domestic politics, this does not inspire the US to seek grounds for legitimating its position abroad. A contributing factor here is the US tendency to demand nearly absolute security for itself. The problem for the US of transcending its own self-image is hardly new, but it has become both more difficult and more important in managing its position in the more complex world in which the US is neither so clearly on the right side of a great struggle, nor so dominant in material terms. It is unclear at this point whether Obama will be able to transcend this aspect of American politics, though it is clear that the nature of American¶ politics makes it difficult for any president to do so.

THE TURN AGAINST HEGEMONY

The third constraint stems not from any particular characteristic of the US, but from the fact of unipolarity itself. Since decolonisation global international society has developed a growing disjuncture between a¶ defining principle of legitimacy based on sovereign equality, and a practice that is substantially rooted in¶ the hegemony of great powers. The problem is the absence of a consensual principle of hegemony with¶ which international society might bridge this gap between its principles and its practices. A concentration¶ of power in one actor disrupts the ideas of balance and equilibrium which are the traditional sources and¶ conditions for legitimacy in international society. This problem would arise for any unipolar power, but it¶ connects back to the more US-specific aspects of the legitimacy deficit. Under the Bush administration, the US lost sight of what Adam Watson calls raison de systeme (‘the belief that it pays to make the system¶ work’), and this exacerbated the illegitimacy of hegemony in itself. Since the US looks unlikely to abandon its attachment to its own hegemony, this problem is not going to go away.

If hegemony itself is illegitimate, and the US now lacks both the capabilities and attractiveness to overcome this, what lies on the near horizon is a world with no global leader. Such a world would still have several great powers influential within and beyond their regions: the EU, Russia, China, Japan, the US, possibly¶ India and Brazil. It would also have many substantial regional powers such as South Africa, Turkey and Iran. Whether one sees a move towards a more polycentric, pluralist, and probably regionalised, world political order as desirable or worrying is a matter of choice. In such a world, global hegemony by any one power or culture will be unacceptable. Obama may hasten or delay the US exit from leadership. But the waning of the Western tide, and the re-emergence of a more multi-centred (in terms of power and wealth) and more multicultural (albeit with substantial elements of Westernization) world, mean that hegemonic global leadership whether by a single power or the West collectively is no longer going to be acceptable. The question is whether such a new world order can find the foundations for collective great power management,¶ and whether the US can learn to live in a more pluralist international society where it is no longer the sole¶ superpower but merely the first among equals. Pg. 4-6

#### They can’t solve for fragmented US politics—attempts to lead will not be credible.

Victor 8—Director of Laboratory on International Law and Regulation @ UC—San Diego [David G. Victor, “Blowhard in Chief,” The Daily Beast, Apr 30, 2008 8:00 PM EDT, pg. http://www.thedailybeast.com/newsweek/2008/04/30/blowhard-in-chief.html]

Leadership matters when it comes to greenery because solving most environmental issues requires a change in direction. Leaders can send signals and forge new paths. But in the area where the world thinks a single leader towers above all—namely the choice of the next American president—leadership actually matters a lot less. America's president is powerful, to be sure, but American politics has been fragmenting over the last few decades. Alone, the president often has a weak impact on real American policies that affect the environment.

The U.S. record on international environmental issues is highly uneven for reasons that have little to do with George W. Bush's leadership. His administration has been tarred across the planet for reckless leadership on international environmental issues. (Its actual record, while dreadful, is not a uniform failure. It has done useful things in a few areas, such as a thoughtful initiative to help conserve forests in the Congo Basin.) But the signature of Bush's reckless foreign policy in this area, his decision to withdraw from the Kyoto treaty barely three months after taking office, actually has its roots in the Clinton administration. Clinton was highly committed to environmental issues and his vice president, Al Gore, was an even more passionate leader. Their zealous diplomats negotiated a treaty that was larded with commitments that the United States never could have honored. The promise to cut U.S. emissions 7 percent below 1990 levels is a good example. Because actual emissions were rising steadily, it would have been impractical to turn them around in time to meet the 2012 Kyoto deadline. The U.S. Congress never could have passed the requisite legislation, and no leader in the White House could have changed that voting arithmetic. The U.S. withdrawal from the Kyoto Protocol was inevitable.

What does this mean for America's credibility in the world? When the American president promises, should anyone listen?

Increasingly, other countries are learning that the answer is no—because American leaders have a habit of promising a lot more than they can deliver. Environmental issues are particularly prone to overpromising, and not just by the United States. Europe, too, is fresh with unrealistic claims by political leaders. The European Union, for example, has launched negotiations for the post-Kyoto agreement by claiming that Europeans will cut greenhouse-gas emissions 20 percent to 30 percent by 2020—an outrageous goal considering that most of Europe (with the exception mainly of Britain and Germany) will fail to meet their existing targets, and emissions are actually rising. Europe as a whole would blow through its Kyoto targets if not for its generous use of a scheme that lets them take credit for overseas investment in low-carbon technologies—despite mounting evidence that many of those overseas credits don't actually deliver real reductions in emissions. Smart politicians know that the benefits lie mainly in the promising today and not in the delivery long in the future.

Ironically, the more enthusiastic the leader, the less credibility he or she has. While the Clinton administration was busy negotiating the Kyoto treaty, the U.S. Senate was passing a resolution, 95 to 0, to signal that it would reject any treaty that didn't contain specific commitments by developing countries to control their effluent of greenhouse gases. Since the developing countries had already rejected that outcome the Clinton administration had little room to maneuver. The great reversal in U.S. "leadership" on global warming over the last year—signaled by President Bush's speech three weeks ago embracing the need for limits on greenhouse gases—came from the people rather than top leaders. Public concern about global warming is rising (though it will be checked by the even more acute worries on the economy and war). The Bush speech was more a recognition that serious efforts to develop climate legislation are already well underway without his stamp. Many states are already planning to regulate greenhouse gases. The Senate has a serious bill on this subject scheduled for floor debate starting June 2. Its sponsors are Joe Lieberman (the former running mate of Al Gore but now alienated from the Democratic Party for his overly independent views) and John Warner (a Republican who has no former track record on global warming). These are ideal leaders for this issue because often it takes the fresh faces focused on building bipartisan majorities to get things done in America.

Perhaps the most interesting signal that American presidents are losing the ability to lead is an effort to rewrite the rules that would govern environmental treaties under American law. Committed environmentalists have rightly noted that America's Constitution requires a two-thirds vote for treaties in the Senate. That standard is nearly impossible to meet because one third of the Senate is usually opposed to anything interesting. Serious efforts are now underway to reinterpret environmental "treaties" as agreements between Congress and the president, which would require only a majority vote. Most trade agreements, for example, travel under this more lax standard and also have special voting rules that require Congress to approve the agreement as a whole package rather than pick it apart piece by piece. Rebranding and changing voting rules makes it easier to approve agreements, boosting the credibility of the president to negotiate agreements that serve the country's interest.

Even then, changing U.S. law requires a majority vote in both houses of Congress. Any legislation that is controversial—which is pretty much anything in today's fractious political environment—actually requires the nod of 60 Senators (that is, 60 percent of the vote). As American politics becomes more hotly contested, it has become easier for any senator who opposes a rule to get 39 others to block it. When the rest of the world looks to U.S. leadership, they should eye the 60th senator perhaps as much as the U.S. president.

When a sharp change in course is needed, former White House occupants might be more important than presidents. On global warming, Al Gore has done much more for the cause than he probably would have achieved as president. Not needing to focus on the messy task of actually running a government—with the minutia of isolating 33 or 40 blocking senators and their equally intransigent counterparts in the House—has liberated him to focus American minds on what is really at stake with unchecked global warming. He has been much more influential on that beat than in the areas where a real president would be held to task. His Nobel Prize reflects passion on the dangers of global warming rather than any coherent game plan for actually solving the global-warming problem. Jimmy Carter is perhaps the best ex-president in American history, focusing attention on important humanitarian causes. Former president Bill Clinton has rallied to these issues and used membership in his Clinton Global Inititiative to spur business leaders to do more than they would otherwise.

The silence of the president's father, George H.W. Bush, has probably improved familial relations but has hurt the country on important issues, including global warming. When sober, conservation-oriented Republicans rally around environmental issues, it is much easier for the country to make credible policies. Most of the bedrock of U.S. environmental law arose when Republicans (notably Nixon) were nominally the country's leaders but Democrats and Republicans worked together to forge consensus. The high-water mark for U.S. international leadership on environmental issues arose when Ronald Reagan's administration brokered the United Nations treaty on the ozone layer. That's because it is the ability to work in bipartisan ways that matters much more in America than the proper names of its particular leaders. Leadership comes from credibility, and that requires centrism and consensus, not just presidents.

#### Structural leadership can’t solve.

Karlsson et al. 11—Professor of Political Science @ Uppsala University [Dr. Christer Karlsson, Charles Parker (Professor of Political Science @ Uppsala University), Mattias Hjerpe (Professor in the Centre for Climate Science and Policy Research @ Linköping University & Björn-Ola Linnér (Professor in Water and Environmental Studies and director of the Centre for Climate Science and Policy Research at Linköping University), “Looking for Leaders: Perceptions of Climate Change Leadership among Climate Change Negotiation Participants,” Global Environmental Politics 11:1, Feb 2011

It is also noteworthy that the structural position and the aggregate power held by different actors do not seem to be particularly important explanatory¶ factors with regard to the leadership perceptions of prospective followers. For example, the US has the greatest combined power resources, and its position as one of the two largest GHG emitters makes it a key player in the field of climate change. At present, of the various leadership contenders, the US has the greatest potential to exercise structural leadership. Nevertheless, the US is only recognized as a leader by roughly a quarter of all respondents. This indicates that diplomatic engagement and perceptions concerning an actor’s commitment to addressing the climate issue matters. An actor’s structural position and its potential for exercising resource-based leadership are simply not sufficient for it to be widely recognized as a leader. The lack of active participation by the Bush administration in the UN global climate change process seems to have profoundly impacted the extent to which COP-14 participants regarded the US as a leader¶ on climate change. Pg. 97

#### Obama’s messaging will be incoherent and weak—they can’t change perceptions about US environmental policy.

Romm 11—Senior Fellow @ American Progress [Dr. Joe Romm (PhD in physics from MIT), “Relax, climate hawks, it’s not about the science. The White House is just lousy at messaging in general,” Think Progress, Mar 2, 2011 at 4:41 pm, pg. http://thinkprogress.org/climate/2011/03/02/207617/obama-white-house-messaging/]

Yes, my sources say the White House communications shop muzzled the Office of Science and Technology Policy from offering a robust defense of climate science after Climategate.  And yes, Obama has utterly failed to offer a strong, coherent message on climate science and related energy policy (see “Obama calls for massive boost in low-carbon energy, but doesn’t mention carbon, climate or warming“).

I’ve been as critical of Obama about this as anybody, and like you, have come to the conclusion that he doesn’t appear to get the dire nature of the situation we’re in.  But, in ‘fairness’ to the President, it must be pointed out that the White House sucks at messaging in general.

Look at their signature health care initiative.  Please tell me what their message is?  (see “[Can Obama deliver health and energy security with a half (assed) message?](http://climateprogress.org/2009/09/06/obama-health-energy-security-message/)“)  Yet, health care is an issue that everybody in the White House cares about, unlike, say, climate, which beyond Obama and Holdren and, formerly, Browner, is of little political interest to almost all other senior WH staff.

Based on my discussions with leading journalists, as well as current and former Administration staff, this White House is the worst at communications in the past three decades.  Indeed, the Obama WH is the worst of both possible worlds.  They are dreadful at messaging BUT they think they are terrific at messaging, so much so that they shut down anybody else in the administration that might actually be good at messaging.

And that brings me to Washington Post columnist Ruth Marcus and her op-ed today, “[President Waldo](http://www.washingtonpost.com/wp-dyn/content/article/2011/03/01/AR2011030105489.html):  Barack Obama is often strangely absent from the most important debates.”  Here are some highlights (lowlights?):

On health care, for instance, he took on a big fight without being able to articulate a clear message or being willing to set out any but the broadest policy prescriptions. Lawmakers, not to mention the public, were left guessing about what, exactly, the administration wanted to see in the measure and where it would draw red lines. That was not an isolated case. Where, for example, is the president on the verge of a potential government shutdown — if not this week, then a few weeks from now?

Aside from a short statement from the Office of Management and Budget threatening a presidential veto of the House version of the funding measure, the White House—much to the frustration of some congressional Democrats—has been unclear in public and private about what cuts would and would not be acceptable.

By contrast, a few weeks before the shutdown in 1995, Clinton administration aides had dispatched Cabinet members and other high-ranking officials to spread the message that cuts in education, health care and housing would harm families and children. Obama seems more the passive bystander to negotiations between the House and Senate than the chief executive leading his party….

The president has faltered, though, when called on to translate that rhetoric to more granular levels of specificity: What change, exactly, does he want people to believe in? How, even more exactly, does he propose to get there? “[Winning the future](http://projects.washingtonpost.com/obama-speeches/speech/548/)” doesn’t quite do it….

Where’s Obama? No matter how hard you look, sometimes he’s impossible to find.

And Marcus is a progressive.

See, climate hawks, even on really important stuff that is central to his reelection, stuff that the entire White House cares about, stuff that they have probably done a dozen polls on, the President and his team have no simple, persuasive message — when they have a message at all, that is.

The ‘good news’, then, is that we shouldn’t rush to judgment on what the President actually believes on climate change based on his general silence and/or mis-messaging on the subject.  It’s just the way he is.

The bad news is that folks I know who have worked with him say, he’s unlikely to change.  Obama is a good speechmaker — and thankfully presidential elections are graded on a curve, so Obama only has to outshine the GOP contender, which is unlikely to be hard in 2012.  But he is no message maker.  He is no Ronald Reagan, much as he aspires to be.

#### US holds the high cards—credibility is not important.

Walt 11—Professor of international relations @ Harvard University [Stephen M. Walt, “[Does the U.S. still need to reassure its allies?](http://walt.foreignpolicy.com/posts/2011/12/05/us_credibility_is_not_our_problem),” Foreign Policy, Monday, December 5, 2011—3:24 PM, pg. http://walt.foreignpolicy.com/posts/2011/12/05/us\_credibility\_is\_not\_our\_problem

A perennial preoccupation of U.S. diplomacy has been the perceived need to reassure allies of our reliability. Throughout the Cold War, U.S. leaders worried that any loss of credibility might cause dominoes to fall, lead key allies to "bandwagon" with the Soviet Union, or result in some form of "Finlandization." Such concerns justified fighting so-called "credibility wars" (including Vietnam), where the main concern was not the direct stakes of the contest but rather the need to retain a reputation for resolve and capability. Similar fears also led the United States to deploy thousands of nuclear weapons in EurUS ope, as a supposed counter to Soviet missiles targeted against our NATO allies.

The possibility that key allies would abandon us was almost always exaggerated, but U.S. leaders remain overly sensitive to the possibility. So Vice President Joe Biden has been [out on the road](http://www.nytimes.com/2011/12/05/world/europe/biden-tries-to-reassure-allies-of-us-support.html?ref=world) this past week, telling various U.S. allies that "the United States isn't going anywhere."  (He wasn't suggesting we're stuck in a rut, of course, but saying that the imminent withdrawal from Iraq doesn't mean a retreat to isolationism or anything like that.)

There's nothing really wrong with offering up this sort of comforting rhetoric, but I've never really understood why U.S. leaders were so worried about the credibility of our commitments to others. For starters, given our remarkably secure geopolitical position, whether U.S. pledges are credible is first and foremost a problem for those who are dependent on U.S. help. We should therefore take our allies' occasional hints about realignment or neutrality with some skepticism; they have every incentive to try to make us worry about it, but in most cases little incentive to actually do it.

Don't get me wrong: having allies around the world is useful and some attention needs to be paid to preserving intra-alliance solidarity, especially when the ally in question does have important things that we want or need. But an excessive concern for credibility encourages and enables allies to free-ride (something most of them have done for decades), and it can lead Washington to keep pouring resources into shaky endeavors lest allies elsewhere doubt our resolve.

This logic is wrong-headed, because squandering billions on fruitless endeavors (see under: Afghanistan) ultimately leaves one weaker overall and eventually diminishes public support for active engagement abroad. By contrast, liquidating a costly burden enables you to rebuild and regroup and puts you in a better position to respond in places that matter. The real message that Biden and other U.S. representatives should be telling their listeners is that getting out of Iraq (and eventually Afghanistan) is going to improve America's ability to protect its real interests, and that important U.S. allies need not be that concerned.

More importantly, worrying a bit less about our credibility and "playing hard to get" on occasion would have real benefits. If other states were a bit less confident that the United States would come to their aid if asked, they would be willing to do more to ensure that we would. If key U.S. allies are not entirely convinced of U.S. support no matter what they did, they would be less likely to engage in dangerous or provocative acts of their own. Moreover, playing "hard to get" reduces the likelihood that the United States will be perceived as a trigger-happy global policeman. As the cases of the Balkans in the 1990s and the recent Libyan intervention illustrate, when Washington is more reluctant to take on collective burdens, it ends up being appreciated (and less feared) when it finally does get involved. Thus, worrying a bit less about U.S. credibility is a way to get others to do more, and to resent what we do less.

To be clear: I'm not saying the United States should cultivate a reputation for unreliability or capriciousness. It should make commitments that are consistent with its interests and, so long as those interests do not change, it should do its best to fulfill the pledges it has made. But it ought to be hardheaded about this process, and proceed from the clear understanding that most of our allies need us more than we need them (at least most of the time). There will still be hard bargaining on occasion, a need for constructive and empathetic diplomacy, and there is little to be gained from treating our allies with visible disdain. But the United States still holds a lot of high cards, and we should expect allies to spend as much time reassuring us that they are worth the effort as we do reassuring them.

### 2nc—Ozone

No internal link to ozone – Montreal protocol proves consensus exists – US legitimacy isn’t necessary to convince other states—

**No impact – expected to fully recover in the next 30 years --- that’s Reynold Dixon – postdates the 1ac ev and assumes most recent studies**

**Not rapidly disappearing – new losses are due to substances that have been banned**

**States News Service 11** [“MYSTERIES OF OZONE DEPLETION CONTINUE 25 YEARS AFTER THE DISCOVERY OF THE ANTARCTIC OZONE HOLE,” 8-29, Lexis Nexis]

We're no longer producing the primary chemicals chlorofluorocarbons (CFCs) that caused the problem, but CFCs have very long lifetimes in our atmosphere, and so we'll have ozone depletion for several more decades, said Solomon. There are still some remarkable mysteries regarding exactly how these chlorine compounds behave in Antarctica and it's amazing that we still have much to learn, even after studying ozone for so long. Susan Solomon, Ph.D., delivered the Kavli Foundation Lecture at the ACS 242nd National Meeting and Exposition. High-resolution version The ozone layer is crucial to life on Earth, forming a protective shield high in the atmosphere that blocks potentially harmful ultraviolet rays in sunlight. Scientists have known since 1930 that ozone forms and decomposes through chemical processes. The first hints that human activity threatened the ozone layer emerged in the 1970s, and included one warning from Paul Crutzen, Ph.D., that agricultural fertilizers might reduce ozone levels. Another hint was from F. Sherwood Rowland, Ph.D., and Mario Molina, Ph.D., who described how CFCs in aerosol spray cans and other products could destroy the ozone layer. The three shared a 1995 Nobel Prize in Chemistry for that research. In 1985, British scientists discovered a hole, a completely unexpected area of intense ozone depletion over Antarctica. Solomon's 1986 expedition to Antarctica provided some of the clinching evidence that underpinned a global ban on CFCs and certain otherozone-depleting gases. Evidence suggests that the ozone depletion has stopped getting worse. Ozone can be thought of as a patient in remission, but it's too early to declare recovery, said Solomon. And surprises, such as last winter's loss of 40% of the ozone over the Arctic still occur due to the extremely long lifetimes of ozone-destroying substances released years ago before the ban.

#### Newest evidence confirms the ozone threat was a sham. Depletion hasn’t occurred and effects have been minimal.

**Lieberman ‘7** (Ben, Senior Policy Analyst for Energy and Environment – Heritage Foundation, China Post, “MONTREAL PROTOCOL AND OZONE CRISIS THAT WASN'T”, 9-14, L/N)

Environmentalists have made many apocalyptic predictions over the past decades and, when they have not come to pass, have proclaimed that their preventive measures averted disaster -- as with the 1987 Montreal Protocol On Substances That Deplete The Ozone Layer (Montreal Protocol). The many lurid predictions of skin cancer epidemics, eco-system destruction and so on have not come true, and to Montreal Protocol proponents this is cause for self-congratulation. But in retrospect the evidence shows that ozone depletion was an exaggerated threat in the first place and that the parade of horribles never really was in the cards. As the parties to the treaty return to Montreal for their 20th anniversary this week it should be cause for reflection, not celebration, especially for those who see it as a success story to be repeated for climate change. The treaty came about over legitimate but overstated concerns that chlorofluorocarbons (CFCs, then a widely used refrigerant gas) and other compounds were rising to the stratosphere and destroying ozone molecules. These molecules, collectively known as the ozone layer, shield the earth from excessive ultraviolet-B radiation (UVB) from the sun. The 1987 Montreal Protocol led to a CFC ban in most developed nations by 1996, while Developing nations were given an extension but are under pressure to curtail it. So what do we know now? A 1998 World Meteorological Organization (WMO) report said that "since 1991, the linear [depletion] trend observed during the 1980s has not continued, but rather total column ozone has been almost constant ..." This was too soon to be attributable to the Montreal Protocol as that same report noted that the stratospheric concentrations of the offending compounds were still increasing at the time of writing. In fact, they did not begin to decline until the end of the 1990s. This lends credence to the view, widely derided at the time of the Montreal Protocol, that natural variations explain the fluctuations in the global ozone layer more than CFC usage. More importantly, the feared widespread increase in ground-level UVB radiation has also failed to materialize. Keep in mind that ozone depletion, in and of itself, is not of consequence to human health or the environment. It is the concern that an eroded ozone layer would allow more of the sun's damaging UVB rays to reach the earth that gave rise to the Montreal Protocol. But the WMO concedes that no statistically significant long-term trends have been detected, noting earlier this year that "outside the polar regions, ozone depletion has been relatively small, hence, in many places, increases in UV due to this depletion are difficult to separate from the increases caused by other factors, such as changes in cloud and aerosol." In other words, ozone depletion's impact on UVB over populated regions is so small as to be easily lost amidst the noise of background variability. Needless to say, if UVB has not gone up, then the fears are unfounded: indeed, the much hyped acceleration in skin cancer rates has not happened. For example, U.S. National Cancer Institute statistics show that malignant melanoma incidence and mortality, which had shown a long-term increase that pre-dated ozone depletion, had actually been leveling off during the time of the putative ozone crisis. Further, no eco-system or species was ever shown to be seriously harmed by ozone depletion. This is true even in Antarctica, where the largest seasonal ozone losses, the so-called Antarctic ozone hole, occur each year. Also forgotten is a long list of truly ridiculous claims, such as the one from Al Gore's 1992 book Earth in the Balance that, thanks to the Antarctic ozone hole, "hunters now report finding blind rabbits; fishermen catch blind salmon." The Montreal Protocol has not made these problems go away -- they never occurred in the first place.

#### Peer reviewed studies vote neg.

**Schein et al ’95** (Oliver MD, Bealriz Mufioz MS, Sheila West PhD, Center for Prevenlive Opthamology – Johns Hopkins U., James Nethercott MD, Dept. Env. Health Science – Johns Hopkins U., Donald Duncan PhD, Applied Physics Laboratory – Johns Hopkins U., Cesar Vicencio MD, Juan Honeyman MD, U. Chile, Kirk Geiatt VMD, Dept. Small Animal Clinical Sciences – U. Florida, Hillel Karen PhD, US EPA Health Effects Research Laboratory, American Journal of Public Health, “Ocular and Dermatologic Health Effects of Ultraviolet Radiation Exposure from the Ozone Hole in Southern Chile”, 85(4), April, p. 549, Ebsco)

The recent expansion of the geographic area covered by the ozone hole over Antarctica has been accompanied by numerous lay reports of UV radiation related disease in humans and animals in the region. However, our pilot project provides no convincing evidence to support the reported acute adverse health effects. No increase in adverse ocular health effects known to be related to acute UV exposure was witnessed by the ophthalmologists practicing in Punta Arenas. More visits to the dermatologist for verrucae were found during time periods associated with increased irradiance, but since no accompanying increase for sunburn, photcidermatoses, or other sentinel diagnoses was documented, these visits were probably not related to increased UV irradiation. Moreover, while verrucae may be linked with a decline in cellmediated immunity,---' they arc usually associated with wet work and arc quite common, tjccurring in 5% to 10% of all persons.-' They also often involute and recur. The 4% to 1 \% frequency of visits for verrucae in a dermatologic patient pt)pulation is, therefore, not striking. The lack of unusual findings in the systematic chart review was further supported by direct ophthalmologic and dermatologic examinations of small sample populations of fishermen, shepherds, and hospital workers (data not shown). The former two populations were selected because of their outdoor occupational exposure, and the third was selected as a control group. No significant differences in (Kular or dermatologic findings were present by occupation. Tinea infeetions were noted in more than 50% of all subjects examined but were most common in the hospital workers, the group least exposed to UV radiation. The animal investigations were also not supportive of the lay reports. Although external ocular disease consistent with C psittaci was found in 69% of the sheep evaluated, the findings were not consistent with blindness, nor is this infectious agent known to be associated with UV exposure. The frequency of nonblinding cataract among sheep ranged from 3% to 24% at the five ranches. Unfortunately, comparison data do not exist from elsewhere in Chile or from other countries to put these findings into perspective. However, no bilateral blinding cataract was found. Our examination occurred soon after the ozone hole appeared, so it is unlikely that animal loss due to death or injury from blindness could explain our findings. The acute effects of UV-B exposure in cattle have been documented in experimental studies of infectious keratoconjunctivitis caused by Mycohacteriiim bovis, an infection not seen in the cattle examined in Chile. UV exposure has been linked to squamous cell carcinoma in Hereford cattle in the United States.'^ In the sample of Hereford cattle examined in Chile, the prevalenee of presumed squamous cell earcinoma was high (5 of 30 animals). However, a larger sample would need to be examined before this rate could be considered reliable. The lack of observed adverse health effects is consistent with our estimation of an excess annual UV-B exposure in the region of 1%. It is also important to assess the absolute level of exposure in the region. Using historical cloud cover data from Punta Arenas, ozone column density measurements from a Brewer MK4 speetroradiometer located in Punta Arenas, and the Green model for estimating UV-B irradianee,-" we estimated an annual exposure in Punta Arenas of approximately 2190 MEDs. This may be compared with the approximately 2500 MEDs estimated for Maryland in 1992.^^ Clearly, the cumulative UV-B exposure in Punta Arenas, even within the context of an ozone hole, is exceeded by that in many temperate climates and is far surpassed by that in tropical locations.

### 2nc—Warming

#### Tipping points theory is wrong---there’s zero data can reliably identify specific tipping points---it’s just hype and false advertising to hype up the threat of warming --- that’s Revkin

**Warming is inevitable, even if they say the AFF reduces emissions immediately, there’s already too much CO2 in the atmosphere to trigger the impact**

**Anderson and Bows, 11**—\*Tyndall Centre for Climate Change Research, School of Mechanical, Aerospace and Civil Engineering; \*\*Sustainable Consumption Institute, School of Earth, Atmospheric and Environmental Sciences, University of Manchester (Kevin and Alice, “Beyond ‘dangerous’ climate change: emission scenarios for a new world,” Philosophical Transactions of the Royal Society”)

This already demanding conclusion becomes even more challenging when assumptions about the rates of viable emission reductions are considered alongside an upgrading of the severity of impacts for 2◦C. Within global emission scenarios, such as those developed by Stern [6], the CCC [8] and ADAM [47], annual rates of emission reduction beyond the peak years are constrained to levels thought to be compatible with economic growth—normally 3 per cent to 4 per cent per year. However, on closer examination these analyses suggest such reduction rates are no longer sufficient to avoid dangerous climate change. For example, in discussing arguments for and against carbon markets the CCC state ‘rich developed economies need to start demonstrating that a low-carbon economy is possible and compatible with economic prosperity’ [8, p. 160]. However, given the CCC acknowledge ‘it is not now possible to ensure with high likelihood that a temperature rise of more than 2◦C is avoided’ and given the view that reductions in emissions in excess of 3–4% per year are not compatible with economic growth, the CCC are, in effect, conceding that avoiding dangerous (and even extremely dangerous) climate change is no longer compatible with economic prosperity.

In prioritizing such economic prosperity over avoiding extremely dangerous climate change, the CCC, Stern, ADAM and similar analyses suggest they are guided by what is feasible.34 However, while in terms of emission reduction rates their analyses favour the ‘challenging though still feasible’ end of orthodox assessments, the approach they adopt in relation to peaking dates is very different. All premise their principal analyses and economic assessments on the ‘infeasible’ assumption of global emissions peaking between 2010 and 2016; a profound departure from the more ‘feasible’ assumptions framing the majority of such reports. The scale of this departure is further emphasized when disaggregating global emissions into Annex 1 and non-Annex 1 nations, as the scenario pathways developed within this paper demonstrate.

Only if Annex 1 nations reduce emissions immediately35 at rates far beyond those typically countenanced and only then if non-Annex 1 emissions peak between 2020 and 2025 before reducing at unprecedented rates, do global emissions peak by 2020. Consequently, the 2010 global peak central to many integrated assessment model scenarios as well as the 2015–2016 date enshrined in the CCC, Stern and ADAM analyses, do not reflect any orthodox ‘feasibility’. By contrast, the logic of such studies suggests (extremely) dangerous climate change can only be avoided if economic growth is exchanged, at least temporarily, for a period of planned austerity within Annex 1 nations36 and a rapid transition away from fossil-fuelled development within non-Annex 1 nations.

The analysis within this paper offers a stark and unremitting assessment of the climate change challenge facing the global community. There is now little to no chance of maintaining the rise in global mean surface temperature at below 2◦C, despite repeated high-level statements to the contrary. Moreover, the impacts associated with 2◦C have been revised upwards (e.g. [20,21]), sufficiently so that 2◦C now more appropriately represents the threshold between dangerous and extremely dangerous climate change. Consequently, and with tentative signs of global emissions returning to their earlier levels of growth, 2010 represents a political tipping point. The science of climate change allied with emission pathways for Annex 1 and non-Annex 1 nations suggests a profound departure in the scale and scope of the mitigation and adaption challenge from that detailed in many other analyses, particularly those directly informing policy.

However, this paper is not intended as a message of futility, but rather a bare and perhaps brutal assessment of where our ‘rose-tinted’ and well intentioned (though ultimately ineffective) approach to climate change has brought us. Real hope and opportunity, if it is to arise at all, will do so from a raw and dispassionate assessment of the scale of the challenge faced by the global community. This paper is intended as a small contribution to such a vision and future of hope.

#### Mitigation and adapaptation solves.

Mendelsohn 09 (Robert O., the Edwin Weyerhaeuser Davis Professor, Yale School of Forestry and Environmental Studies, Yale University, June 2009, “Climate Change and Economic Growth,” online: http://www.growthcommission.org/storage/cgdev/documents/gcwp060web.pdf)

The heart of the debate about climate change comes from a number of warnings from scientists and others that give the impression that human-induced climate change is an immediate threat to society (IPCC 2007a,b; Stern 2006). Millions of people might be vulnerable to health effects (IPCC 2007b), crop production might fall in the low latitudes (IPCC 2007b), water supplies might dwindle (IPCC 2007b), precipitation might fall in arid regions (IPCC 2007b), extreme events will grow exponentially (Stern 2006), and between 20–30 percent of species will risk extinction (IPCC 2007b). Even worse, there may be catastrophic events such as the melting of Greenland or Antarctic ice sheets causing severe sea level rise, which would inundate hundreds of millions of people (Dasgupta et al. 2009). Proponents argue there is no time to waste. Unless greenhouse gases are cut dramatically today, economic growth and well‐being may be at risk (Stern 2006). These statements are largely alarmist and misleading. Although climate change is a serious problem that deserves attention, society’s immediate behavior has an extremely low probability of leading to catastrophic consequences. The science and economics of climate change is quite clear that emissions over the next few decades will lead to only mild consequences. The severe impacts predicted by alarmists require a century (or two in the case of Stern 2006) of no mitigation. Many of the predicted impacts assume there will be no or little adaptation. The net economic impacts from climate change over the next 50 years will be small regardless. Most of the more severe impacts will take more than a century or even a millennium to unfold and many of these “potential” impacts will never occur because people will adapt. It is not at all apparent that immediate and dramatic policies need to be developed to thwart long‐range climate risks. What is needed are long‐run balanced responses.

#### Climate change proves Oceans and marine bioD are resilient – alarmist predictions empirically denied

Taylor 10 (James M. Taylor is a senior fellow of The Heartland Institute and managing editor of Environment & Climate News., “Ocean Acidification Scare Pushed at Copenhagen,” Feb 10 http://www.heartland.org/publications/environment%20climate/article/26815/Ocean\_Acidification\_Scare\_Pushed\_at\_Copenhagen.html)

With global temperatures continuing their decade-long decline and United Nations-sponsored global warming talks falling apart in Copenhagen, alarmists at the U.N. talks spent considerable time claiming carbon dioxide emissions will cause catastrophic ocean acidification, regardless of whether temperatures rise. The latest scientific data, however, show no such catastrophe is likely to occur. Food Supply Risk Claimed The United Kingdom’s environment secretary, Hilary Benn, initiated the Copenhagen ocean scare with a high-profile speech and numerous media interviews claiming ocean acidification threatens the world’s food supply. “The fact is our seas absorb CO2. They absorb about a quarter of the total that we produce, but it is making our seas more acidic,” said Benn in his speech. “If this continues as a problem, then it can affect the one billion people who depend on fish as their principle source of protein, and we have to feed another 2½ to 3 billion people over the next 40 to 50 years.” Benn’s claim of oceans becoming “more acidic” is misleading, however. Water with a pH of 7.0 is considered neutral. pH values lower than 7.0 are considered acidic, while those higher than 7.0 are considered alkaline. The world’s oceans have a pH of 8.1, making them alkaline, not acidic. Increasing carbon dioxide concentrations would make the oceans less alkaline but not acidic. Since human industrial activity first began emitting carbon dioxide into the atmosphere a little more than 200 years ago, the pH of the oceans has fallen merely 0.1, from 8.2 to 8.1. Following Benn’s December 14 speech and public relations efforts, most of the world’s major media outlets produced stories claiming ocean acidification is threatening the world’s marine life. An Associated Press headline, for example, went so far as to call ocean acidification the “evil twin” of climate change. Studies Show CO2 Benefits Numerous recent scientific studies show higher carbon dioxide levels in the world’s oceans have the same beneficial effect on marine life as higher levels of atmospheric carbon dioxide have on terrestrial plant life. In a 2005 study published in the Journal of Geophysical Research, scientists examined trends in chlorophyll concentrations, critical building blocks in the oceanic food chain. The French and American scientists reported “an overall increase of the world ocean average chlorophyll concentration by about 22 percent” during the prior two decades of increasing carbon dioxide concentrations. In a 2006 study published in Global Change Biology, scientists observed higher CO2 levels are correlated with better growth conditions for oceanic life. The highest CO2 concentrations produced “higher growth rates and biomass yields” than the lower CO2 conditions. Higher CO2 levels may well fuel “subsequent primary production, phytoplankton blooms, and sustaining oceanic food-webs,” the study concluded. Ocean Life ‘Surprisingly Resilient’ In a 2008 study published in Biogeosciences, scientists subjected marine organisms to varying concentrations of CO2, including abrupt changes of CO2 concentration. The ecosystems were “surprisingly resilient” to changes in atmospheric CO2, and “the ecosystem composition, bacterial and phytoplankton abundances and productivity, grazing rates and total grazer abundance and reproduction were not significantly affected by CO2-induced effects.” In a 2009 study published in Proceedings of the National Academy of Sciences, scientists reported, “Sea star growth and feeding rates increased with water temperature from 5ºC to 21ºC. A doubling of current [CO2] also increased growth rates both with and without a concurrent temperature increase from 12ºC to 15ºC.” Another False CO2 Scare “Far too many predictions of CO2-induced catastrophes are treated by alarmists as sure to occur, when real-world observations show these doomsday scenarios to be highly unlikely or even virtual impossibilities,” said Craig Idso, Ph.D., author of the 2009 book CO2, Global Warming and Coral Reefs. “The phenomenon of CO2-induced ocean acidification appears to be no different.

#### No wars impact

Salehyan 07 (Idean, Professor of Political Science – University of North Texas, “The New Myth About Climate Change”, Foreign Policy, Summer, http://www.foreignpolicy.com/story/cms.php?story\_id=3922)

First, aside from a few anecdotes, there is little systematic empirical evidence that resource scarcity and changing environmental conditions lead to conflict. In fact, several studies have shown that an abundance of natural resources is more likely to contribute to conflict. Moreover, even as the planet has warmed, the number of civil wars and insurgencies has decreased dramatically. Data collected by researchers at Uppsala University and the International Peace Research Institute, Oslo shows a steep decline in the number of armed conflicts around the world. Between 1989 and 2002, some 100 armed conflicts came to an end, including the wars in Mozambique, Nicaragua, and Cambodia. If global warming causes conflict, we should not be witnessing this downward trend. Furthermore, if famine and drought led to the crisis in Darfur, why have scores of environmental catastrophes failed to set off armed conflict elsewhere? For instance, the U.N. World Food Programme warns that 5 million people in Malawi have been experiencing chronic food shortages for several years. But famine-wracked Malawi has yet to experience a major civil war. Similarly, the Asian tsunami in 2004 killed hundreds of thousands of people, generated millions of environmental refugees, and led to severe shortages of shelter, food, clean water, and electricity. Yet the tsunami, one of the most extreme catastrophes in recent history, did not lead to an outbreak of resource wars. Clearly then, there is much more to armed conflict than resource scarcity and natural disasters.

#### Climate change is not the root cause of refugees, and they don’t solve for the institutions that actually cause displacement

Hartmann 10 (Betsy professor of development studies and director of the Population and Development Program , B.A. from Yale University, Ph.D. from the London School of Economics 23 FEB 2010 Rethinking climate refugees and climate conflict: Rhetoric, reality and the politics of policy discourse <http://onlinelibrary.wiley.com/doi/10.1002/jid.1676/abstract>)

The narrative ignores basic elements of Sudanese political economy that helped create and sustain the conﬂict. These include gross inequalities in wealth and power between the elite in the capital and the rural population; government agricultural policies that favour large mechanised farms and irrigation schemes over rain-fed, small farmer agriculture, causing both political grievances and land degradation; forced migration, such as the 1990s removal of Nuba farmers from their lands into so-called ‘peace villages’ where they became a source of captive labour for mechanised farms; and what Alex de Waal calls ‘militarised tribalism’ (de Waal, 2007). In particular, the nationalisation of land in 1970, by which customary laws were set aside and people could obtain access only through lease agreements with the government, set the stage for widespread land-grabbing by elites and the marginalisation of pastoralists. As one scholar of the region notes, ‘. . .not all resource conﬂicts are based on a situation of resource scarcity; rather, they are political in nature and have to do with the workings of the Sudanese state’ (Manger, 2005, p. 135). The discovery but rather to heighten it, if the government controls the water for its own interests (Polgreen, 2007). The construction of Darfur as a climate conﬂict should serve as canary in the coal mine that something is amiss when environmental determinism overrides serious analysis of power relations. This is not to deny that environmental changes due to global warming could in some instances exacerbate already existing economic and political divisions. However, whether or not violent conﬂict and mass migrations result depends on so many other factors that it is far too simplistic to see climate change as a major cause or trigger. Moreover, such threat scenarios ignore the way many poorly resourced communities manage their affairs without recourse to violence. Brown et al. (2007) cite the case of the semi-arid regions of Northern Nigeria where conﬂicts between pastoralists and agricultural communities occur over water and fodder, but seldom spread because of the existence of traditional conﬂict resolution institutions. They argue that helping these communities adapt to climate change should involve strengthening such institutions.

#### No impact to warming

Idso and Idso 11 (Craig D., Founder and Chairman of the Board – Center for the Study of Carbon Dioxide and Global Change, and Sherwood B., President – Center for the Study of Carbon Dioxide and Global Change, “Carbon Dioxide and Earth’s Future Pursuing the Prudent Path,” February, http://www.co2science.org/education/reports/ prudentpath/prudentpath.pdf)

As presently constituted, earth’s atmosphere contains just slightly less than 400 ppm of the colorless and odorless gas we call carbon dioxide or CO2. That’s only four-hundredths of one percent. Consequently, even if the air's CO2 concentration was tripled, carbon dioxide would still comprise only a little over one tenth of one percent of the air we breathe, which is far less than what wafted through earth’s atmosphere eons ago, when the planet was a virtual garden place. Nevertheless, a small increase in this minuscule amount of CO2 is frequently predicted to produce a suite of dire environmental consequences, including dangerous global warming, catastrophic sea level rise, reduced agricultural output, and the destruction of many natural ecosystems, as well as dramatic increases in extreme weather phenomena, such as droughts, floods and hurricanes. As strange as it may seem, these frightening future scenarios are derived from a single source of information: the ever-evolving computer-driven climate models that presume to reduce the important physical, chemical and biological processes that combine to determine the state of earth’s climate into a set of mathematical equations out of which their forecasts are produced. But do we really know what all of those complex and interacting processes are? And even if we did -- which we don't -- could we correctly reduce them into manageable computer code so as to produce reliable forecasts 50 or 100 years into the future? Some people answer these questions in the affirmative. However, as may be seen in the body of this report, real-world observations fail to confirm essentially all of the alarming predictions of significant increases in the frequency and severity of droughts, floods and hurricanes that climate models suggest should occur in response to a global warming of the magnitude that was experienced by the earth over the past two centuries as it gradually recovered from the much-lower-than-present temperatures characteristic of the depths of the Little Ice Age. And other observations have shown that the rising atmospheric CO2 concentrations associated with the development of the Industrial Revolution have actually been good for the planet, as they have significantly enhanced the plant productivity and vegetative water use efficiency of earth's natural and agro-ecosystems, leading to a significant "greening of the earth." In the pages that follow, we present this oft-neglected evidence via a review of the pertinent scientific literature. In the case of the biospheric benefits of atmospheric CO2 enrichment, we find that with more CO2 in the air, plants grow bigger and better in almost every conceivable way, and that they do it more efficiently, with respect to their utilization of valuable natural resources, and more effectively, in the face of environmental constraints. And when plants benefit, so do all of the animals and people that depend upon them for their sustenance. Likewise, in the case of climate model inadequacies, we reveal their many shortcomings via a comparison of their "doom and gloom" predictions with real-world observations. And this exercise reveals that even though the world has warmed substantially over the past century or more -- at a rate that is claimed by many to have been unprecedented over the past one to two millennia -- this report demonstrates that none of the environmental catastrophes that are predicted by climate alarmists to be produced by such a warming has ever come to pass. And this fact -- that there have been no significant increases in either the frequency or severity of droughts, floods or hurricanes over the past two centuries or more of global warming -- poses an important question. What should be easier to predict: the effects of global warming on extreme weather events or the effects of elevated atmospheric CO2 concentrations on global temperature? The first part of this question should, in principle, be answerable; for it is well defined in terms of the small number of known factors likely to play a role in linking the independent variable (global warming) with the specified weather phenomena (droughts, floods and hurricanes). The latter part of the question, on the other hand, is ill-defined and possibly even unanswerable; for there are many factors -- physical, chemical and biological -- that could well be involved in linking CO2 (or causing it not to be linked) to global temperature. If, then, today's climate models cannot correctly predict what should be relatively easy for them to correctly predict (the effect of global warming on extreme weather events), why should we believe what they say about something infinitely more complex (the effect of a rise in the air’s CO2 content on mean global air temperature)? Clearly, we should pay the models no heed in the matter of future climate -- especially in terms of predictions based on the behavior of a non-meteorological parameter (CO2) -- until they can reproduce the climate of the past, based on the behavior of one of the most basic of all true meteorological parameters (temperature). And even if the models eventually solve this part of the problem, we should still reserve judgment on their forecasts of global warming; for there will yet be a vast gulf between where they will be at that time and where they will have to go to be able to meet the much greater challenge to which they aspire

#### Previous temperature spikes disprove the impact

Singer 11 (S. Fred, Robert M. and Craig, PhD physics – Princeton University and professor of environmental science – UVA, consultant – NASA, GAO, DOE, NASA, Carter, PhD paleontology – University of Cambridge, adjunct research professor – Marine Geophysical Laboratory @ James Cook University, and Idso, PhD Geography – ASU, “Climate Change Reconsidered,” 2011 Interim Report of the Nongovernmental Panel on Climate Change)

Research from locations around the world reveal a significant period of elevated air temperatures that immediately preceded the Little Ice Age, during a time that has come to be known as the Little Medieval Warm Period. A discussion of this topic was not included in the 2009 NIPCC report, but we include it here to demonstrate the existence of another set of real-world data that do not support the IPCC‘s claim that temperatures of the past couple of decades have been the warmest of the past one to two millennia. In one of the more intriguing aspects of his study of global climate change over the past three millennia, Loehle (2004) presented a graph of the Sargasso Sea and South African temperature records of Keigwin (1996) and Holmgren et al. (1999, 2001) that reveals the existence of a major spike in surface air temperature that began sometime in the early 1400s. This abrupt and anomalous warming pushed the air temperatures of these two records considerably above their representations of the peak warmth of the twentieth century, after which they fell back to pre-spike levels in the mid-1500s, in harmony with the work of McIntyre and McKitrick (2003), who found a similar period of higher-than-current temperatures in their reanalysis of the data employed by Mann et al. (1998, 1999).

#### Can’t solve developing countries

Socolow and Glaser 09 – Professor of Mechanical and Aerospace Engineering at Princeton University and Assistant Professor at the Woodrow Wilson School of Public and International Affairs and in the Department of Mechanical and Aerospace Engineering at Princeton University (Robert H. and Alexander, Fall. “Balancing risks: nuclear energy & climate change.” Dædalus Volume 138, Issue 4, pp. 31-44. MIT Press Journals.)

In this paper we consider a nuclear future where 1,500 GW of base load nuclear power is deployed in 2050. A nuclear fleet of this size would contribute about one wedge, if the power plant that would have been built instead of the nuclear plant has the average CO2 emissions per kilowatt hour of all operating plants, which might be half of the value for a coal plant. Base load power of 1,500 GW would contribute one fourth of total electric power in a business-as-usual world that produced 50,000 terawatt-hours (TWh) of electricity per year, two-and-a-half times the global power consumption. However, **in a world focused on climate change mitigation, one would expect massive global investments in energy efficiency–more efficient motors, compressors, lighting, and circuit boards–that by 2050 could cut total electricity demand in half, relative to business as usual**. In such a world, 1,500 GW of nuclear power would provide half of the power. We can get a feel for the geopolitical dimension of climate change mitigation from the widely cited scenarios by the International Energy Agency (iea) presented annually in its World Energy Outlook (weo), even though these now go only to 2030. The weo 2008 estimates energy, electricity, and CO2 emissions by region. Its 2030 world emits 40.5 billion tons of CO2, 45 percent from electric power plants. The countries of theOrganisation for Economic Co-operation and Development (oecd) emit less than one third of total global fossil fuel emissions and less than one third of global emissions from electric power production. By extrapolation, at midcentury the oecd could contribute only one quarter of the world’s greenhouse gas emissions. It is hard for Western analysts to grasp the importance of these numbers. **The focus of climate change mitigation today is on leadership from the OECD countries**, **which are wealthier and more risk averse. But within a decade, the targets under discussion today can be within reach only if mitigation is in full gear in those parts of the developing world that share production and consumption patterns with the industrialized world**. The map (see Figure 1) shows a hypothetical global distribution of nuclear power in the year 2050 based on a highnuclear scenario proposed in a widely cited mit report published in 2003. Three-fifths of the nuclear capacity in 2050 as stated in the mit report is located in the oecd, and more nuclear power is deployed in the United States in 2050 than in the whole world today. The worldview underlying these results is pessimistic about electricity growth rates for key developing countries, relative to many other sources. Notably, per capita electricity consumption in almost every developing country remains below 4,000 kWh per year in 2050, which is one-fifth of the assumed U.S. value for the same year. Such a ratio would startle many analysts today–certainly many in China. It is well within limits of credulity that nuclear power in 2050 could be nearly absent from the United States and the European Union and at the same time widely deployed in several of the countries rapidly industrializing today. Such a bifurcation could emerge, for example, if public opposition to nu clear power in the United States and Europe remains powerful enough to prevent nuclear expansion, while elsewhere, perhaps where modernization and geopolitical considerations trump other concerns, nuclear power proceeds vigorously. It may be that the United States and other countries of the oecd will have substantial leverage over the development of nuclear power for only a decade or so. Change will not happen overnight**. Since 2006, almost 50 countries that today have no nuclear power plants have approached the International Atomic Energy Agency (iaea) for assistance, and many of them have announced plans to build one or more reactors by 2020. Most of these countries, however, are not currently in a good position to do so. Many face important** technical and economic constraints**, such as grid capacity, electricity demand, or gdp. Many have too few trained nuclear scientists and engineers, or lack an adequate regulatory framework and related legislation, or have not yet had a public debate about the rationale for the project**. Overall, **the iaea has estimated that “for a State with little developed technical base the implementation of the first [nuclear power plant] would, on average, take about 15 years**.” 11 **This lead time constrains rapid expansion of nuclear energy today**. **A wedge of nuclear power is, necessarily, nuclear power deployed widely– including in regions that are politically unstable today. If nuclear power is suf-ficiently unattractive in such a deployment scenario,** nuclear power is not on the list of solutions **to climate change**.

#### Warming is irreversible

ANI 10 (“IPCC has underestimated climate-change impacts, say scientists”, 3-20, One India, http://news.oneindia.in/2010/03/20/ipcchas-underestimated-climate-change-impacts-sayscientis.html)

According to Charles H. Greene, Cornell professor of Earth and atmospheric science, "Even if all man-made greenhouse gas emissions were stopped tomorrow and carbon-dioxide levels stabilized at today's concentration, by the end of this century, the global average temperature would increase by about 4.3 degrees Fahrenheit, or about 2.4 degrees centigrade above pre-industrial levels, which is significantly above the level which scientists and policy makers agree is a threshold for dangerous climate change." "Of course, greenhouse gas emissions will not stop tomorrow, so the actual temperature increase will likely be significantly larger, resulting in potentially catastrophic impacts to society unless other steps are taken to reduce the Earth's temperature," he added. "Furthermore, while the oceans have slowed the amount of warming we would otherwise have seen for the level of greenhouse gases in the atmosphere, the ocean's thermal inertia will also slow the cooling we experience once we finally reduce our greenhouse gas emissions," he said. This means that the temperature rise we see this century will be largely irreversible for the next thousand years. "Reducing greenhouse gas emissions alone is unlikely to mitigate the risks of dangerous climate change," said Green.

# Round 5 v. Kansas FG

## 1NC

### 1NC DA

#### Political capital key to get TPA done

McLarty and Cunningham 2/2 (Thomas F. "Mack" McLarty was chief of staff to President Bill Clinton during the NAFTA ratification fight. Nelson W. Cunningham was also a Clinton White House aide, “A Critical Test of Leadership,” 2/2/14 http://www.huffingtonpost.com/thomas-f-mclarty/a-critical-test-of-leader\_b\_4705623.html)

In his State of the Union address last week, President Obama took a good first step in asking Congress to provide the tools he needs to close two of the most ambitious trade deals in U.S. history. But he faces an immediate challenge from within his party that could imperil negotiations, with huge stakes for the U.S. globally and for our economy at home.¶ At issue is Trade Promotion Authority (TPA), which allows the president to send a trade agreement to Congress for an up-or-down vote, without amendments. Many Republicans reflexively oppose granting any request from the administration. But the biggest opposition is coming from Democrats skeptical of the value of free trade.¶ The day after the president's address, Senate Majority Leader Harry Reid said he opposed "fast track" authority. His remarks revealed the depth of a gulf among Democrats over trade, and sparked new criticism from Republicans as a sign that the president's party couldn't be lined up behind a major administration initiative.¶ For President Obama, this is a critical test of his leadership. Can he muster enough support for his trade agenda within his own party, and then assemble a bipartisan majority in both houses of Congress? Failure would be a great setback for U.S. prestige internationally, and a dismal signal for the president's remaining three years in office.¶ We've seen this movie before -- and it didn't end well. The last Democratic president to seek fast track authority on trade was Bill Clinton in 1997. The effort collapsed when then House Speaker Newt Gingrich was unable to marshal his Republican majority. It was an opportunity lost, ending a period of bipartisan cooperation on trade and stalling momentum created a few years earlier by the North American Free Trade Agreement.¶ Repeating this history would be a mistake, especially as our economy struggles to create good jobs at high wages. But the president faces an uphill battle. Now is the moment for Democrats to pause and take full measure of the stakes involved in opposing fast track. It's time for Republican supporters of trade to rally. And it is essential that the president and his cabinet exert persistent, focused leadership to persuade the skeptics.¶ President Obama deserves much credit for advancing the most far-reaching trade agenda in a generation. The administration is nearing the finish line in negotiations of the Trans Pacific Partnership, an agreement with 11 Pacific Rim nations, including Japan and perhaps South Korea and others. Simultaneous talks are underway between the United States and the European Union over the Transatlantic Trade and Investment Partnership -- creating an economic NATO and the largest liberalized trade zone in the world.¶ Together, the agreements would lower barriers in markets accounting for more than 60 percent of the global economy.¶ Neither negotiation would survive a failure to renew Trade Promotion Authority, which expired in 2007. TPA reassures our negotiating partners that they will not agree to difficult concessions only to see Congress later force unilateral changes. Under TPA, Congress establishes negotiating goals and must be regularly consulted by the president. In exchange, Congress promises an up-or-down vote without amendment. No major trade legislation has passed Congress in decades without it.¶ President Clinton knew that because trade was so hard, its support had to be bipartisan. To push for NAFTA, he assembled a high-profile war room in the White House, led by a prominent Democrat, Bill Daley, and former Republican Congressman Bill Frenzel. The president worked members tirelessly. The bill eventually passed with 102 Democratic and 132 Republican votes, and a similarly bipartisan total in the Senate. By contrast, the 1997 effort to renew fast-track authority lacked that high-profile White House push -- helping seal its doom.¶ Over the last decades, global trade has proven essential to building employment and reducing inequality at home. One of every five jobs in the United States is tied to exports. More significantly for the long run, 95 percent of the world's customers live outside our borders. While many Americans have concerns about free trade, they say the benefits of U.S. involvement in the global economy outweigh the risks (by a 2-1 margin in a poll last month by the Pew Research Center).¶ Even so, last fall 151 House Democrats signed a letter expressing their opposition to granting President Obama Trade Promotion Authority. Almost three dozen House Republicans followed suit. When the bill to renew TPA was introduced earlier this month, a number of Democratic Senators announced their opposition. They have now been joined by Sen. Reid.¶ The warning signs are clear, but so is the path forward. Now is the time for a full-court press from the White House. President Obama should be clear about the imperative of TPA and make the strong case for trade as a catalyst for job growth. Then he must press his cabinet to the task. Ambassador Froman is a skilled negotiator and advocate. His cabinet colleagues include many effective proponents of free trade and international engagement, including Secretary of State John Kerry, Treasury Secretary Jack Lew, and Commerce Secretary Penny Pritzker.¶ Without a concerted effort, TPA may well fail, embarrassing us abroad, casting a shadow on the president's second term and hurting our economy in the long run. Why not instead show America and the world that the president and Congress, including leaders of his own party, can work together?

#### Plan destroys Obama collapses the agenda

Loomis 07 Visiting Fellow at the Center for a New American Security, and Department of Government at Georgetown University [Dr. Andrew J. Loomis, “Leveraging legitimacy in the crafting of U.S. foreign policy”, March 2, 2007, pg 36-37, http://citation.allacademic.com//meta/p\_mla\_apa\_research\_citation/1/7/9/4/8/pages179487/p179487-36.php

Declining political authority encourages defection. American political analyst Norman Ornstein writes of the domestic context, In a system where a President has limited formal power, perception matters. The reputation for success—the belief by other political actors that even when he looks down, a president will find a way to pull out a victory—is the most valuable resource a chief executive can have. Conversely, the widespread belief that the Oval Office occupant is on the defensive, on the wane or without the ability to win under adversity can lead to disaster, as individual lawmakers calculate who will be on the winning side and negotiate accordingly. In simple terms, winners win and losers lose more often than not. Failure begets failure. In short, a president experiencing declining amounts of political capital has diminished capacity to advance his goals. As a result, political allies perceive a decreasing benefit in publicly tying themselves to the president, and an increasing benefit in allying with rising centers of authority. A president’s incapacity and his record of success are interlocked and reinforce each other. Incapacity leads to political failure, which reinforces perceptions of incapacity. This feedback loop accelerates decay both in leadership capacity and defection by key allies. The central point of this review of the presidential literature is that the sources of presidential influence—and thus their prospects for enjoying success in pursuing preferred foreign policies—go beyond the structural factors imbued by the Constitution. Presidential authority is affected by ideational resources in the form of public perceptions of legitimacy. The public offers and rescinds its support in accordance with normative trends and historical patterns, non-material sources of power that affects the character of U.S. policy, foreign and domestic.

#### TPA k2 growth

Oberhelman, 12/30 --- chairman and CEO of Caterpillar in Illinois and chairman of Business Roundtable’s International Engagement Committee (Doug, 12/30/2013, “Guest: Should Congress give Obama fast-track authority for trade deals? Yes,” <http://seattletimes.com/html/opinion/2022546185_dougoberhelmanprotradeoped30xml.html)>

LIKE most Americans, I’m frustrated with the slow rate of economic growth in the United States over the last several years.¶ Most proposals to fix the problem focus on domestic issues — government spending, taxes and infrastructure projects, to name a few.¶ As the chairman and chief executive officer of Caterpillar, I particularly like to talk about the need to invest in our nation’s infrastructure, which helps to make America more competitive in the world economy.¶ But while all of these issues are critically important to the U.S. economy, the opportunity to increase U.S. investment, growth and jobs requires us to go beyond America’s border.¶ Ninety-six percent of the world’s consumers live outside of the United States. In fact, in the last five years, Caterpillar has exported more than $82 billion in products manufactured at our factories in the United States, supporting tens of thousands of jobs. Creating opportunities for American companies to reach these consumers through new and expanded free-trade agreements can help to get our economy back on track and keep our nation globally competitive.¶ Today, trade supports more than one in five American jobs. U.S. exports have grown more than twice as fast as GDP since 2002, accounting for 14 percent of GDP in 2012. And workers in U.S. companies that export goods earn on average up to 18 percent more than those in similar jobs in non-exporting companies.¶ The United States is currently pursuing one of the most ambitious trade agendas in a generation, trade agreements that would open markets in the Asia-Pacific region and in Europe.¶ Also being negotiated is an agreement aimed at knocking down barriers to boost the global competitiveness of U.S. services companies. But to realize the economic benefits of these pending trade deals, Congress must update and pass Trade Promotion Authority legislation.¶ A partnership between Congress and the Administration, TPA legislation helps shape a strategic vision for U.S. trade policy and the goals the United States wants to accomplish in trade negotiations.¶ It provides a framework for Congress and the president to work together to craft that vision, and it helps define the critical constitutional relationship between Congress and the president with respect to foreign commerce.¶ From the 1930s until 2007, Congress has authorized every president to pursue trade agreements that open markets for U.S. goods and services. Such authority was last passed by Congress in 2002 and expired in 2007.¶ Updated TPA legislation would provide clear guidance on Congress’ requirements for trade agreements. It would also provide our trade negotiating partners with a degree of comfort that the United States is committed to the international trade negotiating process and the trade agreements we negotiate.¶ In the coming weeks it is expected that Congress will introduce updated TPA legislation. Congress should seize the opportunity to shore up the benefits of current and future trade agreements — increased U.S. investment, growth and jobs — by passing updated TPA legislation.¶ Working with the president to do so would ensure that the United States continues to pursue trade agreements that not only would allow companies like Caterpillar to remain globally competitive, but also would benefit America.

#### Nuclear war

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

With the global financial system in serious trouble, is America's geostrategic dominance likely to diminish? If so, what would that mean?¶ One immediate implication of the crisis that began on Wall Street and spread across the world is that the primary instruments of U.S. foreign policy will be crimped. The next president will face an entirely new and adverse fiscal position. Estimates of this year's federal budget deficit already show that it has jumped $237 billion from last year, to $407 billion. With families and businesses hurting, there will be calls for various and expensive domestic relief programs.¶ In the face of this onrushing river of red ink, both Barack Obama and John McCain have been reluctant to lay out what portions of their programmatic wish list they might defer or delete. Only Joe Biden has suggested a possible reduction -- foreign aid. This would be one of the few popular cuts, but in budgetary terms it is a mere grain of sand. Still, Sen. Biden's comment hints at where we may be headed: toward a major reduction in America's world role, and perhaps even a new era of financially-induced isolationism.¶ Pressures to cut defense spending, and to dodge the cost of waging two wars, already intense before this crisis, are likely to mount. Despite the success of the surge, the war in Iraq remains deeply unpopular. Precipitous withdrawal -- attractive to a sizable swath of the electorate before the financial implosion -- might well become even more popular with annual war bills running in the hundreds of billions.¶ Protectionist sentiments are sure to grow stronger as jobs disappear in the coming slowdown. Even before our current woes, calls to save jobs by restricting imports had begun to gather support among many Democrats and some Republicans. In a prolonged recession, gale-force winds of protectionism will blow.¶ Then there are the dolorous consequences of a potential collapse of the world's financial architecture. For decades now, Americans have enjoyed the advantages of being at the center of that system. The worldwide use of the dollar, and the stability of our economy, among other things, made it easier for us to run huge budget deficits, as we counted on foreigners to pick up the tab by buying dollar-denominated assets as a safe haven. Will this be possible in the future?¶ Meanwhile, traditional foreign-policy challenges are multiplying. The threat from al Qaeda and Islamic terrorist affiliates has not been extinguished. Iran and North Korea are continuing on their bellicose paths, while Pakistan and Afghanistan are progressing smartly down the road to chaos. Russia's new militancy and China's seemingly relentless rise also give cause for concern.¶ If America now tries to pull back from the world stage, it will leave a dangerous power vacuum. The stabilizing effects of our presence in Asia, our continuing commitment to Europe, and our position as defender of last resort for Middle East energy sources and supply lines could all be placed at risk.¶ In such a scenario there are shades of the 1930s, when global trade and finance ground nearly to a halt, the peaceful democracies failed to cooperate, and aggressive powers led by the remorseless fanatics who rose up on the crest of economic disaster exploited their divisions. Today we run the risk that **rogue states may choose to become ever more reckless with their nuclear toys**, just at our moment of maximum vulnerability.¶ The aftershocks of the financial crisis will almost certainly rock our principal strategic competitors even harder than they will rock us. The dramatic free fall of the Russian stock market has demonstrated the fragility of a state whose economic performance hinges on high oil prices, now driven down by the global slowdown. China is perhaps even more fragile, its economic growth depending heavily on foreign investment and access to foreign markets. Both will now be constricted, inflicting economic pain and perhaps even sparking unrest in a country where political legitimacy rests on progress in the long march to prosperity.¶ None of this is good news if the authoritarian leaders of these countries seek to divert attention from internal travails with external adventures.¶ As for our democratic friends, the present crisis comes when many European nations are struggling to deal with decades of anemic growth, sclerotic governance and an impending demographic crisis. Despite its past dynamism, Japan faces similar challenges. India is still in the early stages of its emergence as a world economic and geopolitical power.¶ What does this all mean? There is no substitute for America on the world stage. The choice we have before us is between the potentially disastrous effects of disengagement and the stiff price tag of continued American leadership.

### 1NC T

#### Restrictions are prohibitions on action—the aff is not

Schiedler-Brown ‘12 Jean, Attorney, Jean Schiedler-Brown & Associates, Appellant Brief of Randall Kinchloe v. States Dept of Health, Washington, The Court of Appeals of the State of Washington, Division 1, http://www.courts.wa.gov/content/Briefs/A01/686429%20Appellant%20Randall%20Kincheloe%27s.pdf

3. The ordinary definition of the term "restrictions" also does not include the reporting and monitoring or supervising terms and conditions that are included in the 2001 Stipulation. Black's Law Dictionary, 'fifth edition,(1979) defines "restriction" as; A limitation often imposed in a deed or lease respecting the use to which the property may be put. The term "restrict' is also cross referenced with the term "restrain." Restrain is defined as; To limit, confine, abridge, narrow down, restrict, obstruct, impede, hinder, stay, destroy. To prohibit from action; to put compulsion on; to restrict; to hold or press back. To keep in check; to hold back from acting, proceeding, or advancing, either by physical or moral force, or by interposing obstacle, to repress or suppress, to curb. In contrast, the terms "supervise" and "supervisor" are defined as; To have general oversight over, to superintend or to inspect. See Supervisor. A surveyor or overseer. . . In a broad sense, one having authority over others, to superintend and direct. The term "supervisor" means an individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but required the use of independent judgment. Comparing the above definitions, it is clear that the definition of "restriction" is very different from the definition of "supervision"-very few of the same words are used to explain or define the different terms. In his 2001 stipulation, Mr. Kincheloe essentially agreed to some supervision conditions, but he did not agree to restrict his license.

#### Voting issue

#### Bidirectional – checks on authority can claim the aff increases prez powers

#### Limits – hundreds of insignificant conditions the courts could impose – impossible to have a debate about the tactics.

### 1NC Critique

#### The rule of law is a national security apparatus that makes colonial warfare inevitable. Legal restrictions enable the U.S. to wage more precisely regulated and brutal forms of war.

Francisco J. CONTRERAS Prf. Philosophy of Law @ Seville AND Ignacio de la RASILLA Ph.D. candidate in international law, Graduate Institute of International Studies, Geneva, 8 [“On War as Law and Law as War” Leiden Journal of International Law Vol. 21 Issue 3 p. 770-773]

Kennedy begins by coldly contradicting those opponents of the Bush administration ‘that have routinely claimed that the United States has disregarded these rules’ (p. 40) by pointing out that both opponents and supporters of the Iraq war as well as both opponents and supporters of the great panoply of US legal measures related to the war on terror ‘were playing with the same deck’ (p. 40) in presenting ‘professional arguments about how recognised rules and standards, as well as recognised exceptions and jurisdictional limitations, should be interpreted’ (p. 40). The author’s only concession with reference to the Bush administration’s legal advisers is to point out that ‘as professionals, these lawyers failed to advise their client adequately about the consequences of the interpretations they proposed, and about the way others would read the same texts – and their memoranda’ (p. 39).Thus Kennedy does not adopt any legal position to the detriment of any other, as his assessment does not seemingly pretend to persuade his reader at the level of the world of legal validity presented in the vocabulary of the UN Charter. The extent to which that excludes the author from the category of being a ‘true jus-internationalist’, according to A. Canc¸ado Trindade’s understanding of those who actually ‘comply with the ineluctable duty to stand against the apology of the use of force which is manifested in our days through distinct “doctrinal” elaborations’,42 is not for us to judge. Suffice it to note that the starting point of Kennedy’s convoluted perspective on the matter is that ‘the law of force’ is a form of ‘vocabulary for assessing the legitimacy’ (p. 41) of a form of conduct (e.g. amilitary campaign) or ‘for defending as well as attacking the “legality”’ (p. 41) of an act (e.g. distinguishing legitimate from illegitimate targets) in which the same law of force becomes a two-edged sword, everybody’s and no one’s strategic partner in a contemporary world where ‘legitimacy has become the currency of power’ (p. 45). For the author, in today’s age of ‘lawfare’ (p. 12), ‘to resist war in the name of law . . . is to misunderstand the delicate partnership of war and law’ (p. 167). In Kennedy’s view, therefore, ‘there is little comfort in knowing that law has become the vernacular for evaluating the legitimacy of war and politics where it has done so by itself becoming a strategic instrument of war and the continuation of politics by similar means’ (p. 132). 3. LAW AS A MODERN LEGAL INSTITUTION Of War and Law seems, indeed, to be animated by a certain philosophical perplexity regarding the ambiguous relation between the apparently antithetical nature of the terms appearing in its title. Since antiquity both jurists and philosophers have taught that the law’s raison d’eˆ tre is that of making social peace possible, of overcoming what would later be commonly known as the Hobbesian state of nature: bellum omnium contra omnes. Kant noted that law should be perceived first and foremost as a pacifying tool – in other words, ‘the establishment of peace constitutes, not a part of, but the whole purpose of the doctrine of law’43 – and Lauterpacht projected that same principle onto the international sphere: ‘the primordial duty’ of international law is to ensure that ‘there shall be no violence among states’.44 The paradox lies, of course, in that law performs its pacifying function not by means of edifying advice, but by the threat of the use of force. In this sense, as Kennedy points out, ‘to use law is also to invoke violence, at least the violence that stands behind legal authority’ (p. 22). Hobbes himself never concealed the fact that the state, ‘that mortal god, to which we owe under the immortal God our peace and defence’,would succeed in eradicating inter-individual violence precisely due to its ability to ‘inspire terror’;45 but Weber – ‘the State is a human community that (successfully) claims the monopoly of the legitimate use of physical force within a given territory’46 – Godwin,47 and Kelsen48 have also provided support for the same proposition. This ambivalent and paradoxical relationship between law and violence,which is obvious in the domestic or intra-state realm, becomes even more obvious in the interstate domain with its classical twin antinomy of ubi jus, ibi pax and inter arma leges silent until the law in war emerges as a bold normative sector which dares to defy this conceptual incompatibility; even war can be regulated, be submitted to conditions and limitations. The hesitations of Kant in addressing jus in bello49 or the very fact that the Latin terms jus ad bellum and jus in bello were coined, as R. Kolb has pointed out,50 at relatively recent dates, seem to confirm that this has never been per se an evident aspiration.51 Kennedy explains his own calling as international lawyer as being partly inspired by his will to participate in the law’s civilizing mission (p. 29)52 as something utterly distinct from war: We think of these rules [law in war] as coming from ‘outside’ war, limiting and restricting the military. We think of international law as a broadly humanist and civilizing force, standing back from war, judging it as just or unjust, while offering itself as a code of conduct to limit violence on the battlefield. (p. 167) The author notes how this virginal confidence in the pacifying efficiency of international law – its presumed ability to forbid, limit, humanize war ‘from outside’ – becomes progressively nuanced, eroded, almost discredited by a series of considerations. The disquieting image of the ‘delicate partnership of war and law’ becomes more and more evidenced; the lawyer who attempts to regulate warfare inevitably also becomes its accomplice. As Kennedy puts it, The laws of force provide the vocabulary not only for restraining the violence and incidence of war – but also for waging war and deciding to go to war. . . . [L]aw no longer stands outside violence, silent or prohibitive. Law also permits injury, as it privileges, channels, structures, legitimates, and facilitates acts of war. (p. 167) Unable to suppress all violence, law typifies certain forms of violence as legally admissible, thus ‘privileging’ them with regard to others and investing some agents with a ‘privilege to kill’ (p. 115). Law thereby becomes, in Kennedy’s view, a tool not so much for the restriction of war as for the legal construction of war.53 Elsewhere we have labeled Kennedy ‘a relative outsider’54 who, peering from the edge of the vocabulary of international law, tries to ‘highlight its inherent structural limits, gaps, dogmas, blind spots and biases’, as someone ‘specialised in speaking the unspeakable, disclosing ambivalences and asking awkward questions’.55 The ‘unspeakable’, in the case of the ‘law of force’, is precisely, in Kennedy’s view, this process of involuntary complicity with the very phenomenon one supposedly wants to prohibit. Prepared to ‘stain his hands’ a` la Sartre, in his attempt to humanize the military machine from within, to walk one step behind the soldier reminding him constantly, as an imaginary CNN camera, of the legal limits of the legitimate use of force, the lawyer starts to realize, in the author’s view, that he is becoming but an accessory to the war machine. Kennedy maintains that law, in its attempt to subject war to its rule, has been absorbed by it and has now become but another war instrument (p. 32);56 law has been weaponized (p. 37).57 Contemporary war is by definition a legally organized war: ‘no ship moves, no weapon is fired, no target selected without some review for compliance with regulation – not because the military has gone soft, but because there is simply no other way to make modern warfare work. Warfare has become rule and regulation’ (p. 33).War ‘has become a modern legal institution’ (p. 5), with the result that the international lawyer finds himself before an evident instance of Marxian reification, in other words ‘the consolidation of our own products as a material power erected above us beyond our control that raises a wall in front of our expectations and destroys our calculations’.58 Ideas and institutions develop ‘a life of their own’, an autonomous, perverted dynamism.

#### This drive to destroy non-liberal ways of life will culminate in extinction

Batur 7 [Pinar, PhD @ UT-Austin – Prof. of Sociology @ Vassar, *The Heart of Violence: Global Racism, War, and Genocide*, Handbook of The Sociology of Racial and Ethnic Relations, eds. Vera and Feagin, p. 441-3]

War and genocide are horrid, and taking them for granted is inhuman. In the 21st century, our problem is not only seeing them as natural and inevitable, but even worse: not seeing, not noticing, but ignoring them. Such act and thought, fueled by global racism, reveal that racial inequality has advanced from the establishment of racial hierarchy and institutionalization of segregation, to the confinement and exclusion, and elimination, of those considered inferior through genocide. In this trajectory, global racism manifests genocide. But this is not inevitable. This article, by examining global racism, explores the new terms of exclusion and the path to permanent war and genocide, to examine the integrality of genocide to the frame-work of global antiracist confrontation. GLOBAL RACISM IN THE AGE OF “CULTURE WARS” Racist legitimization of inequality has changed from presupposed biological inferiority to assumed cultural inadequacy. This defines the new terms of impossibility of coexistence, much less equality. The Jim Crow racism of biological inferiority is now being replaced with a new and modern racism (Baker 1981; Ansell 1997) with “culture war” as the key to justify difference, hierarchy, and oppression. The ideology of “culture war” is becoming embedded in institutions, defining the workings of organizations, and is now defended by individuals who argue that they are not racist, but are not blind to the inherent differences between African-Americans/Arabs/Chinese, or whomever, and “us.” “Us” as a concept defines the power of a group to distinguish itself and to assign a superior value to its institutions, revealing certainty that affinity with “them” will be harmful to its existence (Hunter 1991; Buchanan 2002). How can we conceptualize this shift to examine what has changed over the past century and what has remained the same in a racist society? Joe Feagin examines this question with a theory of systemic racism to explore societal complexity of interconnected elements for longevity and adaptability of racism. He sees that systemic racism persists due to a “white racial frame,” defining and maintaining an “organized set of racialized ideas, stereotypes, emotions, and inclinations to discriminate” (Feagin 2006: 25). The white racial frame arranges the routine operation of racist institutions, which enables social and economic repro-duction and amendment of racial privilege. It is this frame that defines the political and economic bases of cultural and historical legitimization. While the white racial frame is one of the components of systemic racism, it is attached to other terms of racial oppression to forge systemic coherency. It has altered over time from slavery to segregation to racial oppression and now frames “culture war,” or “clash of civilizations,” to legitimate the racist oppression of domination, exclusion, war, and genocide. The concept of “culture war” emerged to define opposing ideas in America regarding privacy, censorship, citizenship rights, and secularism, but it has been globalized through conflicts over immigration, nuclear power, and the “war on terrorism.” Its discourse and action articulate to flood the racial space of systemic racism. Racism is a process of defining and building communities and societies based on racial-ized hierarchy of power. The expansion of capitalism cast new formulas of divisions and oppositions, fostering inequality even while integrating all previous forms of oppressive hierarchical arrangements as long as they bolstered the need to maintain the structure and form of capitalist arrangements (Batur-VanderLippe 1996). In this context, the white racial frame, defining the terms of racist systems of oppression, enabled the globalization of racial space through the articulation of capitalism (Du Bois 1942; Winant 1994). The key to understanding this expansion is comprehension of the synergistic relationship between racist systems of oppression and the capitalist system of exploitation. Taken separately, these two systems would be unable to create such oppression independently. However, the synergy between them is devastating. In the age of industrial capitalism, this synergy manifested itself imperialism and colonialism. In the age of advanced capitalism, it is war and genocide. The capitalist system, by enabling and maintaining the connection between everyday life and the global, buttresses the processes of racial oppression, and synergy between racial oppression and capitalist exploitation begets violence. Etienne Balibar points out that the connection between everyday life and the global is established through thought, making global racism a way of thinking, enabling connections of “words with objects and words with images in order to create concepts” (Balibar 1994: 200). Yet, global racism is not only an articulation of thought, but also a way of knowing and acting, framed by both everyday and global experiences. Synergy between capitalism and racism as systems of oppression enables this perpetuation and destruction on the global level. As capitalism expanded and adapted to the particularities of spatial and temporal variables, global racism became part of its legitimization and accommodation, first in terms of colonialist arrangements. In colonized and colonizing lands, global racism has been perpetuated through racial ideologies and discriminatory practices under capitalism by the creation and recreation of connections among memory, knowledge, institutions, and construction of the future in thought and action. What makes racism global are the bridges connecting the particularities of everyday racist experiences to the universality of racist concepts and actions, maintained globally by myriad forms of prejudice, discrimination, and violence (Balibar and Wallerstein 1991; Batur 1999, 2006). Under colonialism, colonizing and colonized societies were antagonistic opposites. Since colonizing society portrayed the colonized “other,” as the adversary and challenger of the “the ideal self,” not only identification but also segregation and containment were essential to racist policies. The terms of exclusion were set by the institutions that fostered and maintained segregation, but the intensity of exclusion, and redundancy, became more apparent in the age of advanced capitalism, as an extension of post-colonial discipline. The exclusionary measures when tested led to war, and genocide. Although, more often than not, genocide was perpetuated and fostered by the post-colonial institutions, rather than colonizing forces, the colonial identification of the “inferior other” led to segregation, then exclusion, then war and genocide. Violence glued them together into seamless continuity. Violence is integral to understanding global racism. Fanon (1963), in exploring colonial oppression, discusses how divisions created or reinforced by colonialism guarantee the perpetuation, and escalation, of violence for both the colonizer and colonized. Racial differentiations, cemented through the colonial relationship, are integral to the aggregation of violence during and after colonialism: “Manichaeism [division of the universe into opposites of good and evil] goes to its logical conclusion and dehumanizes” (Fanon 1963:42). Within this dehumanizing framework, Fanon argues that the violence resulting from the destruction of everyday life, sense of self and imagination under colonialism continues to infest the post-colonial existence by integrating colonized land into the violent destruction of a new “geography of hunger” and exploitation (Fanon 1963: 96). The “geography of hunger” marks the context and space in which oppression and exploitation continue. The historical maps drawn by colonialism now demarcate the boundaries of post-colonial arrangements. The white racial frame restructures this space to fit the imagery of symbolic racism, modifying it to fit the television screen, or making the evidence of the necessity of the politics of exclusion, and the violence of war and genocide, palatable enough for the front page of newspapers, spread out next to the morning breakfast cereal. Two examples of this “geography of hunger and exploitation” are Iraq and New Orleans.

#### Reject the aff’s use of legal liberalism.

#### We should frame the question of executive power in terms of racialized harm and otherization. Refusing accommodation with values of the security state is a *precondition* for preventing racialized hierarchy.

Gil GOTT Int’l Studies @ DePaul 5 “The Devil We Know: Racial Subordination and National Security Law” Villanova Law Review, Vol. 50, Iss. 4, p. 1075-1076

Anti-subordinationist principles require taking more complete account of how enemy groups are racialized, and how they come to be constructed as outsiders and the kinds of harms that may befall them as such. Group-based status harms include those that have been inscribed in law and effectuated through state action, and those that arise within civil society, through social structures, institutions, culture and habitus. Familiarity with the processes of racialization is a necessary precondition for appreciating and remedying such injuries. Applying anti-subordinationist thinking to national security law and policy does not require arguing that only race-based effects matter, but does require affording significant analytical and normative weight to the problems of such status harms. Racial injuries require racial remedies. Foregrounding anti-subordinationist principles in national security law and policy analysis departs significantly from traditional approaches in the field. Nonetheless, arguments based in history, political theory and pragmatism suggest that such a fundamental departure is warranted. Historically, emergency-induced "states of exception" 6 that have suspended legal protections against governmental abuses have tended to be identitybased in conception and implementation. 7 Viewed from the perspective of critical political theory, the constellation of current "security threats" rests on the epochal co-production of identity-based and market-driven global political antagonisms, referred to somewhat obliquely as civilization clashes or perhaps more forthrightly as American imperialism. Pragmatically, it makes no sense to fight terrorism by alienating millions of Muslim, Arab and South Asian residents in the United States and hundreds of millions more abroad through abusive treatment and double standards operative in identity-based repression at home and in selective, preemptive U.S. militarism abroad. Such double standards undermine the democratic legitimacy of the United States both in its internal affairs and in its assertions of global leadership. Indeed, there seems to be no shortage of perspectives from which liberal legal institutions would be enjoined from embracing a philosophy of political decisionism precisely at the interface of law and security, an anomic frontier along which are likely to arise identity-based regimes of exception and evolving race-based forms of subordination. Part I analyzes accommodationist approaches that variously incorporate security-inflected logic in truncating the regulative role law plays in national security contexts. I will seek to understand the accommodationist thrust of these interventions in light of the authors' operative assumptions regarding the proper array of interests and exigencies to be balanced. I will argue that the interests of demonized "enemy groups" facing racebased status harm-Muslims, Arabs and South Asians in the United States-are ineffectively engaged through accommodationist frameworks. The decisionist impulse of these analyses, that is, the tendency to acquiesce in the outcomes of non-substantively constrained statist and/or majoritarian political process, results from an incomplete grasp of the racialization processes. In short, more race consciousness is needed in national security law and policy in order to cement substantive commitments and procedural safeguards against historical and ongoing racebased subordination through the racialization of "security threats."

### 1NC CP

#### The Executive Branch of the United States should grant Article III Courts exclusive jurisdiction over the United States Armed Forces’ indefinite detention policy and provide access to a trial.

#### The Office of Legal Counsel should determine that the Executive Branch lacks the legal authority detain indefinitely without Article III trial.

#### The President should require the Office of Legal Counsel to publish any legal opinions regarding policies adopted by the Executive Branch.

#### CP solves the aff

Adrian Vermeule 7, Harvard law prof - AND - Eric Posner - U Chicago law, The Credible Executive, 74 U. Chi. L. Rev. 865

\*We do not endorse gendered language

The Madisonian system of oversight has not totally failed. Some- times legislators overcome the temptation to free ride; sometimes they invest in protecting the separation of powers or legislative preroga- tives. Sometimes judges review exercises of executive discretion, even during emergencies. But often enough, legislators and judges have no real alternative to letting executive officials exercise discretion un- checked. The Madisonian system is a partial failure; compensating mechanisms must be adopted to fill the area of slack, the institutional gap between executive discretion and the oversight capacities of other institutions. Again, the magnitude of this gap is unclear, but plausibly it is quite large; we will assume that it is. It is often assumed that this partial failure of the Madisonian sys- tem unshackles and therefore benefits ill-motivated executives. This is grievously incomplete. The failure of the Madisonian system harms the well-motivated executive as much as it benefits the ill-motivated one. Where Madisonian oversight fails, the well-motivated executive is a victim of his own power. Voters, legislators, and judges will be wary of granting further discretion to an executive whose motivations are un- certain and possibly nefarious. The partial failure of Madisonian over- sight thus threatens a form of inefficiency, a kind of contracting failure that makes potentially everyone, including the voters, worse off. Our central question, then, is what the well-motivated executive can do to solve or at least ameliorate the problem. The solution is for the executive to complement his (well-motivated) first-order policy goals with second-order mechanisms for demonstrating credibility to other actors. We thus do not address the different question of what voters, legislators, judges, and other actors should do about an executive who is ill motivated and known to be so. That project involves shoring up or replacing the Madisonian system to block executive dictatorship. Our project is the converse of this, and involves finding new mechanisms to help the well-motivated executive credibly distinguish himself as such. ¶ IV. EXECUTIVE SIGNALING: LAW AND MECHANISMS ¶ We suggest that the executive’s credibility problem can be solved by second-order mechanisms of executive signaling. In the general case, well-motivated executives send credible signals by taking actions that are more costly for ill-motivated actors than for well- motivated ones, thus distinguishing themselves from their ill- motivated mimics. Among the specific mechanisms we discuss, an important subset involves executive self-binding, whereby executives commit themselves to a course of action that would impose higher costs on ill-motivated actors. Commitments themselves have value as signals of benign motivations. ¶ This departs from the usual approach in legal scholarship. Legal theory has often discussed self-binding by “government” or govern- ment officials. In constitutional theory, it is often suggested that consti- tutions represent an attempt by “the people” to bind “themselves” against their own future decisionmaking pathologies, or relatedly, that constitutional prohibitions represent mechanisms by which govern- ments commit themselves not to expropriate investments or to exploit their populations.72 Whether or not this picture is coherent,73 it is not the question we examine here, although some of the relevant consid- erations are similar.74 We are not concerned with binding the president so that he cannot abuse his powers, but with how he might bind himself or take other actions that enhance his credibility, so that he can generate support from the public and other members of the government. ¶ Furthermore, our question is subconstitutional: it is whether a well-motivated executive, acting within an established set of constitu- tional and statutory rules, can use signaling mechanisms to generate public trust. Accordingly, we proceed by assuming that no constitutional amendments or new statutes will be enacted. Within these con- straints, what can a well-motivated executive do to bootstrap himself to credibility? The problem for the well-motivated executive is to credibly signal his benign motivations. In general, the solution is to engage in actions that are less costly for good types than for bad types. ¶ We begin with some relevant law, then examine a set of possible mechanisms—emphasizing both the conditions under which they might succeed and the conditions under which they might not—and conclude by examining the costs of credibility. ¶ A. A Preliminary Note on Law and Self-Binding ¶ Many of our mechanisms are unproblematic from a legal per- spective, as they involve presidential actions that are clearly lawful. But a few raise legal questions; in particular, those that involve self- binding.75 Can a president bind himself to respect particular first-order policies? With qualifications, the answer is yes, at least to the same extent that a legislature can. Formally, a duly promulgated executive rule or order binds even the executive unless and until it is validly abrogated, thereby establishing a new legal status quo.76 The legal authority to establish a new status quo allows a president to create inertia or political constraints that will affect his own future choices. In a practical sense, presidents, like legislatures, have great de facto power to adopt policies that shape the legal landscape for the future. A president might commit himself to a long-term project of defense pro- curement or infrastructure or foreign policy, narrowing his own future choices and generating new political coalitions that will act to defend the new rules or policies. More schematically, we may speak of formal and informal means of self-binding:

### Solvency

#### trials will just become Kangaroo Courts that facilitate indefinite detention. Fear of terror will turn them into the mirror image of military tribunals

Wedel 11—JD Candidate @ Stanford Law School [Collin P. Wedel (Prospective Law Clerk to the Honorable Ruggero J. Aldisert, United States Court of Appeals for the Third Circuit), “War Courts: Terror's Distorting Effects on Federal Courts,” Legislation and Policy Brief, Volume 3 1 Issue 1, 1-6-2011]

V. CONCLUSION

The pressure to convict "dangerous" terrorists against a backdrop of a decade-long war has taken its toll on the federal courts. Rather than vindicating the accused's constitutional rights in all circumstances, the federal courts have too often become complicit in distorting them.179 Federal courts have begun to resemble the military tribunal system that was once defined by how distinct it was from the Article III system. The past decade has seen federal courts' power to review executive detention heavily circumscribed. Federal prisons have begun to approximate Guantinamo Bay's indefinite detention regime, and federal criminal trial proceedings of terrorists at times bear an eerie resemblance to military commission norms.

As much as one may endorse the apparent move from military commissions to federal courts, that move should be rejected if it comes at the cost of scarring the Article III system. Therefore, both those in favor of military commissions and those in favor of federal court trials should pause. Regardless of whether it may be desirable that the criminal justice system has the flexibility to adjust to these wartime conditions, these developments have eviscerated the largest disparities between the tribunal and criminal spheres. Even persons in favor of a separate judicial system in the form of tribunals no longer have much justification for such a proposal.

Wars invariably have a corrosive effect on democratic institutions. 180 Courts are no different. Perhaps, as some have suggested, the solution would be to remove courts from the fast-paced business of trying terror with a common law process.18' However, that solution is too simplistic. It is apparent that, no matter where terrorists are tried, our societal fear of the threat they pose has led us to create mirror-image systems that tend toward kangaroo courts, state secrets, prolonged interrogation, and indefinite detention. Until we confront and deal with this inclination, any system in which we try terrorists is doomed to repeat these errors. Pg. 37-38

#### courts will give in to wartime pressures. Seepage will create bad law for nonterror cases

Wedel 11—JD Candidate @ Stanford Law School [Collin P. Wedel (Prospective Law Clerk to the Honorable Ruggero J. Aldisert, United States Court of Appeals for the Third Circuit), “War Courts: Terror's Distorting Effects on Federal Courts,” Legislation and Policy Brief, Volume 3 1 Issue 1, 1-6-2011]

Wars have a corrosive effect on courts. Many of the darkest moments in federal jurisprudential history have resulted from wartime cases. This is because, "[in an idealized view, our judicial system is insulated from the ribald passions of politics. [But] in reality, those passions suffuse the criminal justice system."26 Wars especially tend to excite passions to a fever pitch. As the D.C. Circuit has lamented,

[t]he common law process depends on incrementalism and eventual correction, and it is most effective where there are a significant number of cases brought before a large set of courts, which in turn enjoy the luxury of time to work the doctrine supple. None of those factors exist in the Guantinamo context .... [11n the midst of an ongoing war, time to entertain a process of trial and error is not a luxury we have.27

The war in Afghanistan, presenting a host of thorny legal issues, 28 is now the longest war in United States history.29 This means that thefederal courts have never endured wartime conditions for so long. As a result of this prolonged martial influence, it is clear that this war is corroding federal court jurisprudence. Court-watchers have long feared the danger of "seepage"—the notion that, if terrorists were tried in Article III courts, the pressure to convict would spur the creation of bad law that would "seep" into future non-terror trials."g In this Note, I argue that this hypothetical fear of seepage has become concrete. Indeed, judges already admit that the war has taken a regrettable toll on courts' opinions. In Al-Bihani v. Obama g1 a recent D.C. Circuit decision about Guantdnamo detention, habeas corpus review, and criminal procedure, the opinion's author admits how the courts have bent to accommodate the pressures of war:

War is a challenge to law, and the law must adjust. It must recognize that the old wineskins of international law, domestic criminal procedures, or other prior frameworks are ill-suited to the bitter wine of this new warfare. We can no longer afford diffidence. This war has placed us not just at, but already past the leading edge of a new and frightening paradigm, one that demands new rules be written. Falling back on the comfort of prior practices supplies only illusory comfort.32 pg. 13-14

#### They rollback due process rights for all cases

Mukasey 7—US district judge [MICHAEL B. MUKASEY, “Jose Padilla Makes Bad Law,” Wall Street Journal, August 22, 2007, pg. http://tinyurl.com/lmhup5x]

And third, consider the distortions that arise from applying to national security cases generally the rules that apply to ordinary criminal cases.

On one end of the spectrum, the rules that apply to routine criminals who pursue finite goals are skewed, and properly so, to assure that only the highest level of proof will result in a conviction. But those rules do not protect a society that must gather information about, and at least incapacitate, people who have cosmic goals that they are intent on achieving by cataclysmic means.

Khalid Sheikh Mohammed, the mastermind of the 9/11 attacks, is said to have told his American captors that he wanted a lawyer and would see them in court. If the Supreme Court rules -- in a case it has agreed to hear relating to Guantanamo detainees -- that foreigners in U.S. custody enjoy the protection of our Constitution regardless of the place or circumstances of their apprehension, this bold joke could become a reality.

The director of an organization purporting to protect constitutional rights has announced that his goal is to unleash a flood of lawyers on Guantanamo so as to paralyze interrogation of detainees. Perhaps it bears mention that one unintended outcome of a Supreme Court ruling exercising jurisdiction over Guantanamo detainees may be that, in the future, capture of terrorism suspects will be forgone in favor of killing them. Or they may be put in the custody of other countries like Egypt or Pakistan that are famously not squeamish in their approach to interrogation -- a practice, known as rendition, followed during the Clinton administration.

At the other end of the spectrum, if conventional legal rules are adapted to deal with a terrorist threat, whether by relaxed standards for conviction, searches, the admissibility of evidence or otherwise, those adaptations will infect and change the standards in ordinary cases with ordinary defendants in ordinary courts of law.

#### independently destroys court legitimacy

Fallon 9—Professor of Law @ Harvard Law School [Richard H. Fallon, Jr., “Article: Constitutional Constraints,” California Law Review, 97 Calif. L. Rev. 975, August 2009]

1. Inefficacy or Nullity Under Applicable Rules of Recognition

Judges and justices are constrained by the prospect that some decisions they might imaginably render would be treated as nullities or otherwise prove inefficacious. n189 While some rules of recognition tell justices how to identify valid law, others, applicable to other officials, characteristically direct those other officials to accept judicial interpretations as binding—even when those other officials think the judges made mistakes. n190 But there are limits. For example, as I have said before, a judicial directive purporting to raise or lower interest rates solely for policy reasons would not be recognized as legally authoritative. n191

This conclusion may appear trivial, but I do not believe that it is. As Fred Schauer has documented, the Supreme Court's docket typically includes few of the issues that most American regard as most pressing. n192 Matters of war and peace, economic boom and bust, and priorities in the provision of public services seldom come within the province of judicial decision-making. In light of familiar assumptions that unchecked power tends to expand, n193 we might ask why this is so. Part of the answer lies in the justices' awareness of external constraints.

 [\*1016]  As a historical matter, the prospect of judicial pronouncements being treated as nullities or otherwise proving inefficacious is hardly hypothetical. n194 President Thomas Jefferson and Secretary of State James Madison credibly threatened to defy the Supreme Court if it awarded mandamus relief to William Marbury in Marbury v. Madison. n195 Abraham Lincoln directed his subordinates to ignore the ruling of Chief Justice Taney in Ex parte Merryman. n196

Another example may come from the World War II case of Ex parte Quirin, n197 in which the Court upheld executive authority to try alleged Nazi saboteurs before military tribunals rather than civilian courts. n198 While the case was pending, President Franklin D. Roosevelt made it known to the justices that if they ruled for the petitioners, he would order military trials and summary executions to proceed anyway. n199 In the wartime circumstances, military personnel would almost certainly have obeyed presidential orders to ignore a judicial ruling—a consideration that may well have affected the Court's decision to uphold the constitutionality of military trials. n200 The Court may also have framed its famous order that local schools boards should enforce the rights recognized in Brown v. Board of Education n201 "with all deliberate speed," n202 rather than posthaste, partly because it knew that a mandate of immediate desegregation might have proved inefficacious. n203

 [\*1017]  Without attempting to account systematically for all possible external constraints that arise from the prospect that judicial rulings might be null under the rules of recognition practiced by nonjudicial officials, or might otherwise provoke defiance, I offer three observations.

First, in cases in which the justices worry that executive officials or lower courts might defy their rulings, they may feel a tension between the direct normative constraints and the external constraints to which they are subject. In other words, they may believe that they have a legal duty to do what they may feel externally constrained from doing. In Quirin, for example, the justices might easily have believed that at least one of the alleged saboteurs—a U.S. citizen who had been apprehended within the United States—had a constitutional right to civilian trial. n204

As I noted above, however, it also seems plausible that in a case such as Quirin, external constraints might affect the justices' perceptions of their legal duties. For example, in reflecting upon precedents such as Marbury v. Madison n205 and Stuart v. Laird, n206 in which the Court bowed to political threats, the justices may have concluded that the "rule of recognition" authorizes them to avoid rulings that would likely provoke broadly supported defiance and thereby threaten the long-or short-term authority of the judicial branch. As I have written elsewhere:   
Looking at the Supreme Court's long-term pattern of decisions, I would surmise that the Justices have internalized the constraint that the Court must conduct itself in ways that the public will accept as lawful and practically tolerable ... : the Court's interpretations of the Constitution must be likely to be accepted and enforced by at least a critical mass of the officials normally counted on to implement judicial decisions, and they should not trigger a strong and enduring sense of mass outrage by political majorities that the Court has overstepped its constitutional powers. n207  
 [\*1018]  Second, while assent to judicial mandates is today the norm, and official defiance of court rulings the exception, some observers believe that nonjudicial officials should feel freer than they presently do to treat judicial rulings as not binding on them. In a much discussed book, Larry Kramer has argued that nonjudicial officials once regarded themselves as being entitled as judges to interpret the Constitution, even after the courts had spoken, and to treat judicial rulings as limited to the particular cases in which they were issued or even to ignore them. n208 Whatever historical practice may have been, the recognition practices of nonjudicial officials could change in the future, with official defiance of judicial rulings becoming more common. n209 The external constraints on judges and justices are thus potential variables.

Third, if we ask why elected officials, in particular, currently accede so readily to claims of judicial authority that are not clearly ultra vires, part of the answer can be traced to the external constraint that public expectations impose. The public expects governmental officials to obey the law, and the public has been socialized to believe that judicial interpretations are legally binding. n210 But reference to current norms only postpones the question of how a state of affairs developed in which judicial authority to resolve disputable constitutional questions is so widely accepted.

In addressing this question, it is just as important to recognize that the domain of recognized judicial authority is bounded—that there are some issues committed almost wholly to resolution by politically accountable officials—as it is to note that judicial authority is seldom seriously questioned within its sphere. In accounting for these phenomena, political scientists increasingly argue that the domain within which the Court possesses recognized authority is politically "constructed." n211 With respect to the kinds of issues concerning which the courts speak authoritatively, elected officials prefer that the courts do speak authoritatively. n212 Maintenance of a relatively independent judiciary within a limited sphere may be the preferred strategy of risk-averse political leaders who willingly forego some opportunities to exercise power while they  [\*1019]  hold office in order to prevent unbounded power by their political adversaries when the adversaries triumph at the polls. n213 Perhaps of even greater significance, politicians may find it to their electoral advantage to leave a range of contentious issues for judicial resolution. n214 Congress and the president may also be happy to see dominant national visions enforced against the states n215 and to delegate to the courts a number of issues possessing low political salience. n216

If political scientists are correct that the domain of judicial authority is politically constructed, however, there is no guarantee that the political forces that define that domain will remain in long-term equilibrium. From the perspective of some political scientists, every election is a potential external shock to the system. n217 Keith Whittington advances the more architectonic thesis that, from time to time, "reconstructive" presidents have confronted the Supreme Court, sometimes successfully, and have forced a redefinition of the substantive bounds within which acceptable judicial decision-making can occur. n218 According to Professor Whittington, Thomas Jefferson, Andrew Jackson, Abraham Lincoln, and Franklin Roosevelt all achieved this effect to greater or lesser degrees. n219 They did so partly by persuading the public to accept their visions of constitutional meaning and partly, having prevailed in the court of public opinion, by appointing justices who shared their constitutional visions. Thus, to take the starkest example, the prevailing constitutional understandings that emerged from the Roosevelt Revolution of the 1930s—in the country as well as on the Court—differed vastly from those of the 1920s, and the principal engine driving the change was Franklin Roosevelt. n220

 [\*1020]  In order for external constraints to be effective, judges and justices need not respond to them self-consciously, "for the constitutional understandings shared by those affiliated" with the dominant political coalition or "regime"—including jurists who have been nominated and confirmed with their constitutional visions in mind—"will be entrenched and assumed." n221 Nevertheless, the external constraints that define the domain of politically acceptable judicial action can exert important influence as parts of the process through which current and future judges identify and internalize legal norms. As Thomas Keck puts it, "The justices' ostensibly political preferences have themselves been constituted in part by legal ideas, and those legal ideas, in turn, have been derived in large part from ongoing debates in the broader political system." n222

2. Concurrent Agreement or Acquiescence Requirements  
 The Supreme Court "is a they, not an it." n223 In considering constraints on the Court as an institution, it is easy to forget that the Court is comprised of nine justices, each of whom is constrained individually by the need to secure the agreement of at least four colleagues in order to render legally efficacious constitutional rulings. n224 Judges of courts of appeals are similarly constrained by the need to muster majority support for their conclusions. Unlike Supreme Court justices, lower court judges are of course further constrained by the Supreme Court's power to reverse their decisions. n225

 [\*1021]  As I have noted, nonjudicial officials can defy or refuse to implement judicial decisions. Indeed, they have sometimes done so. n226 The courts, however, are virtually never constrained by the need to earn the formal approval or acquiescence of officials in another branch in order to act with the authority of law. The reason, I would speculate, is that the Constitution is written, and surrounding norms and expectations have developed, on the hypothesis that the judiciary is the least dangerous branch. n227 If the judiciary is assumed to be relatively impotent to inflict affirmative damage, and if the other branches are more threatening, it may be more desirable to preserve an efficacious checking power for the judiciary than to establish concurrent agreement or acquiescence requirements as formal checks against judicial action.

Having said this, I hasten to add that there may be circumstances under which the exercise of a judicial negative does indeed do affirmative harm—for example, if the Court unwisely invalidates legislation that would further important public interests or protect moral rights. n228 Perceptions that the Court has done so partly explain some of the instances in which "reconstructive" presidents—including Abraham Lincoln and Franklin Roosevelt—have mounted successful attacks on previously prevailing visions of appropriate judicial authority under the Constitution. n229

3. Sanctions  
The Constitution insulates the Supreme Court, as it does all federal judges, against certain kinds of sanctions. The justices cannot be removed from office during good behavior, nor can Congress reduce their salaries. n230 All judges, justices included, also enjoy immunity from suits for civil damages based on their official acts. n231

Despite these safeguards of judicial independence, the Constitution provides for some sanctions against Supreme Court justices. Most formally and conspicuously, justices can be impeached and removed from office. n232 They are  [\*1022]  also subject to the criminal law, including its prohibitions against bribery and extortion.

Less formally, justices confront the possibility of sanctioning by their colleagues. If the justices thought one of their number to be reckless or cavalier in her constitutional judgments, they could deprive the wayward colleague of the privilege of speaking authoritatively for the Court simply by refusing to join her opinions. Or they could vote to rehear any case in which that colleague cast the decisive vote—as apparently happened with the aged William O. Douglas. n233 The justices' capacity to write opinions exposing their colleagues' constitutionally faithless reasoning (if such were ever to occur), and thus to hold up offenders to contempt or ridicule, may also qualify as a constitutionally authorized, albeit informal, sanction. n234

Beyond the sanctions available against Supreme Court justices, the Constitution provides mechanisms for the imposition of institutional sanctions, directed not against individual justices but the Court as a whole. The Constitution permits Congress to withdraw at least some cases from the Court's jurisdiction. n235 If so minded, Congress and the president could also "pack" the Court and thereby not only reduce the power of incumbent justices, but also diminish the Court's prestige. n236

Lower federal court judges are vulnerable to virtually the same sanctions as Supreme Court justices, but with one conspicuous addition. Unlike the justices, lower court judges are subject to being reversed, and potentially to being upbraided, on appeal. n237

 [\*1023]  Insofar as threats of sanctions function as a constraint on judicial action, their directive force could sometimes create a tension with applicable normative constraints. n238 This prospect appears most visibly in the case of state judges, who may incur electoral or other political sanctions if their decisions displease a majority of voters. n239 But it is at least imaginable that an irate or partisan Congress might sanction federal judges by impeaching them and removing them from office for rendering unpopular but legally correct decisions. n240

#### Loss of legitimacy destroys the environment

Stein 5—Former Judge of the New South Wales Court of Appeal and the New South Wales Land and Environment Court [Justice Paul Stein (International Union for Conservation of Nature (IUCN) Specialist Group on the Judiciary), “Why judges are essential to the rule of law and environmental protection,” Judges and the Rule of Law: Creating the Links: Environment, Human Rights and Poverty, IUCN Environmental Policy and Law Paper No. 60, Edited by Thomas Greiber, 2006]

The Johannesburg Principles state:

“We emphasize that the fragile state of the global environment requires the judiciary, as the guardian of the Rule of Law, to boldly and fearlessly implement and enforce applicable international and national laws, which in the field of environment and sustainable development will assist in alleviating poverty and sustaining an enduring civilization, and ensuring that the present generation will enjoy and improve the quality of life of all peoples, while also ensuring that the inherent rights and interests of succeeding generations are not compromised.”

There can be no argument that environmental law, and sustainable development law in particular, are vibrant and dynamic areas, both internationally and domestically. Judge Weeramantry (of the ICJ) has reminded us that we judges, as custodians of the law, have a major obligation to contribute to its development. Much of sustainable development law is presently making the journey from soft law into hard law. This is happening internationally but also it is occurring in many national legislatures and courts.

Fundamental environmental laws relating to water, air, our soils and energy are critical to narrowing the widening gap between the rich and poor of the world. Development may be seen as the bridge to narrow that gap but it is one that is riddled with dangers and contradictions. We cannot bridge the gap with materials stolen from future generations. Truly sustainable development can only take place in harmony with the environment. Importantly we must not allow sustainable development to be duchessed and bastardized.

A role for judges?

It is in striking the balance between development and the environment that the courts have a role. Of course, this role imposes on judges a significant trust. The balancing of the rights and needs of citizens, present and future, with development, is a delicate one. It is a balance often between powerful interests (private and public) and the voiceless poor. In a way judges are the meat in the sandwich but, difficult as it is, we must not shirk our duty. Pg. 53-54

#### Extinction

Barry 13—Political ecologist with expert proficiencies in old forest protection, climate change, and environmental sustainability policy [Dr. Glen Barry (Ph.D. in "Land Resources" and Masters of Science in "Conservation Biology and Sustainable Development” from the University of Wisconsin-Madison), “ECOLOGY SCIENCE: Terrestrial Ecosystem Loss and Biosphere Collapse,” Forests.org, February 4, 2013, pg. http://forests.org/blog/2013/02/ecology-science-terrestrial-ec.asp

Blunt, Biocentric Discussion on Avoiding Global Ecosystem Collapse and Achieving Global Ecological Sustainability

Science needs to do a better job of considering worst-case scenarios regarding continental- and global-scale ecological collapse. The loss of biodiversity, ecosystems, and landscape connectivity reviewed here shows clearly that ecological collapse is occurring at spatially extensive scales. The collapse of the biosphere and complex life, or eventually even all life, is a possibility that needs to be better understood and mitigated against. A tentative case has been presented here that terrestrial ecosystem loss is at or near a planetary boundary. It is suggested that a 66% of Earth's land mass must be maintained in terrestrial ecosystems, to maintain critical connectivity necessary for ecosystem services across scales to continue, including the biosphere. Yet various indicators show that around 50% of Earth's terrestrial ecosystems have been lost and their services usurped by humans. Humanity may have already destroyed more terrestrial ecosystems than the biosphere can bear. There exists a major need for further research into how much land must be maintained in a natural and agroecological state to meet landscape and bioregional sustainable development goals while maintaining an operable biosphere.

It is proposed that a critical element in determining the threshold where terrestrial ecosystem loss becomes problematic is where landscape connectivity of intact terrestrial ecosystems erodes to the point where habitat patches exist only in a human context. Based upon an understanding of how landscapes percolate across scale, it is recommended that 66% of Earth's surface be maintained as ecosystems; 44% as natural intact ecosystems (2/3 of 2/3) and 22% as agroecological buffer zones. Thus nearly half of Earth must remain as large, connected, intact, and naturally evolving ecosystems, including old-growth forests, to provide the context and top-down ecological regulation of both human agroecological, and reduced impact and appropriately scaled industrial activities.

Given the stakes, it is proper for political ecologists and other Earth scientists to willingly speak bluntly if we are to have any chance of averting global ecosystem collapse. A case has been presented that Earth is already well beyond carrying capacity in terms of amount of natural ecosystem habitat that can be lost before the continued existence of healthy regional ecosystems and the global biosphere itself may not be possible. Cautious and justifiably conservative science must still be able to rise to the occasion of global ecological emergencies that may threaten our very survival as a species and planet.

Those knowledgeable about planetary boundaries—and abrupt climate change and terrestrial ecosystem loss in particular—must be more bold and insistent in conveying the range and possible severity of threats of global ecosystem collapse, while proposing sufficient solutions. It is not possible to do controlled experiments on the Earth system; all we have is observation based upon science and trained intuition to diagnose the state of Earth's biosphere and suggest sufficient ecological science–based remedies.

If Gaia is alive, she can die. Given the strength of life-reducing trends across biological systems and scales, there is a need for a rigorous research agenda to understand at what point the biosphere may perish and Earth die, and to learn what configuration of ecosystems and other boundary conditions may prevent her from doing so. We see death of cells, organisms, plant communities, wildlife populations, and whole ecosystems all the time in nature—extreme cases being desertification and ocean dead zones. There is no reason to dismiss out of hand that the Earth System could die if critical thresholds are crossed. We need as Earth scientists to better understand how this may occur and bring knowledge to bear to avoid global ecosystem and biosphere collapse or more extreme outcomes such as biological homogenization and the loss of most or even all life. To what extent can a homogenized Earth of dandelions, rats, and extremophiles be said to be alive, can it ever recover, and how long can it last?

The risks of global ecosystem collapse and the need for strong response to achieve global ecological sustainability have been understated for decades. If indeed there is some possibility that our shared biosphere could be collapsing, there needs to be further investigation of what sorts of sociopolitical responses are valid in such a situation. Dry, unemotional scientific inquiry into such matters is necessary—yet more proactive and evocative political ecological language may be justified as well. We must remember we are speaking of the potential for a period of great dying in species, ecosystems, humans, and perhaps all being. It is not clear whether this global ecological emergency is avoidable or recoverable. It may not be. But we must follow and seek truth wherever it leads us.

Planetary boundaries have been quite anthropocentric, focusing upon human safety and giving relatively little attention to other species and the biosphere's needs other than serving humans. Planetary boundaries need to be set that, while including human needs, go beyond them to meet the needs of ecosystems and all their constituent species and their aggregation into a living biosphere. Planetary boundary thinking needs to be more biocentric.

I concur with Williams (2000) that what is needed is an Earth System–based conservation ethic—based upon an "Earth narrative" of natural and human history—which seeks as its objective the "complete preservation of the Earth's biotic inheritance." Humans are in no position to be indicating which species and ecosystems can be lost without harm to their own intrinsic right to exist, as well as the needs of the biosphere. For us to survive as a species, logic and reason must prevail (Williams 2000).

Those who deny limits to growth are unaware of biological realities (Vitousek 1986). There are strong indications humanity may undergo societal collapse and pull down the biosphere with it. The longer dramatic reductions in fossil fuel emissions and a halt to old-growth logging are put off, the worse the risk of abrupt and irreversible climate change becomes, and the less likely we are to survive and thrive as a species. Human survival—entirely dependent upon the natural world—depends critically upon both keeping carbon emissions below 350 ppm and maintaining at least 66% of the landscape as natural ecological core areas and agroecological transitions and buffers. Much of the world has already fallen below this proportion, and in sum the biosphere's terrestrial ecosystem loss almost certainly has been surpassed, yet it must be the goal for habitat transition in remaining relatively wild lands undergoing development such as the Amazon, and for habitat restoration and protection in severely fragmented natural habitat areas such as the Western Ghats.

The human family faces an unprecedented global ecological emergency as reckless growth destroys the ecosystems and the biosphere on which all life depends. Where is the sense of urgency, and what are proper scientific responses if in fact Earth is dying? Not speaking of worst-case scenarios—the collapse of the biosphere and loss of a living Earth, and mass ecosystem collapse and death in places like Kerala—is intellectually dishonest. We must consider the real possibility that we are pulling the biosphere down with us, setting back or eliminating complex life.

The 66% / 44% / 22% threshold of terrestrial ecosystems in total, natural core areas, and agroecological buffers gets at the critical need to maintain large and expansive ecosystems across at least 50% of the land so as to keep nature connected and fully functional. We need an approach to planetary boundaries that is more sensitive to deep ecology to ensure that habitable conditions for all life and natural evolutionary change continue. A terrestrial ecosystem boundary which protects primary forests and seeks to recover old-growth forests elsewhere is critical in this regard. In old forests and all their life lie both the history of Earth's life, and the hope for its future. The end of their industrial destruction is a global ecological imperative.

Much-needed dialogue is beginning to focus on how humanity may face systematic social and ecological collapse and what sort of community resilience is possible. There have been ecologically mediated periods of societal collapse from human damage to ecosystems in the past (Kuecker and Hall 2011). What makes it different this time is that the human species may have the scale and prowess to pull down the biosphere with them. It is fitting at this juncture for political ecologists to concern themselves with both legal regulatory measures, as well as revolutionary processes of social change, which may bring about the social norms necessary to maintain the biosphere. Rockström and colleagues (2009b) refer to the need for "novel and adaptive governance" without using the word revolution. Scientists need to take greater latitude in proposing solutions that lie outside the current political paradigms and sovereign powers.

Even the Blue Planet Laureates' remarkable analysis (Brundtland et al. 2012), which notes the potential for climate change, ecosystem loss, and inequitable development patterns neither directly states nor investigates in depth the potential for global ecosystem collapse, or discusses revolutionary responses. UNEP (2012) notes abrupt and irreversible ecological change, which they say may impact life-support systems, but are not more explicit regarding the profound human and ecological implications of biosphere collapse, or the full range of sociopolitical responses to such predictions. More scientific investigations are needed regarding alternative governing structures optimal for pursuit and achievement of bioregional, continental, and global sustainability if we are maintain a fully operable biosphere forever. An economic system based upon endless growth that views ecosystems necessary for planetary habitability primarily as resources to be consumed cannot exist for long.   
Planetary boundaries offer a profoundly difficult challenge for global governance, particularly as increased scientific salience does not appear to be sufficient to trigger international action to sustain ecosystems (Galaz et al. 2012). If indeed the safe operating space for humanity is closing, or the biosphere even collapsing and dying, might not discussion of revolutionary social change be acceptable? Particularly, if there is a lack of consensus by atomized actors, who are unable to legislate the required social change within the current socioeconomic system. By not even speaking of revolutionary action, we dismiss any means outside the dominant growth-based oligarchies.

In the author's opinion, it is shockingly irresponsible for Earth System scientists to speak of geoengineering a climate without being willing to academically investigate revolutionary social and economic change as well. It is desirable that the current political and economic systems should reform themselves to be ecologically sustainable, establishing laws and institutions for doing so. Yet there is nothing sacrosanct about current political economy arrangements, particularly if they are collapsing the biosphere. Earth requires all enlightened and knowledgeable voices to consider the full range of possible responses now more than ever.

One possible solution to the critical issues of terrestrial ecosystem loss and abrupt climate change is a massive and global, natural ecosystem protection and restoration program—funded by a carbon tax—to further establish protected large and connected core ecological sustainability areas, buffers, and agro-ecological transition zones throughout all of Earth's bioregions. Fossil fuel emission reductions must also be a priority. It is critical that humanity both stop burning fossil fuels and destroying natural ecosystems, as fast as possible, to avoid surpassing nearly all the planetary boundaries.

In summation, we are witnessing the collective dismantling of the biosphere and its constituent ecosystems which can be described as ecocidal. The loss of a species is tragic, of an ecosystem widely impactful, yet with the loss of the biosphere all life may be gone. Global ecosystems when connected for life's material flows provide the all-encompassing context within which life is possible. The miracle of life is that life begets life, and the tragedy is that across scales when enough life is lost beyond thresholds, living systems die.

### 1NC DPT Advantage

**High prices cause a shift to renewable energy—key to solve warming.**

**Yetiv 6** (Steven A., Professor of political science and international studies at Old Dominion University, *America benefits from high oil prices*, February 6th,

http://www.signonsandiego.com/uniontrib/20060206/news\_mz1e6yetiv.html)

From Wall Street to Main Street, people hate high oil prices because they cause economic pain. But like coffee, red wine, and perhaps even chocolate, high oil prices can do some good too. Current energy legislation, which was passed by Congress and signed by President Bush in August 2005, moved America in the right direction, but it has a core weakness. This legislation, like President Bush's vision of oil independence laid out in his recent State of the Union speech, fails to do what higher oil prices can accomplish: decrease oil consumption in the transportation sector where 70 percent of oil is used and diminish our dependence on foreign oil. Current energy legislation, and President Bush's vision, does encourage power sources such as nuclear, coal, solar and wind. But, with the potential partial exception of solar power, they can't run vehicles. Astonishingly, less than one-eighth of that $14.6 billion in energy legislation actually decreased oil use in transportation. In particular, what can high oil prices do that America's energy policy fails to do? First, sooner or later, high oil prices spur the development of alternative energy resources because they make it more profitable to produce them. The higher prices go, the more entrepreneurs and companies around the world work to move us beyond the hazardous petroleum era. Second, the higher oil prices go, the more likely automakers will mass-produce more efficient, less pricey vehicles. That is precisely what we need to shift the current oil-guzzling paradigm. A joint report by the Transportation Research Institute's Office for the Study of Automotive Transportation at the University of Michigan and the Natural Resources Defense Council shows that higher oil prices will hurt America's top automakers by decreasing sales of SUVs and pickup trucks. The report calls on them to make fuel efficient vehicles their top priority to better the country and their bottom line. Most automakers are experimenting with fuel cell vehicles that run on hydrogen rather than oil. They are also selling 2005 hybrid vehicles that run on an internal combustion engine, as do conventional cars, plus an electric motor. Depending on the car, they yield between 10 percent and 50 percent better gas mileage than regular vehicles, and far better mileage than the ubiquitous SUV. But hybrids represent a drop in the market bucket, because automakers have so far made their profits by mass-producing less efficient, money-making vehicles. And fuel cell vehicles aren't expected to reach the market until 2010. High oil prices are an incentive for making efficient vehicles on a mass, affordable scale, and sooner rather than later. Third, high oil prices make consumers less likely to waste gas and more likely to buy hybrids. In Europe, high gas prices – roughly double that in the United States – have led to mass adoption of hybrids. Investment banking firm Goldman Sachs predicts that gas prices would have to hit $4.30 a gallon in the United States to change the gas-guzzling culture. But it is better to see the impact as relative to price. Fourth, high oil prices benefit the environment. Indeed, one study has shown that a broad energy tax on carbon content in fuels would reduce oil use and carbon emissions by over 10 percent. For that matter, vehicles that run on fuel cells emit only water and heat as waste, and hybrids emit more limited emissions than conventional vehicles. Since carbon emissions cause global warming – a scientific fact rather than science fiction – we should tip our hats to high oil prices, in this respect. Fifth, high oil prices are raising consciousness about the hazards of the oil era. Ninety-three percent of Americans believe that oil dependence is a serious problem. Although they still act like oil is an entitlement, pricey oil may lead them eventually to put pressure on politicians to move toward greater oil independence, as reflected perhaps in President Bush's speech. Of course, higher oil prices are painful. But, over time they can serve the environment, decrease our dependence on Middle East oil, especially from countries like Iran which uses oil money to build nuclear capability and force us to take actions that make us less vulnerable when oil starts to dwindle in the future.

**Middle eastern instability causes a shift to renewable energy.**

**Owens 11** (Mackubin Thomas, Professor of National Security Affairs at the Naval War College and Editor of Orbis - The Journal of the Foreign Policy Research Institute, *The upside of high oil prices*, March 15th, http://www.washingtontimes.com/news/2011/mar/15/the-upside-of-high-oil-prices/)

The price of crude oil currently hovers around $100 per barrel. This price matches highs reached two years ago and - adjusted for inflation - in early 1980s. Because of turmoil in the Middle East and North Africa, it is likely that the price will rise further. High oil prices can wreak havoc on American businesses and consumers. But if they lead to improved energy efficiency and to greater investment in alternative sources of energy, such as natural gas and nuclear power generation, they contribute, albeit in a clumsy and painful way, to reducing our dependence on hostile and unreliable oil-producing countries. The positive features of higher prices manifest themselves in two ways. First, in a market economy, higher prices signal that demand for a good is outstripping supply, providing producers with incentives to increase production of that good in the hopes of maximizing profits. Second, higher prices provide incentives for producers and consumers to shift to relatively cheaper substitutes. For instance, a alternative that is uneconomical when the price of oil stands at $50 a barrel may be a viable substitute when oil is $100 a barrel. Unfortunately, current U.S. government policies short-circuit the market, negating the two positive features of higher oil prices. Regarding the first, state and federal governments effectively hamstring the ability of domestic oil producers to increase output by denying them access to substantial reserves. For example, producers are prohibited from exploiting federal lands that are not in parks in the West, Alaska and under the waters off our coasts. Those areas hold an estimated 635 trillion cubic feet of recoverable natural gas - enough to meet the needs of the 60 million American homes fueled by natural gas for more than a century - and an estimated 112 billion barrels of recoverable oil - enough to produce gasoline for 60 million cars and fuel oil for 25 million homes for 60 years.

**Warming causes extinction**

**Brandenberg 99** (John & Monica Paxson, Visiting Prof. Researcher @ Florida Space Institute, Physicist Ph.D., Science Writer, Dead Mars Dying Earth, Pg 232-233)

The ozone hole expands, driven by a monstrous synergy with global warming that puts more catalytic ice crystals into the stratosphere, but this affects the far north and south and not the major nations’ heartlands. The seas rise, the tropics roast but the media networks no longer cover it. The Amazon rainforest becomes the Amazon desert. Oxygen levels fall, but profits rise for those who can provide it in bottles. An equatorial high-pressure zone forms, forcing drought in central Africa and Brazil, the Nile dries up and the monsoons fail. Then inevitably, at some unlucky point in time, a major unexpected event occurs—a major volcanic eruption, a sudden and dramatic shift in ocean circulation or a large asteroid impact (those who think freakish accidents do not occur have paid little attention to life or Mars), or a nuclear war that starts between Pakistan and India and escalates to involve China and Russia . . . Suddenly the gradual climb in global temperatures goes on a mad excursion as the oceans warm and release large amounts of dissolved carbon dioxide from their lower depths into the atmosphere. Oxygen levels go down precipitously as oxygen replaces lost oceanic carbon dioxide. Asthma cases double and then double again. Now a third of the world fears breathing. As the oceans dump carbon dioxide, the greenhouse effect increases, which further warms the oceans, causing them to dump even more carbon. Because of the heat, plants die and burn in enormous fires which release more carbon dioxide, and the oceans evaporate, adding more water vapor to the greenhouse. Soon, we are in what is termed a runaway greenhouse effect, as happened to Venus eons ago. The last two surviving scientists inevitably argue, one telling the other, “See! I told you the missing sink was in the ocean!” Earth, as we know it, dies. After this Venusian excursion in temperatures, the oxygen disappears into the soil, the oceans evaporate and are lost and the dead Earth loses its ozone layer completely. Earth is too far from the Sun for it to be the second Venus for long. Its atmosphere is slowly lost—as is its water—because of ultraviolet bombardment breaking up all the molecules apart from carbon dioxide. As the atmosphere becomes thin, the Earth becomes colder. For a short while temperatures are nearly normal, but the ultraviolet sears any life that tries to make a comeback. The carbon dioxide thins out to form a thin veneer with a few wispy clouds and dust devils. Earth becomes the second Mars—red, desolate, with perhaps a few hardy microbes surviving.

**Middle East war doesn’t escalate**

**Terrill 9,** member of Strategic Studies Institute (SSI) since October 2001; General Douglas MacArthur Professor of National Security Affairs; Middle East Nonprolif analyst for the International Assessments Division of the Lawrence Livermore National Laboratory (LLNL); Visiting Professor at the U.S. Air War College; former faculty member at Old Dominion University; retired U.S. Army Reserve lieutenant colonel and Foreign Area Officer (Middle East); published in numerous academic journals; participated in the Middle Eastern Arms Control and Regional Security (ACRS) Track 2 talks, which are part of the Middle East Peace Process; served as a member of the military and security working group of the Baker/Hamilton Iraq Study; holds a B.A. from California State Polytechnic University; M.A. from the University of California, Riverside, both in Political Science; holds a Ph.D. in International Relations from Claremont Graduate Universit—(W. Andrew Terrill, Escalation and intrawar deterrence During limited wars in the middle east,” September 2009, http://www.strategicstudiesinstitute.army.mil/pdffiles/pub941.pdf)

The number of declared nuclear powers has expanded significantly in the last 20 years to include Pakistan, India, and North Korea. Additionally, other powers such as Iran are almost certainly striving for a nuclear weapons capability while a number of count- ries in the developing world possess or seek biological and chemical weapons. In this milieu, a central purpose of this monograph by W. Andrew Terrill is to reexamine two earlier conflicts for insights that may be relevant for ongoing dangers during limited wars involving nations possessing chemical or biological weapons or emerging nuclear arsenals. Decision-makers from the United States and other countries may have to consider the circumstances under which a smaller and weaker enemy will use nuclear weapons or other mass destruction weapons. Some of Dr. Terrill’s observations may be particularly useful for policymakers dealing with future crises involving developing nations that possess weapons of mass destruction (WMD). Although it is possible that the United States could be a party to such a conflict, any crisis involving nuclear weapons states is expected to be of inherent concern to Washington, even if it is not a combatant. Dr. Terrill has examined two important **Mid**dle Eastern wars. These conflicts are the 1973 Arab- Israeli War and the 1991 Gulf War. This monograph may be particularly valuable in providing readers, including senior military and political leaders, with a discussion of the implications of these historical case studies in which WMD-armed nations may have seriously **considered** their use **but ultimately did not resort to them**. Both of these wars were fought at the conventional level, although the prospect of Israel using nuclear weapons (1973), Egypt using biological weapons (1973), or Iraq using chemical and biological weapons (1991) were of serious concern at various points during the fighting. The prospect of a U.S. war with WMD-armed opponents (such as occurred in 1991) raises the question of how **escalation can be controlled** in such circumstances and what are the most likelyways that intrawar deterrence can break down. This monograph will consider why **efforts at escalation control and intrawar deterrence were successful** in the two case studies and assess the points at which these efforts were under the most intensive stress that might have caused them to fail. Dr. Terrill notes that intrawar deterrence is always difficult and usually based on a variety of factors that no combatant can control in all circumstances of an ongoing conflict. The Strategic Studies Institute is pleased to offer this monograph as a contribution to the national secur- ity debate on this important subject as our nation continues to grapple with a variety of problems associated with the proliferation of nuclear, biological, and chemical weapons. This analysis should be especially useful to U.S. strategic leaders and intelli- gence professionals as they seek to address the complicated interplay of factors related to regional security issues and the support of local allies. This work may also benefit those seeking greater understanding of long range issues of Middle Eastern and global security. We hope this work will be of benefit to officers of all services as well as other U.S. Government officials involved in military planning, and that it may cause them to reconsider some of the instances where intrawar deterrence seemed to work well but may have done so by a much closer margin than future planners can comfortably accept. In this regard, Dr. Terrill’s work is important to understanding the **lessons** of these conflicts which might **otherwise be forgotten or oversimplified**. Additionally, an understanding of the issues involved with **these earlier case studies** may be **useful in future circumstances** where the United States may seek to **deter wartime WMD** use by potential adversaries such as Iran or North Korea. The two case studies may also point out the inherent difficulties in doing so and the need to enter into conflict with these states only if one is prepared to accept the strong possibility that any efforts to control escalation have a good chance of breaking down. This understanding is particularly important in a wartime environment in which all parties should rationally have an interest in controlling escalation, but may have trouble doing so due to both systemic and wartime misperceptions and mistakes that distort communications between adversaries and may cause fundamental misunderstandings about the nature of the conflict in which these states may find themselves embroiled.

#### No Conflict – internal Israeli documents

Elhusseini 13 (Fadi, Palestinian Diplomat and Journalist, 3/12/2013, "Will Israel attack Iran?", jordantimes.com/will-israel-attack-iran)

That red line is fast approaching, but is Israel going to really attack Iran?

Many observers say this is sheer fantasy, especially in view of the new Israeli government coalition and the current developments in the Middle East.

Iran insists its nuclear programme is peaceful and a national right, yet the fiery speeches and comments delivered by its officials proffer neither good gestures nor convincing assurances to the international community or its sympathisers.

The prospect of war terrifies not only Israelis, but also people across the Middle East and the rest of the world. Surveys in Israel show that most Israelis oppose launching a unilateral attack on Iranian nuclear facilities.

Experts believe that no Israeli attack would deter the Iranian nuclear programme and its ambition would not be ended, but simply delayed. Israeli military and intelligence chiefs believe that a strike on Iran is a bad idea, while the Obama administration has told Israel to back off and wait for sanctions to work.

While it is likely that Iran would retaliate against Israel and possibly the US in response to any attack, it is unlikely that Iran will instigate a major war. Albeit for different reasons, Iran, Israel and the US understand that a war would not serve their interests.

Israeli decision makers are confident that if things go bad, the US will not leave Israel at peril.

Neither the US, whose most difficult decisions are usually taken in the second presidential term, nor other international powers would leave Israel unaided or accept an Israeli defeat.

Iranian decision makers are also aware of the fact that initiating a major war would lead to an eventual American intervention and an inevitable confrontation with the world’s biggest military might.

Middle East instability doesn’t cause inter-state wars

**Maloney and Takeyh, 07** - \*senior fellow for Middle East Policy at the Saban Center for Middle East Studies at the Brookings Institution AND \*\*senior fellow for Middle East Studies at the Council on Foreign Relations (Susan and Ray, International Herald Tribune, 6/28, “Why the Iraq War Won't Engulf the Mideast”,

http://www.brookings.edu/opinions/2007/0628iraq\_maloney.aspx)

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 experience 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.

#### Democratic peace is spurious --- causal logic does not support the correlation.

Sebastian Rosato, November 2003. Ph.D. Candidate, Department of Political Science. “The Flawed Logic of Democratic Peace Theory,” American Political Science Review 97.4.

Democratic peace theory—the claim that democ- racies rarely fight one another because they share common norms of live-and-let-live and domestic institutions that constrain the recourse to war—is probably the most powerful liberal contribu- tion to the debate on the causes of war and peace.1 If the theory is correct, it has important implications for both the study and the practice of international poli- tics. Within the academy it undermines both the realist claim that states are condemned to exist in a constant state of security competition and its assertion that the structure of the international system, rather than state type, should be central to our understanding of state behavior. In practical terms democratic peace theory provides the intellectual justification for the belief that spreading democracy abroad will perform the dual task of enhancing American national security and promot- ing world peace.

In this article I offer an assessment of democratic peace theory. Specifically, I examine the causal logics that underpin the theory to determine whether they offer compelling explanations for why democracies do not fight one another.

A theory is comprised of a hypothesis stipulating an association between an independent and a dependent variable and a causal logic that explains the connec- tion between those two variables. To test a theory fully, we should determine whether there is support for the hypothesis, that is, whether there is a correlation be- tween the independent and the dependent variables and whether there is a causal relationship between them.2 An evaluation of democratic peace theory, then, rests on answering two questions. First, do the data sup- port the claim that democracies rarely fight each other? Second, is there a compelling explanation for why this should be the case?

Democratic peace theorists have discovered a pow- erful empirical generalization: Democracies rarely go to war or engage in militarized disputes with one an- other. Although there have been several attempts to challenge these findings (e.g., Farber and Gowa 1997; Layne 1994; Spiro 1994), the correlations remain ro- bust (e.g., Maoz 1998; Oneal and Russett 1999; Ray 1995; Russett 1993; Weart 1998). Nevertheless, some scholars argue that while there is certainly peace among democracies, it may be caused by factors other than the democratic nature of those states (Farber and Gowa 1997; Gartzke 1998; Layne 1994). Farber and Gowa (1997), for example, suggest that the Cold War largely explains the democratic peace finding. In essence, they are raising doubts about whether there is a convinc- ing causal logic that explains how democracies inter- act with each other in ways that lead to peace. To resolve this debate, we must take the next step in the testing process: determining the persuasiveness of the various causal logics offered by democratic peace theorists.

#### Threat of revolts provides authoritarian accountability.

Mario Gilli and Yuan Li, June 2012. University of Milan-Bicocca; and University of Duisburg. “Citizenry Accountability in Autocracies. The Political Economy of Good Governance in China,” Network of European Peace Scientists, Working Paper, http://www.europeanpeacescientists.org/3\_2012.pdf.

Do the citizens have a role in constraining policies in autocratic governments? Usually the political and economic literature model autocracy as if the citizens have no role in constraining leader’s behavior, but actually autocratic government are afraid of possible citizens’ revolts. In this paper we focus on contemporary China to analyze how citizens might induce an autocratic government to adopt congruent policies. Although there is no party or electoral competition, the leader fears deposition by coup d’état of the selectorate and revolutionary threats from citizens. We build a three player political agency model to study the role of both these constraints and we show that the effectiveness of the selectorate and of revolutionary threats are crucial factors in determining the policy outcomes. In particular, we show that the citizens can effectively discipline the leader because of the revolution threat notwithstanding the selectorate size, but this may result in a failed state when the costs of revolting and the selectorate size are small. As the size of the selectorate and the costs of revolution vary dramatically across countries, our result explain why different types of autocracies arise. In particular our model and results provide a useful framework to interpret China policy in the last twenty years.

#### Backsliding will produce electoral authoritarianism, not dictatorship --- it’s the new norm.

Ryan Shirah, 4/23/2012. Fellow @ Center for the Study of Democracy @ UC Irvine. “Institutional Legacy and the Survival of New Democracies: The Lasting Effects of Competitive Authoritarianism,” http://www.socsci.uci.edu/files/democracy/docs/conferences/grad/shirah.pdf.

Contemporary authoritarian regimes sport an impressively diverse array of political institutions. Nominally democratic institutions like elected legislatures and political parties are now a common feature of nondemocratic politics (Schedler 2002). While a signiﬁcant amount of work has been put into understanding the causes and consequences of this institutional variation, many questions have not yet been adequately addressed. In particular, as Brownlee (2009a) points out, “comparativists have delved less deeply into the long–term and post– regime effects of electoral competition” (132). Building upon previous work on unfree elections and democratization (Brownlee 2009b, Schedler 2009, Lindberg 2006a, Lindberg 2006b, Lindberg 2009a, Howard & Roessler 2002, Hadenius & Teorell 2007), this study examines how the adoption of competitive elections prior to a democratic transition affects prospects for long–term democratic stability and consolidation. 1 I engage the literature on hybrid regimes and political institutions under dictatorship in order to draw out implications for how the institutionalization of competitive elections prior to democratization might impact the stability of a democratic successor regime. Previously unaddressed implications of two competing arguments are presented. An event history analysis of 74 new democracies that transitioned from authoritarian rule between 1975 and 2003 shows that institutional legacies signiﬁcantly affect prospects for democratic consolidation. Speciﬁcally, competitive authoritarian regimes tend to make for longer–lived democracies following a democratic transition than regimes without minimally competitive elections. 2 The idea that political institutions have signiﬁcant and independent effects is hardly controversial in comparative politics. What has been less broadly accepted is the notion that nominally democratic institutions are anything but window dressing in regimes that do not allow for meaningful challenges to authority. By the late 1980s, a series of observed transitions led to the conclusion that there was no sustainable form of electoral authori- 2arianism. Huntington (1991) famously declared that “liberalized authoritarianism is not a stable equilibrium; the halfway house does not stand” (174–5). Others had already begun drawing the same conclusion; regimes that adopted nominally democratic institutions did not represent a new variety or subtype of authoritarian regime, they were instead considered transitory states (O’Donnell & Schmitter 1986, DiPalma 1990, Przeworski 1991). For a decade, the literature on democratization treated dictatorships with electoral institutions as semi–democracies or states in the process of full liberalization. But by the turn of the century the observed facts made this a diffcult position to maintain. Dictators remained in power alongside legislatures, political parties, and electoral systems that they had created or inherited. It became clear that electoral authoritarianism was not an ephemeral and unstable state; it was a new kind of nondemocracy, and it was quickly becoming the norm (Schedler 2002).

### 1NC Bagram

NATO is redundant—other international organizations solve—NATO only creates free-riding and lowers over-all security

Hartung 13 (Farina Hartung, Master Thesis International and European Relations, Linköping University, “Case-study of NATO: Is NATO a redundant international organization or not?”, http://www.liu.se/utbildning/pabyggnad/F7MME/student/courses/733a27masterthesis/filarkiv/spring-2013/theses-june/1.464731/MasterThesisFinalVersionFarinaHartung.pdf)

Just as mentioned above, NATO has gone through a process of changes since it was first established. It can be said that the changes where necessary or as a matter of fact that they were not - it always depends on the view one takes. The position of this paper has been stated before that it is going to investigate the question if NATO is redundant and to show proof that it is. As history has shown, it can be argued that the organization is redundant and has survived much longer passed its due time. From this point of view, it can be argued that this is what hurts the organization; they need to reform before they have a chance to act.

It is quite difficult to claim that NATO is not redundant, but as mentioned before, this Thesis will take a look at the opposite side of this claim. Instead of trying to prove that NATO is needed, I will try to show that it is not needed and has long surpassed its duty. That has become clear over the past years. NATO has reformed itself in order to ensure that it will stay relevant enough in order to play an impacting role in politics and international relations. Although they have taken the initiative to stay relevant, they seem to have failed. There have been different voices, such as Theo Sommer and Kenneth Waltz, who claim and argue that NATO is as a matter of fact redundant.

One could always ask what is redundancy and how can it be measured. Redundancy is not self-evident, and it also cannot really be defined. Neither can redundancy be measured. Redundancy is what one makes out of it and what others understand of redundancy is left open for discussion. But in regards to this paper, redundancy is just the fact that NATO is not really needed any longer. The task it is currently doing, such as the peacekeeping, can be done by other international organizations, such as the United Nations There is no longer the need for just one international organization to have its sole focus and propose on collective security. Security is something that is desired by so many countries and there is no need that NATO needs to be the one organization that will provide this to all the countries in the world. And as mentioned before, NATO already goes outside its territorial borders in order to provide security to the world (“NATO in the 21st Century).

NATO is a redundant international organization simply because it has lost its endeavor. It strives to do so much in order to provide its member states with the necessary certainty that in case of a threat, there is a whole community that will act and protect each member state. But how should NATO really do that in reality? The member states have cut down their size of military they have. In time of great danger, one country might not want to act because there could be a conflict of interests. Currently, there is just not such a big threat as the Soviet Union was that there needs to be a military alliance. In case that such a great threat rises to the surface again, it is just simply as easy to create a new international military organization which can then function according to the actual needs, because it is always during the time of threat that new alliances are created.

As mentioned above, the main purpose of NATO has vanished when the Cold War was over and the Soviet Union ceased to exist. Since the Cold War and the threat that the Soviet Union posed so close to European borders dissolved in the beginning of the 1990s, NATO just has lost its main function. According to Theo Sommer, NATO has ever since then been in a constant stage of “transformation”, never really knowing what it should achieve and what its goal is (17). In addition to that, one could argue that NATO is facing more problems that seem to have come along with the problem of the lacking threat.

This Thesis argues that NATO is neither necessary to fulfill a defensive function or that of providing security for its members. NATO is an international organization that is in fact no longer permissible. It has surpassed its life expectancy by many years. Moreover, it can be said that since it has surpassed its reason of existence, it will step down from the position it holds in regards of an international security organization. It is no longer the main focus of the member states. NATO should also no longer be the main focus. Other organizations have emerged over the past decades that show that they are able to do the necessary work without having to go through a process of transformation. For example regional international organization, such as the European Union could take over this task, since most of the members are located on the European continent to begin with. Furthermore, it can be claimed that NATO should be able to see that they are no longer fit for modern times. Before NATO is able to act on any kind of problem or concern, it has to go through a process of transforming itself; otherwise, it might not be able to act. This point of view may seem a bit exaggerated; however, it is suitable for NATO since it is pragmatic. NATO is not the same since the end of the Cold War. It can be said that the main reason why the NATO was established was to be able to encounter the Soviet Union in a time of crisis. According to Lindley-French, NATO today is a strategic and defensive focal point that can project both military and partnership power worldwide (89). She continuous her argument by noting that the job the alliance has to done is the same as ever and has not changed (Ibid). The job of the alliance has always been to safeguard the freedom and security of its member nations through political and security needs, instituted by the values of “democracy, liberty, rule of law and the peaceful resolution to disputes” (Ibid). Yet another point he claims is that NATO provides a strategic forum for consultation between North Americans and Europeans on security issues of common concern and the facility for taking joint action to deal with them (Ibid).

To repeat, NATO has lost its power and maybe even its standpoint in the modern day time politics. There are many different international organizations that all could take over the work of NATO or even could continue it in a better manner than NATO is currently doing. Claiming that NATO is not redundant just does not seem to follow the actual fact of the position that NATO is currently in. They have missed indeed the point where it was time to either dissolve the whole international organization or the time to reform which would have actually created positive outcomes. The latter point, however, seems impossible now. It just is impossible for NATO to change yet again. In the time of its existence, NATO has undergone so many different changes and reforms, altogether a total of six. There is just no logical reason why NATO is able to successfully undergo another process of changes and transformation. New reforms always bring changes and if they actually will help NATO is left in the open.

As Theo Sommer puts it, NATO has served its time simply because the world has changed (9). The threats are no longer the same and to some extend may not even exist anymore. There are of course new threats, such as terrorism, piracy, and cyber-attacks, now that have emerged and rose to the surface of international politics. However, those are not really the same as they were when NATO was created. Hence, NATO is not suitable to tackle new issues and problems. They can try to reform, but it will never be the same because NATO itself will have to adjust to the new situation. But this is not what this once great military alliance was intended to do.

No Central Asia impact

Richard **Weitz**, senior fellow and associate director of the Center for Future Security Strategies at the Hudson Institute, Summer **200**The Washington Quarterly, lexis.

Central Asian security affairs have become **much more complex** than during the original nineteenth-century great game between czarist Russia and the United Kingdom. At that time, these two governments could largely dominate local affairs, but today a variety of influential actors are involved in the region. The early 1990s witnessed a vigorous competition between Turkey and Iran for influence in Central Asia. More recently, India and Pakistan have pursued a mixture of cooperative and competitive policies in the region that have influenced and been affected by their broader relationship. The now independent Central Asian countries also invariably affect the region's international relations as they seek to maneuver among the major powers without compromising their newfound autonomy. Although Russia, China, and the United States substantially affect regional security issues, they cannot dictate outcomes the way imperial governments frequently did a century ago. Concerns about a renewed great game are thus **exaggerated**. The contest for influence in the region **does not directly challenge the vital national interests of China, Russia, or the U**nited **S**tates, the most important extraregional countries in Central Asian security affairs. Unless restrained, however, competitive pressures risk impeding opportunities for beneficial cooperation among these countries. The three external great powers have incentives to compete for local allies, energy resources, and military advantage, but they also share substantial interests, especially in reducing terrorism and drug trafficking. If properly aligned, the major multilateral security organizations active in Central Asia could provide opportunities for cooperative diplomacy in a region where bilateral ties traditionally have predominated.

**Afghanistan doesn’t spill over, the Taliban isn’t powerful enough**

**Haas 12/20**/10 – president of the Council on Foreign Relations (Richard N., “Let's Un-Surge in Afghanistan,” http://www.cfr.org/publication/23669/lets\_unsurge\_in\_afghanistan.html, WRW)

The second interest at stake is Pakistan. Some argue that we must stabilize Afghanistan lest it become a staging ground for undermining its more important neighbor, one that hosts the world's most dangerous terrorists and possesses more than 100 nuclear weapons. This defies logic. Pakistan is providing sanctuary and support to the Afghan Taliban who have not demonstrated an agenda to destabilize Pakistan. Why should we be more worried than the Pakistanis themselves?

Viewing Afghanistan as holding the key to Pakistan shows a misunderstanding of Pakistan. It is, to be sure, a weak state. But the threats to it are mostly internal and the result of deep divisions within the society and decades of poor governance. If Pakistan ever fails, it will not be because of terrorists coming across its western border.

#### No Pakistan takeover

**ASG 10 – The Afghanistan Study Group**—an ad hoc group of public policy practitioners, former U.S. government officials, academics, business representatives, policy-concerned activists and association leaders concerned with the Obama administration’s policy course in Afghanistan, 2010 (“America’s Interests,” *A New Way Forward: Rethinking U.S. Strategy in Afghanistan*, August 16th, Available Online at http://www.afghanistanstudygroup.org/NewWayForward\_report.pdf, Accessed 08-29-2010)

Fortunately, the danger of a radical takeover of the Pakistani government is small. Islamist extremism in Pakistan is concentrated within the tribal areas in its northwest frontier, and largely confined to its Pashtun minority (which comprises about 15 percent of the population). The Pakistani army is primarily Punjabi (roughly 44 percent of the population) and remains loyal. At present, therefore, this second strategic interest is not seriously threatened.

## 2NC

### No Escalation

#### No escalation—great powers don’t want it

**Kucera 10**—regular contributor to U.S. News and World Report, Slate and EurasiaNet (Joshua, Central Asia Security Vacuum, 16 June 2010, http://the-diplomat.com/2010/06/16/central-asia%E2%80%99s-security-vacuum/)

Note – CSTO = Collective Security Treaty Organization

Yet when brutal violence broke out in one of the CSTO member countries, Kyrgyzstan, just days later, the group didn’t respond rapidly at all. Kyrgyzstan’s interim president, Roza Otunbayeva, even asked Russia to intervene, but Russian President Dmitry Medvedev responded that Russians would only do so under the auspices of the CSTO. And nearly a week after the start of the violence—which some estimate has killed more than 1000 people and threatens to tear the country apart—the CSTO has still not gotten involved, but says it is ‘considering’ intervening. ‘We did not rule out the use of any means which are in the CSTO’s potential, and the use of which is possible regardless of the development of the situation in Kyrgyzstan,’ Russian National Security Chief Nikolai Patrushev said Monday. On June 10-11, another regional security group, the Shanghai Cooperation Organisation, held its annual summit in Tashkent, Uzbekistan. The SCO has similar collective security aims as the CSTO, and includes Russia, China and most of the Central Asian republics, including Kyrgyzstan. But despite the violence that was going on even as the SCO countries’ presidents met in Uzbekistan, that group also didn’t involve itself in the conflict, and made only a tepid statement calling for calm. Civil society groups in Kyrgyzstan and Uzbekistan (much of the violence is directed toward ethnic Uzbeks in Kyrgyzstan, and the centre of the violence, the city of Osh, is right on the border of Uzbekistan) called on the United Nations to intervene. And Otunbayeva said she didn’t ask the US for help. Even Uzbekistan, which many in Kyrgyzstan and elsewhere feared might try to intervene on behalf of ethnic Uzbeks, has instead opted to stay out of the fray, and issued a statement blaming outsiders for ‘provoking’ the brutal violence. The violence has exposed a security vacuum in Central Asia that no one appears interested in filling. In spite of all of the armchair geopoliticians who have declared that a ‘new Great Game’ is on in Central Asia, the major powers seem distinctly reluctant to expand their spheres of influence there. Why? It’s possible that, amid a tentative US-Russia rapprochement and an apparent pro-Western turn in Russian foreign policy, neither side wants to antagonize the other. The United States, obviously, also is overextended in Iraq and Afghanistan and has little interest in getting in the middle of an ethnic conflict in Kyrgyzstan. It’s possible that the CSTO Rapid Reaction Force isn’t ready for a serious intervention as would be required in Kyrgyzstan. (It’s also possible that Russia’s reluctance is merely a demure gesture to ensure that they don’t seem too eager to get involved; only time will tell.)

### No UQ

If Hamid Karzai cannot reach an agreement with America for some troops to stay, then NATO is scheduled to pull out completely by the end of the year.

#### Every component of this AFF is inevitable

Biddle, September 13- Professor of Political Science and International Affairs at George Washington University and Adjunct Senior Fellow for Defense Policy at the Council on Foreign Relations (Stephen, “Ending the War in Afghanistan: How to Avoid Failure on the Installment Plan” Foreign Affairs, Sept/Oct, proquest)

International forces in Afghanistan are preparing to hand over responsibility for security to Afghan soldiers and police by the end of 2014. U.S. President Barack Obama has argued that battlefield successes since 2009 have enabled this transition and that with it, "this long war will come to a responsible end." But the war will not end in 2014. The U.S. role may end, in whole or in part, but the war will continue-and its ultimate outcome is very much in doubt.

Should current trends continue, U.S. combat troops are likely to leave behind a grinding stalemate between the Afghan government and the Taliban. The Afghan National Security Forces can probably sustain this deadlock, but only as long as the U.S. Congress pays the multibillion-dollar annual bills needed to keep them fighting. The war will thus become a contest in stamina between Congress and the Taliban. Unless Congress proves more patient than the Taliban leader Mullah Omar, funding for the ansf will eventually shrink until Afghan forces can no longer hold their ground, and at that point, the country could easily descend into chaos. If it does, the war will be lost and U.S. aims forfeited. A policy of simply handing off an ongoing war to an Afghan government that cannot afford the troops needed to win it is thus not a strategy for a "responsible end" to the conflict; it is closer to what the Nixon administration was willing to accept in the final stages of the Vietnam War, a "decent interval" between the United States' withdrawal and the eventual defeat of its local ally.

#### Impact inevitable – residual force

Biddle, September 13- Professor of Political Science and International Affairs at George Washington University and Adjunct Senior Fellow for Defense Policy at the Council on Foreign Relations (Stephen, “Ending the War in Afghanistan: How to Avoid Failure on the Installment Plan” Foreign Affairs, Sept/Oct, proquest)

In the near term, Congress will probably pay the ansf what the White House requests, but the more time goes on, the more likely it will be that these appropriations will be cut back. It will not take much reduction in funds before the ansf contracts to a size that is smaller than what it needs to be to hold the line or before a shrinking pool of patronage money splits the institution along factional lines. Either result risks a return to the civil warfare of the 1990s, which would provide exactly the kind of militant safe haven that the United States has fought since 2001 to prevent.

Managing the congressional politics around sustaining Afghan forces after the transition was feasible back when Washington assumed that a troop surge before the transition would put the Taliban on a glide path to extinction. The United States would still have had to give billions of dollars a year to the ansf, but the war would have ended relatively quickly. After that, it would have been possible to demobilize large parts of the ansf and turn the remainder into a peacetime establishment; aid would then have shrunk to lower levels, making congressional funding a much easier sell. But that is not the scenario that will present itself in 2014. With an indefinite stalemate on the horizon instead, the politics of funding the ansf will be much harder to handle-and without a settlement, that funding will outlast the Taliban's will to fight only if one assumes heroic patience on the part of Congress.

#### The magnitude is the same

Mead, 9/19/13– Sir Walter Russell (“As Withdrawal Approaches, Afghanistan Gets Bloody”, <http://blogs.the-american-interest.com/wrm/2013/09/19/as-withdrawal-approaches-afghanistan-gets-bloody/>)

A senior election official was assassinated in Afghanistan’s Kunduz province on Tuesday, the first killing directly linked to next spring’s critical presidential elections. The Taliban quickly claimed responsibility for the attack on their Twitter feed. Then, in nearby Badakhshan province yesterday, Taliban fighters reportedly killed 10 police and kidnapped 16. Both of these attacks occurred in the normally (more) peaceful northern part of the country. Violence in Afghanistan always seems to be simmering away at a low boil, so casual readers may assume that these stories are merely business as usual. But that appears not to be the case: violence is markedly up. The NY Times reports on the grisly trend: While hard figures are scarce this year, a number of public comments have suggested a significant increase in casualties on the government side. The Guardian newspaper this month quoted Gen. Joseph F. Dunford, the American military commander, as saying that Afghan forces were losing 100 killed a week. “I’m not assuming that those casualties are sustainable,” General Dunford was reported to have said. If that trend continued, it would represent a substantial increase over last year’s reported 2,970 deaths for Afghan security forces, including both police and soldiers. On July 22, the interior minister, Gen. Ghulam Mujtaba Patang, addressing Parliament during impeachment proceedings against him, defended himself by saying he had been preoccupied with the rising death toll. “From March 21 up to now, I swear to God, 2,748 police have been martyred,” he said. Leaving Afghanistan in decent shape was never going to be an easy thing to achieve. General Dunford, cited above, estimated that allied forces would have to provide at least five more years of support before the Afghan security forces could stand on their own two feet. There’s just no appetite for that level of sustained engagement in any of the allied capitals. But by setting a hard date for American disengagement, President Obama clearly communicated to the Taliban exactly when applying pressure to the existing government would have the greatest impact. That time appears to be at hand, so look for much, much more of this kind of thing in the coming weeks and months as the Taliban do their worst to maximize their advantage.

### No Impact

#### No impact to Afghan collapse and no spillover

**Silverman, 9** – PhD in international relations-government and, as a Ford Foundation Project Specialist (11/19/09, Jerry Mark, The National Interest, “Sturdy Dominoes,” http://www.nationalinterest.org/Article.aspx?id=22512)

The fear that Pakistan and central Asian governments are too weak to withstand the Taliban leads logically to the proposition—just as it did forty years ago—that only the United States can defend the region from its own extremist groups and, therefore, that any loss of faith in America will result in a net gain for pan-Islamist movements in a zero-sum global competition for power. Unfortunately, the resurrection of “falling dominos” as a metaphor for predicted consequences of an American military withdrawal reflects a profound inability to re-envision the nature of today’s global political environment and America’s place in it.

The current worry is that Pakistan will revive support for the Taliban and return to its historically rooted policy of noninterference in local governance or security arrangements along the frontier. This fear is compounded by a vision of radical Islamists gaining access to Pakistan’s nuclear arsenal. Those concerns are fueled by the judgment that Pakistan’s new democratically elected civilian government is too weak to withstand pressures by its most senior military officers to keep its pro-Afghan Taliban option open. From that perspective, any sign of American “dithering” would reinforce that historically-rooted preference, even as the imperative would remain to separate the Pakistani-Taliban from the Afghan insurgents. Further, any significant increase in terrorist violence, especially within major Pakistani urban centers, would likely lead to the imposition of martial law and return to an authoritarian military regime, weakening American influence even further. At its most extreme, that scenario ends with the most frightening outcome of all—the overthrow of relatively secular senior Pakistani generals by a pro-Islamist and anti-Western group of second-tier officers with access to that country’s nuclear weapons.

Beyond Pakistan, advocates of today’s domino theory point to the Taliban’s links to both the Islamic Movement of Uzbekistan and the Islamic Jihad Union, and conclude that a Taliban victory in Afghanistan would encourage similar radical Islamist movements in Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan. In the face of a scenario of increasing radicalization along Russia’s relatively new, southern borders, domino theorists argue that a NATO retreat from Afghanistan would spur the projection of its own military and political power into the resulting “vacuum” there.

The primary problem with the worst-case scenarios predicted by the domino theorists is that no analyst is really prescient enough to accurately predict how decisions made by the United States today will affect future outcomes in the South and central Asian region. Their forecasts might occur whether or not the United States withdraws or, alternatively, increases its forces in Afghanistan. Worse, it is entirely possible that the most dreaded consequences will occur only as the result of a decision to stay.

With the benefit of hindsight, we know that the earlier domino theory falsely represented interstate and domestic political realities throughout most of Southeast Asia in 1975. Although it is true that American influence throughout much of Southeast Asia suffered for a few years following Communist victories in Cambodia, Laos and Vietnam, we now know that while we viewed the Vietnam War as part of a larger conflict, our opponent’s focus was limited to the unification of their own country. Although border disputes erupted between Vietnam and Cambodia, China and the Philippines, actual military conflicts occurred only between the supposedly fraternal Communist governments of Vietnam, China and Cambodia. Neither of the two competing Communist regimes in Cambodia survived. Further, no serious threats to install Communist regimes were initiated outside of Indochina, and, most importantly, the current political situation in Southeast Asia now conforms closely to what Washington had hoped to achieve in the first place. It is, of course, unfortunate that the transition from military conflict in Vietnam to the welcome situation in Southeast Asia today was initially violent, messy, bloody, and fraught with revenge and violations of human rights. But as the perpetrators, magnitude, and victims of violence changed, the level of violence eventually declined.

#### No escalation

**Collins and Wohlforth 4** (Kathleen, Prof PoliSci–Notre Dame and William, Prof Government–Dartmouth, “Defying ‘Great Game’ Expectations”, Strategic Asia 2003-4: Fragility and Crisis, p. 312-3)

Conclusion

The popular great game lens for analyzing Central Asia fails to capture the declared interests of the great powers as well as the best reading of their objective interests in security and economic growth. Perhaps more importantly, it fails to explain their actual behavior on the ground, as well the specific reactions of the Central Asian states themselves. Naturally, there are competitive elements in great power relations. Each country’s policymaking community has slightly different preferences for tackling the challenges presented in the region, and the more influence they have the more able they are to shape events in concordance with those preferences. But these clashing preferences concern the means to serve ends that all the great powers share. To be sure, policy-makers in each capital would prefer that their own national firms or their own government’s budget be the beneficiaries of any economic rents that emerge from the exploitation and transshipment of the region’s natural resources. But the scale of these rents is marginal even for Russia’s oil-fueled budget. And for taxable profits to be created, the projects must make sense economically—something that is determined more by markets and firms than governments. Does it matter? The great game is an arresting metaphor that serves to draw people’s attention to an oft-neglected region. The problem is the great-game lens can distort realities on the ground, and therefore bias analysis and policy. For when great powers are locked in a competitive fight, the issues at hand matter less than their implication for the relative power of contending states. Power itself becomes the issue—one that tends to be nonnegotiable. Viewing an essential positive-sum relationship through zero sum conceptual lenses will result in missed opportunities for cooperation that leaves all players—not least the people who live in the region—poorer and more insecure.

While cautious realism must remain the watchword concerning an impoverished and potentially unstable region comprised of fragile and authoritarian states, our analysis yields at least conditional and relative optimism. Given the confluence of their chief strategic interests, the major powers are in a better position to serve as a stabilizing force than analogies to the Great Game or the Cold War would suggest. It is important to stress that the region’s response to the profoundly destabilizing shock of coordinated terror attacks was increased cooperation between local governments and China and Russia, and—multipolar rhetoric notwithstanding—between both of them and the United States. If this trend is nurtured and if the initial signals about potential SCO-CSTO-NATO cooperation are pursued, another destabilizing shock might generate more rather than less cooperation among the major powers. Uzbekistan, Kyrgyzstan, Tajikistan, and Kazakhstan are clearly on a trajectory that portends longer-term cooperation with each of the great powers. As military and economic security interests become more entwined, there are sound reasons to conclude that “great game” politics will not shape Central Asia’s future in the same competitive and destabilizing way as they have controlled its past. To the contrary, mutual interests in Central Asia may reinforce the broader positive developments in the great powers’ relations that have taken place since September 11, as well as reinforce regional and domestic stability in Central Asia.

### Impact O/V Kansas FG

#### Stability offered by liberal-democratic assistance comes at a price—they establish the conditions for long-term exploitation and genocide. The historical record of democratic interventions proves the reality of solvency never lives up to the rhetoric

Oliver RICHMOND IR and Director of Centre for Peace and Conflict Studies @ St. Andrews 9 [*New Perspectives on liberal peacebuilding* eds. Newman, Paris & Richmond p. 59-63]

Backsliding: Emerging problems with the liberal peace The liberal peace offers a blueprint and process for stabilizing postconflict societies. Yet it has shown a marked propensity for backsliding. In cases including Cambodia, the Middle East, Sri Lanka, Lebanon, Kosovo, Bosnia and Timor-Leste, direct or indirect attempts have been made through donor conditionality, arrangements with the World Bank, or diplomatic and strategic relations to instil democratization, pluralism, the rule of law, human rights and neo-liberal forms of marketization. Broad agreement on these terms is normally apparent amongst peacebuilders, which I have previously described as a weak "peace building consensus" about the liberal peace,26 and local actors often nominally join this consensus. Yet, in comparative work in a number of cases, research indicates that, despite the construction of liberal conditionality and institutions, little changes in the discursive political frameworks in post-conflict settings. Nationalists in Bosnia still threaten the unity ofpost-Dayton Bosnia and few reforms have been internalized. In Kosovo, ethnic violence is a regular occurrence and ethnic difference looks set to be the basis for the state that will emerge from the recent declaration of independence. In Timor-Leste, political and socioeconomic problems led to the complete collapse of the liberal state in 2006, four years after the United Nations withdrew and independence was achieved. Recent moves in Timor-Leste have seen welfare and cultural issues placed at the forefront of political debate (and a concurrent stabilization). 2 7 The liberal international " bubble" in Afghanistan barely covers all of Kabul. In many of these cases, a "draw-down" is currently taking place, but there is little indication that what has been achieved is self-sustainable.28 Kant was clear that his perpetual peace system would not advance progressively, but would be subject to attacks, obstacles and problems, both internally and externally. It is also important to note that Kant believed that his system needed to be able to conduct peaceful relations with nonliberal others and should not be used as an excuse for hegemonic practices or wars with such others. It should not become a basis for new and exclusionary practices, as Macmillan argues, against non-liberal others. 29 Any hope of developing a broader peace in these terms therefore requires a broader engagement than is often projected by theorists of the democratic peace—in other words, more liberalism, not a reversion to illiberalism in the hope it will avert any "backsliding". Thus, Kantian approaches to peace required a focus not just on democracy and trade but also on the broader root causes of conflict, including welfare and culture. 30 In this way, Kant was not merely a pillar of his establishment but actually sought to unsettle the comfortable assumptions that his own thinking might lead to, though he also extended Rousseau's thinking on peace by favouring democracy.31 So, extending this line of thought, backsliding for Kant was more than just a structural obstacle; it was also representative of the failure of the putative " liberal" polity to encounter the other in a reflexive and pluralist manner, without reverting to coercive and conditional hegemonic engagement. Kant would not have wanted to see the democratic peace argument, for example, become a reason for colonialism or imperialism redux, as J ahn has shown.32 Backsliding is as much about post-conflict polities failing to achieve and maintain liberal standards as it is about a peace building consensus being imposed with little regard for the "local" and indigenous and, of course, with simplistic assumptions about the universality and transferability of technical and contextual solutions for peace. It also points to the need for a move beyond liberalism. Institutional responses to the problems of liberal peacebuilding often focus on coordination and efficiency in peace building operations, rather than on the deeper issues that have also appeared. These are as follows. As Mann and Snyder have argued, democratization can lead to ethnic polarization and even genocidal violence. 33 Certainly, such polarization has occurred in Bosnia and Kosovo. Liberal human rights can be culturally inappropriate or contested, as can be seen in cultural settings where communities, tribes or clans, rather than individuals, are the unit of analysis, as in much of sub-Saharan Africa, the Pacific or Asia. 34 The rule of law can mask inequity and the privatization of state functions at the expense of the needy, as appears to be the case across all peacebuilding interventions, where subsistence and unemployment rates rarely improve. 35 Civil society building is often subject to "forum shopping" and an instrumentalist project mentality rather than looking at localized needs. Development, in its neo-liberal or modernization forms, can marginalize the needy.36 Indeed, because liberal peace building is more or less always imagined within a liberal and neo-liberal state framework, it can become an agent of ethnocentric self-determination, nationalism and a "bare" socioeconomic life because such states cannot compete internationally in an open market and do not have the resources to establish an economic base. This emergence of bare life for citizens means that the aspired-to liberal social contract between government and citizen is not achieved, and, indeed, citizens may choose to move into grey or black markets, militias or transnational crime. 37 These unintended dynamics are major sources of backsliding and can be observed across a range of peace operations since the end of the Cold War. Do these criticisms mean that the liberal peace is a failed project, or is it merely suffering from stress and can be salvaged? The editors of this volume disagree significantly on this point. Quite clearly it is a top-down project, promoted by an alliance of liberal, hegemonic actors. The peacebuilding consensus behind it is broad, but the liberal peace project is under considerable strain because it does not deliver all that it promises in conflict zones. What is more, it is onto logically incoherent, which is reflected in its coordination. It offers several different states of being—for a state-centric world dominated by sovereign constitutional democracies, a world dominated by institutions, a world in which human rights and selfdetermination are valued. The only way in which this peace system can be coherent is if it is taken to be hierarchical and regulative, which then provides the framework in which human rights and self-determination can be observed. Democracy provides the political system in which this process is made nationally representative. The trouble with this is that the individual is subservient to the structure and system, which may be enabling in some contexts but not in others. Where enforcement and surveillance are weak, abuses generally follow and are committed by the elites who control the various systems that make up the liberal peace. This means that the post-conflict individual, who is relatively powerless, is required to perform "liberal peace acts", such as voting, paying taxes, engaging in the free market and expecting rights, in order to keep the international gaze satisfied, but is not to expect that this performance carries any weight. The liberal peace is easily rendered virtual or hyperreal; the copy does not represent the actual intention of the international community. Thus the liberal peace becomes a virtual peace; more strongly associated with conservative forms of liberalism and underpinned by realist theory. In this sense the liberal peace produced by realist and idealist thinking, and even in the contexts of constructivism and critical theory, is virtual and is constructed primarily for the benefit of the international community, in the hope that locals will benefit later when it becomes internalized and the local is 'converted'. Post-structuralist contributions to international relations theory, which turn this process on its head and argue for the recognition, contextualization, emancipation and de-securitization of the individual, fail to offer a way out of this impasse. Indeed, the mainstream debates have even managed to co-opt aspects of the post-structural agenda—in particular the requirements for emancipation, empathy and care (but not the recognition of alterity)—into the mainstream consensus, producing an emancipatory form of liberalism, at least in rhetorical terms. The international and academic consensus on the liberal peace across the board has been achieved on the assumption that its norms and governance frameworks are universal. But this conclusion has been reached only on the basis of a limited consultation, mainly among the victors of the Second World War. Unfortunately, as is well known, this conversation has reinforced and favoured the hegemony of official actors, key states and their organizations, and has resulted in the relative marginalization of non-state actors, developing states, postcolonial states, individuals, communities and other identity groupings. This can also be described as a form of orientalism, in which liberal epistemic communities of peacebuilders transfer governance regimes through a process of conditional funding, training and dependency creation to more " primitive" recipients in conflict zones. This process is supported by the ideological hegemony of contemporary forms of liberalism, which are projected through the various mediums of print capitalism as unassailable. They aim to make recipients internalize the liberal peace while contradictorily gaining agency and autonomy. There are a number of reasons why this has not worked. First, despite the fact that the Cold War is over, there is a varying resistance to the different ideological aspects and basic assumptions of this liberal peace. Though most accept that democratization should be a cornerstone of political organization, parts of the Middle East, South Asia and subSaharan Africa are led by governments that do not aspire to democracy. This is not to say that the populations of these regions do not aspire to democratic self-determination, but democratic aspirations are very often closely linked with secessionist aspirations and state creation where identity minorities desire separation in order to avoid minority status. Democratization has been shown regularly to result in only a softening of feudal or corrupt politics rather than radical reform. Many across the world aspire to free markets and unfettered trade, but the vast majority of the populations affected by war and conflict are economically disadvantaged because of both war and free trade. Many more see the international political economy as redistributing resources in favour of the elites that drive the neo-liberal character of the liberal peace, meaning that neo-liberal economic policies generally disadvantage the already marginalized. Many resist the neo-liberal development strategies that accompany the liberal peace. Some resist the universal claims of the human rights rhetoric. Many traditional elites have adopted what van der Walle has called the " partial reform syndrome",38 in which local elites use the institutions and dynamics of the liberal peace to their own advantage by literally freeriding on the resources that it provides and by only partially implementing its demands. In this sense, the liberal peace agenda is driven by a neo-liberal notion of power—money and resources can be used to induce institutional development and reform in conflict zones. Local elites often use this to camouflage the lack of reform. Much of the critical focus on this liberal version of peace, however, is on how it concentrates on institutions, officialdom and top-down reform, and thus results in the creation of "empty states" in which citizens are generally not seen or heard. In fact, there has been a major attempt to engage with this problem in order to identify and empower isolated and marginalized groups in post-conflict zones, and indeed to provide every citizen with rights and agency as befits their status in the liberal peace. Yet, inevitably, this has been a troubled process, far outweighed by the more traditional assumption that, if one builds institutions first, then every other aspect of the liberal peace will automatically fall into place. This, of course, means that most energy is expended on the top-down model of the liberal peace. Some, such as Ignatieff, have called this a "rough and ready peace";39 others, such as Fukuyama, have argued that this in effect results in the destruction of what little local or indigenous capacity was already in existence.4o In other words, the liberal peace agenda is far from uncontested, coherent or proven in practice. It is marked by local co-option, backsliding and international unease.

#### Overreliance on utility principles to justify executive detention power turns the lesser evil into the greater by obliterating restraints on the conduct of war – balancing legal checks and balances with security is necessary to create optimal outcomes for both

Richard Ashby Wilson 5, the Gladstein Distinguished Chair of Human Rights and Director of the Human Rights Institute at the University of Connecticut, Human Rights in the War on Terror, p. 19-21

Michael Ignatieff’s ‘lesser evil’ ethics and overreliance on a consequentialist ethics place him much closer to the anti-rights philosophical tradition of utilitarianism than the liberal tradition of human rights. Philosophically and politically, utilitarian consequentialism is about as far from an ethics of human rights as one can travel, and this is borne out in the DOJ memo’s dramatic bolstering of executive power and the sweeping away of the rights of prisoners of war. Jonathan Raban might have a point in suggesting that Ignatieff has become the ‘in-house philosopher’ of the ‘terror warriors’ (2005: 22). Lesser evil reasoning makes a virtue out of lowering accepted standards and surrendering safeguards on individual liberties. In the hands of government officials, it enables unrestrained presidential authority and a disregard for long-standing restraints on the conduct of war. Anyone remotely familiar with the history of twentieth-century Latin America will also be accustomed to ‘lesser evil’ excuses for human rights abuses, given their pervasiveness in the National Security Doctrine of numerous military dictatorships. Ignatieff is aware that a lesser evil ethics can take us down a slippery slope: ‘If a war on terror may require lesser evils, what will keep them from slowly becoming the greater evil? The only answer is democracy itself . . . The system of checks and balances and the division of powers assume the possibility of venality or incapacity in one institution or the other’ (2004: 10-11). This argument now seems rather credulous. Evidence gathered from Abu Ghraib, Guantanamo Bay and U.S. prisons in Afghanistan suggests that torture, the keeping of ‘ghost detainees’ and other violations of the Geneva Conventions were endemic within the system of military custody. By the time government officials weakly diverted blame to by denouncing a few low-ranking ‘bad apples’ in the 272nd Military Police Company, the damage had already been done, to the prisoners and to America’s standing in Iraq and the world. Even if the connection between a lesser evil ethics and a disregard for prisoners’ human rights is coincidental rather than intrinsic, lesser evil advocates have been wildly overconfident about the probity of government and the ability of democratic institutions to monitor closely the boundary between coercion and torture. The evidence points to the contrary view; that the executive branch, at the very least, fostered a legal setting in which prisoner abuse could flourish and excluded any congressional oversight. The monitoring procedures that were in place did not prevent such abuse from becoming widespread and symptomatic. The ‘lesser evil’ moral calculus that simplifies difficult decision making in an ‘age of terrorism’ is a little more complicated for others, and the DOJ memo should have at least demonstrated an awareness that the standard necessity defence case has been challenged comprehensively in jurisprudence and moral philosophy. In the 1970s, the late philosopher Bernard Williams carried out a critique of utilitarianism’s philosophy of the law so devastating that he concluded ‘the simple-mindedness of utilitarianism disqualifies it totally…the day cannot be far off in which we hear no more of it’ (1973: 150). Alas, this was the only part of Williams’ critique that was wide of the mark, since utilitarianism will probably always appeal to those longing for greater executive power. Williams examines a scenario analogous to the necessity defence cases found in the DOJ memo. He considers the case of a man, Jim, who is dropped into a South American village where he is the guest of honor. There, a soldier, Pedro, presents him with the dilemma of intentionally killing one man and saving another nineteen souls, whom Pedro was about to execute. Williams finds the utilitarian answer, that obviously Jim should kill one man to save nineteen, inadequate on a number of grounds. Generally stated, Williams’ position is that utilitarianism ignores individual integrity in its quest for the general good and it neglects the point that each of us are morally responsible for what we do, not what others do. Jim is responsible for his own actions and his not killing one man is not causal to Pedro’s subsequent killing of twenty. To advise Jim to torture or kill the one to save the many is to treat Jim as an impersonal and empty channel for effects in the world, or in Williams’ words, as a janitor of a system of values whose role is not to think or feel, but just to mop up the moral mess. The utilitarian perspective portrays an anxiety about the long-term psychological effects on the agent, say, a person’s feelings or remorse for an act of murder, as self-indulgent. It ignores the life projects to which Jim is committed, and his obligations to friends and family to act in a certain way It treats these commitments as irrational and of no consequence in its moral calculus of the greater good. In this critique, utilitarianism, of the kind that has characterized the legal counsel to President Bush in the ‘war on terror’, ignores individual moral agency and strips human life of what makes it worthwhile. Seeing persons as ends in themselves and not as means to other ends corresponds with a Kantian defence of human rights and liberal democracy more generally. In the struggle against Islamist terrorists, we are well advised to temper our desire for good consequences (which can seldom be predicted in advance) with an equal concern with intentions and integrity of motives. Consequences matter and integrity and good intentions are not in themselves sufficient. Yet developing an approach that is not overreliant on consequentialism and which foregrounds human agency, motivations and intentions could provide enduring grounds for defending human rights in the present climate. It could better equip us with the fundamental ethical principles to go about recombining human rights and security, and work through more carefully which suspensions of ordinary domestic laws and international rule of law are defensible, and which are not.

### 2NC—K Prior

#### Framing war powers restrictions as a *means* to achieve greater national security quashes political alternatives to unilateral war-fighting.

Francisco J. CONTRERAS Prf. Philosophy of Law @ Seville AND Ignacio de la RASILLA Ph.D. candidate in international law, Graduate Institute of International Studies, Geneva 8 “On War as Law and Law as War” Leiden Journal of International Law Vol. 21 Issue 3 p. 779-780 [Gender paraphrased]

War’s ubiquity, its discontinuity, and the blurring of its outline are not without psychological and moral consequences in the military: ‘Experts have long observed that when warfare itself seems to have no clear beginning or end, no clear battlefield, no clear enemy, military discipline, as well as morale, breaks down’ (p. 119). This dispiriting confusion that affects soldiers also concerns the international lawyer, who sees the old rules of jus belli evaporate and be replaced by much vaguer ‘standards’. The last pages of Of War and Law convey, in fact, a clear feeling of defeat or loss, showing the demoralization of the international lawyer who still tries to take the law of war seriously: ‘How can ethical absolutes and instrumental calculations be made to lie down peacefully together? How can one know what to do, how to judge, whom to denounce?’ (p. 117). The former categorical imperatives (‘thou shalt not bomb cities’, ‘thou shalt not execute prisoners’, etc.) give way to an elastic and blurred logic of more and less, within which instrumental might triumphs definitively over the ethical (p. 132).89 As the new flexible ‘standards’ seem more susceptible to strategic exploitation and modulation than do the old strict rules, the various actors will play with the labels of jus belli—now definitively versatile—according to their strategic needs: Ending conflict, calling it occupation, calling it sovereignty—then opening hostilities, calling it a police action, suspending the judicial requirements of policing, declaring a state of emergency, a zone of insurgency—all these are also tactics in the conflict. . . . All these assertions take the form of factual or legal assessments, but we should also understand them as arguments, at once messages and weapons. (p. 122)90 Kennedy reiterates a new aspect of the ‘weaponization of the law’: the legal qualification of facts appears as a means of conveying messages to the enemy and to public opinion alike, because in the age of immediate media coverage, wars are fought as much in the press and opinion polls as they are on the battlefield. The skilled handling of jus belli categories will benefit one side and prejudice the other (p. 127);91 as the coinage of the very term ‘lawfare’ seems to reflect, the legal battle has already become an extension of the military one (p. 126).92 In cataloguing some of the dark sides of the law of war, Kennedy also stresses how the legal debate tends to smother and displace discussions which would probably be more appropriate and necessary. Thus the controversy about the impending intervention in Iraq, which developed basically within the discursive domain of the law of war, largely deprived lawyers of participating in an in-depth discussion on the neo-conservative project of a ‘great Middle East’—more democratic and Western-friendly and less prone to tyranny and terrorism—the feasibility of ‘regime change’, an adequate means of fostering democracy in the region, and so on: We never needed to ask, how should regimes in the Middle East . . . be changed? Is Iraq the place to start? Is military intervention the way to do it? . . .Had our debates not been framed by the laws of war, we might well have found other solutions, escaped the limited choices of UN sanctions, humanitarian aid, and war, thought outside the box. (p. 163) 6. CONCLUSIONS Those familiar with the author’s previous works93 will certainly have already identified the Derridean streak in Kennedy’s thought in the underlying claim that every discourse generates dark zones and silences or represses certain aspects, renders the formulation of certain questions impossible (a Foucauldian streak in the author could be suspected as well: every discourse—be it administrative, legal, medical, or psychiatric—implies simultaneously ‘knowledge’ and ‘power’; each discourse amounts somehow to a system of domination, insofar as it defines ‘conditions of admission’ into the realm of the legally valid, the ‘sane society’, etc.).94 In the picture resulting from the application of this analytical framework to the domain of the use of force, international lawyers and humanitarian professionals appear gagged, restricted by the language they try to utter effectively to themselves and others. As if the legal language had imposed on them its own logic, it now speaks through their voices and what is, evidently, once again, the Marxian-structuralist idea of cultural products gaining a life of their own and turning against their own creators. Kennedy, however, does not stop at noting that jurists have become ‘spoken’ by their language amidst a dramatically changing war scenario. More disquietingly, he stresses the evident corollary of the previous proposition: the evaporation of a sense of individual moral responsibility: [A]ll these formulations, encouraged by the language of law, displace human responsibility for the death and suffering of war onto others . . . . In all these ways, we step back from the terrible responsibility and freedom that comes with the discretion to kill. . . .Violence and injury have lost their author and their judge as soldiers, humanitarians, and statesmen [statespeople] have come to assess the legitimacy of violence in a common legal and bureaucratic vernacular. (pp. 168–9) While depersonalization and a lack of sense of personal responsibility are evidently also favoured by external structural factors, among which is the bureaucratic political complexity of modern states themselves (p. 17),96 Kennedy stresses that the language of international law would thus trivialize and conceal the gravity of decisions: In all these ways, we step back from the terrible responsibility and freedom that comes with the discretion to kill. . . . The problem is loss of the human experience of responsible freedom and free decision—of discretion to kill and let live. (p. 170)

### Link Wall – Kansas FG

#### International Humanitarian Law and the Laws of War constitutively exclude non-Western ways of war.

Claire NIELSEN 8 [“From Nuremberg to The Hague: The Civilizing Mission of International Criminal Law” *Auckland University Law Review* 86-88]

International Humanitarian Law and Frédéric Mégret The traditional narrative of international humanitarian law acknowledges that in the distant past international humanitarian law may have been confined to history.37 The trend from the nineteenth century was the gradual humanizing of war and the laws of war, which were being extended to include ever more classes of people. The Hague Conferences of 1899 and 1907, and their resulting Conventions, feature in the narrative as the beginning of the codification of the laws of war; what may look like political compromises in context become grand statements on the part of states to limit their means and methods of warfare, and to respect humanity as a whole.38 Continuing this trend, the intervention of World War II, and the Nuremberg and Tokyo Tribunals, and the introduction of universal human rights, definitively ensure that any colonial and racist origins no longer have a bearing on “modern” international humanitarian law. All are now included in the framework of international humanitarian law, which begins to focus on its link to international human rights law and its increasing ability to take account of Third World perspectives.39 The laws of war have been fundamentally humanized and cover all those in need of protection. Now, their gravest breaches are punishable by the ICC, the new bastion of humanity and civilization after war. Like Anghie in respect of international law, Frédéric Mégret questions this traditional narrative of international humanitarian law, laying the groundwork for a comprehensive critical theory of international humanitarian law by looking at the exclusions of this body of law.40 In particular, he looks at the possibility that, for all its claims of inclusivity, international humanitarian law features significant exclusions that may have roots in the ambiguous origins of the law itself and be legitimized by it.41 He moots that the laws of war are both inclusive and exclusive, in that for every protection gained there is an “other” excluded from such protection.42 The “other”, which he sees as central to, and constitutive of, the laws of war, is the colonial “other”: the “uncivilized”, the “barbarian”, the “savage”.43 Mégret traces “patterns of exclusion” from the birth of modern international humanitarian law in the nineteenth century through to today’s “war on terror”, revealing a body of law that relies heavily on distinctions between civilized and uncivilized; a body of law reliant on an essentially European conception of “civilized” war that excludes non-European peoples.44 This stereotype of European war becomes the universal standard on which the laws of war are based, and all must conform to the “fantasy” in order to be given its protection.45 In the conventional narrative of international humanitarian law, the laws of war were “de-Westernized” after the Second World War and through the period of decolonization.46 The intervention of international human rights law deeply altered the conception of the laws of war and made it difficult to deny that they were not universally applicable, and, thus, over time, “the whole of humanity” was brought within the laws of war.47 However, in analysing the events surrounding the “war on terror”, Mégret reveals “the persistence of the exclusionary strand embedded within the laws of war”,48 so that while the explicit discourse of civilized versus savage may have disappeared, and while non-Europeans are no longer formally excluded, the pattern of exclusion persists. This pattern of exclusion is reliant on the idea of legitimate warfare, the Western method of waging war, which is embedded and universalized in the laws of war,49 so that those who do not conform are continuously excluded from the protection of the law.50 Thus, the laws of war become “a project of Western imperialism”,51 by which a stereotype of Western warfare is disseminated and universalized, forcing non-Western nations to conform and make the laws of war their frame of reference.52

Further erosion of the rule of law in nations such as Egypt and Pakistan could further destabilize these states, with dire consequences for global security

#### Rule of Law is actually Rule through law. International legal culture articulates the interests and techniques of rule of dominant states.

Nikolas RAJKOVIC Law @ Kent ’10 “‘Global law’ and governmentality: Reconceptualizing the ‘rule of law’ as rule ‘through’ law” *European Journal of Int’l Relations* 18 (1) p. 30

The ‘rule of law’, as a concept, has generated considerable enthusiasm within the contemporary practice and academic study of world affairs.1 This conceptual ascendancy has been propelled by a rising liberal literature in both International Relations (IR) and International Law (IL) which has emphasized the role of law as a structural constraint on state behaviour. The outcome has been a discursive climate where the ‘rule of law’ commands a rhetorical zeal unmatched in current political speech, and where it is difficult for anyone to credibly and persuasively contest the imperative that domestic and international politics should be subject to the ‘rule of law’. Within a liberal academia, the ‘rule of law’ concept commands a powerful research agenda which claims a realignment of world governance from an international to a now more ‘global’ regime (Abbott et al., 2000; Bass, 2000; Ikenberry and Slaughter, 2006; Keck and Sikkink, 1998; Risse et al., 1999; Simma and Paulus, 1998; Slaughter, 1995, 2003, 2004, 2007). Varied kinds of historical events and political practices have been touted as confirming such a ‘rule of law’ trajectory. First and foremost, the September 2001 attacks on the United States inaugurated a wave of legislative and executive responses which established an extra-legal ‘counter-terror’ regime (Fitzpatrick, 2003; Heug and McDonagh, 2008); a move endorsed by the United Nations with Security Council Resolution 1373. Second, international courts of criminal justice have risen to prominence, initiated by the UN Security Council with ad hoc courts for the Former Yugoslavia, Rwanda, Cambodia and Sierra Leone, and then followed by the Rome Treaty establishing the International Criminal Court (ICC). Third, a movement for ‘transnational justice’ is said to be manifest, loosely populated by various state, judicial and non-state actors, pushing an accountability agenda on ‘human rights’ beyond the state (Finnemore and Sikkink, 1998; Keck and Sikkink, 1998; Risse et al., 1999); some even allege that a ‘global community of courts’ has emerged which integrates international and national law into a unifying ‘global’ system (Slaughter, 2003). Fourth, we see an increased resort to legalistic discourse and justifications that accompany foreign policy actions and pronouncements, with themes such as ‘legality’ (Abbott et al., 2000; Falk, 2005) and ‘human rights’ regularly clothing the actions of state and non-state actors. Yet, this article is not about announcing an established trend or substantiating the relevance of the ‘rule of law’ in contemporary international affairs. The ‘rule of law’ has indeed arrived in world affairs, and the aim of this article is to prompt critical reflection on key assumptions which now gird the ‘rule of law’ topos in academic and practical understandings. I argue that there are three interwoven claims which guide mainstream liberal understandings of the ‘rule of law’ in the practice of world affairs. First, that international law has more or less emerged as a significant factor in the actual and discursive practice of international affairs. Second, the alleged ascendancy of law has given structural salience to non-state actors, such as international courts and transnational advocacy groups. Third, the institutionalization of political authority in world affairs has begun to shift from a state-centric structure to that of a ‘global’ regime governed by ‘global’ legal actors and laws which increasingly direct political conduct. This article takes critical aim at these assumptions, to challenge the bright-eyed optimism common to research programmes on the ‘rule of law’ in world affairs. I argue, first, that the concept of the ‘rule of law’ is often employed with sparse inquiry into the politics of its actual meaning; and thus, while varied literatures have identified the ‘rule of law’ as a salient concept (or efficient ‘variable’), insufficient analysis has been directed at what the ‘rule of law’ actually means as a practical concept and how its conceptualization is a subject for political scrutiny. Second, theorizing on the ‘rule of law’ has promoted a zero-sum conception of power, where it is alleged that deference to law and legal entities (e.g. international courts) translates into a subsequent marginalization of state power and authority. Third, studies on the ‘rule of law’ in world affairs have served to obfuscate our understanding of global governance vis-a-vis law, by utilizing an analytical framework which identifies authority with either the state or a ‘global’ legal regime. Lost is an appreciation of how rule can be constituted and conducted through plural and complex relations between state actors, international laws and nonstate legal actors. These three stated criticisms provide motive to consider an alternative manner of theorizing the ‘rule of law’ in world affairs. How we explain the relationship between state actors and an alleged ‘global legal system’ necessitates an approach, I argue, that perceives law not as a self-contained and panacea-like universe but rather as a practice of government aimed at directing human conduct. In this way, I assert that the ‘rule of law’ topos is an analytical red herring**,** and political analysts would gain more insight by treating the association between politics and law in world affairs as rule ‘through’ law**.** This proposed revision is about more than semantics, as the following considerations attest. First, key sources of international law, such as treaties and customs, did not arise independent of politics, but rather were made by and between different kinds of states — thus according to particular political advantages. Second, different types of international legal institutions, credited with an active role in global governance (e.g. the ICC or the WTO), did not arise in a political vacuum either: they owe their existence and continued function to the support and funding of key states. Indeed, such aspects are readily acknowledged by IR and IL scholars as taken-for-granted. Yet, this may be the analytical problem: what has been missing is a theoretical approach which emphasizes ‘the mechanisms of power’ (Sending and Neumann, 2006: 652), and domination implied in such relations, as a regime of practice and government. Such a manner of theorizing, I argue, becomes possible with reference to Michel Foucault’s concept of ‘governmentality’. Foucauldian ‘governmentality’ provides us with two potential insights for assessing the role of law in global governance. First, governmentality can be used to treat the emergence of a ‘global legal system’ as a rationality of government; whereby legal norms and legal entities are characterized not in opposition to state power but rather as a means for government by dominant states. Such a perspective challenges the popular assumption that deference to law and legal actors is evidence of a transfer of power from an inter-state to a genuinely global structure of governance; to appreciate how governance through law can be a key asset for political rule and domination. Second, drawing upon Mitchell Dean’s (1999) notion of ‘mentalities’ of government, governmentality highlights the significance of collective thought in conditioning how we think about the exercise of authority in world affairs; and here the prescriptive force of legality should be considered potent as it provides meaning and signification capable of governing perceptions of ‘just’ rule in world affairs. Taken together, these two aspects of governmentality. applied to law in world affairs provide a perspective which turns a popular understanding on its head, identifying the ‘rule of law’ not in opposition to politics but rather as a powerful ordering rationality and hence means for government.

### Nat Security Link

#### Legal checks on the executive institutionalizes warfare – critique is the only way out

JOCHNICK AND NORMAND 94. Chris JOCHNICK Director of Projects, Center for Economic and Social Rights AND Roger NORMAND Director of Policy Center for Economic and Social Rights ’94 [“The Legitimation of Violence: A Critical History of the Laws of War” 35 Harv. Int'l L.J. 49 L/N]

While the laws of war impose no substantive restraints on pre-existing customary military practices, they nevertheless have an impact on war. The mere belief that law places humane limits on war, even if factually mistaken, has profound consequences for the way people view war, and therefore the way that war is conducted. The credibility of laws of war lends unwarranted legitimacy to customary military practices. Acts sanctioned by law enjoy a humanitarian cover that helps shield them from criticism. As one commentator warned, "precisely because aggression in its crudest form is now so universally condemned, many of the assaults that are made will be dressed up in some more respectable garb . . . . Because public opinion is itself so confused, [\*57] aggression may secure its fruits without paying the deserved penalty in international goodwill." n21 The "respectable garb" with which belligerents have dressed their assaults is precisely the laws themselves. By legitimating conduct, the laws serve to promote it. Law legitimates conduct on two levels. Because people generally view compliance with "the law" as an independent good, acts are validated by simply being legal. In particular, sovereign conduct that complies with the law will appear more legitimate than that which violates it. n22 Nations acknowledge the power of this form of legitimation by seeking to explain their actions by reference to law. n23 According to a former Legal Advisor to the U.S. State Department, "legal justification is part of the over-all defence [sic] of a public decision." n24 Proponents of Critical Legal Studies ("CLS") n25 identify a deeper sense of legitimation. n26 They argue that law functions ideologically to both reinforce "shared values" and to impress upon people a sense of obligation to the existing order. n27 More than simply supporting or deterring a particular act, law influences the public perception of an act by imbuing it with the psychic trappings of lawfulness. In this way, law helps condition people to accept the prevailing distribution of social and political power, which in turn reinscribes its hierarchies into the law. These effects are by their nature hidden; the contingent, malleable power relations that produce law are made to seem natural, neutral, and inevitable. n28 In essence, this legitimation theory involves a two [\*58] stage process in which law is internalized as belief and belief leads to compliance. Whereas national law legitimates the domestic social order, the international legal regime reflects and reifies the status, rights, and obligations of states. n29 Here again, law operates to shape discourse and lends credence and inevitability to existing arrangements. n30 In the context of war, the basic fact that nations purport to respect the rule of law helps protect the entire structure of war-making from more fundamental challenges. While the laws themselves speak to sovereign nations, their psycho-social effects are visited upon the public at large. A critical understanding of international law compels a reevaluation of the role of law in deterring wartime atrocities. By endorsing military necessity without substantive limitations, the laws of war ask only that belligerents act in accord with military self-interest. n31 Belligerents who meet this hollow requirement receive in return a powerful rhetorical tool to protect their controversial conduct from humanitarian challenges. n32 The notion that humanitarian rhetoric can subvert its stated purpose raises several important questions: How does the legal hierarchy of [\*59] sovereign over individual interests affect the perception of war? How does legal language influence popular attitudes towards wartime violence? How does the law's sanction affect public support for military conduct? Do these effects translate into more or less public pressure on belligerents to adhere to humanitarian standards? These questions have no clear, empirically based answers. n33 However, the importance of public support for war, coupled with the growing stature of international legal rhetoric, validates the search for a critical understanding of the legitimating effects of law. Moreover, the capacity of the laws of war to subvert their own humane rhetoric carries an implicit warning for future attempts to control wars: the promotion of supposedly humane laws may serve the purposes of unrestrained violence rather than of humanity.

### Afghanistan link

#### Striving for Afghan stability is a metaphor for the desire of maintaining bio-political control

Engelhardt, 09(Tom Engelhardt, co-founder of [the American Empire Project](http://www.americanempireproject.com/) and contributor to [Foreign Policy In Focus](http://www.fpif.org), runs the Nation Institute's TomDispatch.com, 3/1/09 Foreign Policy In Focus, “The Imperial Unconscious” Google)

Here, according to Bloomberg News, is part of Secretary of Defense Robert Gates’s recent testimony on the Afghan War before the Senate Foreign Relations Committee: U.S. goals in Afghanistan must be 'modest, realistic,' and 'above all, there must be an Afghan face on this war,' Gates said. 'The Afghan people must believe this is their war and we are there to help them. If they think we are there for our own purposes, then we will go the way of every other foreign army that has been in Afghanistan. Now, in our world, a statement like this seems so obvious, so reasonable as to be beyond comment. And yet, stop a moment and think about this part of it: “There must be an Afghan face on this war.” U.S. military and civilian officials used an equivalent phrase in 2005-2006 when things were going really, really wrong in Iraq. It was then commonplace — and no less unremarked upon — for them to urgently suggest that an “Iraqi face” be put on events there. Evidently back in vogue for a different war, the phrase is revelatory — and oddly blunt. As an image, there’s really only one way to understand it (not that anyone here stops to do so). After all, what does it mean to “put a face” on something that assumedly already has a face? In this case, it has to mean putting an Afghan mask over what we know to be the actual “face” of the Afghan War — ours — a foreign face that men like Gates recognize, quite correctly, is not the one most Afghans want to see. It’s hardly surprising that the Secretary of Defense would pick up such a phrase, part of Washington’s everyday arsenal of words and images when it comes to geopolitics, power, and war. And yet, make no mistake, this is Empire-speak, American-style. It’s the language — behind which lies a deeper structure of argument and thought — that is essential to Washington’s vision of itself as a planet-straddling goliath. Think of that “Afghan face” mask, in fact, as part of the flotsam and jetsam that regularly bubbles up from the American imperial unconscious. Of course, words create realities even though such language, in all its strangeness, essentially passes unnoticed here. Largely uncommented upon, it helps normalize American practices in the world, comfortably shielding us from certain global realities; but it also has the potential to blind us to those realities, which, in perilous times, can be dangerous indeed. So let’s consider just a few entries in what might be thought of as *The Dictionary of American Empire-Speak.*

## 1NR

### 1nr—Overview

**The plan solves Middle East instability which high prices are contingent on --- markets and speculators bet on future prices --- when those markets perceive instability as permanent they add a huge risk premium --- this makes status quo prices look like pocket change --- that’s Owens**

**High prices are key to renewables—that solves warming—Warming outweighs --- Brandenburg says it causes sea level rise, deforestation, oxygen disappearance, ocean evaporation, and ultraviolet radiation --- results in total extinction --- no AFF impact rises to this level --- the difference between total extinction and near extinction is huge.**

**Matheny 7** (Jason, Ph.D. Candidate in the Department of Health Policy and Management at the Bloomberg School of Public Health at Johns Hopkins University, *Reducing the Risk of Human Extinction*, Risk Analysis, Volume 27, Number 5, Available Online at http://www.upmc-biosecurity.org/website/resources/publications/2007\_orig-articles/2007-10-15-reducingrisk.html)

We may be poorly equipped to recognize or plan for extinction risks (Yudkowsky, 2007). We may not be good at grasping the significance of very large numbers (catastrophic outcomes) or very small numbers (probabilities) over large timeframes. We struggle with estimating the probabilities of rare or unprecedented events (Kunreuther et al., 2001). Policymakers may not plan far beyond current political administrations and rarely do risk assessments value the existence of future generations.18 We may unjustifiably discount the value of future lives. Finally, extinction risks are market failures where an individual enjoys no perceptible benefit from his or her investment in risk reduction. Human survival may thus be a good requiring deliberate policies to protect. It might be feared that consideration of extinction risks would lead to a reductio ad absurdum: we ought to invest all our resources in asteroid defense or nuclear disarmament, instead of AIDS, pollution, world hunger, or other problems we face today. On the contrary, programs that create a healthy and content global population are likely to reduce the probability of global war or catastrophic terrorism. They should thus be seen as an essential part of a portfolio of risk-reducing projects.Discussing the risks of “nuclear winter,” Carl Sagan (1983) wrote: Some have argued that the difference between the deaths of several hundred million people in a nuclear war (as has been thought until recently to be a reasonable upper limit) and the death of every person on Earth (as now seems possible) is only a matter of one order of magnitude. For me, the difference is considerably greater. Restricting our attention only to those who die as a consequence of the war conceals its full impact. If we are required to calibrate extinction in numerical terms, I would be sure to include the number of people in future generations who would not be born. A nuclear war imperils all of our descendants, for as long as there will be humans. Even if the population remains static, with an average lifetime of the order of 100 years, over a typical time period for the biological evolution of a successful species (roughly ten million years), we are talking about some **500 trillion people** yet to come. By this criterion, the stakes are **one million times greater** for extinction than for the more modest nuclear wars that kill “only” hundreds of millions of people. There are many other possible measures of the potential loss—including culture and science, the evolutionary history of the planet, and the significance of the lives of all of our ancestors who contributed to the future of their descendants. Extinction is the undoing of the human enterprise. In a similar vein, the philosopher Derek Parfit (1984) wrote: I believe that if we destroy mankind, as we now can, this outcome will be much worse than most people think. Compare three outcomes:

1. Peace

2. A nuclear war that kills 99% of the world’s existing population

3. A nuclear war that kills 100%

2 would be worse than 1, and 3 would be worse than 2. Which is the greater of these two differences? Most people believe that the greater difference is between 1 and 2. I believe that the difference between 2 and 3 is very much greater.... The Earth will remain habitable for at least another billion years. Civilization began only a few thousand years ago. If we do not destroy mankind, these thousand years may be only a **tiny fraction** of the whole of civilized human history. The difference between 2 and 3 may thus be the difference between this tiny fraction and all of the rest of this history. If we compare this possible history to a day, what has occurred so far is only a **fraction of a second**. Human extinction in the next few centuries could reduce the number of future generations by thousands or more. We take extraordinary measures to protect some endangered species from extinction. It might be reasonable to take extraordinary measures to protect humanity from the same.19 To decide whether this is so requires more discussion of the methodological problems mentioned here, as well as research on the extinction risks we face and the costs of mitigating them.20

**All other impacts are reversible.**

**Tobin 90** (Richard, Associate Prof. Pol. Sci. @ SUNY Buffalo, *The Expendable Future: U.S. Politics and the Protection of Biological Diversity*, p. 14)

In fact, when compared to all other environmental problems, human-caused extinctions are likely to be of far greater concern. Extinction is the permanent destruction of unique life forms and the only irreversible ecological change that humans can cause. No matter what the effort or sincerity of intentions, extinction species can never be replaced. “From the standpoint of permanent despoliation of the planet,” Norman Myers observes, no other form of environmental degradation “is anywhere so significant as the fallout of species.” Harvard biologist Edward O. Wilson is less modest in assessing the relative consequences of human-caused extinctions. To Wilson, the worst thing that will happen to earth is not economic collapse, the depletion of energy supplies, or even nuclear war. As frightful as these events might be, Wilson reasons that they can be repaired within a few generations. The one process ongoing … that will take millions of years to correct is the loss of genetic and species diversity by destruction of natural habitats.” David Ehrenfeld succinctly summarizes the problem and the need for a solution: “We are masters of extermination, yet creation is beyond our powers…. Complacency in the face of this terrible dilemma is inexcusable.” Ehrenfeld wrote these words in the early 1970s. Were he to write today he would likely add a note of dire urgency. If scientists are correct in their assessments of current extinctions and reasonably confident about extinction rates in the near future, then a concentrated and effective response to human-caused extinctions is essential. The chapters that follow evaluate that response in the United States.

**Its try or die --- every AFF impact is inevitable due to resource conflict.**

**Klare 6** (Michael, Professor of peace and world security studies at Hampshire College, *The Coming Resource Wars*, March 10th, http://www.alternet.org/environment/33243)

It's official: the era of resource wars is upon us. In a major London address, British Defense Secretary John Reid warned that global climate change and dwindling natural resources are combining to increase the **likelihood** of violent conflict over land, water and energy. Climate change, he indicated, "will make **scarce resources**, clean water, viable agricultural land even scarcer" -- and this will "make the emergence of violent conflict more rather than less likely." Although not unprecedented, Reid's prediction of an upsurge in resource conflict is significant both because of his senior rank and the vehemence of his remarks. "The blunt truth is that the lack of water and agricultural land is a significant contributory factor to the tragic conflict we see unfolding in Darfur," he declared. "We should see this as a warning sign." Resource conflicts of this type are most likely to arise in the developing world, Reid indicated, but the more advanced and affluent countries are not likely to be spared the damaging and destabilizing effects of global climate change. With sea levels rising, water and energy becoming increasingly scarce and prime agricultural lands turning into deserts, internecine warfare over access to vital resources will become a global phenomenon. Reid's speech, delivered at the prestigious Chatham House in London (Britain's equivalent of the Council on Foreign Relations), is but the most recent expression of a growing trend in strategic circles to view environmental and sresource effects -- rather than political orientation and ideology -- as the most potent source of armed conflict in the decades to come. With the world population rising, global consumption rates soaring, energy supplies rapidly disappearing and climate change eradicating valuable farmland, the stage is being set for persistent and worldwide struggles over vital resources. Religious and political strife will not disappear in this scenario, but rather will be channeled into contests over valuable sources of water, food and energy. Prior to Reid's address, the most significant expression of this outlook was a report prepared for the U.S. Department of Defense by a California-based consulting firm in October 2003. Entitled "An Abrupt Climate Change Scenario and Its Implications for United States National Security," the report warned that global climate change is more likely to result in **sudden**, cataclysmic environmental events than a gradual (and therefore manageable) rise in average temperatures. Such events could include a substantial increase in global sea levels, intense storms and hurricanes and continent-wide "dust bowl" effects. This would trigger pitched battles between the survivors of these effects for access to food, water, habitable land and energy supplies. "Violence and disruption stemming from the stresses created by abrupt changes in the climate pose a different type of threat to national security than we are accustomed to today," the 2003 report noted. "Military confrontation may be triggered by a desperate need for natural resources such as energy, food and water rather than by conflicts over ideology, religion or national honor." Until now, this mode of analysis has failed to command the attention of top American and British policymakers. For the most part, they insist that ideological and religious differences -- notably, the clash between values of tolerance and democracy on one hand and extremist forms of Islam on the other -- remain the main drivers of international conflict. But Reid's speech at Chatham House suggests that a major shift in strategic thinking may be under way. Environmental perils may soon dominate the world security agenda. This shift is due in part to the growing weight of **evidence** pointing to a significant human role in altering the planet's basic climate systems. Recent studies showing the rapid shrinkage of the polar ice caps, the accelerated melting of North American glaciers, the increased frequency of severe hurricanes and a number of other such effects all suggest that dramatic and potentially harmful changes to the global climate have begun to occur. More importantly, they conclude that human behavior -- most importantly, the burning of fossil fuels in factories, power plants, and motor vehicles -- is the most likely cause of these changes. This assessment may not have yet penetrated the White House and other bastions of head-in-the-sand thinking, but it is clearly gaining ground among scientists and thoughtful analysts around the world. For the most part, public discussion of global climate change has tended to describe its effects as an environmental problem -- as a threat to safe water, arable soil, temperate forests, certain species and so on. And, of course, climate change is a potent threat to the environment; in fact, the greatest threat imaginable. But viewing climate change as an environmental problem fails to do justice to the magnitude of the peril it poses. As Reid's speech and the 2003 Pentagon study make clear, the greatest danger posed by global climate change is not the degradation of ecosystems per se, but rather the disintegration of entire human societies, producing wholesale starvation, mass migrations and recurring conflict over resources. "As famine, disease, and weather-related disasters strike due to abrupt climate change," the Pentagon report notes, "many countries' needs will exceed their carrying capacity" -- that is, their ability to provide the minimum requirements for human survival. This "will create a sense of **desperation**, which is likely to lead to offensive **aggression**" against countries with a greater stock of vital resources. "Imagine eastern European countries, struggling to feed their populations with a falling supply of food, water, and energy, eyeing Russia, whose population is already in decline, for access to its grain, minerals, and energy supply." Similar scenarios will be replicated all across the planet, as those without the means to survival invade or migrate to those with greater abundance -- producing **endless struggles** between resource "haves" and "have-nots." It is this prospect, more than anything, that worries John Reid. In particular, he expressed concern over the inadequate capacity of poor and unstable countries to cope with the effects of climate change, and the resulting risk of state collapse, civil war and mass migration. "More than 300 million people in Africa currently lack access to safe water," he observed, and "climate change will worsen this dire situation" -- provoking more wars like Darfur. And even if these social disasters will occur primarily in the developing world, the wealthier countries will also be caught up in them, whether by participating in peacekeeping and humanitarian aid operations, by fending off unwanted migrants or by fighting for access to overseas supplies of food, oil, and minerals. When reading of these nightmarish scenarios, it is easy to conjure up images of desperate, starving people killing one another with knives, staves and clubs -- as was certainly often the case in the past, and could easily prove to be so again. But these scenarios also envision the use of more **deadly weapons**. "In this world of warring states," the 2003 Pentagon report predicted, "nuclear arms **proliferation** is inevitable." As oil and natural gas disappears, more and more countries will rely on nuclear power to meet their energy needs -- and this "will accelerate nuclear proliferation as countries develop enrichment and reprocessing capabilities to ensure their national security." Although speculative, these reports make one thing clear: when thinking about the calamitous effects of global climate change, we must emphasize its social and **political consequences** as much as its purely environmental effects. Drought, flooding and storms can kill us, and surely will -- but so will wars among the survivors of these catastrophes over what remains of food, water and shelter. As Reid's comments indicate, no society, however affluent, will escape involvement in these forms of conflict.

**Nuclear war won’t escalate**

**Quinin 97** (Michale, Under Secretary of the State for Defense, *Thinking about Nuclear Weapons*, 31)

There are good reasons for fearing escalation: the confusion of war; its stresses, anger, hatred, and the desire for revenge; reluctance to accept the humiliation of backing down; perhaps the temptation to get further blows in first. Given all this, the risks of escalation—which Western leaders were rightly wont to emphasize in the interests of deterrence—are grave. But this is not to say that they are virtually certain, or even necessarily odds-on; still less that they are so for all the assorted circumstances in which the situation might arise, in a nuclear world to which past experience is only a limited guide. It is entirely possible, for example, that the initial use of nuclear weapons, breaching a barrier that has held since 1945, might so appall both sides in a conflict that they recognised an overwhelming common interest in composing their differences. The human pressures in that direction would be very great. Even if initial nuclear use did not quickly end the fighting, the supposition of inexorable momentum in a developing exchange, with each side rushing to overreaction amid confusion and uncertainty, is implausible; it fails to consider what the decision-makers' situation would really be. Neither side could want escalation; both would be appalled at what was going on; both would be desperately looking for signs that the other was ready to call a halt; both, given the capacity for evasion or concealment which modern delivery systems can possess, could have in reserve ample forces invulnerable enough not to impose `use or lose' pressures. As a result, neither could have any predisposition to suppose, in an ambiguous situation of enormous risk, that the right course when in doubt was to go on copiously launching weapons. And none of this analysis rests on any presumption of highly subtle, pre-concerted or culture-specific rationality; the rationality required is plain and basic.

**That’s supercharged by commander assassination.**

**Walsh 85** (Edward, Lieutenant colonel in Air Force, *Nuclear War Opposing Viewpoints*, p. 51)

No president or dictator, madman or otherwise would take it upon himself [sic] to launch an all out nuclear attack without due consultation with his [sic] staff. **It is a natural human phenomenon** that there would be certain members of this staff with an invincible sense of survival who would **resort to assassination** before allowing themselves and their nation to be subjected to a retaliatory holocaust.

**Counterforce strikes mean only 20 million die.**

**Mueller 9** (John, Woody Hayes Chair of National Security Studies and Professor of Political Science at Ohio State University, *Atomic Obsession: Nuclear Alarmism from Hiroshima to Al-Qaeda*, pg. 8)

To begin to approach a condition that can credibly justify applying such extreme characterizations as societal annihilation, a full-out attack with hundreds, probably thousands, of thermonuclear bombs would be required. Even in such extreme cases, the area actually devastated by the bombs' blast and thermal pulse effects would be limited: 2,000 I-MT explosions with a destructive radius of 5 miles each would directly demolish less than 5 percent of the territory of the United States, for example. Obviously, if major population centers were targeted, this sort of attack could inflict massive casualties. Back in cold war days, when such devastating events sometimes seemed uncomfortably likely, a number of studies were conducted to estimate the consequences of massive thermonuclear attacks. One of the most prominent of these considered several possibilities. The most likely scenario--one that could be perhaps be considered at least to begin to approach the rational-was a "counterforce" strike in which well over 1,000 thermonuclear weapons would be targeted at America's ballistic missile silos, strategic airfields, and nuclear submarine bases in an effort to destroy the country's strategic ability to retaliate. Since the attack would not directly target population centers, most of the ensuing deaths would be from radioactive fallout, and the study estimates that from 2 to 20 million, depending mostly on wind, weather, and sheltering, would perish during the first month.

**No nuclear winter**

**Bell 6** (Desmond, Professor at the Strategic and Defense Studies Centre at the Australian National University, *The Probabilities of On the Beach: Assessing ‘Armageddon Scenarios’ in the 21st Century*, Working Paper No. 401, Strategic and Defence Studies Centre at The Australian National University, http://rspas.anu.edu.au/papers/sdsc/wp/wp\_sdsc\_401.pdf)

I argued vigorously with Sagan about the ‘Nuclear Winter’ hypothesis, both in lengthy correspondence and, in August-September 1985, when I was a guest in the lovely house he and Ann Druyan had overlooking Ithaca in up-state New York. I argued that, with more realistic data about the operational characteristics of the respective US and Soviet force configurations (such as bomber delivery profiles, impact footprints of MIRVed warheads) and more plausible exchange scenarios, it was impossible to generate anywhere near the postulated levels of smoke. The megatonnage expended on cities (economic/industrial targets) was more likely to be around 140-650 than over 1,000; the amount of smoke generated would have ranged from around 18 million tonnes to perhaps 80 million tonnes. In the case of counter-force scenarios, most missile forces were (and still are) located in either ploughed fields or tundra and, even where they are generally located in forested or grassed areas, very few of the actual missile silos are less than several kilometers from combustible material. A target-by-target analysis of the actual locations of the strategic nuclear forces in the United States and the Soviet Union showed that the actual amount of smoke produced even by a 4,000 megaton counter-force scenario would range from only 300 tonnes (if the exchange occurred in January) to 2,000 tonnes (for an exchange in July)—the worst case being a factor of 40 smaller than that postulated by the ‘Nuclear Winter’ theorists. I thought that it was just as wrong to overestimate the possible consequences of nuclear war, and to raise the spectre of extermination of human life as a serious likelihood, as to underestimate them (e.g., by omitting fallout casualties).

**Nuclear autumn is most likely, not nuclear winter**

**Thompson 86** (Starley L, Thompson, Stephen H. Schneider, Atmospheric scientists, climate theorists, and public policy analysts at the National Center for Atmospheric Research (NCAR) in Boulder, Colorado, *NUCLEAR WINTER REAPPRAISED*, Foreign Affairs, Ebsco)

In the recent NCAR research, we have not adopted any particular detailed war scenario other than the obvious assumption that the smoke and dust would come from the NATO and Warsaw Pact countries.^^ In fact, there is no general consensus on the amount and blackness of smoke that would exist in the atmosphere a few days after tbe start of a major nuclear exchange like the 6,500-megaton war the NAS study used as a baseline. Given this large range of uncertainty, we have used three different amounts of moderately black smoke—20, 60 and 180 million tons—to bracket what is currently thought to be a reasonable range of smoke amount and blackness for a large nuclear war. It should be pointed out that the NAS baseline smoke amount estimate (180 million tons) now appears to lie closer to the plausible upper limit of effective smoke amount than it once was thought to. The war is assumed to take place during a typical day in July, with smoke generated for the first two days.^ The land surface temperatures produced by the three smoke cases are shown in Figure 1. This figure shows that the average temperature changes for the northern hemisphere mid-latitudes are considerably smaller than the original estimates of one-dimensional models, and are about two-thirds of the temperature changes found in our original three-dimensional calculations. These temperature changes more closely describe a nuclear "fall" than a nuclear winter. The reasons for the moderation of temperature compared to the original calculations are well understood: first, the oceans have a large heat capacity, which ameliorates the cooling over land. Second, about three-fourths of the smoke is removed from the model's atmosphere over the course of 30 days. Third, the infrared "greenhouse" effect of the smoke, which was not included in earlier three-dimensional models, does produce a significant mitigation of the surface cooling.^^ We must stress that our results are for July, the month in which the temperature changes are likely to be largest. Similar calculations for January show much less effect simply because at that time it is already winter in the northern hemisphere. The curves in the figures represent averages over all the land areas in wide latitude zones. At any specific location in the model, however, the temperatures are considerably more variable. For example, some large areas in the interiors of the North American and Eurasian continents, particularly in Can- ada and Siberia, fall below freezing intermittently in the two cases of larger amounts of smoke. On the other hand, some areas near coasts experience little effect. Thus, it can be mis- leading to interpret the curves on the figures without taking into account geographic and weather variability as well. Indeed, for certain biological impacts it would be sufficient to have only a few hours of temperature below some critical level—e.g., subfreezing for wheat, or 10-15°C (50-59°F) for rice.^^ The global spread of acute climatic effects is assessed in Figure 2. Previous atmospheric circulation models have supported the notion that smoke would spread upwards and across the equator into the southern hemisphere for a war taking place in the northern hemisphere during the summer. While this has not changed, our current estimate is that the amount of smoke thus transported would be relatively small. This is reflected in the temperature curve for the subtropical latitude band 10-30°N, which shows only a small average effect, even for our largest case of 180 million tons of smoke. Equatorial and southern hemispheric temperature effects are very small in all these cases. The much greater severity of effects at high northern latitudes, however, is shown by the results for 50- 70°N.

### 1nr—Transition (AT Tar Sands)

**High prices trigger a renewable shift --- Yetiv says it makes that tech cost competitive and therefore profitable, incentivizes efficiency in tech development, and spurs hybrid development.**

**High prices create political coalitions for clean tech**

**Woods 8** (Richard, Journalist @ The Sunday Times, *How China’s thirst for oil can save the planet*, July 6th, http://business.timesonline.co.uk/tol/business/industry\_sectors/natural\_resources/article4277055.ece)

There is an added motivation for western politicians. The spike in oil prices is handing yet more power to oil-producing nations, some of them hostile. To reduce the dependence on these countries is becoming more of a geopolitical priority. Innovators, investors and entrepreneurs are optimistic change can be achieved with political backing. Michael Liebreich, chairman and chief executive of New Energy Finance, said: “The high oil and gas prices are certainly helping to drive that investment, but investors are still looking for stronger signals on policy because they worry about what will happen if, or when, the prices recede.” In the right political environment, even hard-nosed bean counters are optimistic. A report by Price Waterhouse Coopers last week reckoned the change to a low-carbon future can be achieved by 2050 at the cost of “one year of global GDP growth . . . ie, reaching the same level of GDP in 2051 as might otherwise have happened in 2050”. It seems a modest price to pay for what Liebreich calls “nothing less than the complete restructuring of the world’s energy industry”. Are you listening, Mr Brown?

**It’s empirically proven**

**Dewan 11** (Angela, Center for International Forestry Research, *Biodiesel Demand Fuelled by Policy, Not Oil Prices*, April 6th, http://blog.cifor.org/2359/biodiesel-demand-fuelled-by-policy-not-oil-prices/)

While oil prices are not directly affecting biofuel demand to a significant extent, they are pushing energy policy. US President Barack Obama, announced on March 31 that the United States would cut one-third of its oil imports by 2025. Part of that plan includes government investments in advanced biofuels research and development, blender pumps and flex-fuel cars. With the exception of Brazil, governments in the developing world are not showing the same enthusiasm for biofuel in energy policy. In his occasional paper – “Potential land use competition from first-generation biofuel expansion in developing countries”, released in January – Schoneveld says that developing nations producing biofuel feedstocks could improve their energy security and reduce vulnerability to oil price shocks by consuming their biofuel domestically.

**High prices change consumption habits.**

**Woods 8** (Richard, Journalist @ The Sunday Times, *How China’s thirst for oil can save the planet*, July 6th, http://business.timesonline.co.uk/tol/business/industry\_sectorsece)

Among mainstream analysts, predictions of the price reaching $200 are unexceptional. Last month Gazprom, the Russian oil giant, suggested it would hit $250 next year. The maverick energy guru Robert Hirsch, who forecast the present oil squeeze, has suggested the price could reach $500 a barrel within three to five years. Gas prices are also soaring and coal, though cheap and plentiful, is one of the worst emissions. sources of CO2 What is bad news for businesses and consumers, however, is good for investors in green energy. Vast sums of money are pouring into technologies that until relatively recently were the preserve of niche businesses and environmental campaigners. This year should see a record £73 billion or more invested in “clean technology” despite the credit crunch, according to a report published last week by the consultants New Energy Finance for the United Nations. “The green energy gold rush is attracting legions of modern-day prospectors in all parts of the globe,” said Achim Steiner, head of the UN environment programme. Dotcom entrepreneurs, Wall Street financiers and venture capitalists of every hue are piling in. This 21st-century “green Klondike” stands in stark contrast to the fortunes of ageing icons of the oil age, such as the US carmaker General Motors. Until recently the biggest vehicle manufacturer in the world, GM is in the middle of an enormous, possibly fatal, slow-motion crash. It has been running low on gas for some time, losing $51 billion in just three years. Last week one of the wheels fell off as it axed four plants that build thirsty sports-utility vehicles and trucks. The company’s outlook is so poor that the investment bank Merrill Lynch has warned that bankruptcy is “not impossible”. These tectonic shifts are driven in large part by the surging development of China and its 1.3 billion people. While the demand for oil in most western countries has flatlined or even declined over the past 12 months as economic conditions have worsened, in China it is powering away. This demand, and for other commodities, is driving up prices – but also spurring investment in technologies that might unlock a new era of clean, affordable energy. It prompts several questions: are consumers finally beginning to change their habits? Will alternative energy sources become economically competitive? And could China’s thirst for oil in fact save the planet? That high oil prices are changing consumers’ habits is clear. In the US the latest figures show that American motorists drove 1.4 billion fewer miles in April than in the same month last year. It was the sixth consecutive monthly drop. Bus and train use has jumped 10-15%. In Britain similar concern is evident. Petrol sales are down and an AA survey shows that 48% of drivers are considering cutting out short journeys by car and 62% would consider buying a more fuel-efficient model. Last month Toyota sold its 25,000th Prius in the UK and the hybrid car, powered by petrol and electricity, is in such demand that buyers sometimes face waiting lists, depending on colour and specification. Worldwide, Toyota has sold more than 1m Priuses.

**Their evidence says transition to oil sands --- that doesn’t cause warming**

**Gronewold 9** (Nathanial, Writer @ Scientific American and Climate Wire, *Will Canada's Tar Sands Destroy the Global Climate?*, May 22nd, http://www.scientificamerican.com/article.cfm?id=canada-tar-sands-oil-global-climate&print=true)

Due to the close proximity of the two North American countries and their tight trading relationship, money diverted to Canada to purchase energy is much more likely to be recycled back into the U.S. economy through direct purchases of goods and services than if that same capital is sent to Saudi Arabia and other OPEC states. And despite fears by climate change activists that increased oil sand production has profoundly negative consequences to global warming, Alberta's massive reserve base contributes relatively little to the problem at a global scale, Levi says. Though increasing oil sands production, which many expect will triple by 2030, will grow Canada's greenhouse gas emissions to a huge extent if business-as-usual practices continue, the added carbon dioxide emissions are marginal in the U.S. and global contexts. Studies show CO2 output from oil sands production is equivalent to 0.5 percent of U.S. aggregate emissions from energy use and less than 0.1 percent of total global emissions. On the other hand, U.S. energy security enthusiasts eager to boost supplies from a friendly and reliable neighbor can also rest assured that a price on carbon is unlikely to add huge costs to the oil coming from the tar sands, Levi says.

**Academic studies support our claim.**

**Levi 9** (Michael A., Senior fellow for energy and the environment at the Council on Foreign Relations, Director of the CFR program on energy security and climate change, Project director for the CFR-sponsored Independent Task Force on Climate Change, Previously fellow for science and technology at CFR, Previously a nonresident science fellow and a science and technology fellow in foreign policy studies at the Brookings Institution, *The Canadian Oil Sands Energy Security vs. Climate Change*, Council Special Report No. 47, May 2009, Accessed Online @ the Council on Foreign Relations)

The roughly 1.2 mb/d of current oil sands production is thus respon- sible for a premium of about 40 million tons of CO2 emissions each year compared to conventional oil.24 This is equal to about 5 percent of Canadian emissions, 0.5 percent of U.S. emissions from energy use, and slightly less than 0.1 percent of global emissions—a small piece of the emissions picture. If oil sands production increases as expected and the emissions entailed in producing each barrel are not reduced, that contribution will roughly triple by 2030, making oil sands a huge rela- tive contributor to Canadian emissions but still a relatively marginal one in the U.S. and global contexts. If, however, policy efforts manage to slash other emissions, as they must if ambitious goals for reducing the risk of catastrophic climate change are to be met, the relative promi- nence of the oil sands would greatly increase. Imagine, for example, that oil sands emissions rose as expected over the next two decades and then stabilized in 2030, while total U.S. and Canadian emissions dropped by 80 percent by 2050 (an oft-proposed target). Oil sands emissions would then become equivalent to about 10 percent of U.S. emissions by 2050, representing almost all emissions from Canada at that point. Oil sands’ emissions will thus be critical to deal with in the long term though not as important in the immediate future.

**Claims to the contrary are biased.**

**Foster 10** (Peter, Journalist @ The Financial Post, Author of eight books, Winner of the National Business Book Award and Numerous Magazine Awards, *Peter Foster: Ethical oil*, September 21st, http://opinion.financialpost.com/2010/09/21/peter-foster-ethical-oil/)

Oil sands opponents are motivated by anti-capitalist, anti-development ideology and organizational self-interest An Alberta government delegation came east this week to sell the embattled oilsands as a good news story for all of Canada. The Pembina Institute took a group of Athabasca aboriginals to Washington to claim that they were being poisoned. One of the frustrations of observing the oil sands “debate” is how one-sided it is. The Albertan government officials couldn’t stop apologizing for how much harder they had to work — like the carthorse in Animal Farm — to be more “sustainable.” Their opponents — who never created a productive job in their lives — continued to unload factual garbage by the dump truck, to be faithfully served up by the media. Given this reluctance to fight, it is uncertain how far the defenders of the oil sands will welcome the uncompromising support of Ezra Levant. Mr. Levant is an intellectual bulldog, as the Canadian human rights establishment discovered to its cost. He is also sometimes a loose cannon (he recently managed to libel the appalling George Soros, which takes some doing), but not here. In his new book, Ethical Oil: The Case for Canada’s Oil Sands, he not only exposes the lies and hypocrisy of the media-coddled opponents of the vast resource, but raises the uncomfortable question of what alternatives to the oilsands these moralists prefer. If the United States doesn’t take oil from the oilsands, it has to take it from Saudi Arabia, Venezuela, Nigeria or Iran, whose human rights records are appalling, and whose environmental performance tends not to be so great either. Mr. Levant notes that the “facts” about the oil sands are comprehensively perverted. They are presented as laying waste to an area the size of Florida when in fact only 2% of that area will be disturbed by anti-photogenic strip mining (which has to be reclaimed). The development is portrayed as a gigantic sponge for fresh water when the maximum that it can divert from the Athabasca river is just 2.2% of its flow. “Dirty” oil sands oil is declared to be a threat to the global climate when it is responsible for **one-thousandth** of global human emissions of CO2, which in turn are a small part of **overall emissions**. The oilsands are painted as destroyers of aboriginal culture when in fact they provide hope, and well-paid jobs, for desperately poor, often dysfunctional, communities. Mr. Levant goes after the NGO peddlers of doom and gloom — from Pembina through Greenpeace and church group Kairos to the World Wildlife Fund — suggesting that they are motivated by a combination of anti-capitalist, anti-development ideology and organizational self-interest. He lacerates those who purport to rank businesses on “ethical” grounds while profiting from the very activities they condemn. He skewers craven U.S. corporations such as Whole Foods and Bed Bath & Beyond because when they cave in to environmental extremists in supporting boycotts, they are of necessity supporting fascist theocracies and Bolivarian despots. Mr. Levant suggests that Greenpeace’s priorities are severely skewed by organizational self-interest. They treat the truly horrendous environmental problems of China with kid gloves because Beijing allows them to raise funds in the country, which they see as a huge “market.” While Chinese cities are the unhealthiest places to live on earth, Greenpeace China’s top campaign issues are recycled Western cell phones and disposable chopsticks!

**Criticisms are factually inaccurate.**

**Brannan 10** (Andrew, Bachelor of science in nursing at McMaster University in Hamilton – Ontario, *Ethical Oil: The Case for Canada's Oil Sands*, Volume 6, Number 2, http://theobjectivestandard.com/issues/2011-summer/ezra-levant.asp)

The first oil company to work the oil sands region was Suncor, in 1967. The open-pit mines that many people think of when picturing the oil sands are a relic of the early days of oil exploration and extraction. Today, Alberta’s oil sands are easily one of the most technologically advanced resource operations in the world. Behind every dump-truck driver are teams of computer modellers, engineers, geologists, and technical operators. For every strong back working a shovel, there are a dozen M.A.s and Ph.D.s somewhere working a computer. (p. 117) Most of the thick bitumen (80 percent) is deep in the ground and must be drilled for and pumped out using steam-assisted gravity drainage (SAGD), whereby steam is injected to reduce the viscosity of the bitumen, which then drains, by force of gravity, into a pipe below the steam and is pumped out. Using this technology, Canadian oil sands companies are able to transform what was once “considered an experimental project” into an oil-generating powerhouse (p. 9). In 2008, Canada shipped 715 million barrels [of oil] to the United States, far more than the 550 million barrels the Saudis sold. From 2003 to 2008, the oil sands had helped cut Saudi imports by 80 million barrels a year. (p. 9) But as Canada has become a larger player in the global oil market, Levant explains, environmentalists and other critics of the oil sands have increasingly condemned this technology and the companies that employ it. The critics claim that the oil sands are “140,000 square kilometers of toxic sludge” and “giant toxic lakes” inhabited by deformed fish, and that “migrating birds sometimes stop to rest” at these toxic sites before dying by the “tens of millions” (p. 1). Critics further claim that because of the high volume of water required to extract oil from these sites, “the mighty Athabasca River is about to become a small, dirty creek” (p. 2). They claim that the oil sands are “poisoning the aboriginals” in the region and “poisoning our very planet” (p. 3). And they claim that Fort McMurray, the urban center of oil sands production, is afflicted with all the “social ills of a boom town—the violence, the mistreatment of women, the addiction problems, and an artificially high cost of living that makes almost anyone with a job part of the working poor” (p. 3). Levant contends that the foregoing criticisms are “**false** . . . [e]very one of them” and sets out to refute them and others, and to show that the oil sands are ethically superior to the alternatives on multiple fronts (p. 3). . . .

**Obama will block tar sands**

**Schmidt 9** (Jake, International climate policy director at Natural Resources Defense Council, *Tar Sands and Solving Global Warming – Compatible with Strong Commitments?*, February 18th, http://switchboard.nrdc.org/blogs/jschmidt/tar\_sands\_and\_global\_warming.html)

Well the anticipated trip of President Obama to Canada is just about to begin. The Canadian press has been reporting for a while that Prime Minister Harper will raise tar sands when President Obama makes his first international trip. And, he'll raise this mixed in with discussions of global warming, a proposal that they raised minutes after President Obama was elected (as I discussed here). With President Obama signaling a major shift in US policy towards global warming, as I've discussed here, a lot of people were wondering what that shift would mean for tar sands. After all, how can you square the push for new clean energy solutions, solving global warming, and creating an economy of the future, with the continued export of the dirtiest oil on the planet (as my colleagues have highlighted many times, see here)? In an interview last night on the Canadian Broadcasting Corporation (CBC), President Obama was asked about tar sands (diplomatically called oil sands to hide its "dirty" nature). All ears were perked when he was asked about tar sands. Would he endorse the continued export of this dirty oil or would it go the way of past dirty sources of energy (to the junk drawer never to be seen again)? Despite what you might read in the press about this interview, he didn't exactly do either --endorse or kill. But he did set a pretty high bar for tar sands -- it must fit in a world that is not rapidly accelerating global warming. Here is what he had to say: "What we know is that oilsands creates a big carbon footprint. So the dilemma that Canada faces, the United States faces and China and the entire world faces, is how do we obtain the energy that we need to grow our economies in a way that is not rapidly accelerating climate change?" Since tar sands is a huge source of Canada's global warming pollution and a major driver of its projected increase, Canada will have to get a grip on the pollution from tar sands if it wants to be credible in international efforts to solve global warming. No exceptions, no special provisions (as our President Frances Beinecke and my colleague Susan Casey-Lefkowitz discussed). The simple question that will be asked, how does it fit within our efforts to solve global warming? If Canada comes to Copenhagen (or before) with a commitment to significantly cut global warming pollution and tar sands are included, then there might be room to talk -- at least on global warming (but tar sands have lots of other environmental issues that need to be resolved as well). But as my colleague George Peridas points out it isn't that easy: "[A]lthough Carbon Capture & Sequestration (CCS) technology is available today to begin deployment today in some industrial sectors, the tar sands pose unique challenges." So the onus is on the Canadians to prove how their continued production of tar sands is compatible with serious efforts to address global warming. Let's see your proof not just in your framing (as the Canadian Environment Minister recently attempted to do), but in the deeds on the ground.

**Their evidence says shale gas --- it doesn’t cause warming**

**Harvey 11** (Fiona, Environmental Correspondent @ The Guardian, *Shale gas: is it as green as the oil companies say?*, April 20th, http://www.guardian.co.uk/environment/2011/apr/20/shale-gas-green-oil-companies)

There are no holes, nothing to betray the fact that this shale rock can be made to yield natural gas in such quantities that it could power the globe for centuries. Shale is being hailed as the green energy of the future because new technologies can be used to fracture the dense rock and flood it with water to release bubbles of natural gas that can be burned for electricity with – according to the gas industry – only about half of the carbon dioxide emissions of coal. "This source of gas is revolutionary," said Malcolm Brinded, foremost expert on the technology at Royal Dutch Shell. "It will reduce dependence on imported oil, and in practice price volatility. There is a huge pace of growth." Oil companies are rapidly seizing the opportunity. Within two years, predicts James Smith, outgoing UK chairman of Shell, the company will go from being an oil business to a gas producer. "Estimates show that we could have enough gas to power the world for 200 years," he said.

**It would meet 2020 Copenhagen obligations.**

**Harvey 11** (Fiona, Environmental Correspondent @ The Guardian, *Shale gas: is it as green as the oil companies say?*, April 20th, http://www.guardian.co.uk/environment/2011/apr/20/shale-gas-green-oil-companies)

Oil companies see gas as a means of recasting themselves as environmentally friendly, with government backing. Newly available forms of gas appear to offer a 50% reduction in carbon emissions compared with electricity generation from coal, meaning most countries could easily meet their 2020 emissions targets – agreed at the 2009 Copenhagen climate conference – at a fraction of the expense of investing in wind, solar and renewables. These assumptions are backed up by an economic analysis commissioned by the European Gas Advocacy Forum (EGAF) based in part on work by McKinsey, a consultancy which found that Europe could save about €900bn by 2050 if it met its emissions targets through investment in gas rather than renewables. "This report seems to get pulled out at every meeting," said one European commission insider. "But what they [the lobbyists] do not say is where it came from."

### 1nr—MENA Impact

**Middle East war doesn’t escalate --- deterrence solves Middle East war --- Iran and Israel won’t escalate the war because they fear great power retaliation --- it’s empirically proven --- the 1973 Arab-Israeli war didn’t escalate and the Gulf War also didn’t spill over or cause wider conflict --- that’s Terrill**

Middle East instability doesn’t cause inter-state wars --- only civil wars at best

**Maloney 7** - \*senior fellow for Middle East Policy at the Saban Center for Middle East Studies at the Brookings Institution AND \*\*senior fellow for Middle East Studies at the Council on Foreign Relations (Susan and Ray, International Herald Tribune, 6/28, “Why the Iraq War Won't Engulf the Mideast”,

http://www.brookings.edu/opinions/2007/0628iraq\_maloney.aspx)

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 experience 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.

#### No Iran-Israel war --- the Elany evidence cites internal Israeli documents saying they won’t escalate the war with Iran --- their evidence is just hype from journalists --- and, Netanyahu won’t start a war

Harel 2-12 [Amos, graduate of Tel Aviv University, military correspondent and defense analyst for Haaretz "Israel unlikely to attack Iran before summer, senior officials say," 2-12, <http://www.haaretz.com/print-edition/news/israel-unlikely-to-attack-iran-before-summer-senior-officials-say.premium-1.502969>]

Given these circumstances, the United States expects Israel not to interfere. Prime Minister Benjamin Netanyahu, who has refrained from ordering military action at several previous decision points in recent years, will have to take the views of his American visitor into account. Finally, Netanyahu must take three other things into account: the vehement opposition by defense establishment professionals to any attack at this point in time that isn't coordinated with Washington; the agenda of the party expected to be his main partner in his next government (the people who voted for Yair Lapid's Yesh Atid party wanted to bring about socioeconomic change, not open up a new military front ); and perhaps also the views of his next defense minister, whoever that may be. It's doubtful that Netanyahu has yet fully recovered from the trick played on him by outgoing Defense Minister Ehud Barak, who apparently withdrew his support for a strike on Iran at the last minute last fall. And if Moshe Ya'alon is the man who succeeds Barak, his position is even clearer: In all the discussions on Iran held by Netanyahu's octet of senior ministers over the last four years, Ya'alon was firmly in the dovish camp.

### 1nr—Democ Impact

Democratic peace theory is wrong --- prefer Rosato --- it’s just correlation not causation --- our ev assumes studies

#### Threat of revolts provides authoritarian accountability.

Mario Gilli and Yuan Li, June 2012. University of Milan-Bicocca; and University of Duisburg. “Citizenry Accountability in Autocracies. The Political Economy of Good Governance in China,” Network of European Peace Scientists, Working Paper, http://www.europeanpeacescientists.org/3\_2012.pdf.

Do the citizens have a role in constraining policies in autocratic governments? Usually the political and economic literature model autocracy as if the citizens have no role in constraining leader’s behavior, but actually autocratic government are afraid of possible citizens’ revolts. In this paper we focus on contemporary China to analyze how citizens might induce an autocratic government to adopt congruent policies. Although there is no party or electoral competition, the leader fears deposition by coup d’état of the selectorate and revolutionary threats from citizens. We build a three player political agency model to study the role of both these constraints and we show that the effectiveness of the selectorate and of revolutionary threats are crucial factors in determining the policy outcomes. In particular, we show that the citizens can effectively discipline the leader because of the revolution threat notwithstanding the selectorate size, but this may result in a failed state when the costs of revolting and the selectorate size are small. As the size of the selectorate and the costs of revolution vary dramatically across countries, our result explain why different types of autocracies arise. In particular our model and results provide a useful framework to interpret China policy in the last twenty years.

#### Backsliding will produce electoral authoritarianism, not dictatorship --- it’s the new norm.

Ryan Shirah, 4/23/2012. Fellow @ Center for the Study of Democracy @ UC Irvine. “Institutional Legacy and the Survival of New Democracies: The Lasting Effects of Competitive Authoritarianism,” http://www.socsci.uci.edu/files/democracy/docs/conferences/grad/shirah.pdf.

Contemporary authoritarian regimes sport an impressively diverse array of political institutions. Nominally democratic institutions like elected legislatures and political parties are now a common feature of nondemocratic politics (Schedler 2002). While a signiﬁcant amount of work has been put into understanding the causes and consequences of this institutional variation, many questions have not yet been adequately addressed. In particular, as Brownlee (2009a) points out, “comparativists have delved less deeply into the long–term and post– regime effects of electoral competition” (132). Building upon previous work on unfree elections and democratization (Brownlee 2009b, Schedler 2009, Lindberg 2006a, Lindberg 2006b, Lindberg 2009a, Howard & Roessler 2002, Hadenius & Teorell 2007), this study examines how the adoption of competitive elections prior to a democratic transition affects prospects for long–term democratic stability and consolidation. 1 I engage the literature on hybrid regimes and political institutions under dictatorship in order to draw out implications for how the institutionalization of competitive elections prior to democratization might impact the stability of a democratic successor regime. Previously unaddressed implications of two competing arguments are presented. An event history analysis of 74 new democracies that transitioned from authoritarian rule between 1975 and 2003 shows that institutional legacies signiﬁcantly affect prospects for democratic consolidation. Speciﬁcally, competitive authoritarian regimes tend to make for longer–lived democracies following a democratic transition than regimes without minimally competitive elections. 2 The idea that political institutions have signiﬁcant and independent effects is hardly controversial in comparative politics. What has been less broadly accepted is the notion that nominally democratic institutions are anything but window dressing in regimes that do not allow for meaningful challenges to authority. By the late 1980s, a series of observed transitions led to the conclusion that there was no sustainable form of electoral authori- 2arianism. Huntington (1991) famously declared that “liberalized authoritarianism is not a stable equilibrium; the halfway house does not stand” (174–5). Others had already begun drawing the same conclusion; regimes that adopted nominally democratic institutions did not represent a new variety or subtype of authoritarian regime, they were instead considered transitory states (O’Donnell & Schmitter 1986, DiPalma 1990, Przeworski 1991). For a decade, the literature on democratization treated dictatorships with electoral institutions as semi–democracies or states in the process of full liberalization. But by the turn of the century the observed facts made this a diffcult position to maintain. Dictators remained in power alongside legislatures, political parties, and electoral systems that they had created or inherited. It became clear that electoral authoritarianism was not an ephemeral and unstable state; it was a new kind of nondemocracy, and it was quickly becoming the norm (Schedler 2002).

# Round 8 v. Minnesota CE

## 1NC

### 1NC PTX

#### Momentum preventing sanctions – Obama’s capital is key – bill would start a war with Iran

WEBER 1 – 30 – 14 senior editor at TheWeek.com [Peter Weber, What sank the Senate's Iran sanctions bill? After Obama's State of the Union speech, it looks like Democrats are going to give peace a chance, after all, <http://theweek.com/article/index/255771/what-sank-the-senates-iran-sanctions-bill>]

In mid-January it appeared that a bipartisan Senate bill threatening Iran with new sanctions was a foregone conclusion. Yes, President Obama opposed the legislation and promised to veto it, but supporters of the Nuclear Weapon Free Iran Act strongly hinted that they had a veto-proof majority — and with 59 senators (43 Republicans and 16 Democrats) co-sponsoring the bill, that seemed eminently plausible.

They would only need eight more votes (and action in the House) to thwart Obama's veto pen, and momentum appeared to be on their side.

If there is any momentum on the bill now, it's on the other side. Obama reiterated his veto threat in the very public setting of his State of the Union address on Tuesday night, saying that "for the sake of our national security, we must give diplomacy a chance to succeed." Jan. 20 marked the beginning of a six-month period of negotiations between the U.S., Iran, and five other world powers aimed at preventing Iran from developing a nuclear bomb.

The negotiations won't be easy, and "any long-term deal we agree to must be based on verifiable action," not trust, Obama said. But "if John F. Kennedy and Ronald Reagan could negotiate with the Soviet Union, then surely a strong and confident America can negotiate with less powerful adversaries today."

After the speech, at least four Democratic cosponsors — Sens. Chris Coons (Del.), Kirsten Gillibrand (N.Y.), Joe Manchin (W.Va.), and Ben Cardin (Md.) — said they didn't want to vote on the bill while negotiations are ongoing. Sen. Richard Blumenthal (D-Conn.) had already adopted that position earlier in the month.

The distance these cosponsors put between themselves and the bill wasn't uniform. Cardin punted to Sen. Harry Reid (D-Nev.), who is opposed to bringing the bill to the floor for a vote. (Cardin "wants to see negotiations with Iran succeed," a spokeswoman's said. "As for timing of the bill, it is and has always been up to the Majority Leader.")

Manchin, on the other hand, told MSNBC that he didn't sign on to the bill "with the intention that it would ever be voted upon or used upon while we were negotiating," but rather "to make sure the president had a hammer if he needed it." He added: "We've got to give peace a chance here."

With the list of Democratic cosponsors willing to vote for the bill shrinking by five, the dream of a veto-proof majority in the next six months appears to be dead. Even Republican supporters of the legislation are pessimistic of its chances: "Is there support to override a veto?" Sen. Jim Inhofe (R-Okla.), the top Republican on the Senate Armed Services Committee, told National Journal on Wednesday. "I say, 'No.'"

So, what happened to the Iran sanctions bill? The short version: Time, pressure, and journalism.

The journalism category encompasses two points: First, reporters actually read the legislation, and it doesn't quite match up with the claims of lead sponsors Sen. Robert Menendez (D-N.J.) and Sen. Mark Kirk (R-Ill.), who say the sanctions would only take effect if Iran was found to be negotiating in bad faith. A much-cited analysis by Edward Levine at the Center for Arms Control and Non-Proliferation showed that the Iran sanctions would kick in unless Obama certified a list of impossible or deal-breaking conditions.

Journalists also started asking the cosponsors about their intentions. It's possible there were never 59 votes for the bill, but the legislation was filed right before Christmas and many reporters (not unreasonably) conflated cosponsorship with support for the bill, regardless of what was happening with the negotiations. They only asked on Tuesday night and Wednesday because Obama brought up the issue in his State of the Union speech.

Time without action always saps momentum, but with the Iran sanctions bill it also allowed events to catch up with the proponents of new sanctions. When they filed the bill Dec. 20, the interim Iran deal was just a talking point; a month later it was reality. The Obama administration, U.S. intelligence community, and outside analysts agree that new sanctions would scuttle the deal, and its harder to take that risk when that deal is in effect.

Finally, critics of the bill — including the White House and J Street, the liberal pro-Israel lobbying group — had time to mount a counterattack. Starting Jan. 6, J Street and other groups opposed to the legislation "reached out to senators who were on the fence and senators who'd cosponsored on day one," says Slate's David Weigel. "The message was the same: Have you guys read this thing?" Dylan William, J Street's director of government relations, describes the strategy in more depth:

We made especially prodigious use of our grass tops activists. These are people who have longstanding relationships with members of Congress to express two things. One: The bill is bad policy. Two: There was no political reason that these senators should feel they need to support the bill. There is deep political support in communities for members of Congress and senators who want to reserve this peaceably. [Slate]

So take a bow, J Street — for now, the David of the Israel lobby has slain its Goliath, the American Israel Public Affairs Committee (AIPAC), which is pushing for the legislation. That could all change if the interim Iran deal falls apart or some other event intercedes to change the equation for lawmakers. But momentum is hard to un-stall, and lawmakers are now considering changing the bill into a non-binding resolution.

John Judis at The New Republic is relieved, and counts Obama's veto threat Tuesday night as the boldest part of his speech. "If these negotiations with Iran fail, the United States will be left with very unsatisfactory alternatives," he writes:

Use military force to stop Iran, which might only delay Iran's acquisition of nuclear weapons, and will potentially inflame the region in a new war, or allow Iran to go ahead and hope to contain Iran as we have contained other potentially hostile nuclear powers. Obama may not be able to secure authorization for the first alternative... and if he opts for the second, he will leave open the possibility of regional proliferation or of Israel going to war against Iran. It's in America's interest — and, incidentally, Israel's as well — to allow the current negotiations to take their course — without malignant interference from Congress and AIPAC. [New Republic]

#### It’s a war powers fight that Obama wins – but failure greenlights Israel strikes

**Merry, 1/1/14** - Robert W. Merry, political editor of the National Interest, is the author of books on American history and foreign policy (Robert, “Obama may buck the Israel lobby on Iran” Washington Times, factiva)

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.

2014 will mark the 100th anniversary of beginning of World War I, a conflict triggered by entangling alliances that essentially gave the rulers of the Hapsburg Empire power that forced nation after nation into a war they didn’t want and cost the world as many as 20 million lives. Historians have warned since of the danger of nations delegating the power to take their people into war to other nations with very different interests.

AIPAC’s political power is substantial, but this is Washington power, the product of substantial campaign contributions and threats posed to re-election prospects. According to the Center for Responsive Politics’ Open Secrets website, Sens. Kirk, Menendez and Schumer each receives hundreds of thousands of dollars a year in pro-Israel PAC money and each of their states includes concentrations of pro-Israel voters who help elect and re-elect them.

Elsewhere in the country, AIPAC’s Washington power will collide with the country’s clear and powerful political sentiment against further U.S. adventurism in the Middle East, particularly one as fraught with as much danger and unintended consequence as a war with Iran. If the issue gets joined, as it appears that it will, Mr. Obama will see that it gets joined as a matter of war and peace. If the Menendez-Schumer-Kirk legislation clears Congress and faces a presidential veto, the war-and-peace issue could galvanize the American people as seldom before.

If that happens, the strongly held opinions of a democratic public are liable to overwhelm the mechanisms of Washington power, and the vaunted influence of the Israel lobby may be seen as being not quite what it has been cracked up to be.

#### Plan kills Obama’s agenda

KRINER 10—Assistant professor of political science at Boston University [Douglas L. Kriner, “After the Rubicon: Congress, Presidents, and the Politics of Waging War”, pg. 276-77]

One of the mechanisms by which congressional opposition influences presidential cost-benefit calculations is by sending signals of American disunity to the target state. Measuring the effects of such congressional signals on the calculations of the target state is always difficult. In the case of Iraq it is exceedingly so, given the lack of data on the non-state insurgent actors who were the true “target” of the American occupation after the fall of the Hussein regime. Similarly, in the absence of archival documents, such as those from the Reagan Presidential Library presented in chapter 5, it is all but impossible to measure the effects of congressional signals on the administration’s perceptions of the military costs it would have to pay to achieve its objectives militarily.

By contrast. measuring the domestic political costs of congressional opposition, while still difficult, is at least a tractable endeavor. Chapter 2 posited two primary pathways through which congressional opposition could raise the political costs of staying the course militarily for the president. First, high-profile congressional challenges to a use of force can affect real or anticipated public opinion and bring popular pressures to bear on the president to change course. Second, congressional opposition to the president’s conduct of military affairs can compel him to spend considerable political capital in the military arena to the detriment of other major items on his programmatic agenda. On both of these dimensions, congressional opposition to the war in Iraq appears to have had the predicted effect.

#### Global war

**Reuveny, 10** – professor in the School of Public and Environmental Affairs at Indiana University (Rafael, “Unilateral strike could trigger World War III, global depression” Gazette Xtra, 8/7, - See more at: <http://gazettextra.com/news/2010/aug/07/con-unilateral-strike-could-trigger-world-war-iii-/#sthash.ec4zqu8o.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. After years of futilely fighting Palestinian irregular armies, Israel has lost some of its perceived superiority—bolstering its enemies’ resolve.

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.

From there, things could deteriorate as they did in the 1930s. 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.

### 1NC T

#### Authority over indefinite detention is the authority TO DETAIN

GLAZIER 06 Associate Professor at Loyola Law School in Los Angeles, California [David Glazier, ARTICLE: FULL AND FAIR BY WHAT MEASURE?: IDENTIFYING THE INTERNATIONAL LAW REGULATING MILITARY COMMISSION PROCEDURE, Boston University International Law Journal, Spring, 2006, 24 B.U. Int'l L.J. 55]

President Bush's decision to consider the terrorist attacks of September 11, 2001, as an act of war has significant legal ramifications. Endorsed by Congress in the Authorization for the Use of Military Force ("AUMF"), n1 this paradigm shift away from treating terrorism as a crime to treating terrorism as an armed conflict allows the United States to exercise "fundamental incidents of waging war." n2 Among these fundamental war powers are the authorities to detain enemy personnel for the duration of hostilities, to subject law of war violators to trials in military tribunals, and to exercise subject matter jurisdiction over the full scope of the law of war, rather than over only those offenses defined in U.S. criminal statutes. n3

#### Restriction is a prohibition on an ACTION – the aff must prohibit indefinite detention

Northglenn 11 (City of Northglenn Zoning Ordinance, “Rules of Construction – Definitions”, http://www.northglenn.org/municode/ch11/content\_11-5.html)

Section 11-5-3. Restrictions. As used in this Chapter 11 of the Municipal Code, the **term "restriction**" shall mean a prohibitive regulation. Any use, activity, operation, building, structure or thing which is the subject of a restriction is prohibited, and no such use, activity, operation, building, structure or thing shall be authorized by any permit or license.

#### The courts have NO AUTHORITY to decide to release prisoners – this is necessary to CORE NEGATIVE GROUND about circumvention related to the aff. It’s also not an authority of the president which explodes limits – they can talk about anything related to the 4 topic areas which makes research impossible.

#### Independently, the aff is extra topical which explodes limits and makes being neg impossible

Chow 11 (Samuel, JD Benjamin N. Cardozo School of Law, “THE KIYEMBA PARADOX: CREATING A JUDICIAL FRAMEWORK TO ERADICATE INDEFINITE, UNLAWFUL EXECUTIVE DETENTIONS”, 19 Cardozo J. Int'l & Comp. L. 775 2011)

The facts that legitimized the Court's holding in Munaf are substantially different from the facts in Kiyemba. In Kiyemba, the D.C. Circuit Court also held that it did not have the authority to order the petitioners' release into the United States, but for different reasons from those espoused in Munaf. There, the circuit court determined that such release would violate the traditional distribution of immigration authority-a problem that did not exist with the American petitioners in Munaf.2 z As in Munaf, the government concluded that the Kiyemba petitioners' request amounted to a request for "release-plus. ' 23 Unlike Munaf, however, a troubling paradox is raised under the Kiyemba facts as it now stands, the Executive has determined that certain detainees being held unlawfully may, nonetheless, remain indefinitely detained.24 There are three primary elements that contributed to the Uighur 25 plaintiffs' dilemma. First, because of the high risk of torture, the Uighurs could not return to their home country of China.26 Second, diplomatic solutions had failed and no third-party country had been willing to accept them.27 Third, the D.C. Circuit Court determined that release into the United States would violate immigration laws and undermine the Executive's ability to administer those laws. 28 Lacking refuge and possibility of asylum, the Uighurs were forced to remain, indefinitely, as prisoners at Guantanamo Bay.

### 1NC K

#### Legitimacy is a weapon for the national-security apparatus. Legal restrictions enable the U.S. to wage more precisely regulated and brutal forms of war. Causes colonial violence and turns the case

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Kennedy begins by coldly contradicting those opponents of the Bush administration ‘that have routinely claimed that the United States has disregarded these rules’ (p. 40) by pointing out that both opponents and supporters of the Iraq war as well as both opponents and supporters of the great panoply of US legal measures related to the war on terror ‘were playing with the same deck’ (p. 40) in presenting ‘professional arguments about how recognised rules and standards, as well as recognised exceptions and jurisdictional limitations, should be interpreted’ (p. 40). The author’s only concession with reference to the Bush administration’s legal advisers is to point out that ‘as professionals, these lawyers failed to advise their client adequately about the consequences of the interpretations they proposed, and about the way others would read the same texts – and their memoranda’ (p. 39).Thus Kennedy does not adopt any legal position to the detriment of any other, as his assessment does not seemingly pretend to persuade his reader at the level of the world of legal validity presented in the vocabulary of the UN Charter. The extent to which that excludes the author from the category of being a ‘true jus-internationalist’, according to A. Canc¸ado Trindade’s understanding of those who actually ‘comply with the ineluctable duty to stand against the apology of the use of force which is manifested in our days through distinct “doctrinal” elaborations’,42 is not for us to judge. Suffice it to note that the starting point of Kennedy’s convoluted perspective on the matter is that ‘the law of force’ is a form of ‘vocabulary for assessing the legitimacy’ (p. 41) of a form of conduct (e.g. amilitary campaign) or ‘for defending as well as attacking the “legality”’ (p. 41) of an act (e.g. distinguishing legitimate from illegitimate targets) in which the same law of force becomes a two-edged sword, everybody’s and no one’s strategic partner in a contemporary world where ‘legitimacy has become the currency of power’ (p. 45). For the author, in today’s age of ‘lawfare’ (p. 12), ‘to resist war in the name of law . . . is to misunderstand the delicate partnership of war and law’ (p. 167). In Kennedy’s view, therefore, ‘there is little comfort in knowing that law has become the vernacular for evaluating the legitimacy of war and politics where it has done so by itself becoming a strategic instrument of war and the continuation of politics by similar means’ (p. 132). 3. LAW AS A MODERN LEGAL INSTITUTION Of War and Law seems, indeed, to be animated by a certain philosophical perplexity regarding the ambiguous relation between the apparently antithetical nature of the terms appearing in its title. Since antiquity both jurists and philosophers have taught that the law’s raison d’eˆ tre is that of making social peace possible, of overcoming what would later be commonly known as the Hobbesian state of nature: bellum omnium contra omnes. Kant noted that law should be perceived first and foremost as a pacifying tool – in other words, ‘the establishment of peace constitutes, not a part of, but the whole purpose of the doctrine of law’43 – and Lauterpacht projected that same principle onto the international sphere: ‘the primordial duty’ of international law is to ensure that ‘there shall be no violence among states’.44 The paradox lies, of course, in that law performs its pacifying function not by means of edifying advice, but by the threat of the use of force. In this sense, as Kennedy points out, ‘to use law is also to invoke violence, at least the violence that stands behind legal authority’ (p. 22). Hobbes himself never concealed the fact that the state, ‘that mortal god, to which we owe under the immortal God our peace and defence’,would succeed in eradicating inter-individual violence precisely due to its ability to ‘inspire terror’;45 but Weber – ‘the State is a human community that (successfully) claims the monopoly of the legitimate use of physical force within a given territory’46 – Godwin,47 and Kelsen48 have also provided support for the same proposition. This ambivalent and paradoxical relationship between law and violence,which is obvious in the domestic or intra-state realm, becomes even more obvious in the interstate domain with its classical twin antinomy of ubi jus, ibi pax and inter arma leges silent until the law in war emerges as a bold normative sector which dares to defy this conceptual incompatibility; even war can be regulated, be submitted to conditions and limitations. The hesitations of Kant in addressing jus in bello49 or the very fact that the Latin terms jus ad bellum and jus in bello were coined, as R. Kolb has pointed out,50 at relatively recent dates, seem to confirm that this has never been per se an evident aspiration.51 Kennedy explains his own calling as international lawyer as being partly inspired by his will to participate in the law’s civilizing mission (p. 29)52 as something utterly distinct from war: We think of these rules [law in war] as coming from ‘outside’ war, limiting and restricting the military. We think of international law as a broadly humanist and civilizing force, standing back from war, judging it as just or unjust, while offering itself as a code of conduct to limit violence on the battlefield. (p. 167) The author notes how this virginal confidence in the pacifying efficiency of international law – its presumed ability to forbid, limit, humanize war ‘from outside’ – becomes progressively nuanced, eroded, almost discredited by a series of considerations. The disquieting image of the ‘delicate partnership of war and law’ becomes more and more evidenced; the lawyer who attempts to regulate warfare inevitably also becomes its accomplice. As Kennedy puts it, The laws of force provide the vocabulary not only for restraining the violence and incidence of war – but also for waging war and deciding to go to war. . . . [L]aw no longer stands outside violence, silent or prohibitive. Law also permits injury, as it privileges, channels, structures, legitimates, and facilitates acts of war. (p. 167) Unable to suppress all violence, law typifies certain forms of violence as legally admissible, thus ‘privileging’ them with regard to others and investing some agents with a ‘privilege to kill’ (p. 115). Law thereby becomes, in Kennedy’s view, a tool not so much for the restriction of war as for the legal construction of war.53 Elsewhere we have labeled Kennedy ‘a relative outsider’54 who, peering from the edge of the vocabulary of international law, tries to ‘highlight its inherent structural limits, gaps, dogmas, blind spots and biases’, as someone ‘specialised in speaking the unspeakable, disclosing ambivalences and asking awkward questions’.55 The ‘unspeakable’, in the case of the ‘law of force’, is precisely, in Kennedy’s view, this process of involuntary complicity with the very phenomenon one supposedly wants to prohibit. Prepared to ‘stain his hands’ a` la Sartre, in his attempt to humanize the military machine from within, to walk one step behind the soldier reminding him constantly, as an imaginary CNN camera, of the legal limits of the legitimate use of force, the lawyer starts to realize, in the author’s view, that he is becoming but an accessory to the war machine. Kennedy maintains that law, in its attempt to subject war to its rule, has been absorbed by it and has now become but another war instrument (p. 32);56 law has been weaponized (p. 37).57 Contemporary war is by definition a legally organized war: ‘no ship moves, no weapon is fired, no target selected without some review for compliance with regulation – not because the military has gone soft, but because there is simply no other way to make modern warfare work. Warfare has become rule and regulation’ (p. 33).War ‘has become a modern legal institution’ (p. 5), with the result that the international lawyer finds himself before an evident instance of Marxian reification, in other words ‘the consolidation of our own products as a material power erected above us beyond our control that raises a wall in front of our expectations and destroys our calculations’.58 Ideas and institutions develop ‘a life of their own’, an autonomous, perverted dynamism.

#### Thus, the alternative is a challenge to conceptual framework of national security.

#### Only our alternative displaces the source of executive overreach. Legal restraint without conceptual change is futile.

Aziz RANA Law at Cornell 11 [“Who Decides on Security?” Cornell Law Faculty Working Papers, Paper 87, http://scholarship.law.cornell.edu/clsops\_papers/87 p. 45-51]

The prevalence of these continuities between Frankfurter’s vision and contemporary judicial arguments raise serious concerns with today’s conceptual framework. Certainly, Frankfurter’s role during World War II in defending and promoting a number of infamous judicial decisions highlights the potential abuses embedded in a legal discourse premised on the specially-situated knowledge of executive officials and military personnel. As the example of Japanese internment dramatizes, too strong an assumption of expert understanding can easily allow elite prejudices—and with it state violence—to run rampant and unconstrained. For the present, it hints at an obvious question: How skeptical should we be of current assertions of expertise and, indeed, of the dominant security framework itself? One claim, repeated especially in the wake of September 11, has been that regardless of normative legitimacy, the prevailing security concept—with its account of unique knowledge, insulation, and hierarchy—is simply an unavoidable consequence of existing global dangers. Even if Herring and Frankfurter may have been wrong in principle about their answer to the question “who decides in matters of security?” they nevertheless were right to believe that complexity and endemic threat make it impossible to defend the old Lockean sensibility. In the final pages of the article, I explore this basic question of the degree to which objective conditions justify the conceptual shifts and offer some initial reflections on what might be required to limit the government’s expansive security powers. VI. CONCLUSION: THE OPENNESS OF THREATS The ideological transformation in the meaning of security has helped to generate a massive and largely secret infrastructure of overlapping executive agencies, all tasked with gathering information and keeping the country safe from perceived threats. In 2010, The Washington Post produced a series of articles outlining the buildings, personnel, and companies that make up this hidden national security apparatus. According to journalists Dana Priest and William Arkin, there exist “some 1271 government organizations and 1931 private companies” across 10,000 locations in the United States, all working on “counterterrorism, homeland security, and intelligence.”180 This apparatus is especially concentrated in the Washington, D.C. area, which amounts to “the capital of an alternative geography of the United States.”181 Employed by these hidden agencies and bureaucratic entities are some 854,000 people (approximately 1.5 times as many people as live in Washington itself) who hold topsecret clearances.182 As Priest and Arkin make clear, the most elite of those with such clearance are highly trained experts, ranging from scientists and economists to regional specialists. “To do what it does, the NSA relies on the largest number of mathematicians in the world. It needs linguists and technology experts, as well as cryptologists, known as ‘crippies.’”183 These professionals cluster together in neighborhoods that are among the wealthiest in the country—six of the ten richest counties in the United States according to Census Bureau data.184 As the executive of Howard County, Virginia, one such community, declared, “These are some of the most brilliant people in the world. . . . They demand good schools and a high quality of life.”185 School excellence is particularly important, as education holds the key to sustaining elevated professional and financial status across generations. In fact, some schools are even “adopting a curriculum . . . that will teach students as young as 10 what kind of lifestyle it takes to get a security clearance and what kind of behavior would disqualify them.”186 The implicit aim of this curriculum is to ensure that the children of NSA mathematicians and Defense Department linguists can one day succeed their parents on the job. In effect, what Priest and Arkin detail is a striking illustration of how security has transformed from a matter of ordinary judgment into one of elite skill. They also underscore how this transformation is bound to a related set of developments regarding social privilege and status—developments that would have been welcome to Frankfurter but deeply disillusioning to Brownson, Lincoln, and Taney. Such changes highlight how one’s professional standing increasingly drives who has a right to make key institutional choices. Lost in the process, however, is the longstanding belief that issues of war and peace are fundamentally a domain of common care, marked by democratic intelligence and shared responsibility. Despite such democratic concerns, a large part of what makes today’s dominant security concept so compelling are two purportedly objective sociological claims about the nature of modern threat. As these claims undergird the current security concept, by way of a conclusion I would like to assess them more directly and, in the process, indicate what they suggest about the prospects for any future reform. The first claim is that global interdependence means that the U.S. faces near continuous threats from abroad. Just as Pearl Harbor presented a physical attack on the homeland justifying a revised framework, the American position in the world since has been one of permanent insecurity in the face of new, equally objective dangers. Although today these threats no longer come from menacing totalitarian regimes like Nazi Germany or the Soviet Union, they nonetheless create of world of chaos and instability in which American domestic peace is imperiled by decentralized terrorists and aggressive rogue states.187 Second, and relatedly, the objective complexity of modern threats makes it impossible for ordinary citizens to comprehend fully the causes and likely consequences of existing dangers. Thus, the best response is the further entrenchment of Herring’s national security state, with the U.S. permanently mobilized militarily to gather intelligence and to combat enemies wherever they strike—at home or abroad. Accordingly, modern legal and political institutions that privilege executive authority and insulated decisionmaking are simply the necessary consequence of these externally generated crises. Regardless of these trade-offs, the security benefits of an empowered presidency (one armed with countless secret and public agencies as well as with a truly global military footprint)188 greatly outweigh the costs. Yet, although these sociological views have become commonplace, the conclusions that Americans should draw about security requirements are not nearly as clear cut as the conventional wisdom assumes. In particular, a closer examination of contemporary arguments about endemic danger suggests that such claims are not objective empirical judgments but rather are socially complex and politically infused interpretations. Indeed, the openness of existing circumstances to multiple interpretations of threat implies that the presumptive need for secrecy and centralization is not self-evident. And as underscored by high profile failures in expert assessment, claims to security expertise are themselves riddled with ideological presuppositions and subjective biases. All this indicates that the gulf between elite knowledge and lay incomprehension in matters of security may be far less extensive than is ordinarily thought. It also means that the question of who decides—and with it the issue of how democratic or insular our institutions should be—remains open as well. Clearly technological changes, from airpower to biological and chemical weapons, have shifted the nature of America’s position in the world and its potential vulnerability. As has been widely remarked for nearly a century, the oceans alone cannot guarantee our permanent safety. Yet, in truth they never fully ensured domestic tranquility. The nineteenth century was one of near continuous violence, especially with indigenous communities fighting to protect their territory from expansionist settlers.189 But even if technological shifts make doomsday scenarios more chilling than those faced by Hamilton, Jefferson, or Taney, the mere existence of these scenarios tells us little about their likelihood or how best to address them. Indeed, these latter security judgments are inevitably permeated with subjective political assessments, assessments that carry with them preexisting ideological points of view—such as regarding how much risk constitutional societies should accept or how interventionist states should be in foreign policy. In fact, from its emergence in the 1930s and 1940s, supporters of the modern security concept have—at times unwittingly—reaffirmed the political rather than purely objective nature of interpreting external threats. In particular, commentators have repeatedly noted the link between the idea of insecurity and America’s post-World War II position of global primacy, one which today has only expanded following the Cold War. In 1961, none other than Senator James William Fulbright declared, in terms reminiscent of Herring and Frankfurter, that security imperatives meant that “our basic constitutional machinery, admirably suited to the needs of a remote agrarian republic in the 18th century,” was no longer “adequate” for the “20th- century nation.”190 For Fulbright, the driving impetus behind the need to jettison antiquated constitutional practices was the importance of sustaining the country’s “preeminen[ce] in political and military power.”191 Fulbright held that greater executive action and war-making capacities were essential precisely because the United States found itself “burdened with all the enormous responsibilities that accompany such power.”192 According to Fulbright, the United States had both a right and a duty to suppress those forms of chaos and disorder that existed at the edges of American authority. Thus, rather than being purely objective, the American condition of permanent danger was itself deeply tied to political calculations about the importance of global primacy. What generated the condition of continual crisis was not only technological change, but also the belief that the United States’ own ‘national security’ rested on the successful projection of power into the internal affairs of foreign states. The key point is that regardless of whether one agrees with such an underlying project, the value of this project is ultimately an open political question. This suggests that whether distant crises should be viewed as generating insecurity at home is similarly as much an interpretative judgment as an empirically verifiable conclusion.193 To appreciate the open nature of security determinations, one need only look at the presentation of terrorism as a principal and overriding danger facing the country. According to the State Department’s Annual Country Reports on Terrorism, in 2009 “[t]here were just 25 U.S. noncombatant fatalities from terrorism worldwide” (sixteen abroad and nine at home).194 While the fear of a terrorist attack is a legitimate concern, these numbers—which have been consistent in recent years—place the gravity of the threat in perspective. Rather than a condition of endemic danger—requiring everincreasing secrecy and centralization—such facts are perfectly consistent with a reading that Americans do not face an existential crisis (one presumably comparable to Pearl Harbor) and actually enjoy relative security. Indeed, the disconnect between numbers and resources expended, especially in a time of profound economic insecurity, highlights the political choice of policymakers and citizens to persist in interpreting foreign events through a World War II and early Cold War lens of permanent threat. In fact, the continuous alteration of basic constitutional values to fit ‘national security’ aims highlights just how entrenched Herring’s old vision of security as pre-political and foundational has become, regardless of whether other interpretations of the present moment may be equally compelling. It also underscores a telling and often ignored point about the nature of modern security expertise, particularly as reproduced by the United States’ massive intelligence infrastructure. To the extent that political assumptions—like the centrality of global primacy or the view that instability abroad necessarily implicates security at home—shape the interpretative approach of executive officials, what passes as objective security expertise is itself intertwined with contested claims about how to view external actors and their motivations. This means that while modern conditions may well be complex, the conclusions of the presumed experts may not be systematically less liable to subjective bias than judgments made by ordinary citizens based on publicly available information. It further underscores that the question of who decides cannot be foreclosed in advance by simply asserting deference to elite knowledge. If anything, one can argue that the presumptive gulf between elite awareness and suspect mass opinion has generated its own very dramatic political and legal pathologies. In recent years, the country has witnessed a variety of security crises built on the basic failure of ‘expertise.’195 At present, part of what obscures this fact is the very culture of secret information sustained by the modern security concept. Today, it is commonplace for government officials to leak security material about terrorism or external threat to newspapers as a method of shaping the public debate.196 These ‘open’ secrets allow greater public access to elite information and embody a central and routine instrument for incorporating mass voice into state decision-making. But this mode of popular involvement comes at a key cost. Secret information is generally treated as worthy of a higher status than information already present in the public realm—the shared collective information through which ordinary citizens reach conclusions about emergency and defense. Yet, oftentimes, as with the lead up to the Iraq War in 2003, although the actual content of this secret information is flawed,197 its status as secret masks these problems and allows policymakers to cloak their positions in added authority. This reality highlights the importance of approaching security information with far greater collective skepticism; it also means that security judgments may be more ‘Hobbesian’—marked fundamentally by epistemological uncertainty as opposed to verifiable fact—than policymakers admit. If both objective sociological claims at the center of the modern security concept are themselves profoundly contested, what does this mean for reform efforts that seek to recalibrate the relationship between liberty and security? Above all, it indicates that the central problem with the procedural solutions offered by constitutional scholars—emphasizing new statutory frameworks or greater judicial assertiveness—is that they mistake a question of politics for one of law. In other words, such scholars ignore the extent to which governing practices are the product of background political judgments about threat, democratic knowledge, professional expertise, and the necessity for insulated decision-making. To the extent that Americans are convinced that they face continuous danger from hidden and potentially limitless assailants—danger too complex for the average citizen to comprehend independently—it is inevitable that institutions (regardless of legal reform initiatives) will operate to centralize power in those hands presumed to enjoy military and security expertise. Thus, any systematic effort to challenge the current framing of the relationship between security and liberty must begin by challenging the underlying assumptions about knowledge and security upon which legal and political arrangements rest. Without a sustained and public debate about the validity of security expertise, its supporting institutions, and the broader legitimacy of secret information, there can be no substantive shift in our constitutional politics. The problem at present, however, is that no popular base exists to raise these questions. Unless such a base emerges, we can expect our prevailing security arrangements to become ever more entrenched.

### 1NC CP

#### The United States federal judiciary should use the avoidance canon to clarify the interpretation of the current statutory framework governing indefinite detention to not allow the detention of individuals without trials from existing Article III court, a military court martial, or be released within a reasonable, specified time period.

#### Avoidance canon’s use of constitutional restriction v. judicial or statutory restriction doesn’t link to politics and the legitimacy DA but solves the case without raising constitutional issues.

Frickey 05 (Philip P. Frickey, 2005, Richard W. Jennings Professor of Law, School of Law, University of California, Berkeley (Boalt Hall), March, 2005 California Law Review, 93 Calif. L. Rev. 397, ARTICLE: Getting from Joe to Gene (McCarthy): The Avoidance Canon, Legal Process Theory, and Narrowing Statutory Interpretation in the Early Warren Court, Lexis)

There is another side to the story, however. This Article investigates an era, now largely forgotten, in which the rules of avoidance played an exceedingly important - and, I believe, valuable - role in shaping public law and the relationship between Congress and the Supreme Court. It examines the Warren Court of the 1950s, before it became "the Warren Court" as it is usually remembered today. With one exception, the rulings that define the constitutional legacy of the "Warren Court" - Mapp [9](#n9) and Miranda, [10](#n10) Baker [11](#n11) and Reynolds, [12](#n12) Griswold [13](#n13) and Loving,[14](#n14) school prayer, [15](" \l "n15" \t "_self) and so on - all came after 1961. The memorable exception, of course, is Brown [16](" \l "n16" \t "_self) (and its early progeny, Cooper [17](" \l "n17" \t "_self)). But there was more to the 1950s than Brown: a series of cases in this decade were important precursors to many of the rulings of "the Warren Court" that are part of its constitutional legacy. These 1950s progenitors arose in a time of political hysteria about Communism that threatened to drag the Court, already vulnerable because of southern opposition to Brown, into a maelstrom of congressional reprisals that would have not merely overturned cases, but would have entrenched disturbing values into the public law and institutionally wounded the Court. By generally deciding these cases at the subconstitutional level through the rules of avoidance, the Court used techniques that might defuse political opposition while incrementally adjusting public law to better respect individual liberty. Employing avoidance also shifted the burden of overcoming legislative inertia to those opposing the Court's understanding of public values. The canons allowed a divided and besieged set of Justices to avoid the sharpest confrontations with Congress and each other so as to preserve the Court's stature and integrity. They also gave the Court time for the political furor to subside, for First Amendment and due process values to reemerge in the general consciousness, and for Congress and, indeed, the Court, to change composition and move past a crisis. In short, the rules of avoidance, putatively about judicial restraint and deference to political institutions, allowed the Court to play a game of high-stakes politics, to correct individual injustice in some circumstances, and to protect its independence and future autonomy. [\*402]

To be sure, this is not a pretty story for any reader enamored of the view of the Court as insulated from politics and culture, dutifully finding and enforcing the best answer that emerges from Herculean legal analysis. [18](" \l "n18" \t "_self) But it is also not a story of a Court that abandons legal analysis in the pursuit of pure politics. Remarkably, the institutional moves that may appear unseemly to one who believes in a sharp disjunction between law and politics were largely the work of Justice Frankfurter (a lawyer's judge if there ever was one), Justice Harlan, and the early iteration of Chief Justice Warren; the left wing of the early Warren Court, Justices Black and Douglas, rarely played along. Though the median Justices on the Court used the rules of avoidance in strategic ways, their approach also had contemporary academic respectability, as it correlated well with the legal process approach to statutory interpretation being developed by Henry Hart and Albert Sacks, themselves hardly wild-eyed hellions, and Alexander Bickel's notions of judicial prudence in constitutional cases. This is not a story of politically motivated Justices ambitiously remaking constitutional law through broad strokes. Rather, this is a story about how thinking small rather than big, how clinging to legal technicality, and how talking descriptively while thinking normatively have their virtues - even if not all of them are passive.

I write less to illuminate a period of American public law than to use the cases as a backdrop for assessing the utility of the avoidance canon. My thesis has descriptive and normative elements. I seek to demonstrate that the avoidance canon is not so much a maxim of statutory interpretation as it is a tool of constitutional law. The canon is not easily defended on the usual descriptive grounds: it involves judicial lawmaking, not judicial restraint; the outcomes it produces are at least sometimes inconsistent with probable current congressional preferences; and it will not always foster a deliberative congressional response. My account suggests, however, that the canon may perform an invaluable normative function in public law. The canon provides a means to mediate the borderline between statutory interpretation and constitutional law, and between the judicial and legislative roles, where judicial line-drawing is especially difficult and where underenforced constitutional values are at stake. In a broader sense, the canon can mediate another borderline, that between constitutional law and constitutional culture. [19](" \l "n19" \t "_self)

The canon can even facilitate the transition from the constitutional law and culture of one era to those of another. Most recent scholarship dealing  [\*403]  with the avoidance canon criticizes its use in individual cases and then draws out broader criticisms of the technique. [20](" \l "n20" \t "_self)This method misses some of the good the canon can do, which is evident when the Court's use of the canon is viewed not merely at a moment in time, but as a means over time. This Article will show that the canon gave the early Warren Court a way to bridge the law and culture of the 1950s and those of the 1960s - to get from the repressiveness of Joe to the progressiveness of Gene McCarthy.

Although this Article is historically rooted and theoretically oriented, it has a practical contemporary dimension as well. Since September 11, 2001, the United States has been engaged in an ambiguous war on terrorism. Some aspects of this context parallel the circumstances that confronted the early Warren Court. In particular, our national government may have recently taken unacceptable shortcuts around the rights of citizens and aliens in pursuing some of its policies. The victims bear the brunt of a public hostility reminiscent of that facing suspected Communists in the 1950s. Similarly, our time is one in which, for a variety of reasons, bold constitutional lawmaking protecting the rights of such individuals may be unlikely. As it did just a few years ago in somewhat analogous cases about whether habeas corpus is available to review the deportability and detention of aliens, [21](" \l "n21" \t "_self) the Court may find it useful to return yet again to the avoidance canon to mediate statutory or administrative harshness and constitutional values.

#### Avoidance is distinct – court invalidation of statue causes massive backlash and circumvention – only the CP solves.

Marshall 90 (Lawrence C Associate Professor, Northwestern University School of Law 1990 Chicago-Kent Law Review, 66 Chi.-Kent L. Rev. 481, SYMPOSIUM ON STATUTORY INTERPRETATION: DIVESTING THE COURTS: BREAKING THE JUDICIAL MONOPOLY ON CONSTITUTIONAL INTERPRETATION, Lexis)

The primary justification provided for the avoidance canon is the "prudential concern that constitutional issues not be needlessly confronted."[16](#n16) Because of the basically irrevocable nature of constitutional decisions -- constitutional amendments are virtually impossible in all but the most politically volatile subject areas -- judicial decisions based on the Constitution are thought to create an extraordinary degree of friction between the judicial and legislative branches. Statutory interpretation  [\*485]  decisions, on the other hand, can be modified by Congress. Many supporters of the avoidance canon have, therefore, justified it as a tool for promoting judicial restraint and for stimulating dialogue between the courts and Congress on constitutional issues. [17](#n17)  
This argument would be considerably stronger if there was some evidence that Congress is likely to accept the Court's invitation to engage in constitutional dialogue. But where are the instances of Congress enacting a law adopting interpretation 'a', after the Court specifically has adopted interpretation 'b' to avoid confronting the questionable constitutionality of interpretation 'a'? To do this, Congress would not only have to overcome all of the inertia associated with enacting or amending any piece of legislation, [18](#n18) but would also have to be willing to confront the Court by passing a statute about which the Court has already expressed significant constitutional doubts. It is not surprising that no instances of this kind of confrontation come to mind. [19](#n19) The hoped for colloquy between the courts and Congress virtually always ends up as a judicial soliloquy.  
Indeed, it seems quite plausible that the Court promotes more congressional attention to both the constitutional and statutory issues when it actually invalidates a statute based on its most natural construction. For in such cases, the invalidation of the statute (or more likely a provision in the statute) will often leave an unacceptable vacuum in the regulatory scheme. [20](#n20) When this happens, Congress may not have the luxury of  [\*486]  letting the status quo remain, as it does when the Court has taken upon itself to rewrite the statute in a manner that avoids possible constitutional difficulties. By declaring the most natural construction of the statute to be unconstitutional, the Court may well be forcing Congress to confront the subject and to reframe the statute in a manner that incorporates Congress's view of the Constitution, as informed by the Court's decision. [21](#n21)

### 1NC DA

#### Wartime means Obama will ignore the decision. Noncompliance undermines the Court’s legitimacy and makes the plan worthless

Pushaw 4—Professor of law @ Pepperdine University [Robert J. Pushaw, Jr., “Defending Deference: A Response to Professors Epstein and Wells,” Missouri Law Review, Vol. 69, 2004]

Civil libertarians have urged the Court to exercise the same sort of judicial review over war powers as it does in purely domestic cases—i.e., independently interpreting and applying the law of the Constitution, despite the contrary view of the political branches and regardless of the political repercussions.54 This proposed solution ignores the institutional differences, embedded in the Constitution, that have always led federal judges to review warmaking under special standards. Most obviously, the President can act with a speed, decisiveness, and access to information (often highly confidential) that cannot be matched by Congress, which must garner a majority of hundreds of legislators representing multiple interests.55 Moreover, the judiciary by design acts far more slowly than either political branch. A court must wait for parties to initiate a suit, oversee the litigation process, and render a deliberative judgment that applies the law to the pertinent facts.56 Hence, by the time federal judges (particularly those on the Supreme Court) decide a case, the action taken by the executive is several years old. Sometimes, this delay is long enough that the crisis has passed and the Court’s detached perspective has been restored.57 At other times, however, the war rages, the President’s action is set in stone, and he will ignore any judicial orders that he conform his conduct to constitutional norms.58 In such critical situations, issuing a judgment simply weakens the Court as an institution, as Chief Justice Taney learned the hard way.59

Professor Wells understands the foregoing institutional differences and thus does not naively demand that the Court exercise regular judicial review to safeguard individual constitutional rights, come hell or high water. Nonetheless, she remains troubled by cases in which the Court’s examination of executive action is so cursory as to amount to an abdication of its responsibilities—and a stamp of constitutional approval for the President’s actions.60 Therefore, she proposes a compromise: requiring the President to establish a reasonable basis for the measures he has taken in response to a genuine risk to national security.61 In this way, federal judges would ensure accountability not by substituting their judgments for those of executive officials (as hap-pens with normal judicial review), but rather by forcing them to adequately justify their decisions.62

This proposal intelligently blends a concern for individual rights with pragmatism. Civil libertarians often overlook the basic point that constitutional rights are not absolute, but rather may be infringed if the government has a compelling reason for doing so and employs the least restrictive means to achieve that interest.63 Obviously, national security is a compelling governmental interest.64 Professor Wells’s crucial insight is that courts should not allow the President simply to assert that “national security” necessitated his actions; rather, he must concretely demonstrate that his policies were a reasonable and narrowly tailored response to a particular risk that had been assessed accurately.65

Although this approach is plausible in theory, I am not sure it would work well in practice. Presumably, the President almost always will be able to set forth plausible justifications for his actions, often based on a wide array of factors—including highly sensitive intelligence that he does not wish to dis-close.66 Moreover, if the President’s response seems unduly harsh, he will likely cite the wisdom of erring on the side of caution. If the Court disagrees, it will have to find that those proffered reasons are pretextual and that the President overreacted emotionally instead of rationally evaluating and responding to the true risks involved. But are judges competent to make such determinations? And even if they are, would they be willing to impugn the President’s integrity and judgment? If so, what effect might such a judicial decision have on America’s foreign relations? These questions are worth pondering before concluding that “hard look” review would be an improvement over the Court’s established approach.

Moreover, such searching scrutiny will be useless in situations where the President has made a wartime decision that he will not change, even if judicially ordered to do so. For instance, assume that the Court in Korematsu had applied “hard look” review and found that President Roosevelt had wildly exaggerated the sabotage and espionage risks posed by Japanese-Americans and had imprisoned them based on unfounded fears and prejudice (as appears to have been the case). If the Court accordingly had struck down FDR’s order to relocate them, he would likely have disobeyed it.

Professor Wells could reply that this result would have been better than what happened, which was that the Court engaged in “pretend” review and stained its reputation by upholding the constitutionality of the President’s odious and unwarranted racial discrimination. I would agree. But I submit that the solution in such unique situations (i.e., where a politically strong President has made a final decision and will defy any contrary court judgment) is not judicial review in any form—ordinary, deferential, or hard look. Rather, the Court should simply declare the matter to be a political question and dismiss the case. Although such Bickelian manipulation of the political question doctrine might be legally unprincipled and morally craven, 67 at least it would avoid giving the President political cover by blessing his unconstitutional conduct and instead would force him to shoulder full responsibility. Pg. 968-970

#### Weakening the court prevents sustainable development

Stein 5—Former Judge of the New South Wales Court of Appeal and the New South Wales Land and Environment Court [Justice Paul Stein (International Union for Conservation of Nature (IUCN) Specialist Group on the Judiciary), “Why judges are essential to the rule of law and environmental protection,” Judges and the Rule of Law: Creating the Links: Environment, Human Rights and Poverty, IUCN Environmental Policy and Law Paper No. 60, Edited by Thomas Greiber, 2006]

The Johannesburg Principles state:

“We emphasize that the fragile state of the global environment requires the judiciary, as the guardian of the Rule of Law, to boldly and fearlessly implement and enforce applicable international and national laws, which in the field of environment and sustainable development will assist in alleviating poverty and sustaining an enduring civilization, and ensuring that the present generation will enjoy and improve the quality of life of all peoples, while also ensuring that the inherent rights and interests of succeeding generations are not compromised.”

There can be no argument that environmental law, and sustainable development law in particular, are vibrant and dynamic areas, both internationally and domestically. Judge Weeramantry (of the ICJ) has reminded us that we judges, as custodians of the law, have a major obligation to contribute to its development. Much of sustainable development law is presently making the journey from soft law into hard law. This is happening internationally but also it is occurring in many national legislatures and courts.

Fundamental environmental laws relating to water, air, our soils and energy are critical to narrowing the widening gap between the rich and poor of the world. Development may be seen as the bridge to narrow that gap but it is one that is riddled with dangers and contradictions. We cannot bridge the gap with materials stolen from future generations. Truly sustainable development can only take place in harmony with the environment. Importantly we must not allow sustainable development to be duchessed and bastardized.

A role for judges?

It is in striking the balance between development and the environment that the courts have a role. Of course, this role imposes on judges a significant trust. The balancing of the rights and needs of citizens, present and future, with development, is a delicate one. It is a balance often between powerful interests (private and public) and the voiceless poor. In a way judges are the meat in the sandwich but, difficult as it is, we must not shirk our duty. Pg. 53-54

#### Extinction of all complex life

Barry 13—Political ecologist with expert proficiencies in old forest protection, climate change, and environmental sustainability policy [Dr. Glen Barry (Ph.D. in "Land Resources" and Masters of Science in "Conservation Biology and Sustainable Development” from the University of Wisconsin-Madison), “ECOLOGY SCIENCE: Terrestrial Ecosystem Loss and Biosphere Collapse,” Forests.org, February 4, 2013, pg. http://forests.org/blog/2013/02/ecology-science-terrestrial-ec.asp

Blunt, Biocentric Discussion on Avoiding Global Ecosystem Collapse and Achieving Global Ecological Sustainability

Science needs to do a better job of considering worst-case scenarios regarding continental- and global-scale ecological collapse. The loss of biodiversity, ecosystems, and landscape connectivity reviewed here shows clearly that ecological collapse is occurring at spatially extensive scales. The collapse of the biosphere and complex life, or eventually even all life, is a possibility that needs to be better understood and mitigated against. A tentative case has been presented here that terrestrial ecosystem loss is at or near a planetary boundary. It is suggested that a 66% of Earth's land mass must be maintained in terrestrial ecosystems, to maintain critical connectivity necessary for ecosystem services across scales to continue, including the biosphere. Yet various indicators show that around 50% of Earth's terrestrial ecosystems have been lost and their services usurped by humans. Humanity may have already destroyed more terrestrial ecosystems than the biosphere can bear. There exists a major need for further research into how much land must be maintained in a natural and agroecological state to meet landscape and bioregional sustainable development goals while maintaining an operable biosphere.

It is proposed that a critical element in determining the threshold where terrestrial ecosystem loss becomes problematic is where landscape connectivity of intact terrestrial ecosystems erodes to the point where habitat patches exist only in a human context. Based upon an understanding of how landscapes percolate across scale, it is recommended that 66% of Earth's surface be maintained as ecosystems; 44% as natural intact ecosystems (2/3 of 2/3) and 22% as agroecological buffer zones. Thus nearly half of Earth must remain as large, connected, intact, and naturally evolving ecosystems, including old-growth forests, to provide the context and top-down ecological regulation of both human agroecological, and reduced impact and appropriately scaled industrial activities.

Given the stakes, it is proper for political ecologists and other Earth scientists to willingly speak bluntly if we are to have any chance of averting global ecosystem collapse. A case has been presented that Earth is already well beyond carrying capacity in terms of amount of natural ecosystem habitat that can be lost before the continued existence of healthy regional ecosystems and the global biosphere itself may not be possible. Cautious and justifiably conservative science must still be able to rise to the occasion of global ecological emergencies that may threaten our very survival as a species and planet.

Those knowledgeable about planetary boundaries—and abrupt climate change and terrestrial ecosystem loss in particular—must be more bold and insistent in conveying the range and possible severity of threats of global ecosystem collapse, while proposing sufficient solutions. It is not possible to do controlled experiments on the Earth system; all we have is observation based upon science and trained intuition to diagnose the state of Earth's biosphere and suggest sufficient ecological science–based remedies.

If Gaia is alive, she can die. Given the strength of life-reducing trends across biological systems and scales, there is a need for a rigorous research agenda to understand at what point the biosphere may perish and Earth die, and to learn what configuration of ecosystems and other boundary conditions may prevent her from doing so. We see death of cells, organisms, plant communities, wildlife populations, and whole ecosystems all the time in nature—extreme cases being desertification and ocean dead zones. There is no reason to dismiss out of hand that the Earth System could die if critical thresholds are crossed. We need as Earth scientists to better understand how this may occur and bring knowledge to bear to avoid global ecosystem and biosphere collapse or more extreme outcomes such as biological homogenization and the loss of most or even all life. To what extent can a homogenized Earth of dandelions, rats, and extremophiles be said to be alive, can it ever recover, and how long can it last?

The risks of global ecosystem collapse and the need for strong response to achieve global ecological sustainability have been understated for decades. If indeed there is some possibility that our shared biosphere could be collapsing, there needs to be further investigation of what sorts of sociopolitical responses are valid in such a situation. Dry, unemotional scientific inquiry into such matters is necessary—yet more proactive and evocative political ecological language may be justified as well. We must remember we are speaking of the potential for a period of great dying in species, ecosystems, humans, and perhaps all being. It is not clear whether this global ecological emergency is avoidable or recoverable. It may not be. But we must follow and seek truth wherever it leads us.

Planetary boundaries have been quite anthropocentric, focusing upon human safety and giving relatively little attention to other species and the biosphere's needs other than serving humans. Planetary boundaries need to be set that, while including human needs, go beyond them to meet the needs of ecosystems and all their constituent species and their aggregation into a living biosphere. Planetary boundary thinking needs to be more biocentric.

I concur with Williams (2000) that what is needed is an Earth System–based conservation ethic—based upon an "Earth narrative" of natural and human history—which seeks as its objective the "complete preservation of the Earth's biotic inheritance." Humans are in no position to be indicating which species and ecosystems can be lost without harm to their own intrinsic right to exist, as well as the needs of the biosphere. For us to survive as a species, logic and reason must prevail (Williams 2000).

Those who deny limits to growth are unaware of biological realities (Vitousek 1986). There are strong indications humanity may undergo societal collapse and pull down the biosphere with it. The longer dramatic reductions in fossil fuel emissions and a halt to old-growth logging are put off, the worse the risk of abrupt and irreversible climate change becomes, and the less likely we are to survive and thrive as a species. Human survival—entirely dependent upon the natural world—depends critically upon both keeping carbon emissions below 350 ppm and maintaining at least 66% of the landscape as natural ecological core areas and agroecological transitions and buffers. Much of the world has already fallen below this proportion, and in sum the biosphere's terrestrial ecosystem loss almost certainly has been surpassed, yet it must be the goal for habitat transition in remaining relatively wild lands undergoing development such as the Amazon, and for habitat restoration and protection in severely fragmented natural habitat areas such as the Western Ghats.

The human family faces an unprecedented global ecological emergency as reckless growth destroys the ecosystems and the biosphere on which all life depends. Where is the sense of urgency, and what are proper scientific responses if in fact Earth is dying? Not speaking of worst-case scenarios—the collapse of the biosphere and loss of a living Earth, and mass ecosystem collapse and death in places like Kerala—is intellectually dishonest. We must consider the real possibility that we are pulling the biosphere down with us, setting back or eliminating complex life.

The 66% / 44% / 22% threshold of terrestrial ecosystems in total, natural core areas, and agroecological buffers gets at the critical need to maintain large and expansive ecosystems across at least 50% of the land so as to keep nature connected and fully functional. We need an approach to planetary boundaries that is more sensitive to deep ecology to ensure that habitable conditions for all life and natural evolutionary change continue. A terrestrial ecosystem boundary which protects primary forests and seeks to recover old-growth forests elsewhere is critical in this regard. In old forests and all their life lie both the history of Earth's life, and the hope for its future. The end of their industrial destruction is a global ecological imperative.

Much-needed dialogue is beginning to focus on how humanity may face systematic social and ecological collapse and what sort of community resilience is possible. There have been ecologically mediated periods of societal collapse from human damage to ecosystems in the past (Kuecker and Hall 2011). What makes it different this time is that the human species may have the scale and prowess to pull down the biosphere with them. It is fitting at this juncture for political ecologists to concern themselves with both legal regulatory measures, as well as revolutionary processes of social change, which may bring about the social norms necessary to maintain the biosphere. Rockström and colleagues (2009b) refer to the need for "novel and adaptive governance" without using the word revolution. Scientists need to take greater latitude in proposing solutions that lie outside the current political paradigms and sovereign powers.

Even the Blue Planet Laureates' remarkable analysis (Brundtland et al. 2012), which notes the potential for climate change, ecosystem loss, and inequitable development patterns neither directly states nor investigates in depth the potential for global ecosystem collapse, or discusses revolutionary responses. UNEP (2012) notes abrupt and irreversible ecological change, which they say may impact life-support systems, but are not more explicit regarding the profound human and ecological implications of biosphere collapse, or the full range of sociopolitical responses to such predictions. More scientific investigations are needed regarding alternative governing structures optimal for pursuit and achievement of bioregional, continental, and global sustainability if we are maintain a fully operable biosphere forever. An economic system based upon endless growth that views ecosystems necessary for planetary habitability primarily as resources to be consumed cannot exist for long.   
Planetary boundaries offer a profoundly difficult challenge for global governance, particularly as increased scientific salience does not appear to be sufficient to trigger international action to sustain ecosystems (Galaz et al. 2012). If indeed the safe operating space for humanity is closing, or the biosphere even collapsing and dying, might not discussion of revolutionary social change be acceptable? Particularly, if there is a lack of consensus by atomized actors, who are unable to legislate the required social change within the current socioeconomic system. By not even speaking of revolutionary action, we dismiss any means outside the dominant growth-based oligarchies.

In the author's opinion, it is shockingly irresponsible for Earth System scientists to speak of geoengineering a climate without being willing to academically investigate revolutionary social and economic change as well. It is desirable that the current political and economic systems should reform themselves to be ecologically sustainable, establishing laws and institutions for doing so. Yet there is nothing sacrosanct about current political economy arrangements, particularly if they are collapsing the biosphere. Earth requires all enlightened and knowledgeable voices to consider the full range of possible responses now more than ever.

One possible solution to the critical issues of terrestrial ecosystem loss and abrupt climate change is a massive and global, natural ecosystem protection and restoration program—funded by a carbon tax—to further establish protected large and connected core ecological sustainability areas, buffers, and agro-ecological transition zones throughout all of Earth's bioregions. Fossil fuel emission reductions must also be a priority. It is critical that humanity both stop burning fossil fuels and destroying natural ecosystems, as fast as possible, to avoid surpassing nearly all the planetary boundaries.

In summation, we are witnessing the collective dismantling of the biosphere and its constituent ecosystems which can be described as ecocidal. The loss of a species is tragic, of an ecosystem widely impactful, yet with the loss of the biosphere all life may be gone. Global ecosystems when connected for life's material flows provide the all-encompassing context within which life is possible. The miracle of life is that life begets life, and the tragedy is that across scales when enough life is lost beyond thresholds, living systems die.

### 1NC Bio

**No bioterror impact**

Keller 3/7 -- Analyst at Stratfor, Post-Doctoral Fellow at University of Colorado at Boulder (Rebecca, 2013, "Bioterrorism and the Pandemic Potential," http://www.stratfor.com/weekly/bioterrorism-and-pandemic-potential)

It is important to remember that the risk of biological attack is very low and that, partly because viruses can mutate easily, the potential for natural outbreaks is unpredictable. The key is having the right tools in case of an outbreak, epidemic or pandemic, and these include a plan for containment, open channels of communication, scientific research and knowledge sharing. In most cases involving a potential pathogen, the news can appear far worse than the actual threat. Infectious Disease Propagation Since the beginning of February there have been occurrences of H5N1 (bird flu) in Cambodia, H1N1 (swine flu) in India and a new, or novel, coronavirus (a member of the same virus family as SARS) in the United Kingdom. In the past week, a man from Nepal traveled through several countries and eventually ended up in the United States, where it was discovered he had a drug-resistant form of tuberculosis, and the Centers for Disease Control and Prevention released a report stating that antibiotic-resistant infections in hospitals are on the rise. In addition, the United States is experiencing a worse-than-normal flu season, bringing more attention to the influenza virus and other infectious diseases. The potential for a disease to spread is measured by its effective reproduction number, or R-value, a numerical score that indicates whether a disease will propagate or die out. When the disease first occurs and no preventive measures are in place, the reproductive potential of the disease is referred to as R0, the basic reproduction rate. The numerical value is the number of cases a single case can cause on average during its infectious period. An R0 above 1 means the disease will likely spread (many influenza viruses have an R0 between 2 and 3, while measles had an R0 value of between 12 and 18), while an R-value of less than 1 indicates a disease will likely die out. Factors contributing to the spread of the disease include the length of time people are contagious, how mobile they are when they are contagious, how the disease spreads (through the air or bodily fluids) and how susceptible the population is. The initial R0, which assumes no inherent immunity, can be decreased through control measures that bring the value either near or below 1, stopping the further spread of the disease. Both the coronavirus family and the influenza virus are RNA viruses, meaning they replicate using only RNA (which can be thought of as a single-stranded version of DNA, the more commonly known double helix containing genetic makeup). The rapid RNA replication used by many viruses is very susceptible to mutations, which are simply errors in the replication process. Some mutations can alter the behavior of a virus, including the severity of infection and how the virus is transmitted. The combination of two different strains of a virus, through a process known as antigenic shift, can result in what is essentially a new virus. Influenza, because it infects multiple species, is the hallmark example of this kind of evolution. Mutations can make the virus unfamiliar to the body's immune system. The lack of established immunity within a population enables a disease to spread more rapidly because the population is less equipped to battle the disease. The trajectory of a mutated virus (or any other infectious disease) can reach three basic levels of magnitude. An outbreak is a small, localized occurrence of a pathogen. An epidemic indicates a more widespread infection that is still regional, while a pandemic indicates that the disease has spread to a global level. Virologists are able to track mutations by deciphering the genetic sequence of new infections. It is this technology that helped scientists to determine last year that a smattering of respiratory infections discovered in the Middle East was actually a novel coronavirus. And it is possible that through a series of mutations a virus like H5N1 could change in such a way to become easily transmitted between humans. Lessons Learned There have been several influenza pandemics throughout history. The 1918 Spanish Flu pandemic is often cited as a worst-case scenario, since it infected between 20 and 40 percent of the world's population, killing roughly 2 percent of those infected. In more recent history, smaller incidents, including an epidemic of the SARS virus in 2003 and what was technically defined as a pandemic of the swine flu (H1N1) in 2009, caused fear of another pandemic like the 1918 occurrence. The spread of these two diseases was contained before reaching catastrophic levels, although the economic impact from fear of the diseases reached beyond the infected areas. Previous pandemics have underscored the importance of preparation, which is essential to effective disease management. The World Health Organization lays out a set of guidelines for pandemic prevention and containment. The general principles of preparedness include stockpiling vaccines, which is done by both the United States and the European Union (although the possibility exists that the vaccines may not be effective against a new virus). In the event of an outbreak, the guidelines call for developed nations to share vaccines with developing nations. Containment strategies beyond vaccines include quarantine of exposed individuals, limited travel and additional screenings at places where the virus could easily spread, such as airports. Further measures include the closing of businesses, schools and borders. Individual measures can also be taken to guard against infection. These involve general hygienic measures -- avoiding mass gatherings, thoroughly washing hands and even wearing masks in specific, high-risk situations. However, airborne viruses such as influenza are still the most difficult to contain because of the method of transmission. Diseases like noroviruses, HIV or cholera are more serious but have to be transmitted by blood, other bodily fluids or fecal matter. The threat of a rapid pandemic is thereby slowed because it is easier to identify potential contaminates and either avoid or sterilize them. Research is another important aspect of overall preparedness. Knowledge gained from studying the viruses and the ready availability of information can be instrumental in tracking diseases. For example, the genomic sequence of the novel coronavirus was made available, helping scientists and doctors in different countries to readily identify the infection in limited cases and implement quarantine procedures as necessary. There have been only 13 documented cases of the novel coronavirus, so much is unknown regarding the disease. Recent cases in the United Kingdom indicate possible human-to-human transmission. Further sharing of information relating to the novel coronavirus can aid in both treatment and containment. Ongoing research into viruses can also help make future vaccines more efficient against possible mutations, though this type of research is not without controversy. A case in point is research on the H5N1 virus. H5N1 first appeared in humans in 1997. Of the more than 600 cases that have appeared since then, more than half have resulted in death. However, the virus is not easily transmitted because it must cross from bird to human. Human-to-human transmission of H5N1 is very rare, with only a few suspected incidents in the known history of the disease. While there is an H5N1 vaccine, it is possible that a new variation of the vaccine would be needed were the virus to mutate into a form that was transmittable between humans. Vaccines can take months or even years to develop, but preliminary research on the virus, before an outbreak, can help speed up development. In December 2011, two separate research labs, one in the United States and one in the Netherlands, sought to publish their research on the H5N1 virus. Over the course of their research, these labs had created mutations in the virus that allowed for airborne transmission between ferrets. These mutations also caused other changes, including a decrease in the virus's lethality and robustness (the ability to survive outside the carrier). Publication of the research was delayed due to concerns that the results could increase the risk of accidental release of the virus by encouraging further research, or that the information could be used by terrorist organizations to conduct a biological attack. Eventually, publication of papers by both labs was allowed. However, the scientific community imposed a voluntary moratorium in order to allow the community and regulatory bodies to determine the best practices moving forward. This voluntary ban was lifted for much of the world on Jan. 24, 2013. On Feb. 21, the National Institutes of Health in the United States issued proposed guidelines for federally funded labs working with H5N1. Once standards are set, decisions will likely be made on a case-by-case basis to allow research to continue. Fear of a pandemic resulting from research on H5N1 continues even after the moratorium was lifted. Opponents of the research cite the possibility that the virus will be accidentally released or intentionally used as a bioweapon, since information in scientific publications would be considered readily available. The Risk-Reward Equation The risk of an accidental release of H5N1 is similar to that of other infectious pathogens currently being studied. Proper safety standards are key, of course, and experts in the field have had a year to determine the best way to proceed, balancing safety and research benefits. Previous work with the virus was conducted at biosafety level three out of four, which requires researchers wearing respirators and disposable gowns to work in pairs in a negative pressure environment. While many of these labs are part of universities, access is controlled either through keyed entry or even palm scanners. There are roughly 40 labs that submitted to the voluntary ban. Those wishing to resume work after the ban was lifted must comply with guidelines requiring strict national oversight and close communication and collaboration with national authorities. The risk of release either through accident or theft cannot be completely eliminated, but given the established parameters the risk is minimal. The use of the pathogen as a biological weapon requires an assessment of whether a non-state actor would have the capabilities to isolate the virulent strain, then weaponize and distribute it. Stratfor has long held the position that while terrorist organizations may have rudimentary capabilities regarding biological weapons, the likelihood of a successful attack is very low. Given that the laboratory version of H5N1 -- or any influenza virus, for that matter -- is a contagious pathogen, there would be two possible modes that a non-state actor would have to instigate an attack. The virus could be refined and then aerosolized and released into a populated area, or an individual could be infected with the virus and sent to freely circulate within a population. There are severe constraints that make success using either of these methods unlikely. The technology needed to refine and aerosolize a pathogen for a biological attack is beyond the capability of most non-state actors. Even if they were able to develop a weapon, other factors such as wind patterns and humidity can render an attack ineffective. Using a human carrier is a less expensive method, but it requires that the biological agent be a contagion. Additionally, in order to infect the large number of people necessary to start an outbreak, the infected carrier must be mobile while contagious, something that is doubtful with a serious disease like small pox. The carrier also cannot be visibly ill because that would limit the necessary human contact. As far as continued research is concerned, there is a risk-reward equation to consider. The threat of a terrorist attack using biological weapons is very low. And while it is impossible to predict viral outbreaks, it is important to be able to recognize a new strain of virus that could result in an epidemic or even a pandemic, enabling countries to respond more effectively. All of this hinges on the level of preparedness of developed nations and their ability to rapidly exchange information, conduct research and promote individual awareness of the threat.

**No impact to deployment – reject their fear-mongering**

Reynolds 2005, Alan Reynolds is a senior fellow with the Cato Institute and a nationally syndicated columnist, April 10, 2005, “WMD Doomsday Distractions”, http://www.cato.org/publications/commentary/wmd-doomsday-distractions?print

The report lacked not merely facts but common sense. The commission found the CIA’s worst errors were due “chiefly to flaws in analysis,” and to the “fundamental assumptions and premises of its analytic judgments,” and “an inferential leap.”¶ The panel blamed insufficient imagination. The greater danger may be too much imagination — dreaming up long-shot science-fiction scenarios, like those recently leaked from the Homeland Security Department involving demonstrably ineffective agents delivered by inexplicable devices.¶ In the partially prescient 1996 Kurt Russell film “Executive Decision,” Islamic terrorists hijack an airliner to kill “millions of Americans” with bombs filled with sarin nerve gas. Jet fuel would have been a less thrilling yet more realistic threat.¶ As the Economist noted two weeks after the September 11, 2001, terrorist attacks: “Although a few molecules of sarin are enough to kill a person, it takes hundreds of pounds of chemicals to achieve that concentration in an open air attack.”¶ On Oct. 2, 2001, the Washington Post’s reporters Joby Warrick and Joe Stephens found defense and intelligence agencies had become so enthralled with sarin, smallpox and other hypothetical “weapons of mass destruction” they didn’t connect three dots: commercial planes were often hijacked; jet fuel is explosive; suicidal terrorist tactics are common.¶ The article revealed “elaborate multiagency planning exercises with flashy names such as ‘Red Ex’ and ‘Dark Winter’ focused overwhelmingly on biological and chemical threats, while experts urging preparations for a simpler, more conventional attack found it difficult to be heard. … Lots of money poured into research on chemical and biological threats. Entire research institutes were created for it.”¶ The postwar death toll from bioterrorism is only six — five Americans from anthrax and one Bulgarian assassinated with ricin. The death toll from chemical terrorism is 26 — 19 from sarin gas in Japanese subways a decade ago and seven in Chicago in 1982 killed by Tylenol laced with cyanide.¶ In March 1999, The Post’s science writer Daniel Greenberg already sensed a “whiff of hysteria-fanning and budget opportunism in the scary scenarios of the saviors who have stepped forward against the menace of bioterrorism.”¶ Today, the federal cost of this bioterrorism bonanza is $7.9 billion a year — nearly $2 billion for each known victim of bioterrorism. Yet taxpayers are still assaulted by periodic hysteria-fanning studies from opportunistic institutes claiming, “The United States remains woefully unprepared to protect the public against terrorists wielding biological agents.”¶ Lumping nuclear weapons with a hodgepodge of biological and chemical agents as weapons of “mass” destruction is intended to imply germs and chemicals are as dangerous as nuclear bombs. In a January 2003 speech, former Deputy Defense Secretary Paul Wolfowitz claimed Iraq had enough ricin to kill “more than 1 million people,” botulinum toxin (botox) “to kill tens of millions” and anthrax “to kill hundreds of millions.”¶ To use ricin to kill many people, someone would have to dump hundreds of tons of it on a small area. To kill many with anthrax or botox, someone would have to first get the victims to sniff weapons-grade anthrax or eat botulism-contaminated food and then shun antibiotics or antitoxins.¶ Four months before the September 11 attacks, the Center for Strategic and International Studies hosted a “Dark Winter” war game that assumed the smallpox virus could somehow be released in three shopping malls without anyone noticing, leaving 3,000 unknowingly infected. Each victim was (wrongly) assumed to infect 10 more, through casual contact with travelers who didn’t notice their pox. Compounding supposedly resulted in a million deaths within two months. Dark Winter was cited as a reason the Bush administration spent a half-billion dollars on 300 million doses of smallpox vaccine and tried to force risky vaccinations on first responders.¶ Wall Street Journal science columnist Sharon Belgey debunked “Dark Winter” in November 2002, quoting Swiss expert Peter Merkle about “the sensationalistic press and marketing hype emerging from the burgeoning biodefense industry.” “Dark Winter” assumed everyone infected spread the infection to 10 others, but teams of researchers say the scenario is tenfold too large. “Smallpox spreads slowly and is not very contagious,” Miss Begley noted. Smallpox symptoms are quite visible, which acts like a big quarantine sign. Even a partial quarantine and local vaccinations have proven effective against smallpox.¶ After the Iraq invasion turned up no WMD, a Wall Street Journal editorial seized on inspector David Kay’s mention of Iraqi research on aflatoxin — a carcinogenic mold that is researched because excessive aflatoxin on nuts can result in export bans. A U.S. lab worker once tried to commit suicide by ingesting a lot of aflatoxin, but failed.¶ To use aflatoxin, anthrax, botox or ricin to kill more than a half-dozen people, you have to imagine some device for effectively delivering such agents. When it came to imaginary delivery systems, WMD fear-mongering escalated to the absurd.¶ The 2002 British dossier claimed, “Iraq can deliver chemical and biological agents using an extensive range of artillery shells, free-fall bombs, sprayers and ballistic missiles.” But biological agents (except ricin) are living organisms, which would be killed by any bomb, shell or missile. Chemical agents are liquid at room temperature, not gaseous, and most effective in closed spaces like a subway car or building.¶ Chemical agents can be delivered by artillery shells, but how could terrorists sneak into a city with a 4-ton Howitzer? If terrorists can attack us with artillery shells, free-fall bombs or missiles, we should worry far more about conventional explosives than sarin shellings or aflatoxin bombs.¶ Former Secretary of State Powell told the United Nations that Iraq had “ways to disperse lethal biological agents widely, indiscriminately into the water supply, into the air.” But few biological agents (except anthrax) can survive sunlight, and none can survive chlorine. And it would take many huge trucks to poison a small water reservoir.¶ What about fears of biological agents dispersed indiscriminately into the air? Scenario spinners speculate about mixing anthrax with water and somehow spraying it (without detection) from trucks, crop dusters or unmanned aircraft. But to die from anthrax, you need to inhale thousands of spores. Those spores clump together and mix with dust, yet they must end up neither too large nor too small, or else they would be sneezed out, coughed up or swallowed. Even if enough particles of the perfect size could be sprayed into the breezes, the odds are extremely low of infecting more than few dozen people that way. And none would die if they took Cipro promptly.¶ The biggest danger of past and present alarmist statements about biological terrorism is that endless exaggeration of low-probability events continues diverting limited attention and resources away from real weapons real terrorists really use — airplanes, machine guns, arson, suicide bombs and car bombs.

**Death tolls are massively exaggerated.**

Leitenberg ‘6 (Milton, Senior research scholar at the University of Maryland, Trained as a Scientist and Moved into the Field of Arms Control in 1966, First American Recruited to Work at the Stockholm International Peace Research Institute, Affiliated with the Swedish Institute of International Affairs and the Center for International Studies Peace Program at Cornell University, Senior Fellow at CISSM, http://www.commondreams.org/views06/0217-27.htm)

The United States has spent at least $33 billion since 2002 to combat the threat of biological terrorism. The trouble is, the risk that terrorists will use biological agents is being systematically and deliberately exaggerated. And the U.S. government has been using most of its money to prepare for the wrong contingency. A pandemic flu outbreak of the kind the world witnessed in 1918-19 could kill hundreds of millions of people. The only lethal biological attack in the United States — the anthrax mailings — killed five. But the annual budget for combating bioterror is more than $7 billion, while Congress just passed a $3.8-billion emergency package to prepare for a flu outbreak. The exaggeration of the bioterror threat began more than a decade ago after the Japanese Aum Shinrikyo group released sarin gas in the Tokyo subways in 1995. The scaremongering has grown more acute since 9/11 and the mailing of anthrax-laced letters to Congress and media outlets in the fall of 2001. Now an edifice of institutes, programs and publicists with a vested interest in hyping the bioterror threat has grown, funded by the government and by foundations. Last year, for example, Senate Majority Leader Bill Frist described bioterrorism as "the greatest existential threat we have in the world today." But how could he justify such a claim? Is bioterrorism a greater existential threat than global climate change, global poverty levels, wars and conflicts, nuclear proliferation, ocean-quality deterioration, deforestation, desertification, depletion of freshwater aquifers or the balancing of population growth and food production? Is it likely to kill more people than the more mundane scourges of AIDS, tuberculosis, malaria, measles and cholera, which kill more than 11 million people each year?

**The empirical death toll is minimal.**

Leitenberg ‘5 (Milton, Senior research scholar at the University of Maryland, Trained as a Scientist and Moved into the Field of Arms Control in 1966, First American Recruited to Work at the Stockholm International Peace Research Institute, Affiliated with the Swedish Institute of International Affairs and the Center for International Studies Peace Program at Cornell University, Senior Fellow at CISSM, ASSESSING THE BIOLOGICAL WEAPONS AND BIOTERRORISM THREAT, <http://www.cissm.umd.edu/papers/files/assessing_bw_threat.pdf>)

The conclusions from these independent studies were uniform and mutually reinforcing. There is an extremely low incidence of real biological (or chemical) events, in contrast to the number of hoaxes, the latter spawned by administration and media hype since 1996 concerning the prospective likelihood and dangers of such events. A massive second wave of hoaxes followed the anthrax incidents in the United States in October-November 2001, running into global totals of tens of thousands. It is also extremely important that analysts producing tables of “biological” events not count hoaxes. A hoax is not a “biological” event, nor is the word “anthrax” written on a slip of paper the same thing as anthrax, or a pathogen, or a “demonstration of threat”—all of which various analysts and even government advisory groups have counted hoaxes as being on one occasion or another.79 Those events that were real, and were actual examples of use, were overwhelmingly chemical, and even in that category, involved the use of easily available, off-the-shelf, nonsynthesized industrial products. Many of these were instances of personal murder, and not attempts at mass casualty use. The Sands/Monterey compilation indicated that exactly one person was killed in the United States in the 100 years between 1900 and 2000 as a result of an act of biological or chemical terrorism. Excluding the preparation of ricin, a plant toxin that is relatively easier to prepare, there are only a few recorded instances in the years 1900 to 2000 of the preparation or attempted preparation of pathogens in a private laboratory by a nonstate actor. The significant events to date are: • 1984, the Rajneesh, The Dalles, Oregon, use of salmonella on food; • 1990-94, the Japanese Aum Shinrikyo group’s unsuccessful attempts to procure, produce and disperse anthrax and botulinum toxin;80 • 1999, November 2001, al-Qaida,81 the unsuccessful early efforts to obtain anthrax and to prepare a facility in which to do microbiological work; October-November 2001, the successful “Amerithrax” distribution of a high-quality dry-powder preparation of anthrax spores, which had been prepared within the preceding 24 months.

**Deployment of bioweapons dramatically reduces their death toll.**

Mueller ‘10 (John, Woody Hayes Chair of National Security Studies at the Mershon Center for International Security Studies and a Professor of Political Science at The Ohio State University, A.B. from the University of Chicago, M.A. and Ph.D. @ UCLA, *Atomic Obsession – Nuclear Alarmism from Hiroshima to Al-Qaeda*, Oxford University Press, Accessed @ Emory)

Properly developed and deployed, biological weapons could potentially, if thus far only in theory, kill hundreds of thousands, perhaps even millions, of people. The discussion remains **theoretical** because biological weapons have scarcely ever been used. For the most destructive results, they need to be **dispersed** in very **low-altitude** aerosol clouds. Since aerosols do not appreciably settle, pathogens like anthrax (which is not easy to spread or catch and is not contagious) would probably have to be sprayed **near nose level**. Moreover, **90 percent** of the microorganisms are likely to **die** during the process of aerosolization, while their effectiveness could be reduced still further by **sunlight**, **smog**, **humidity**, and **temperature changes**. Explosive methods of dispersion may destroy the organisms, and, except for anthrax spores, long-term **storage** of lethal organisms in bombs or warheads is difficult: even if refrigerated, most of the organisms have a **limited lifetime**. Such weapons can take days or **weeks** to have **full effect**, during which time they can be **countered** with medical and civil defense measures. In the summary judgment of two careful analysts, delivering microbes and toxins over a wide area in the form most suitable for inflicting mass casualties-as an aerosol that could be inhaled-requires a delivery system of **enormous sophistication**, and **even then** effective dispersal could **easily be disrupted** by unfavorable environmental and meteorological conditions.

**Even if an attack could cause mass death --- status quo public health improvements prevent massive casualty rates.**

Clark ‘8 (William R., Chair Emeritus of the Immunology Department of UCLA, *Bracing for Armageddon?, The Science and Politics of Bioterrorism in America*, Oxford University Press, Accessed Via Emory)

We are also buffered by the impressive improvements we have made in order to absorb the impact of such an attack, should one happen. Although our public health system still has a way to go, it is in much better shape now than it was after 2001. And again, we now have stocks of vaccines and medicines that would greatly blunt the consequences of a bioterrorist attack. We would be better off with a few more vaccines, but we are close to having them. The certainty that even a large-scale bioterrorist attack would have the desired effect is much less now than it was ten years ago.

**Their impact claims are hype that have been consistently empirically disproven**

**Feaver and Kohn 5** - Peter Feaver, professor of Political Science and Public Policy and the director of the Triangle Institute for Security Studies at Duke University, and Richard H. Kohn, Professor of History at the University of North Carolina, 2005, “The Gap: Soldiers, Civilians, and Their Mutual Misunderstanding,” in American Defense Policy, 2005 edition, ed. Paul J. Bolt, Damon V. Coletta, Collins G. Shackelford, p. 339

Concerns about a troublesome divide between the armed forces and the society they serve are hardly new **and** in fact goback to the beginning of the Republic. Writing in the 1950s, Samuel Huntington argued that the divide could best be bridged by civilian society tolerating, if not embracing, the conservative values that animate military culture. Huntington also suggested that politicians allow the armed forces a substantial degree of cultural autonomy. Countering this argument, the sociologist Morris Janowitz argued that in a democracy, military culture necessarily adapts to changes in civilian society, adjusting to the needs and dictates of its civilian masters.2 The end of the Cold War and the extraordinary changes in American foreign and defense policy that resulted have revived the debate. The contemporary heirs of Janowitz see the all volunteer military as drifting too far away from the norms of American society, thereby posing problems for civilian control. They make tour principal assertions. First, the military has grown out of step ideologically with the public, showing itself to be inordinately right-wing politically, and much more religious (and fundamentalist) than America as a whole, having a strong and almost exclusive identification with the Republican Party. Second, the military has become increasingly alienated from, disgusted with, and sometimes even explicitly hostile to, civilian culture. Third, the armed forces have resisted change, particularly the integration of women and homosexuals into their ranks, and have generally proved reluctant to carry out constabulary missions. Fourth, civilian control and military effectiveness will both suffer as the military—seeking ways to operate without effective civilian oversight and alienated from the society around it—loses the respect and support of that society. By contrast, the heirs of Huntington argue that a degenerate civilian culture has strayed so far from traditional values that it intends to eradicate healthy and functional civil-military differences, particularly in the areas of gender, sexual orientation, and discipline. This camp, too, makes four key claims. First, its members assert that the military is divorced in values from a political and cultural elite that is itself alienated from the general public. Second, it believes this civilian elite to be ignorant of, and even hostile to, the armed forces—eager to employ the military as a laboratory for social change, even at the cost of crippling its warfighting capacity. Third, it discounts the specter of eroding civilian control because it sees a military so thoroughly inculcated with an ethos of subordination that there is now too much civilian control, the effect of which has been to stifle the military's ability to function effectively Fourth, because support for the military among the general public remains sturdy, any gap in values is inconsequential. The problem, if anything, is with the civilian elite. The debate has been lively (and inside the Beltway, sometimes quite vicious), but it has rested on very thin evidence**—(**tunneling anecdotes and claims and counterclaims about the nature of civilian and military attitudes. Absent has been a body of systematic data exploring opinions, values, perspectives, and attitudes inside the military compared with those held by civilian elites and the general public. Our project provides some answers.

**Impact inevitable -- CMR in the U.S. will always be strained -- opposing values**

**Cohen 2000** Former Secretary of Defense.

Eliot A. Cohen. Why the Gap Matters - gap between military and civilian world. The National Interest. http://www.dtic.mil/miled/pamphlet/AFO18.pdf.

To do so, they must begin by purging themselves of the notion that if there is no threat of a coup, there is no problem. The truth is that the civil-military relationship in a democracy is almost invariably difficult, setting up as it does opposing values, powerful institutions with great resources, and inevitable tensions between military professionals and statesmen. Those difficulties have become more acute in the United States as a result of two great changes: the end of a centuries-old form of military organization, and a transformation in America's geopolitical circumstances.

**Military doctrines make CM gap inevitable**

**Cohen 2000.** Former Secretary of Defense.

Eliot A. Cohen. Why the Gap Matters - gap between military and civilian world. The National Interest. http://www.dtic.mil/miled/pamphlet/AFO18.pdf.

The major doctrinal statements about the use of force in the last twenty years--Secretary of Defense Caspar Weinberger's six rules for intervention, and General Powell's doctrine of overwhelming force--reflect views dominant in the officer corps, views in turn molded by the military's understanding of the Vietnam War. They were echoed by politicians who believed, or found it convenient to declare that they believed, that the job of politicians was merely to set objectives, not scrutinize military plans, monitor the conduct of operations, and adjust strategy to circumstances. This trend reflects a combination of developments, including a common (mis)reading of the Vietnam War, an unwillingness on the part of civilian leaders to accept the responsibilities levied upon them by their offices, and a confidence in the technical expertise of soldiers. Recent doctrine, however, has flaws of the most terrible kind, for it presumes a kind of universal, apolitical and objective military expertise, when military judgmen t is, in fact, highly contextual and contingent, intimately connected with the politics of a situation and subject to a variety of prejudices and personal experiences. Still, the truth is that for the most part civilian political leaders have given up on the kind of hard questioning and probing that characterized the leadership style of those presidents who believed in civilian control and exercised it best--Lincoln, Roosevelt and Eisenhower among them. Each of these leaders, in different and large ways, violated massively the simplistic doctrine of civilian control that is current in the military and Congress: namely, politicians should set objectives and then get out of the way.

**Impact is exaggerated**

**Cohen 2000.** Former Secretary of Defense.

Eliot A. Cohen. Why the Gap Matters - gap between military and civilian world. The National Interest. http://www.dtic.mil/miled/pamphlet/AFO18.pdf.

THE PARADOX of increased social and institutional vulnerability on the one hand and increased military influence on narrow sectors of policymaking on the other is the essence of the contemporary civil-military problem. Its roots lie not in the machinations of power hungry generals; they have had influence thrust upon them. Nor do they lie in the fecklessness of civilian leaders determined to remake the military in the image of civil society; all militaries must, in greater or lesser degree, share some of the mores and attitudes of the broader civilization from which they have emerged. The problem reflects, rather, deeper and more enduring changes in politics, society and technology. The challenge to American policymakers and soldiers lies in admitting that there is a problem without exaggerating its size and scope. There is no danger of a coup, but there is dry rot. There is no threat even of a MacArthur-sized crisis between political and military high commands, but there is a level of mistrust, antipathy and condescension that is worrisome. There is no fear of collapse of civilian control, but there is erosion in some areas, distortion in others, and, more than anything else, confusion about the meaning of military professionalism under the new conditions--plus sheer ignorance and forgetfulness about what civilian control entails. What are the solutions?

### Legitimacy / Heg

#### Decline doesn’t cause conflict

Barry R. Posen, Ford International Professor of Political Science at MIT, Director of the MIT Security Studies Program, 13 [“Pull Back,” Foreign Affairs, Vol 92, no. 1, Jan/Feb]

Under a restrained grand strategy, U.S. military forces could shrink significantly, both to save money and to send allies the message that it's time they did more for themselves. Because the Pentagon would, under this new strategy, swear off counterinsurgency, it could cut the number of ground forces in half. The navy and the air force, meanwhile, should be cut by only a quarter to a third, since their assets take a long time to produce and would still be needed for any effort to maintain the global balance of power. Naval and air forces are also well suited to solving the security problems of Asia and the Persian Gulf. Because these forces are highly mobile, only some need be present in key regions. The rest can be kept at home, as a powerful strategic reserve. The overall size and quality of U.S. military forces should be determined by the critical contingency that they must address: the defense of key resources and allies against direct attack. Too often in the past, Washington has overused its expensive military to send messages that ought to be left to diplomats. That must change. Although the Pentagon should continue leading joint exercises with the militaries of other countries in key regions, it should stop overloading the calendar with pointless exercises the world over. Making that change would save wear and tear on troops and equipment and avoid creating the impression that the United States will solve all the world's security problems. LETTING GO Shifting to a more restrained global stance would yield meaningful benefits for the United States, saving lives and resources and preventing pushback, provided Washington makes deliberate and prudent moves now to prepare its allies to take on the responsibility for their own defense. Scaling down the U.S. military's presence over a decade would give partners plenty of time to fortify their own militaries and develop the political and diplomatic machinery to look after their own affairs. Gradual disengagement would also reduce the chances of creating security vacuums, which opportunistic regional powers might try to fill. U.S. allies, of course, will do everything they can to persuade Washington to keep its current policies in place. Some will promise improvements to their military forces that they will then abandon when it is convenient. Some will claim there is nothing more they can contribute, that their domestic political and economic constraints matter more than America's. Others will try to divert the discussion to shared values and principles. Still others will hint that they will bandwagon with strong neighbors rather than balance against them. A few may even threaten to turn belligerent. U.S. policymakers will need to remain cool in the face of such tactics and keep in mind that these wealthy allies are unlikely to surrender their sovereignty to regional powers. Indeed, history has shown that states more often balance against the powerful than bandwagon with them. As for potential adversaries, the United States can continue to deter actions that threaten its vital interests by defining those interests narrowly, stating them clearly, and maintaining enough military power to protect them. Of course, the United States could do none of these things and instead continue on its present track, wasting resources and earning the enmity of some states and peoples while infantilizing others. Perhaps current economic and geopolitical trends will reverse themselves, and the existing strategy will leave Washington comfortably in the driver's seat, with others eager to live according to its rules. But if the U.S. debt keeps growing and power continues to shift to other countries, some future economic or political crisis could force Washington to switch course abruptly, compelling friendly and not-so-friendly countries to adapt suddenly. That seems like the more dangerous path.

Data disproves hegemony impacts

Fettweis, 11

Christopher J. Fettweis, Department of Political Science, Tulane University, 9/26/11, Free Riding or Restraint? Examining European Grand Strategy, Comparative Strategy, 30:316–332, EBSCO

It is perhaps worth noting that there is no evidence to support a direct relationship between the relative level of U.S. activism and international stability. In fact, the limited data we do have suggest the opposite may be true. During the 1990s, the United States cut back on its defense spending fairly substantially. By 1998, the United States was spending $100 billion less on defense in real terms than it had in 1990.51 To internationalists, defense hawks and believers in hegemonic stability, this irresponsible “peace dividend” endangered both national and global security. “No serious analyst of American military capabilities,” argued Kristol and Kagan, “doubts that the defense budget has been cut much too far to meet America’s responsibilities to itself and to world peace.”52 On the other hand, if the pacific trends were not based upon U.S. hegemony but a strengthening norm against interstate war, one would not have expected an increase in global instability and violence.

The verdict from the past two decades is fairly plain: The world grew more peaceful while the United States cut its forces. No state seemed to believe that its security was endangered by a less-capable United States military, or at least none took any action that would suggest such a belief. No militaries were enhanced to address power vacuums, no security dilemmas drove insecurity or arms races, and no regional balancing occurred once the stabilizing presence of the U.S. military was diminished. The rest of the world acted as if the threat of international war was not a pressing concern, despite the reduction in U.S. capabilities. Most of all, the United States and its allies were no less safe. The incidence and magnitude of global conflict declined while the United States cut its military spending under President Clinton, and kept declining as the Bush Administration ramped the spending back up. No complex statistical analysis should be necessary to reach the conclusion that the two are unrelated.

Military spending figures by themselves are insufficient to disprove a connection between overall U.S. actions and international stability. Once again, one could presumably argue that spending is not the only or even the best indication of hegemony, and that it is instead U.S. foreign political and security commitments that maintain stability. Since neither was significantly altered during this period, instability should not have been expected. Alternately, advocates of hegemonic stability could believe that relative rather than absolute spending is decisive in bringing peace. Although the United States cut back on its spending during the 1990s, its relative advantage never wavered.

However, even if it is true that either U.S. commitments or relative spending account for global pacific trends, then at the very least stability can evidently be maintained at drastically lower levels of both. In other words, even if one can be allowed to argue in the alternative for a moment and suppose that there is in fact a level of engagement below which the United States cannot drop without increasing international disorder, a rational grand strategist would still recommend cutting back on engagement and spending until that level is determined. Grand strategic decisions are never final; continual adjustments can and must be made as time goes on. Basic logic suggests that the United States ought to spend the minimum amount of its blood and treasure while seeking the maximum return on its investment. And if the current era of stability is as stable as many believe it to be, no increase in conflict would ever occur irrespective of U.S. spending, which would save untold trillions for an increasingly debt-ridden nation.

It is also perhaps worth noting that if opposite trends had unfolded, if other states had reacted to news of cuts in U.S. defense spending with more aggressive or insecure behavior, then internationalists would surely argue that their expectations had been fulfilled. If increases in conflict would have been interpreted as proof of the wisdom of internationalist strategies, then logical consistency demands that the lack thereof should at least pose a problem. As it stands, the only evidence we have regarding the likely systemic reaction to a more restrained United States suggests that the current peaceful trends are unrelated to U.S. military spending. Evidently the rest of the world can operate quite effectively without the presence of a global policeman. Those who think otherwise base their view on faith alone.

Soft power fails - empirics

Drezner 11

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

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

Snowden tanks legitimacy

Parisella 6/27/13

John Parisella is a contributing blogger to AQ Online. He is the former Québec delegate general in New York and currently an invited professor at University of Montréal’s International Relations Center, The Americas Quarterly, June 27, 2013, "The Effect of Edward Snowden-A Canadian Perspective", http://www.americasquarterly.org/content/effect-edward-snowden-canadian-perspective

To some, former CIA and National Security Administration (NSA) employee Edward Snowden is seen as a classic whistleblower, who divulged government secrets that contradict the U.S. Constitution and its 4th amendment. Many who espouse his view—on both the left and right—have applauded his courage and regard him as a hero. To others—especially within the U.S. political class—he is now considered a charged felon, who has willingly pursued a plan to embarrass his government, and in so doing, has breached matters of national security and made the United States less safe. His weekend flight from Hong Kong to Russia may lead some to go as far as to label him a “traitor”. Which is it—hero, felon or traitor? It is too early to answer this. But the longer the situation drags on, the more damage it will inflict on the reputation of the United States on the world stage. The 4th amendment of the U.S. Constitution sets guidelines to protect individual privacy. Even in matters of national security, we are told that due process must be followed. NSA programs, including the ones covering telephone records as well as internet activity that Snowden denounced, must be subjected to safeguards that protect the right to privacy. President Barack Obama has since justified these NSA programs as the necessary balance between privacy and security in this post-9-11 world. While his administration has been careful in its choice of vocabulary, it has decided to charge Snowden with contravening the Espionage Act. The spectacle of the strongest power on earth chasing Snowden around the globe is not reassuring to those who believe in the value of U.S. diplomacy, U.S. intelligence capacity or U.S. military might. The ease with which Snowden accessed sensitive material and subjected his government to this embarrassing game of “cat and mouse” is also not comforting to those who count on U.S. intelligence forces to keep them safe. Clearly, at the outset, the initial effect of Snowden’s action was to spark a legitimate debate about privacy, security and the importance of the 4th amendment. Libertarian politicians like Rand Paul did not condemn Snowden outright. Snowden also has significant support in progressive circles. Others, like influential Democratic Senator Diane Feinstein and Republican Congressman Mike Rogers—normally on opposite sides, argued that maintaining national security and keeping America safe requires measures that could affect some privacy issues. Together, however, they have vehemently condemned Snowden’s actions .The flight to Russia may have deviated what was becoming a necessary debate in a democracy from matters of substance to theatrics. Snowden detractors refer to another famous whistleblower incident: that of Daniel Ellsberg and the release of the Pentagon papers, which gradually led to the questioning of the Vietnam War. Unlike Snowden, they argue, Ellsberg stayed in the U.S. and faced the justice system. In contrast, Snowden’s behavior, which has been backed by some advocacy journalists such as Glen Greenwald of The Guardian and Wikileaks, seems set on evading the U.S. justice system. The polemics around Snowden’s whereabouts seem to confuse the nature of the conversation America should be having at this time in its history. In the meantime, The United States’ image is not improving around the world. Its government seems hesitant and vulnerable. The ‘soft power’ strengths of the U.S. are being questioned. Countries such as China and Russia, with poor human rights records, are openly defying the wishes of the world’s oldest and strongest democracy, and its rule of law. At the end of the day, the privacy versus security debate is rapidly becoming a secondary issue, and this entire episode is turning into a zero-sum game for the United States where no individual or principle wins the day. And this may well be the unintended consequence of Edward Snowden’s actions.

#### Terror threat has markedly declined – This will be the best ev read on this question

**Bergen 12/3**/13 - CNN's national security analyst [Peter Bergen, “Hyping the terror threat?,” CNN, updated 2:16 PM EST, Tue December 3, 2013, pg. http://www.cnn.com/2013/12/03/opinion/bergen-u-s-terror-risk/

Both Feinstein and Rogers are able public servants who, as the heads of the two U.S. intelligence oversight committees, are paid to worry about the collective safety of Americans, and they are two of the most prominent defenders of the NSA's controversial surveillance programs, which they defend as necessary for American security.

But is there any real reason to think that Americans are no safer than was the case a couple of years back? Not according to a study by the New America Foundation of every militant indicted in the United States who is affiliated with al Qaeda or with a like-minded group or is motivated by al Qaeda's ideology.

In fact, the total number of such indicted extremists has declined substantially from 33 in 2010 to nine in 2013. And the number of individuals indicted for plotting attacks within the United States, as opposed to being indicted for traveling to join a terrorist group overseas or for sending money to a foreign terrorist group, also declined from 12 in 2011 to only three in 2013.

Of course, a declining number of indictments doesn't mean that the militant threat has disappeared. One of the militants indicted in 2013 was Dzhokhar Tsarnaev, who is one of the brothers alleged to be responsible for the Boston Marathon bombings in April. But a sharply declining number of indictments does suggest that fewer and fewer militants are targeting the United States.

Recent attack plots in the United States also do not show signs of direction from foreign terrorist organizations such as al Qaeda, but instead are conducted by individuals who are influenced by the ideology of violent jihad, usually because of what they read or watch on the Internet.

None of the 21 homegrown extremists known to have been involved in plots against the United States between 2011 and 2013 received training abroad from a terrorist organization -- the kind of training that can turn an angry, young man into a deadly, well-trained, angry, young man.

Of these extremists, only Tamerlan Tsarnaev, one of the alleged Boston bombers, is known to have had any contact with militants overseas, but it is unclear to what extent, if any, these contacts played in the Boston Marathon bombings.

In short, the data on al-Qaeda-linked or -influenced militants indicted in the United States suggests that the threat of terrorism has actually markedly declined over the past couple of years.

Where Feinstein and Rogers were on much firmer ground in their interview with Crowley was when they pointed to the resurgence of a number of al Qaeda groups in the Middle East.

Al Qaeda's affiliates in Syria control much of the north of the country and are the most effective forces fighting the regime of Bashar al-Assad.

In neighboring Iraq, al Qaeda has enjoyed a renaissance of late, which partly accounts for the fact that the violence in Iraq today is as bad as it was in 2008.

The Syrian war is certainly a magnet for militants from across the Muslim world, including hundreds from Europe, and European governments are rightly concerned that returning veterans of the Syrian conflict could foment terrorism in Europe.

But, at least for the moment, these al Qaeda groups in Syria and Iraq are completely focused on overthrowing the Assad regime or attacking what they regard as the Shia-dominated government of Iraq. And, at least so far, these groups have shown no ability to attack in Europe, let alone in the United States.

#### No nuclear terrorism – no capability nor intent reject their alarmism

* Many reasons to doubt both the capability and interest of terrorists getting nuclear devices
* Dangers of a loose nuke from Russia is far over-stated
* Even if a terrorist group got a nuclear weapon using it would be very difficult
* Terrorists and connections between rogue states is exaggerates
* Iran and North Korea are not going to give terrorists nukes because their arsenals are small
* What can go wrong will go wrong – multiple intensifying and compounding probability make terrorist failure inevitable
* Their evidence uses worst case scenarios which is alarmist and false
* Insider documents within Al-Qaeda show they don’t want nuclear weapons and prefer convention weapons
* Their evidence about them wanting nukes is wrong the 90s and out of date
* Even if they did want a nuke it was only to deter a U.S. invasion

Gavin 2010, Francis J. Gavin is Tom Slick Professor of International Affairs and Director of the Robert S. Strauss Center¶ for International Security and Law, Lyndon B. Johnson School of Public Affairs, University of Texas at Austin, 2010, International Security, Vol. 34, No. 3 (Winter 2009/10), pp. 7–37¶ © 2010 by the President and Fellows of Harvard College and the Massachusetts Institute of Technology, “Same As It Ever Was ¶ Nuclear Alarmism, Proliferation, and the¶ Cold War”, http://www.mitpressjournals.org/doi/pdf/10.1162/isec.2010.34.3.7

Nuclear Terrorism. The possibility of a terrorist nuclear attack on the¶ United States is widely believed to be a grave, even apocalyptic, threat and a¶ likely possibility, a belief supported by numerous statements by public¶ ofªcials. Since the collapse of the Soviet Union, “the inevitability of the spread¶ of nuclear terrorism” and of a “successful terrorist attack” have been taken for¶ granted.48¶ Coherent policies to reduce the risk of a nonstate actor using nuclear weapons clearly need to be developed. In particular, the rise of the Abdul Qadeer¶ Khan nuclear technology network should give pause.49 But again, the news is¶ not as grim as nuclear alarmists would suggest. Much has already been done¶ to secure the supply of nuclear materials, and relatively simple steps can produce further improvements. Moreover, there are reasons to doubt both the capabilities and even the interest many terrorist groups have in detonating a¶ nuclear device on U.S. soil. As Adam Garªnkle writes, “The threat of nuclear¶ terrorism is very remote.”50¶ Experts disagree on whether nonstate actors have the scientific, engineering,¶ financial, natural resource, security, and logistical capacities to build a nuclear¶ bomb from scratch. According to terrorism expert Robin Frost, the danger of a¶ “nuclear black market” and loose nukes from Russia may be overstated. Even¶ if a terrorist group did acquire a nuclear weapon, delivering and detonating it¶ against a U.S. target would present tremendous technical and logistical¶ difficulties.51 Finally, the feared nexus between terrorists and rogue regimes¶ may be exaggerated. As nuclear proliferation expert Joseph Cirincione argues,¶ states such as Iran and North Korea are “not the most likely sources for terrorists since their stockpiles, if any, are small and exceedingly precious, and hence¶ well-guarded.”52 Chubin states that there “is no reason to believe that Iran today, any more than Sadaam Hussein earlier, would transfer WMD [weapons of¶ mass destruction] technology to terrorist groups like al-Qaida or Hezbollah.”53¶ Even if a terrorist group were to acquire a nuclear device, expert Michael¶ Levi demonstrates that effective planning can prevent catastrophe: for nuclear terrorists, what “can go wrong might go wrong, and when it comes to¶ nuclear terrorism, a broader, integrated defense, just like controls at the source¶ of weapons and materials, can multiply, intensify, and compound the possibilities of terrorist failure, possibly driving terrorist groups to reject nuclear terrorism altogether.” Warning of the danger of a terrorist acquiring a nuclear¶ weapon, most analyses are based on the inaccurate image of an “infallible tenfoot-tall enemy.” This type of alarmism, writes Levi, impedes the development¶ of thoughtful strategies that could deter, prevent, or mitigate a terrorist attack:¶ “Worst-case estimates have their place, but the possible failure-averse, conservative, resource-limited ªve-foot-tall nuclear terrorist, who is subject not only¶ to the laws of physics but also to Murphy’s law of nuclear terrorism, needs to¶ become just as central to our evaluations of strategies.”54¶ A recent study contends that al-Qaida’s interest in acquiring and using nuclear weapons may be overstated. Anne Stenersen, a terrorism expert, claims¶ that “looking at statements and activities at various levels within the al-Qaida network, it becomes clear that the network’s interest in using unconventional¶ means is in fact much lower than commonly thought.”55 She further states that¶ “CBRN [chemical, biological, radiological, and nuclear] weapons do not play a¶ central part in al-Qaida’s strategy.”56 In the 1990s, members of al-Qaida debated whether to obtain a nuclear device. Those in favor sought the weapons¶ primarily to deter a U.S. attack on al-Qaida’s bases in Afghanistan. This assessment reveals an organization at odds with that laid out by nuclear alarmists of¶ terrorists obsessed with using nuclear weapons against the United States regardless of the consequences. Stenersen asserts, “Although there have been¶ various reports stating that al-Qaida attempted to buy nuclear material in the¶ nineties, and possibly recruited skilled scientists, it appears that al-Qaida central have not dedicated a lot of time or effort to developing a high-end CBRN¶ capability.... Al-Qaida central never had a coherent strategy to obtain¶ CBRN: instead, its members were divided on the issue, and there was an¶ awareness that militarily effective weapons were extremely difficult to obtain.”57 Most terrorist groups “assess nuclear terrorism through the lens of¶ their political goals and may judge that it does not advance their interests.”58¶ As Frost has written, “The risk of nuclear terrorism, especially true nuclear terrorism employing bombs powered by nuclear fission, is overstated, and that¶ popular wisdom on the topic is significantly fiawed.”59

#### Russia rule of law impossible

Vladimir Gel'man is a professor in the Department of Political Science and Sociology at the European University at St.Petersburg, 2k [“The Dictatorship of Law in Russia: Neither Dictatorship, Nor Rule of Law,” October, PONARS Policy Memo 146, http://www.ponarseurasia.org/sites/default/files/policy-memos-pdf/pm\_0146.pdf]

The First Alternative: Strong Rule of Law

First, Russia's current leaders have few incentives to make the dominance of formal

institutions their political goal. The existing legal framework of Russia is such that the

president's constitutional powers are almost unlimited, and he or she is not accountable to

any other actors and/or institutions. Having firm control over other political actors--both

chambers of parliament, major political parties, regional and business elites, as well as

military and security--the Kremlin has also increased its non-constitutional powers. In

these circumstances, there are few incentives for Russia's rulers to seek out and

implement policies that would curb the powers of their offices, since this would

undermine their status as the dominant actors in Russian politics. At the same time,

subordinated actors who are involved in bargaining with the Kremlin can gain more benefits (or lose fewer resources) through these informal deals, and thus no longer pursue

formal rules and norms as weapons in their struggle for political survival. In the absence

of visible opposition (both among elites and the masses), Russia's major political actors

would rather agree on the very existence of a status quo than risk the uncertainty of

institutional changes.

The other possible scenario of institutional reforms that could be used by the Kremlin

would be the installation of a biased set of formal institutions that serves as a facade for

arbitrary rule. The federal reform initiated by Putin immediately upon his election is a

typical example. As Putin himself noted during the parliamentary debates on these

proposals, his major goal here was the opportunity to impose sanctions against regional

governors, rather than the actual imposition. One would expect that the imposing of these

formal sanctions as a tool of the Kremlin's regional policy would depend upon informal

center-region relations. This kind of legal innovation has little in common with the

dominance of formal institutions; rather, it undermines the foundations of the rule of law

in Russia. In sum, the rule of law can be established only within a competitive political

environment. Since the degree of political contestation in Russia seems to be limited

(both on the national and regional level), we can hardly expect the dominance of formal

institutions.

## 2NC

### 2NC Solvency

#### A) They can’t solve – Squo courts UNDER-ENFORCE Constitutional norms. Avoidance precedent is more powerful

Harvard Law Review 08 (Harvard Law Review, unsigned article, February 2008, “NOTE: THE CHARMING BETSY CANON, SEPARATION OF POWERS, AND CUSTOMARY INTERNATIONAL LAW,” 121 Harv. L. Rev. 1215, lexis )

It is important to note that Judge Posner's "penumbra" criticism of the constitutional question canon is itself susceptible to criticism. According to Professor Alexander Bickel, instead of unjustifiably cabining congressional lawmaking, the constitutional avoidance canon reduces friction between the legislature and the judiciary. Professor Bickel reasons that unnecessary judicial discussions of constitutional matters - even in upholding a congressional statute - may affect other legislation and cast a prohibitory pall over the U.S. Code. n38 Preventing such discussion therefore avoids interbranch conflict and preserves the separation of powers. Professor Cass Sunstein also finds value in the constitutional question canon, arguing that the canon compensates for the judiciary's underenforcement of some constitutional norms. n39 Because judicial nullification of statutes on constitutional grounds presents an antidemocratic problem, courts do not enforce some constitutional norms with the vigor necessary to fully vindicate them. Therefore, a canon that pushes statutes away from areas of constitutional doubt and seemingly expands the scope of constitutional [\*1223] prohibitions is actually bringing the law into greater conformity with the true contours of the Constitution. n40

#### B) Aggressive Enforcement – Avoidance sets the key groundwork for acceptance of future overrules that expand judicial review in the area of the plan.

Hasen 09 (Richard L. Hasen, the William H. Harmon Distinguished Professor of Law, Loyola Law School, Los Angeles, 2009, “Constitutional Avoidance and Anti-Avoidance By the Roberts Court,” The Supreme Court Review, 2009 Sup. Ct. Rev. 181, lexis)

Political calculus. The political calculus explanation is that the Court uses constitutional avoidance and similar doctrines (such as the use of "as-applied" constitutional challenges n201 ) to soften public and Congressional resistance to the Court's efforts to move the law in the Justices' preferred policy direction. n202 Like the political legitimacy argument, the political calculus argument too is one about the Court's legitimacy, but it is one that views the Court as strategically pursuing an agenda, rather than as fearfully anticipating a backlash. It advances a view of the Court, and of the [\*220] Chief Justice in particular, as sophisticated and calculating. A recent portrayal of Chief Justice Roberts in a critical New Yorker article by Jeffrey Toobin referred to the Chief as a "stealth hard liner." n203 The view also has echoes in Justice Scalia's lament in the WRTL II case that the Roberts-Alito "as applied" decision on BCRA section 203 was "faux judicial restraint." n204

Under this positive political theory explanation n205 of the Court's actions, the difference between NAMUDNO and Citizens United is simply one of timing. The Court had already laid the groundwork for a deregulatory campaign finance regime through its earlier campaign finance rulings which exhibited some of that faux judicial restraint: it is now ready to put a stake in the heart of the corporate spending limits, if not in Citizens United, then in another challenge soon to come. If that reading is correct, the Voting Rights Act's time of demise will come, and the public will come to expect it once the Court first raised constitutional doubts in NAMUDNO. The avoidance canon is just another doctrinal tool in the Court's arsenal to move constitutional law and policy in the Court's direction and at the Court's chosen speed.

Tom Goldstein seems to take this view of the Court, seeing the conservative majority using the avoidance doctrine and similar doctrines as laying the groundwork for subsequent overruling.

I am struck in particular by the opinions of the Chief Justice that seem to lay down markers that will be followed in later generations of cases. NAMUDNO details constitutional objections to Section 5 of the Voting Rights Act that seem ready-made for a later decision invalidating the statute if it is not amended. . . .

If I'm right about the direction of the case law, the Court's methodology is striking. It is reinforcing its own legitimacy with [\*221] opinions that later can be cited to demonstrate that it is not rapidly or radically changing the law. This approach may be in the starkest relief if next Term the Court cites its recent decision in Wisconsin Right to Life as precedent for concluding that McConnell v. FEC and Austin v. Michigan have been significantly undermined and should be overruled. The plurality and concurrence in Wisconsin Right to Life famously debated how aggressively the Court should go in overruling prior campaign finance precedent. The Chief Justice urged patience--not moving more quickly than required--and the wait may not have been long. n206

The political calculus explanation meshes particularly well with the peculiar nature of the NAMUDNO statutory decision. Ordinarily when Congress considers overriding a statutory interpretation decision of the Supreme Court, doing so will restore a popular law enacted by Congress (leaving open the possibility that the Court will later strike the law down on constitutional grounds). n207 Here, the situation is different: Congress is not going to consider overriding the Court's interpretation of the bailout provision in the Voting Rights Act; there is not much to gain by doing so (we do not know how many jurisdictions will now seek bailout that could not before) and an override could goad the Court into striking down section 5. Either Congress will do nothing--in which case the Court has laid the groundwork for invalidating section 5 in a future case--or the Congress will pass legislation watering down section 5's key provisions to please the conservatives on the Court. It is a win-win situation for a Court making strategic calculations to move the law toward its policy preferences.

#### Avoidance rulings stops legislative backlash and court stripping

Hooper 02 (Sanford G. Hooper, Associate of Lightfoot, Franklin & White, LLC, Summer 2002, “NOTE: Judicial Minimalism and the National Dialogue on Immigration: The Constitutional Avoidance Doctrine in Zadvydas v. Davis,” Washington & Lee Law Review, 59 Wash & Lee L. Rev. 975, lexis )

Indeed, far from stirring up conflict between Congress and the Supreme Court, the Zadvydas opinion seems to have set the stage for a dialogue between the two branches about immigration rights in the context of Congress's attempts to adopt antiterrorism legislation. Testimony submitted at congressional [\*1009] committee hearings on the government's detention policies routinely cited the Zadvydas Court's view that the due process rights afforded to immigrants - that ultimately caused the Court to invoke the avoidance canon to arrive at a statutory construction that was not violative of immigrants' due process rights - were the same as those afforded to regular citizens. n210 Some members of Congress appear to have noticed the Zadvydas Court's statements on immigrant rights. For instance, Senator John Edwards stated during a Senate floor debate that any legislation Congress adopted to fight terrorism should include due process protections for aliens detained because of national security threats. n211 That the legislation Congress ultimately passed was sensitive to aliens' due process rights n212 demonstrates that the Court's invocation of the avoidance doctrine to send an important message to Congress does not necessarily contribute to friction between the two branches. In fact, when Congress accepted the Court's statutory construction, greater comity argAuably resulted because Congress vindicated the Court's decision not to make an unnecessary constitutional ruling. n213 In effect, the Zadvydas decision served the separation of powers principle because the Court, by avoiding a constitutional showdown, [\*1010] was able to prod Congress into considering aliens' constitutional rights rather than invalidating the statute outright; this tactic left Congress's supremacy in legislative matters intact. n214

#### Court stripping turns every advantage

Andrew D. Martin 1, Prof of Political Science at Washington University 2001. Statuatory Battles and Constitutional Wars: Congress and the Supreme Court

But the large policy payoff in the constitutional cases. What does the ability of the President and Congress to attack through overrides or other means constitutional court decisions imply in terms of the cost of the justices bear? If an attack succeeds and the court does not back down, it effectively removes the court from the policy game and may seriously or, even irrevocably harm its reputation, credibility, and legitimacy. Indeed, such an attack would effectively remove the court from policy making, thus incurring an infinite cost. With no constitutional prescription for judicial review, this power is vulnerable, and would be severely damaged if congress and the president were effective in attack on the Court. But even if the attack is unsuccessful, the integrity of the court may be damaged, for the assault may compromise its ability to make future constitutional decisions and, thus, more long-lasting policy. One does not have to peer as far back as scott v. sandford to find examples; Bush v. Gore (2000, U.S.) may provide one. To be sure, the new President and Congress did not attack the decision, but other members of government did of course, unsuccessfully at least in terms of the ruling’s impact. Yet, there seems little doubt that the critics (not to mention the decision itself) caused some major damage to the reputation of the court, the effects of which the justices may feel in the not-so-distant future.

### AT: Perm Do Both

#### 2) Impossible – avoidance REQUIRES reading statutes to prevent invalidation – the perm re-interprets existing statute in DIRECT OPPOSITION to

Hooper 02 (Sanford G. Hooper, Associate of Lightfoot, Franklin & White, LLC, Summer 2002, “NOTE: Judicial Minimalism and the National Dialogue on Immigration: The Constitutional Avoidance Doctrine in Zadvydas v. Davis,” Washington & Lee Law Review, 59 Wash & Lee L. Rev. 975, lexis )

These measures raise important questions about how much deference courts should give Congress and the executive as they examine these and other post-September 11 legislative and regulatory provisions. In particular, what role will the constitutional avoidance doctrine play as courts confront the difficult task of interpreting new immigration statutes? Will courts heed Justice Kennedy's insistence that the political branches enjoy "primacy in foreign affairs" n15 and interpret the statutes in such a way as to respect the wishes of a government that is struggling to respond to a new threat? Or will the courts follow the direction of Justice Breyer's majority opinion in Zadvydas by "read[ing] significant limitations into other immigration statutes in order to avoid their constitutional invalidation"? n16

#### 3) Links to the net benefit – Causes massive congressional retaliation

Geyh 06 (Charles Geyh, Professor of Law at Indiana University, 2006, When Courts and Congress Collide, p. 223-225)

The restraint that Congress has traditionally exhibited toward the judiciary in most contexts has been reciprocated by the courts in three ways. First, the courts have developed myriad conflict-avoidance doctrines to sidestep controversies that could provoke congressional retaliation. Second, the courts have sometimes averted crises by acquiescing to congressional will in key cases when cycles or court-directed hostility have reached their peak. Third, the courts have traditionally exercised their powers of self-government in ways deferential to and solicitous of the desires of Congress.

If one looks only at the ways in which the third branch of government has acquiesced to the first, it suggests the possibility that the courts are not so much independent decision makers paying their respects to a coequal as they are victims paying tribute to an extortionist—an implication belied by studies revealing that courts do not routinely kowtow to congressional preferences.1 When, however, the judiciary's occasional genuflections to the legislature are reexamined in tandem with the evolution of independence norms in Congress, a more nuanced explanation emerges, in which the courts' occasional, short-term displays of deference, offered in a spirit of comity, have promoted long-term congressional acceptance of customary independence.

Conflict Avoidance Devices; The "Passive Virtues"

There is an extensive literature addressing the ways in which a motivated court can avoid deciding controversial cases that could provoke congressional ire. Professors John Ferejohn and Larry Kramer link that literature to the study of judicial dependence and independence. They set out to "chart the major lines of institutionalized judicial self-restraint," in support of their hypothesis that "if Congress and the executive have seldom exercised their power to impair the judiciary, . . . this may be because the judiciary has acted in such a way that Congress and the executive have seldom felt the need to do so."2 Courts have at their disposal a range of conflict-avoidance mechanisms that enable them to retreat from deciding cases that may be too contentious for their comfort. As described shortly, justiciability doctrines allow courts to dodge questions that are too abstract, that arc asked too soon or too late, or that are simply too "political"; rules of constitutional construction minimize the need for courts to reach constitutional questions that might require them to invalidate congressional enactments or executive branch actions; federalism-promoting doctrines ostensibly aimed at reducing federal court interference with state prerogatives also permit courts to avoid decisions that could prompt an angry response from a Congress solicitous of states' rights;' and the Supreme Court may simply manipulate its case agenda by denying petitions for certiorari that seek review of cases the Court regards as too volatile

### AT: Perm Do the CP

#### Rule means they link

Dictionary.com (<http://dictionary.reference.com/browse/rule>)

verb (used with object), ruled, rul·ing.

13.

to control or direct; exercise dominating power, authority, or influence over; govern: to rule the empire with severity.

#### a) This proves competition – the plan bans a current practice while the CP only sets up obstacles to it

Morrison 06 (Trevor W. Morrison, Associate Professor of Law, Cornell Law School, October 2006, “ARTICLE: CONSTITUTIONAL AVOIDANCE IN THE EXECUTIVE BRANCH,” Columbia Law Review, 106 Colum. L. Rev. 1189)

Although the most common accounts of modern avoidance proceed along the lines of the judicial restraint theory discussed above, the judicial and scholarly literatures also provide an alternative account. n89 One of the most detailed elaborations of that account is found in Ernest Young's work on "resistance norms." n90 According to Professor Young, the avoidance canon should be viewed as "designed not to reflect what Congress might have wanted under particular conditions, but rather to give voice to certain normative values." n91 In any given case implicating the avoidance canon, those values "are simply those embodied in the underlying constitutional provisions that create the constitutional 'doubt.'" n92 When implemented by means of avoidance, those constitutional provisions do not dictate the invalidation of the legislation in the mode of conventional judicial review. Instead, they operate as resistance norms - constitutionally grounded "rules that raise obstacles to particular governmental actions without barring those actions entirely." n93

#### b) the CP remands the issue to congress, it explicitly bans the possibility of removing the statue because it does not change the statute itself.

Frickey 05 (Philip P. Frickey, 2005, Richard W. Jennings Professor of Law, School of Law, University of California, Berkeley (Boalt Hall), March, 2005 California Law Review, 93 Calif. L. Rev. 397, ARTICLE: Getting from Joe to Gene (McCarthy): The Avoidance Canon, Legal Process Theory, and Narrowing Statutory Interpretation in the Early Warren Court, Lexis)

The canon does "remand" the issue to Congress for potential reconsideration and thus might promote a democratic rather than judicial resolution of the problem in the long run. However, the ways in which this remand can be understood under democratic theory are debatable. The Congress to which the issue is returned is, of course, a later Congress than the one that originally enacted the statute. In this sort of repeat game, what would a clever Congress, as an institution, prefer ex ante? That the laws it passes today be honored in later years consistent with its intent unless they must be struck down as inconsistent with a future Court's vision of constitutional values? If so, the canon, as currently deployed, is highly objectionable. Alternatively, perhaps Congress would prefer that the Court reconfigure laws passed years ago based on current judicial perceptions of public values. This approach, consistent with the canon, shifts the burden of inertia in the current Congress in favor of the judicial rewriting. It requires those who, for whatever reason, prefer the earlier Congress's intent (or, for that matter, anything other than the judicial rewrite) to overcome the many "vetogates" [298](#n298) inside Congress and obtain passage of amendatory legislation. [299](#n299) If the Court's rewriting of the statute through application of the canon makes the statute more compatible with the current political climate or public values while leaving its core in place, members of Congress  [\*449]  might appreciate being taken off the hook of the controversy. Then Congress has the Court to blame while getting away with doing nothing in response.

### AT: deference?

#### Rasul and Padilla prove the court can rule on non-constitutional grounds to avoid constitutional issues.

Kloppenberg 07 (Lisa, Dean and Professor of Law, University of Dayton School of Law, “The Avoidance Canon: From the Cold War to the War on Terror”, 32 Dayton L. Rev. 349)

In June 2004, the Court decided three cases arising from the War on Terror. In Hamdi v. Rumsfeld, the Court faced the constitutional issue directly and ruled 8-1 that a U.S. citizen apprehended abroad could not be held indefinitely as an enemy combatant without sufficient safeguards required by the Due Process Clause. 47 The Court found that the detainee must be accorded a meaningful factual hearing without determining exactly what that entailed in all details. It resolved the other two cases primarily on nonconstitutional grounds, ruling 6-3 in Rasul v. Bush that Guantanamo Bay detainees who are not U.S. citizens have rights to pursue habeas corpus petitions in federal court.48 In Padilla v. Rumsfeld, the Court found that a U.S. citizen, apprehended abroad and held as an enemy combatant in a military jail within the U.S., had filed his habeas petition in the wrong federal court district.4 9 A majority of the justices indicated, however, that the government did not have authority to detain a U.S. citizen arrested within the U.S. as an enemy combatant.5°

#### Avoidance doctrine rulings set a precedent and spill over – immigration rulings prove

Hooper 02 (Sanford G. Hooper, Associate of Lightfoot, Franklin & White, LLC, Summer 2002, “NOTE: Judicial Minimalism and the National Dialogue on Immigration: The Constitutional Avoidance Doctrine in Zadvydas v. Davis,” Washington & Lee Law Review, 59 Wash & Lee L. Rev. 975, lexis )

In Zadvydas, the Court relied in part on the fact that it had imposed constitutional limitations on plenary power in the past to reject the Government's argument that the Attorney General had the statutory authority to hold deportable aliens indefinitely in the interests of protecting the community. n117 The Court found that, notwithstanding Congress's plenary power, the Attorney General's reading of the provision that an alien "may be detained beyond [\*994] the removal period" indefinitely would cause serious constitutional problems, given the Fifth Amendment's Due Process Clause. n118 Specifically, the Court worried that indefinite detention of an alien might amount to a deprivation of liberty without due process of law. n119 Fearful of the statute's potential to violate the Due Process Clause, the Court felt that its duty was to avoid any interpretation allowing for indefinite detention. n120

The use of the avoidance doctrine in Zadvydas is consistent with Dean Kloppenberg's thesis that the Court relies most heavily on this doctrine when "socially sensitive cases" are at stake. n121 Kloppenberg's contention is particularly salient in light of society's heightened interest in immigration matters since September 11. n122 But the complaints and frustrations leveled at the avoidance doctrine by scholars such as Kloppenberg are inapplicable to Zadvydas. One of Kloppenberg's chief criticisms of the avoidance doctrine is that courts' reliance on it hampers the development of constitutional law. n123 Kloppenberg further claims that courts use the avoidance doctrine to issue "narrow or piecemeal rulings" that hamper the development of law in cases dealing with race and gender discrimination. n124

With respect to Zadvydas, one can imagine that proponents of clear constitutional development would like to know whether the Constitution permits the Attorney General to hold indefinitely an alien whom the INS has ordered deported - a question that bears on an alien's liberty interest and, indirectly, on whether the government may abridge certain rights on account of alienage. However, the mere fact that the Zadvydas Court applied the avoidance doctrine, and thereby did not reach that question, does not mean [\*995] that the Court's holding will not contribute to the development of constitutional law regarding alien rights. Professor Sunstein has noted that "narrow and unambitious rulings have been central to the elaboration of constitutional rights. The modern law of free speech was built not in a year or even in a decade, but through a century of mostly incremental decisions." n125 In effect, Sunstein seems to be telling proponents of an aggressive Court to "be patient."

Sunstein's point is particularly applicable in the area of immigration law. Though it did not involve the avoidance doctrine, the well-known case Yick Wo v. Hopkins n126 supports the contention that a narrow ruling on constitutional rights can be a springboard for elaboration of other constitutional rights. n127 Yick Wo involved a facially-neutral ordinance requiring those operating wooden laundries in the city of San Francisco to obtain permits. n128 The board issuing the permits denied permits to all two hundred Chinese applicants while it granted permits to all non-Chinese applicants but one. n129 The Court found that despite their status as subjects of the Emperor of China, the laundry operators nonetheless deserved the protections of the Fourteenth Amendment's Equal Protection Clause. n130 Accordingly, the Court held that the discrimination against the aliens was illegal. n131

The holding in Yick Wo that aliens were due the protections of the Fourteenth Amendment was arguably a narrow decision because the Court might [\*996] have gone much further by stating that aliens were entitled to the full panoply of constitutional protections. But Yick Wo's narrow holding was nevertheless significant because it signaled that aliens were to some extent under the constitutional umbrella. n132 In subsequent years, the Court built on the basic precept of Yick Wo to expand the constitutional rights of aliens. To wit, in Wong Wing v. United States, n133 ten years after Yick Wo, the Court gave aliens the full range of Fifth and Sixth Amendment protections. n134 In the 1931 case of Russian Volunteer Fleet v. United States, n135 the Court relied on Yick Wo to apply the Fifth Amendment's Takings Clause to aliens. n136 [\*997]

This line of decisions following Yick Wo that protected the rights of aliens did not spring from constitutional claims in admission and expulsion cases. n137 Rather, they involved the fundamental rights of aliens and individuals generally. n138 One scholar has argued that because Yick Wo and its progeny dealt with fundamental human rights rather than narrower admission and expulsion decisions, these cases helped lead to an eventual attenuation of the plenary power doctrine in immigration law. n139 Furthermore, Yick Wo and its progeny prove Professor Sunstein's underlying point that modest rulings in constitutional law build on one another and together can have a powerful cumulative effect. n140

### AT: link to NB

#### Avoidance doesn’t link to controversy over PQD over habeas

Frickey 05 (Philip P. Frickey, 2005, Richard W. Jennings Professor of Law, School of Law, University of California, Berkeley (Boalt Hall), March, 2005 California Law Review, 93 Calif. L. Rev. 397, ARTICLE: Getting from Joe to Gene (McCarthy): The Avoidance Canon, Legal Process Theory, and Narrowing Statutory Interpretation in the Early Warren Court, Lexis)

In the current war on terrorism, like the Cold War of the 1950s, the federal courts may find themselves teetering on the brink of red-hot controversy when they adjudicate how the Constitution applies to regulations purporting to be in the service of national security. The avoidance canon may prove, yet again, to be a useful tool in mediating constitutional law and constitutional culture. [377](" \l "n377" \t "_self) Indeed, just four years ago, in a somewhat analogous situation involving whether Congress had authorized the  [\*464]  indefinite detention of deportable aliens, the Supreme Court used the avoidance canon to soften the reach of the statute in question. [378](" \l "n378" \t "_self) It deployed Witkovich as precedent to that end - a precedent that had languished virtually unused by the Court since the 1950s. In the same year, the Court also used the avoidance canon to steer away from the conclusion that Congress had removed the availability of the writ of habeas corpus to challenge deportation. [379](" \l "n379" \t "_self) Although the Court's first decisions involving terrorism have not focused much on the avoidance canon, [380](" \l "n380" \t "_self) more cases are almost sure to come. Some will likely involve factors similar to those underlying the avoidance decisions of the early Warren Court. For example, we are likely to see more litigation involving general delegations of wide-ranging authority to the executive in a context - "war" involving enemies who fight not for a country, but for a cause - in which international law norms are murky and American constitutional law is undeveloped. As the philosopher Yogi Berra might put it, it may be deja vu all over again for the avoidance canon at the borderline of constitutional law and statutory interpretation, of constitutional law and constitutional culture.

#### Avoidance solves controversial decisions

Fallon et al. 03 (Richard H. Fallon, Jr., Professor of Law, Harvard Law School, Richard H. Fallon, Jr. January, 2003, California Law Review, 91 Calif. L. Rev. 1, ARTICLE: Marbury and the Constitutional Mind: A Bicentennial Essay on the Wages of Doctrinal TensionMarbury and the Constitutional Mind: A Bicentennial Essay on the Wages of Doctrinal Tension, Lexis)

In post-Marbury decisions, the principle that courts should engage in constitutional adjudication only to protect the concrete rights of identified individuals finds abundant expression. Standing doctrine affords one prominent example. [90](" \l "n90" \t "_self) The Supreme Court has asserted recurrently that federal courts may not exercise jurisdiction at all in the absence of a "distinct and palpable" injury to particular individuals. [91](" \l "n91" \t "_self) This limitation, the Court has stated, is "founded in concern about the proper - and properly limited - role of the courts in a democratic society." [92](#n92) The doctrine of constitutional avoidance [93](" \l "n93" \t "_self) furnishes another example of judicial  [\*23]  self-limitation that reflects Marbury's private-rights face, which justifies constitutional adjudication only insofar as it is necessary "to decide on the rights of individuals." [94](" \l "n94" \t "_self) In one of its aspects, the avoidance doctrine prescribes that courts will resolve constitutional issues only as a matter of last resort and strict necessity. [95](" \l "n95" \t "_self) For example, when a party seeking relief on constitutional grounds also asserts a claim under a federal statute or regulations, the Court almost invariably decides the nonconstitutional issues first. [96](" \l "n96" \t "_self) Another frequently cited prescription of constitutional avoidance calls for courts to prefer statutory interpretations that do not generate constitutional difficulties: "Where an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress." [97](#n97)

### Solvency – Protects JI

#### Avoidance makes the judiciary super independent.

Frickey 05 (Philip P. Frickey, 2005, Richard W. Jennings Professor of Law, School of Law, University of California, Berkeley (Boalt Hall), March, 2005 California Law Review, 93 Calif. L. Rev. 397, ARTICLE: Getting from Joe to Gene (McCarthy): The Avoidance Canon, Legal Process Theory, and Narrowing Statutory Interpretation in the Early Warren Court, Lexis)

As this discussion suggests, some applications of the avoidance canon might be even more activist than judicial review. In effect, the canon creates a penumbra around the Constitution that dooms statutes raising serious constitutional questions to creative judicial rewriting, even though, if push came to shove, courts would presumably uphold the constitutionality of at least some of these laws. n295 In fact, in addition to Barenblatt and Cafeteria Workers, the Court's admonitions have sometimes proved merely hortatory, as in later cases when the Court upholds a statute against the same constitutional challenge avoided by the canon in an earlier case. n296

### Solvency – Judicial Strength

#### The plan fails – courts will avoid congressional controversy so they won’t enforce – avoidance means judicial confidence – avoids repudiation.

Frickey 05 (Philip P. Frickey, 2005, Richard W. Jennings Professor of Law, School of Law, University of California, Berkeley (Boalt Hall), March, 2005 California Law Review, 93 Calif. L. Rev. 397, ARTICLE: Getting from Joe to Gene (McCarthy): The Avoidance Canon, Legal Process Theory, and Narrowing Statutory Interpretation in the Early Warren Court, Lexis)

Reconsider Yates as well. In retrospect, Harlan's opinion is an important way station of doctrinal development - a bridge from judicial deference to security concerns in cases like Schenck, n368 Abrams, n369 and Dennis n370 to judicial confidence in constructing a much more protective doctrinal [\*463] regime in Brandenburg. n371 Harlan wrote opaquely for a purpose: to provide a testing ground, leave open future possibilities, and attempt to avoid a congressional repudiation that would have stunted First Amendment law for much longer than the dozen years it took for Brandenburg to emerge.

Robert Post's provocative suggestion that "judicial authority might best be reconceived as a relationship of trust that courts forge with the American people" n372 is, in my judgment, a fitting description of what the avoidance cases in the early Warren Court were all about. If, as Post suggests, "constitutional law emerges from an ongoing dialectic between constitutional culture and the institutional practices of constitutional adjudication," n373 one important tool for those practices - as Frankfurter recognized, a rule of constitutional adjudication more than of statutory interpretation n374 - is the avoidance canon. It helped the Court bridge the public law and culture of the 1950s with the public law and culture of the 1960s. In retrospect, it gave public law a way of getting from Joe to Gene McCarthy.

### Solvency – Follow On / Congress

#### 1) Political Backlash – Avoidance change the debate to force congress’s hand more effectively than statutory interpretations.

Metzger 10 (Gillian E. Metzger, Professor of Law, Columbia Law School, March 2010, “ESSAY: ORDINARY ADMINISTRATIVE LAW AS CONSTITUTIONAL COMMON LAW,” Columbia Law Review, 110 Colum. L. Rev. 479, lexis )

Even Fox acknowledged, moreover, that one likely alternative to requiring that agencies take constitutional concerns into account will be judicial enforcement of those concerns through the mechanism of the constitutional canons, in particular the canon of constitutional avoidance. n202 Much recent scholarship on the constitutional canons has argued that, despite their seemingly milder appearance, decisions applying the canons can be as intrusive on Congress - indeed, perhaps more so - as decisions holding statutes to be unconstitutional. n203 If these canons [\*532] are in fact doing any work, then they are yielding statutory interpretations different from the reading that would otherwise obtain. n204 The effect is to trump the political compromise that initially underlay enactment of the measure; worse, the courts' interpretations may change political dynamics in a way that precludes easy enactment of clarifying or reversing legislation by Congress. n205 Whether or not the formal possibility of congressional reenactment deserves more weight in the equation than these arguments allow, n206 it is hard to dispute that application of the canons can prove a substantial obstacle for Congress, given the difficulties involved in getting federal legislation enacted.

#### 2) Guidance – Avoidance means congress follows court-set rules.

Slocum 07 (Brian, Assistant Professor of Law, Florida Coastal School of Law, 07 , Canons, the Plenary Power Doctrine and Immigration Law. Florida State University Law Review, Vol. 34, Winter 2007)

These second-best interpretations do not necessarily make the statutory decisions that apply canons unpredictable. If applied correctly and consistently, well-established canons can act as background rules that guide Congress by sending signals about how statutes will be interpreted. n97 The Court has endorsed this theory, stating in the immigration case McNary v. Haitian Refugee Center, Inc., n98 that "[i]t is presumable that Congress legislates with knowledge of our basic rules of statutory construction." n99

The recent history of habeas corpus jurisdiction in immigration cases is a good example of the background rules theory at work. In 1996, Congress passed AEDPA and IIRIRA, which made significant changes to the judicial review provisions of the Immigration and Nationality Act (INA). n100 The Court in INS v. St. Cyr applied the avoidance canon, the presumption in favor of judicial review of administrative action, and the "the longstanding rule requiring a clear statement of congressional intent to repeal habeas jurisdiction," thereby rejecting the government's argument that Congress had clearly divested courts of jurisdiction under 28 U.S.C. § 2241 over habeas corpus actions filed by criminal aliens to challenge removal orders. n101

### Solvency – Precedent

#### No UQ – Under-enforcement turns their precedent args – only the CP creates a sustainable legal norm and influences Congressional practice

Hasen 09 (Richard L. Hasen, the William H. Harmon Distinguished Professor of Law, Loyola Law School, Los Angeles, 2009, “Constitutional Avoidance and Anti-Avoidance By the Roberts Court,” The Supreme Court Review, 2009 Sup. Ct. Rev. 181, lexis)

Second, the canon may provide "a low salience mechanism for giving effect to what Larry Sager calls 'underenforced constitutional norms.'" n28 As Eskridge explains: "While a Court that seeks to avoid judicial activism will be reluctant to invalidate federal statutes in close cases, it might seek other ways to protect constitutional norms. One way is through canons of statutory construction." n29 Avoidance in effect remands the statute to Congress. The canon "makes it harder for Congress to enact constitutionally questionable statutes and forces legislatures to reflect and deliberate before plunging into constitutionally sensitive issues." n30

### Legitimacy

#### Legitimacy not key to heg—popularity isn’t a factor

Brooks and Wohlforth 9—\*Stephen G. Brooks is Associate Professor of Government at Dartmouth College. \*\*William C. Wohlforth is the Daniel Webster Professor of Government at Dartmouth College [March-April, 2009, “Reshaping the world order: how Washington should reform international institutions,” *Foreign Affairs*, Emory]

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

#### Legitimacy doesn’t affect the structural reasons why heg solves war

Maher 11—Richard Maher, adjunct prof of political science at Brown [The Paradox of American Unipolarity: Why the United States May Be Better Off in a Post-Unipolar World, Orbis 55;1]

The United States should start planning now for the inevitable decline of its preeminent position in world politics. By taking steps now, the United States will be able to position itself to exercise maximum influence beyond its era of preponderance. This will be America’s fourth attempt at world order. The first, following World War I and the creation of the League of Nations, was a disaster. The second and third, coming in 1945 and 1989-1991, respectively, should be considered significant achievements of U.S. foreign policy and of creating world order. This fourth attempt at world order will go a long way in determining the basic shape and character of world politics and international history for the twenty-first century. The most fundamental necessity for the United States is to create a stable political order that is likely to endure, and that provides for stable relations among the great powers. The United States and other global stakeholders must prevent a return to the 1930s, an era defined by open trade conflict, power competition, and intense nationalism. Fortunately, the United States is in a good position to do this. The global political order that now exists is largely of American creation. Moreover, its forward presence in Europe and East Asia will likely persist for decades to come, ensuring that the United States will remain a major player in these regions. The disparity in military power between the United States and the rest of the world is profound, and this gap will not close in the next several decades at least. In creating a new global political order for twenty-first century world politics, the United States will have to rely on both the realist and liberal traditions of American foreign policy, which will include deterrence and power balancing, but also using international institutions to shape other countries’ preferences and interests. Adapt International Institutions for a New Era of World Politics. The United States should seek to ensure that the global rules, institutions, and norms that it took the lead in creating---which reflect basic American preferences and interests, thus constituting an important element of American power---outlive American preeminence. We know that institutions acquire a certain ‘‘stickiness’’ that allow them to exist long after the features or forces at the time of their creation give way to a new landscape of global politics. The transaction costs of creating a whole new international---or even regional--- institutional architecture that would compete with the American post-World War II vintage would be enormous. Institutions such as the International Monetary Fund (IMF), World Bank, and World Trade Organization (WTO), all reflect basic American preferences for an open trading system and, with a few exceptions, have near-universal membership and overwhelming legitimacy. Even states with which the United States has significant political, economic, or diplomatic disagreement---China, Russia, and Iran---have strongly desired membership in these ‘‘Made in USA’’ institutions. Shifts in the global balance of power will be reflected in these institutions---such as the decision at the September 2009 Pittsburgh G-20 summit to increase China’s voting weight in the IMF by five percentage points, largely at the expense of European countries such as Britain and France. Yet these institutions, if their evolution is managed with deftness and skill, will disproportionately benefit the United States long after the demise of its unparalleled position in world politics. In this sense, the United States will be able to ‘‘lock in’’ a durable international order that will continue to reflect its own basic interests and values. Importantly, the United States should seek to use its vast power in the broad interest of the world, not simply for its own narrow or parochial interests. During the second half of the twentieth century the United States pursued its own interests but also served the interests of the world more broadly. And there was intense global demand for the collective goods and services the United States provided. The United States, along with Great Britain, are history’s only two examples of liberal empires. Rather than an act of altruism, this will improve America’s strategic position. States and societies that are prosperous and stable are less likely to display aggressive or antagonistic behavior in their foreign policies. There are things the United States can do that would hasten the end of American preeminence, and acting in a seemingly arbitrary, capricious, and unilateral manner is one of them. The more the rest of the world views the American-made world as legitimate, and as serving their own interests, the less likely they will be to seek to challenge or even transform it.19 Cultivate Balance of Power Relationships in Other Regions. The United States enjoys better relations with most states than these states do with their regional neighbors. South and East Asia are regions in which distrust, resentment, and outright hostility abound. The United States enjoys relatively strong (if far from perfect) strategic relationships with most of the major states in Asia, including Japan, India, Pakistan, and South Korea. The United States and China have their differences, and a more intense strategic rivalry could develop between the two. However, right now the relationship is generally stable. With the possible exception of China (but perhaps even Beijing views the American military presence in East Asia as an assurance against Japanese revanchism), these countries prefer a U.S. presence in Asia, and in fact view good relations with the United States as indispensable for their own security.

### Terror

* Many reasons to doubt both the capability and interest of terrorists getting nuclear devices
* Dangers of a loose nuke from Russia is far over-stated
* Even if a terrorist group got a nuclear weapon using it would be very difficult
* Terrorists and connections between rogue states is exaggerates
* Iran and North Korea are not going to give terrorists nukes because their arsenals are small
* What can go wrong will go wrong – multiple intensifying and compounding probability make terrorist failure inevitable
* Their evidence uses worst case scenarios which is alarmist and false
* Insider documents within Al-Qaeda show they don’t want nuclear weapons and prefer convention weapons
* Their evidence about them wanting nukes is wrong the 90s and out of date
* Even if they did want a nuke it was only to deter a U.S. invasion

#### Terror threat has markedly declined – This will be the best ev read on this question

**Bergen 12/3**/13 - CNN's national security analyst [Peter Bergen, “Hyping the terror threat?,” CNN, updated 2:16 PM EST, Tue December 3, 2013, pg. http://www.cnn.com/2013/12/03/opinion/bergen-u-s-terror-risk/

Both Feinstein and Rogers are able public servants who, as the heads of the two U.S. intelligence oversight committees, are paid to worry about the collective safety of Americans, and they are two of the most prominent defenders of the NSA's controversial surveillance programs, which they defend as necessary for American security.

But is there any real reason to think that Americans are no safer than was the case a couple of years back? Not according to a study by the New America Foundation of every militant indicted in the United States who is affiliated with al Qaeda or with a like-minded group or is motivated by al Qaeda's ideology.

In fact, the total number of such indicted extremists has declined substantially from 33 in 2010 to nine in 2013. And the number of individuals indicted for plotting attacks within the United States, as opposed to being indicted for traveling to join a terrorist group overseas or for sending money to a foreign terrorist group, also declined from 12 in 2011 to only three in 2013.

Of course, a declining number of indictments doesn't mean that the militant threat has disappeared. One of the militants indicted in 2013 was Dzhokhar Tsarnaev, who is one of the brothers alleged to be responsible for the Boston Marathon bombings in April. But a sharply declining number of indictments does suggest that fewer and fewer militants are targeting the United States.

Recent attack plots in the United States also do not show signs of direction from foreign terrorist organizations such as al Qaeda, but instead are conducted by individuals who are influenced by the ideology of violent jihad, usually because of what they read or watch on the Internet.

None of the 21 homegrown extremists known to have been involved in plots against the United States between 2011 and 2013 received training abroad from a terrorist organization -- the kind of training that can turn an angry, young man into a deadly, well-trained, angry, young man.

Of these extremists, only Tamerlan Tsarnaev, one of the alleged Boston bombers, is known to have had any contact with militants overseas, but it is unclear to what extent, if any, these contacts played in the Boston Marathon bombings.

In short, the data on al-Qaeda-linked or -influenced militants indicted in the United States suggests that the threat of terrorism has actually markedly declined over the past couple of years.

Where Feinstein and Rogers were on much firmer ground in their interview with Crowley was when they pointed to the resurgence of a number of al Qaeda groups in the Middle East.

Al Qaeda's affiliates in Syria control much of the north of the country and are the most effective forces fighting the regime of Bashar al-Assad.

In neighboring Iraq, al Qaeda has enjoyed a renaissance of late, which partly accounts for the fact that the violence in Iraq today is as bad as it was in 2008.

The Syrian war is certainly a magnet for militants from across the Muslim world, including hundreds from Europe, and European governments are rightly concerned that returning veterans of the Syrian conflict could foment terrorism in Europe.

But, at least for the moment, these al Qaeda groups in Syria and Iraq are completely focused on overthrowing the Assad regime or attacking what they regard as the Shia-dominated government of Iraq. And, at least so far, these groups have shown no ability to attack in Europe, let alone in the United States.

### Russia

#### Russia rule of law impossible

Vladimir Gel'man is a professor in the Department of Political Science and Sociology at the European University at St.Petersburg, 2k [“The Dictatorship of Law in Russia: Neither Dictatorship, Nor Rule of Law,” October, PONARS Policy Memo 146, http://www.ponarseurasia.org/sites/default/files/policy-memos-pdf/pm\_0146.pdf]

The First Alternative: Strong Rule of Law

First, Russia's current leaders have few incentives to make the dominance of formal¶ institutions their political goal. The existing legal framework of Russia is such that the¶ president's constitutional powers are almost unlimited, and he or she is not accountable to¶ any other actors and/or institutions. Having firm control over other political actors--both¶ chambers of parliament, major political parties, regional and business elites, as well as¶ military and security--the Kremlin has also increased its non-constitutional powers. In¶ these circumstances, there are few incentives for Russia's rulers to seek out and¶ implement policies that would curb the powers of their offices, since this would¶ undermine their status as the dominant actors in Russian politics. At the same time,¶ subordinated actors who are involved in bargaining with the Kremlin can gain more benefits (or lose fewer resources) through these informal deals, and thus no longer pursue¶ formal rules and norms as weapons in their struggle for political survival. In the absence¶ of visible opposition (both among elites and the masses), Russia's major political actors¶ would rather agree on the very existence of a status quo than risk the uncertainty of¶ institutional changes.

The other possible scenario of institutional reforms that could be used by the Kremlin¶ would be the installation of a biased set of formal institutions that serves as a facade for¶ arbitrary rule. The federal reform initiated by Putin immediately upon his election is a¶ typical example. As Putin himself noted during the parliamentary debates on these¶ proposals, his major goal here was the opportunity to impose sanctions against regional¶ governors, rather than the actual imposition. One would expect that the imposing of these¶ formal sanctions as a tool of the Kremlin's regional policy would depend upon informal¶ center-region relations. This kind of legal innovation has little in common with the¶ dominance of formal institutions; rather, it undermines the foundations of the rule of law¶ in Russia. In sum, the rule of law can be established only within a competitive political¶ environment. Since the degree of political contestation in Russia seems to be limited¶ (both on the national and regional level), we can hardly expect the dominance of formal

institutions.

### Impx D

#### No escalation – disagreements remain limited

Weitz 11 (Richard, senior fellow at the Hudson Institute and a World Politics Review senior editor 9/27/2011, “Global Insights: Putin not a Game-Changer for U.S.-Russia Ties,” <http://www.scribd.com/doc/66579517/Global-Insights-Putin-not-a-Game-Changer-for-U-S-Russia-Ties>)

Fifth, there will inevitably be areas of conflict between Russia and the United States regardless of who is in the Kremlin. Putin and his entourage can never be happy with having NATO be Europe's most powerful security institution, since Moscow is not a member and cannot become one. Similarly, the Russians will always object to NATO's missile defense efforts since they can neither match them nor join them in any meaningful way. In the case of Iran, Russian officials genuinely perceive less of a threat from Tehran than do most Americans, and Russia has more to lose from a cessation of economic ties with Iran -- as well as from an Iranian-Western reconciliation. On the other hand, these conflicts can be managed, since they will likely **remain limited and compartmentalized**. Russia and the West **do not have fundamentally conflicting vital interests of the kind countries would go to war over**. And as the Cold War demonstrated, nuclear weapons are a great pacifier under such conditions. Another novel development is that Russia is much more integrated into the international economy and global society than the Soviet Union was, and Putin's popularity depends heavily on his economic track record. Beyond that, there are objective criteria, such as the smaller size of the Russian population and economy as well as the difficulty of controlling modern means of social communication, that will constrain whoever is in charge of Russia.

#### No nuclear strike

Graham 7 (Thomas Graham, senior advisor on Russia in the US National Security Council staff 2002-2007, 2007, "Russia in Global Affairs” The Dialectics of Strength and Weakness http://eng.globalaffairs.ru/numbers/20/1129.html)

An astute historian of Russia, Martin Malia, wrote several years ago that “Russia has at different times been demonized or divinized by Western opinion less because of her real role in Europe than because of the fears and frustrations, or hopes and aspirations, generated within European society by its own domestic problems.” Such is the case today. To be sure, mounting Western concerns about Russia are a consequence of Russian policies that appear to undermine Western interests, but they are also a reflection of declining confidence in our own abilities and the efficacy of our own policies. Ironically, this growing fear and distrust of Russia come at a time when Russia is arguably less threatening to the West, and the United States in particular, **than it has been at any time since the end of the Second World War**. Russia does not champion a totalitarian ideology intent on our destruction, its military poses no threat to sweep across Europe, its economic growth depends on constructive commercial relations with Europe, and its strategic arsenal – while still capable of annihilating the United States – is under more reliable control than it has been in the past fifteen years and **the threat of a strategic strike approaches zero probability**. Political gridlock in key Western countries, however, precludes the creativity, risk-taking, and subtlety needed to advance our interests on issues over which we are at odds with Russia while laying the basis for more constructive long-term relations with Russia.

### Impx

#### Deployment of bioweapons dramatically reduces their death toll.

Mueller ‘10 (John, Woody Hayes Chair of National Security Studies at the Mershon Center for International Security Studies and a Professor of Political Science at The Ohio State University, A.B. from the University of Chicago, M.A. and Ph.D. @ UCLA, Atomic Obsession – Nuclear Alarmism from Hiroshima to Al-Qaeda, Oxford University Press, Accessed @ Emory)

Properly developed and deployed, biological weapons could potentially, if thus far only in theory, kill hundreds of thousands, perhaps even millions, of people. The discussion remains **theoretical** because biological weapons have scarcely ever been used. For the most destructive results, they need to be **dispersed** in very **low-altitude** aerosol clouds. Since aerosols do not appreciably settle, pathogens like anthrax (which is not easy to spread or catch and is not contagious) would probably have to be sprayed **near nose level**. Moreover, **90 percent** of the microorganisms are likely to **die** during the process of aerosolization, while their effectiveness could be reduced still further by **sunlight**, **smog**, **humidity**, and **temperature changes**. Explosive methods of dispersion may destroy the organisms, and, except for anthrax spores, long-term **storage** of lethal organisms in bombs or warheads is difficult: even if refrigerated, most of the organisms have a **limited lifetime**. Such weapons can take days or **weeks** to have **full effect**, during which time they can be **countered** with medical and civil defense measures. In the summary judgment of two careful analysts, delivering microbes and toxins over a wide area in the form most suitable for inflicting mass casualties-as an aerosol that could be inhaled-requires a delivery system of **enormous sophistication**, and **even then** effective dispersal could **easily be disrupted** by unfavorable environmental and meteorological conditions.

#### Even if an attack could cause mass death --- status quo public health improvements prevent massive casualty rates.

Clark ‘8 (William R., Chair Emeritus of the Immunology Department of UCLA, *Bracing for Armageddon?, The Science and Politics of Bioterrorism in America*, Oxford University Press, Accessed Via Emory)

We are also buffered by the impressive improvements we have made in order to absorb the impact of such an attack, should one happen. Although our public health system still has a way to go, it is in much better shape now than it was after 2001. And again, we now have stocks of vaccines and medicines that would greatly blunt the consequences of a bioterrorist attack. We would be better off with a few more vaccines, but we are close to having them. The certainty that even a large-scale bioterrorist attack would have the desired effect is much less now than it was ten years ago.

## 1NR

### 2nc—Overview

#### Small risk of the DA should be interpreted as having a massive impact. Our ecological overshoot impact makes CBA inappropriate

Guth 7—Legal Director of the Science & Environmental Health Network [Dr. Joseph H. Guth (PhD in Biochemistry from University Of Wisconsin and JD from NYU), “LAW FOR THE ECOLOGICAL AGE,” Vermont Journal of Environmental Law 9 Vt. J. Envtl. L. 431, Winter, 2007-2008]

The central presumption of the common law that environmental damage can be economically justified can be true only so long as the world is "empty." It becomes false when the world is "full," when cumulative environmental damage exceeds the capacity of the Earth to assimilate it. Thus, the belief of Justices Livingston and Holmes that economic activity tends to benefit the public will not always be true. Once we overshoot the Earth's assimilative capacity, and begin to devastate the ecological systems on which we depend, the law can no longer justify a starting presumption that economic activity furthers the public welfare even where it causes ecological damage.

Moreover, under these conditions, cost-benefit analysis can no longer be justified as a tool for evaluating the reasonableness of individual increments of environmental damage. Each incremental impact, if taken alone, might have caused little or even no harm at all in an empty world. But under conditions of ecological overshoot each increment of damage contributes to an immeasurable, indeed infinite, loss. This infinite loss cannot be meaningfully allocated among the various increments of damage. Once we are degrading the environment at an unsustainable rate, attempting to justify increments of damage using cost-benefit principles is profoundly misguided and represents a denial of the biological realities of life on the Earth. Under conditions of ecological overshoot, the core structure of the modern common law cannot be justified as one that furthers the public welfare. At that point, it is no longer legitimate as an American rule of law.

#### AND, collapse makes global wars inevitable. Resource constraint reverses ethical developments that prevent extinction

Aguilar-Millan et al. 10—Director of research at European Fu22tures Observatory [Stephen Aguilar-Millan (Member of the Global Advisory Council of the World Future Society and the Board of the Association of Professional Futurists), Ann Feeney (Member of the Association of Professional Futurists and its board and is a Certified Association Executive), Amy Oberg (Managing partner at Future-In-Sight, LLC. 25 years of experience), and Elizabeth Rudd (Risk assessment consultant), “The Post-Scarcity World of 2050-2075,” The Futurist, Jan/Feb 2010, pg. http://www.eufo.org/psw1.pdf]

Historically, there have been periods when large numbers of the global population have been reduced due to war, disease, natural disasters or famine. In the next 75 years, such an episode is likely to occur. The world has several military hot spots, and weapons able to eliminate large portions of the population are more prevalent than in the past. Rogue states or non-state actors such as terrorist organizations may develop these capabilities over the coming decades. Resource shortages may lead to heightened tensions, isolationism by countries, and increasing incidents of violence. In order to reduce the possibility of such incidents, we may see the rise of supranational governance and regulation and continued efforts to resolve conflicts through diplomacy and negotiation. The outbreak of disease is also a threat. A global pandemic, which, due to global travel, may spread more rapidly than any outbreak in history, could eliminate large numbers of the population. How widespread, and how great the population loss, will be dependent on the ability to curtail the global outbreak and find a cure or vaccination quickly. Inequities in access to health care mean pre-modern nations are likely to sustain a greater proportion of population loss than more-developed nations. Famine has the greater impact in pre-modern nations. Post-modern nations may be able to rely on their supranational relationships to assist them through the tough times. Modern nations may have better resources to manage or avoid food scarcity, but pre-modern nations are heavily dependent on aid from other nations. If globalization and access to finance becomes more difficult, coupled with resource shortages within their own countries, aid may decrease to the pre-modern nations, which will increase the duration and severity of famines. Weather patterns are cyclical. As well, there is a growing body of evidence in the early decades of the century indicating global warming. The severity and occurrence of natural disasters is increasing. If this continues, we are likely to have larger numbers of people displaced, and the death toll is likely to increase. In the early decades of the century, birthrates are much higher in modern and pre-modern countries. Economic development—especially in terms of the advancement of women through access to education, to micro-finance, and to birth control—contributes to reductions in birthrates in pre-modern countries. If pre-modern countries can successfully advance economically, this is likely to contribute to reduced population growth. Population will also impact where and how we live. People have lived in some type of dwelling for most of time, usually with family members. People will continue to live together in dwellings, but what will be the location, form, and ownership of those dwellings? The percentage of the global population living in urban areas is expected to increase from 48% in 2003 to 61% by 2030. The UN estimates that most of these urban dwellers will be in developing countries, living in cities in low-lying coastal areas at high risk from flooding due to global warming, making them vulnerable to natural disasters. As resources become scarce, housing prices are likely to rise, making home ownership less affordable; this may impact living arrangements, meaning more people living together in smaller spaces. This in turn could lead to increased crime rates for theft and violence. This may give rise to the countertrend of a return to villages. Villages afford more space and the ability to attain greater self-sufficiency for essentials like food, water, and power. Individual home ownership is common in many countries. Apartments or condominiums are also often individually owned, or sometimes the whole building is owned by a corporation. As global finance and credit markets become tighter, and resource shortages drive up the cost of housing, we may see more people leasing for longer periods of time and more housing owned by larger corporation and retirement funds. Rents are also likely to increase, so more people will likely share a household, thus reversing the growing trend of oneto two-person households. The materials we use to build and the sources of energy we use to heat and power our homes will likely change. Material shortages may drive innovation in recycled building materials and longer-lasting materials. Wind and solar may become more common sources of power. Rooftop, hydroponic, and vertical gardening could enable residential space to be used for food production, as a shortage of soil and arable land make it harder to feed the world’s growing population. It is difficult to conceive of a society without some form of individual ownership. A world in which all goods, services, and accommodation are provided by the government or by corporations seems unlikely. However, it is possible to conceive of one in which what individuals own, and how goods are consumed, changes due to both the availability of resources and also the materials used. Cradle-to-cradle manufacturing, a closed-cycle manufacturing process where nothing is wasted, may become more commonplace. Planned obsolescence in manufactured goods may become a thing of the past. Leasing of goods, where the manufacturer is responsible for repair and/or replacement and recycling of the item, may become more common. Innovation efforts are likely to focus on these types of efforts as resource availability begins to peak, yet demand continues to increase. While many fantasize about reduced workweeks and more leisure time, for the foreseeable future people will continue to work outside the home to earn an income. Where changes may occur is in the nature and quantity of the work. Statistics indicate that, as many countries develop economically, working hours increase. Resource shortages may mean this will eventually begin to show more balance. As the focus turns to efficiency and resource reuse, people are likely to buy less, which means less is produced, although it may be at a higher cost. Population growth means more adults available to work. This may lead to the elimination of child labor. Access to education for women as well as children may also assist in reducing the number of children working outside the home. Advances in health care and improvements in life span and the quality of life may assist people to remain in the workforce longer; this will be especially beneficial for post-modern countries, where the birthrate typically declines as the country advances economically. Greater numbers of people may enter or remain in the workforce. Reduced working hours may be mandated, in order to create more jobs. More people might work part time. Greater self-reliance may mean more need for time outside of work to spend growing food and tending to other essential activities. The time and activities performed at work are likely to change. Leisure activities are also likely to shift, with more physical activities being more local and distance interactions done virtually through the use of technology. The cost and resources available to enable global leisure travel are likely to experience shortages in the age of scarcity. By 2075, perhaps new technologies to enable low-cost, low impact travel may be developed. The desire to do so, however, is more a question of geopolitics, an issue to which we shall now turn. Post-Scarcity Geopolitics The most-plausible scenario of the development of a post-scarcity society would be driven by advances in nanotechnology or other extensions of materials sciences. So, based on the current infrastructure, the breakthrough developments would most likely take place in Western Europe, the United States, Japan, or South Korea, although China or India, or even one of the oil-wealthy Gulf nations, cannot entirely be ruled out. It would be tempting to follow all these possible scenarios, but for the scope of this paper, we will focus on the assumption that the post-scarcity future begins in the developed, Westernized world. By the time we build a post-scarcity capacity enough to build a post-scarcity economy, there will still be widespread poverty in many nations, particularly those that were still developing at the time of “peak everything” and many that reverted to developing-nation status under the hardships of climate change, scarcity of potable water, wars, and environmental degradation. Whether led by a spirit of philanthropy, capitalism, or enlightened self-interest, it seems likely that the originating nations would ensure that other nations would receive at least some of the benefits fairly soon. Much geopolitical conflict derives from scarcity or perceived scarcity of land, water, energy sources, mineral wealth, or other physical objects, ones which would be greatly alleviated by a post-scarcity economy. Eliminating or reducing these causes for conflict would be a great step toward international peace. However, it would not create total peace, largely because the capacity to mount deadly attacks would increase at the same time that some reasons for conflict will remain or might even worsen. Some scholars posit that all historical conflict has been driven by competition over resources, and that even wars ostensibly over ideologies were truly about scarcity. Political or ideological dominance were ways to an end, rather than the end itself. Certainly for many wars, such as the Crusades and World War II, their arguments are at least plausible. However, conflicts that might have started over scarcity may still capture hearts, minds, and resources by the enticing trappings of politics, religion, or even simply historical grudges. If, as other scholars believe, humans are inherently a warlike species, a postscarcity economy will enhance leaders’ ability to create war over causes that might have seemed trivial during a time when there was scarcity to worry about. The status of the natural world is another area that could create conflict. Many arguments for environmental protection are based on the direct and indirect human benefit of natural land and species conservation. The world’s forests act to sequester carbon, clean the air, regulate the temperature, and house animals and plants of current or potential benefit to humankind. In a post-scarcity society where technology can replace all of those functions, there could well be conflict over the appropriate use of whatever wild areas are left between those who see such areas as having intrinsic value, or possible future extrinsic value, and those who wish to use such land for other purposes. So far, we have just looked at the questions in terms of today’s nations and assumed that today’s nation-states are more or less intact by the time of the post-scarcity society. However, the post-scarcity society may well make both today’s states and the idea of a nationstate obsolete. On the other hand, the twentieth- and twenty-firstcentury creation of international groups and agencies from mutual interests rather than shared borders could replace today’s states in a different way. For example, the European Union formed, as an economic union, the European Economic Community, which itself arose from the European Coal and Steel Community. It has broadened its objectives beyond the purely economic or closely related (e.g., free movement of labor) to include social justice (e.g., its powers to legislate against discrimination), environmental policy, foreign policy, and security issues. If it were to change its charter to be one of shared values and common history, such an organization might not only include Turkey, thus adding part of Asia to its scope, but also traditional allies such as the United States. It might even transcend geography and history to become an alliance of democracies, bringing all of North America and large parts of South America, Asia, Africa, and even parts of the Middle East. Of course, the shadows of colonialism may create too great a barrier for some time, and continental alliances, rather than intercontinental, may come first. Some alliances would be unlikely to continue. OPEC, based on commodity production, would likely disappear. The existing NonAligned Movement, originally formed as a response to NATO and the Warsaw Pact nations, has struggled to define itself and its purpose since the collapse of the Cold War, and even now, its membership has little in common. One remaining unifying theme has been fair and sustainable development, but in a mature post-scarcity world, development would be moot for virtually all nations. On the other hand, a post-scarcity society in which the means of living could be created at a micro level, or even at a household level, could make it possible for small, self-selected communities to exist either as parts of a nation-state but largely independent or as entirely autonomous of a nation-state, even as their own nation-state. History suggests that most of these would be beneficial to their members and at worst harmless to others, but also gives us darker warnings of cults and militant groups that attacked other groups or destroyed themselves and took innocents with them. The ability of these organizations to operate with all the capacities of an autonomous nation in a post-scarcity society is a sobering thought. On the other hand, if the pursuit of these groups is control over themselves and their members and no control from an outside world, or if they can at least settle for this, we might find that post-scarcity geopolitics are in fact the road to a lasting peace. Ultimately, the geopolitics of a post-scarcity world depends upon the interactions of humans and groups. While human nature is a constant, human ethics are not, and most of the world’s history, viewed over a long time span, is what most of us would consider the growth of human ethics. For example, things once considered tolerable by the majority of society, such as slavery and indiscriminate slaughter during war, are now mostly condemned, at least in principle if not always in practice, and are greatly reduced. Perhaps this is what has enabled us to survive so far—that, while our technical capacities always run ahead of our ethical development, our ethics do keep up just enough. In order for a post-scarcity society to develop in such a way that it adds to net human freedom, justice, and well-being, we need more than ever to reinforce the principles of equality, generosity, tolerance, compassion, and mutual interdependence in what we teach and in what we model before those who will build the post-scarcity world. These values (or their lack) will shape whether the post-scarcity world fulfills its promise or creates the seeds of the destruction of civilization. Nowhere will this be felt greater than in the post-scarcity financial system. Pg. 289-297

### 2nc—AT No Link

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

Vladeck 11—Professor of Law and Associate Dean for Scholarship @ American University [Stephen I. Vladeck, “Why Klein (Still) Matters: Congressional Deception and the War on Terrorism,” Journal of National Security Law, Volume 5, 6/16/2011, 9:38 AM

Six weeks later, Congress enacted the USA PATRIOT Act, which included a series of controversial revisions to immigration, surveillance, and other law enforcement authorities.34 But it would be over four years before Congress would again pass a key counterterrorism initiative, enacting the Detainee Treatment Act of 2005 (DTA)35 after—and largely in response to—the Supreme Court’s grant of certiorari in Hamdan v. Rumsfeld.36 In the five years since, Congress had enacted a handful of additional antiterrorism measures, including the Military Commissions Act (MCA) of 2006,37 as amended in 2009,38 the Protect America Act of 2007,39 and the 2008 amendments40 to the Foreign Intelligence Surveillance Act of 1978, known in shorthand as the FAA.41 And yet, although Congress has spoken in these statutes both to the substantive authority for military commissions and to the scope of the government’s wiretapping and other surveillance powers, it has otherwise left some of the central debates in the war on terrorism completely unaddressed.42 Thus, Congress has not revisited the scope of the AUMF since September 18, 2001, even as substantial questions have been raised about whether the conflict has extended beyond that which Congress could reasonably be said to have authorized a decade ago.43 Nor has Congress intervened, despite repeated requests that it do so, to provide substantive, procedural, or evidentiary rules in the habeas litigation arising out of the military detention of noncitizen terrorism suspects at Guantánamo.44

As significantly, at the same time as Congress has left some of these key questions unanswered, it has also attempted to keep courts from answering them. Thus, the DTA and the MCA purported to divest the federal courts of jurisdiction over habeas petitions brought by individuals detained at Guantánamo and elsewhere.45 Moreover, the 2006 MCA precluded any lawsuit seeking collaterally to attack the proceedings of military commissions,46 along with “any other action against the United States or its agents relating to any aspect of the detention, transfer, treatment, trial, or conditions of confinement of an alien who is or was detained by the United States and has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.”47 And although the Supreme Court in Boumediene invalidated the habeas-stripping provision as applied to the Guantánamo detainees,48 the same language has been upheld as applied elsewhere,49 and the more general non-habeas jurisdiction-stripping section has been repeatedly enforced by the federal courts in other cases.50

Such legislative efforts to forestall judicial resolution of the merits can also be found in the telecom immunity provisions of the FAA,51 which provided that telecom companies could not be held liable for violations of the Telecommunications Act committed in conjunction with certain governmental surveillance programs.52 Thus, in addition to changing the underlying substantive law going forward, the FAA pretermitted a series of then-pending lawsuits against the telecom companies.53

Analogously, Congress has attempted to assert itself in the debate over civilian trials versus military commissions by barring the use of appropriated funds to try individuals held at Guantánamo in civilian courts,54 and by also barring the President from using such funds to transfer detainees into the United States for continuing detention or to other countries, as well.55 Rather than enact specific policies governing criteria for detention, treatment, and trial, Congress’s modus operandi throughout the past decade has been to effectuate policy indirectly by barring (or attempting to bar) other governmental actors from exercising their core authority, be it judicial review or executive discretion.

Wasserman views these developments as a period of what Professor Blasi described as “constitutional pathology,” typified by “an unusually serious challenge to one or more of the central norms of the constitutional regime.” Nevertheless, part of how Wasserman defends the “Klein vulnerable” provisions of the MCA and FAA is by concluding that the specific substantive results they effectuate can be achieved by Congress, and so Klein does not stand in the way. But if Redish and Pudelski’s reading of Klein is correct, then the fact that Congress could reach the same substantive results through other means is not dispositive of the validity of these measures. To the contrary, the question is whether any of these initiatives were impermissibly “deceptive,” such that Congress sought to “vest the federal courts with jurisdiction to adjudicate but simultaneously restrict the power of those courts to perform the adjudicatory function in the manner they deem appropriate.”56 pg. 257-259

### 2nc—AT Obama Follows

#### Our evidence also indicates the president is uniquely likely to backlash against Court restrictions if he perceives them as threatening the INSTITUIONAL power of the executive.

Pious 11—Professor of political science @ Barnard College [Richard M. Pious (Chair in History and American Studies @ Barnard College), “Prerogative Power in the Obama Administration: Continuity and Change in the War on Terrorism,” Presidential Studies Quarterly 41, no. 2 (June)]

Obama has taken some steps to recede from the extreme claims of the Bush administration but seems to be developing a variant of “soft prerogative,” in which he keeps the option to act through prerogative power in reserve. In the court cases that have carried over from the Bush administration, he seems to be acting in accordance with the observation of Brad Berenson, a former associate counsel in the Bush White House who pointed out that “The dirty little secret here is that the United States government has enduring institutional interests that carry over from administration to administration and almost always dictate the position the government takes” (Gerstein 2009b). Similarly a law professor at Columbia University, Matthew Waxman, who served as deputy assistant secretary of defense for detainee affairs in the Bush administration, has noted “These are long-standing institutional positions of the executive branch that have historically transcended partisan divides” (Waxman 2010).

Hugh Heclo has analyzed the “deep structure” of the presidency as an institution (i.e., those parts that do not change when an administration changes) (Heclo 1999). In a related sense, there is a “deep structure” of prerogative claims, which do not change—or change slowly—when partisan control of the White House changes. These include claims of sovereign immunity, official immunities involving duties of officials, testimonial privileges (executive, departmental, lawyer-client, protective service), and state secrets doctrines, all of which the Obama administration has attempted to extend in court filings. And when there is movement, it seems always to be in the direction of extending claims rather than retracting them. The prerogative claims are then employed to justify (in courts of law and in the court of public opinion) presidential efforts to prevent prosecution of former officials and prevent the establishment of commissions of inquiry.

The Obama administration, in its court filings involving the Bush administration, has distinguished between policy (which is not defended) and privilege. The “deep structure” is not substantive as much as it is a set of privileges that prevent accountability. Obama seems to have made a “non-decision” about most of these privileges, with extensions of some—which not only help the Bush officials, but also may help members of his administration once they leave office. By failing to push for the Dawn Johnsen nomination, and by allowing the acting chief, David Barron, to remain as the top official, Obama has signaled that there will be a great deal of continuity with the Bush administration. Pg. 286-287

#### Backlash means no precedent will be set

Baum & Devins 10—Professor of Political Science @ Ohio State University & Professor of Law and Professor of Government @ College of William and Mary [LAWRENCE BAUM & NEAL DEVINS, “ARTICLE: Why the Supreme Court Cares About Elites, Not the American People,” Georgetown Law Journal, 98 Geo. L.J. 1515, August 2010]

C. ELECTED GOVERNMENT BACKLASH

The Supreme Court sometimes takes into account the risk of elected government backlash, by which we mean any negative action directed at the Court or its decisions. n48 In particular, lacking the powers of purse and sword, the Court cannot assume that other parts of government will implement its decisions. For this reason, the Court sometimes takes implementation concerns into account when deciding a case. The Court, moreover, sometimes beats a retreat from an earlier decision in response to elected government opprobrium.

Justices are well aware of the potential backlash risks of a sweeping constitutional ruling. For example, the Justices thought that President Richard Nixon might disobey a divided Court ruling in the Watergate tapes case--so, in order to speak unanimously, they compromised with each other and issued a narrow, indeterminate ruling. n49 Likewise, Chief Justice Earl Warren, recognizing potential  [\*1526]  Southern resistance to Brown v. Board of Education, felt strongly that the Court should issue a unanimous holding--even if it meant that the decision would be watered down in order to accommodate the competing preferences of different Justices. n50 The Justices can also take potential backlash risks into account either by issuing narrow, minimalist constitutional rulings or by ruling on statutory, rather than constitutional, grounds. For example, by ducking a constitutional challenge to the 2006 Voting Rights Act reauthorization, n51 the Roberts Court--as Barry Friedman put it--may well have recognized that "[o]ver-ruling a key provision of the recently-renewed congressional law might have brought the Court in for some serious and uncomfortable criticism." n52

The most vivid examples of the Justices taking backlash into account are decisions in which the Court distances itself from earlier, unpopular decisions. n53 In some cases, the Court's composition has changed--so it may be that appointments and confirmation politics explains the change of position. n54 In other  [\*1527]  cases, the Court is clearly responding to elected government attacks on its earlier rulings. n55 Following a spate of 1956-1957 Term rulings rejecting (on statutory grounds) governmental efforts to clamp down on subversives, the Court reversed course in the wake of legislative efforts to strip the Supreme Court of jurisdiction in five domestic security areas. n56 Moreover, after turning the Court into an election issue in 1972 by abolishing the death penalty as it was then administered, n57 the Burger Court subsequently approved reinstatement of the death penalty. n58

#### Lower courts will not follow. They will deviate if the ruling threatens their legitimacy

Westerland et al. 10—Professor of Political Science @ University of Arizona [Chad Westerland, Jeffrey A. Segal (Chair of Political Science and SUNY Distinguished Professor @ StonyBrook University), Lee Epstein (Professor of Law and Political Science @ Northwestern University), Charles M. Cameron (Professor of Politics and Public Affairs @ Princeton University) Scott Comparato (Professor of Political Science @ Southern Illinois University), “Strategic Defiance and Compliance in the U.S. Courts of Appeals,” American Journal of Political Science, Vol. 54, No. 4, October 2010, Pg. 891–905

Scholars and journalists alike spilt much ink over Hopwood, as well as decisions by other courts overturning well-established Supreme Court precedents—cases such as the Fourth Circuit’s United States v. Dickerson (1999), holding that states under its supervision need not follow Miranda v. Arizona (1966); and the Missouri Supreme Court’s overruling of Stanford v. Kentucky (1989) in Simmons v. Roper (2003). And, yet, these decisions are merely the most striking instances of a more general phenomenon, lower court deviation from earlier precedents set by a higher court—a phenomenon that can take far subtler forms (e.g., distinguishing or limiting precedents). Indeed, as one observer noted well over half a century ago, “[Many] precedents have been rejected through the stratagem of distinguishment; others have been the subject of conscious judicial oversight. As a consequence, judicial discretion among ‘inferior’ judges is not so confined and limited as legal theorists would have it” (Comment 1941, 1448–49; see also Canon and Johnson 1998; Murphy 1959).

This observation raises a question that, depending on one’s perspective, may be posed two different ways: Why do lower courts defy higher court precedent, or, given the minute percentage of lower court cases that are heard and reversed (currently well under 1%), why do lower courts comply with higher court precedent?

Scholarly attempts to address these questions take several forms.1 One line of inquiry seeks to identify the circumstances that lead to deviations, subtle or overt. Baum (1978), for example, suggests that lower courts will be less responsive to the U.S. Supreme Court in controversial civil liberties cases, and that the clarity of the precedent, the perceived legitimacy of the Court’s ruling, and perception by lower court judges of the chances of review also affect the likelihood of compliance (see also Canon and Johnson 1998). Another has focused on socialization and conformity to legal culture as the critical causal mechanism. Robert Cover’s (1975) noted study of the enforcement of the Fugitive Slave Act by abolitionist judges, for example, emphasizes the moral quandary posed by the judges’ twin commitments to abolition and the rule of law (see also Howard 1981). Pg. 892

### 2nc—Env I/L

#### US judicial decisions protecting the environment will create a global norm. US must internalize an appreciation for the environment before it can exercise leadership. The can’t access their modeling advantage if we win a link to the DA

Long 8—Professor of Law @ Florida Coastal School of Law [Andrew Long, “International Consensus and U.S. Climate Change Litigation,” 33 Wm. & Mary Envtl. L. & Pol'y Rev. 177, Volume 33 | Issue 1 Article 4 (2008)]

1. Enhancing U.S. International Leadership

In a time of unfavorable global opinion toward the United States, explicit judicial involvement with international norms will move the United States closer to the international community by acknowledging the relevance of international environmental norms for our legal system. As in other contexts, explicit judicial internalization of climate change norms would "build[ ] U.S. 'soft power,' [enhance] its moral authority, and strengthen[ ] U.S. capacity for global leadership"2 °3 on climate change, and other global issues. More specifically, domestic judicial consideration of the global climate regime would reaffirm that although the United States has rejected Kyoto, we take the obligation to respect the global commons seriously by recognizing that obligation as a facet of the domestic legal system.

U.S. courts' overall failure to interact with the international climate regime, as in other issue areas, has "serious consequences for their roles in international norm creation."2" As judicial understandings of climate change law converge, the early and consistent contributors to the transnational judicial dialogue will likely play the strongest role in shaping the emerging international normative consensus.2"' As Justice L'Heureux- Dube of the Canadian Supreme Court noted in an article describing the decline of the U.S. Supreme Court's global influence, "[decisions which look only inward ... have less relevance to those outside that jurisdiction." °6 Thus, if U.S. courts hope to participate in shaping the normative position on climate change adopted by judiciaries throughout the world, explicit recognition of the relationship between domestic and international law is vital.

With climate change in particular, norm development through domestic application should be an important aspect of global learning. The problem requires a global solution beyond the scope of any prior multilateral environmental agreements. This provides a situation in which U.S. judicial reasoning in applying aspects of climate regime thinking to concrete problems will fall into fertile international policy soil.

Accordingly, the recognition of international norms in domestic climate change litigation may play a strengthening role in the perception of U.S. leadership, encourage U.S. development and exportation of effective domestic climate strategies, and promote international agreements that will enhance consistency with such approaches. In short, explicit judicial discussion of international climate change norms as harmonious with U.S. law can enhance U.S. ability to regain a global leadership position on the issue and, thereby, more significantly shape the future of the international climate regime.

2. Promoting the Effectiveness of the International Response

Along with promoting U.S. interests and standing in the international community, climate change litigation has a direct role to play in developing the international regime if courts directly engage that regime." 7 Just as the United States as an actor may benefit from acknowledging and applying international norms, the regime in which the actions occur will benefit through application and acceptance. Indeed, a case such as Massachusetts v. EPA that directly engages only domestic law can nonetheless be understood to impact international lawmaking by considering its actors."' More important, however, will be cases in which the domestic judiciary gives life to international agreements through direct engagement-a "role [that] is particularly important as a check on the delegitimization of international legal rules that are not enforced."" 9

Assuming, as we must in the arena of climate change, that international law can only effect significant changes in behavior through penetration of the domestic sphere, domestic litigation that employs international law not only provides an instance in which the international appears effective but, more importantly, molds it into a shape that will enable further use in domestic cases or suggest necessary changes internationally.

By engaging the international, domestic cases can also provide articulation for the norms that have emerged. The precise meaning of the UNFCCC obligation that nations take measures must be hammered out on the ground. In the United States, if Congress has not acted, it is appropriate for the courts to begin this process by measuring particular actions against the standard.

3. Encouraging Consistency in Domestic Law and Policy

In the absence of national climate change law and policy, explicit discussion of international sources and norms in litigation will provide a well-developed baseline for a uniform judicial approach in the domestic realm. This could occur both within and beyond the United States.

Within the United States, bringing international environmental law into the mix of judicial reasoning would provide common grounding that unifies the decisions and begins to construct a more systematic preference for development of an effective legal response to international threats. Specifically, if an international climate change norm is found relevant to interpretation of a domestic statute, reference will be appropriate to that norm when future questions of interpretation of the domestic statute arise.210 Thus, to the extent that climate change cases rely upon consensus concerning the scientific evidence of climate change, future cases should use that consensus as a measuring stick for claims of scientific uncertainty.2n The same can occur with norm development. For example, had the Court in Massachusetts tied its jurisdictional or substantive holding to an identifiable norm, the opinion would have greater clarity and value as a precedent in other contexts within the United States.

Outside the United States, this approach would provide value to other, more transnationally oriented domestic courts.212 This would serve a norm entrepreneurship function and likely increase agreement among domestic courts on how to approach climate change issues raised under statutes designed for other purposes.

4. Enabling a Check at the Domestic-International Interface

Finally, climate change litigation has something to offer for the growth of administrative law at the interface of domestic and international law. At least two points are noteworthy.

First, U.S. courts can serve a unique function of providing legal accountability for U.S. failure to honor its UNFCCC commitments.213 Although this might be achieved implicitly, arguably the approach of Massachusetts, doing so explicitly would provide a check of a different magnitude. An explicit check here would serve the purposes identified above, as well as offering the practical benefit of increasing compliance. The dualist tradition, and perhaps concerns of domestic political backlash, weigh against grounding a decision solely in the UNFCC. However, looking to it as a major point in a narrative defining the development of a partly domestic obligation to take national action for the redress of climate change would serve the same beneficial purpose. This approach has the advantage of building a significant bridge over the dualist divide between domestic and international law without ripping the Court's analysis from traditional, dualist moorings. Pg. 212-216

### 2nc—AT Environment Resilient

#### Environment isn’t resilient --- A recent study by 22 scientists improves on previous models and concludes that we can cause rapid and irreversible critical transitions

Barnosky et al 12—Professor of Integrative Biology @ UC Berkeley [Dr. Anthony D. Barnosky (Professor of Paleontology @ UC Berkeley), Dr. Elizabeth A. Hadly (Professor of Biology @ Stanford University, Jordi Bascompte (Integrative Ecology Group @ Estación Biológica de Doñana) Eric L. Berlow (TRU NORTH Labs), James H. Brown (Professor of Biology @ The University of New Mexico), Mikael Fortelius (Professor of Geosciences and Geography @ University of Helsinki), Wayne M. Getz (Professor of Environmental Science@ UC Berkeley), John Harte (Professor of Environmental Science@ UC Berkeley) Alan Hastings (Professor of Environmental Science@ UC Davis) Pablo A. Marquet (Departamento de Ecología, Facultad de Ciencias Biológicas, Pontificia Universidad Católica de Chile) Neo D. Martinez (Pacific Ecoinformatics and Computational Ecology Lab) Arne Mooers (Professor of Biological Sciences @ Simon Fraser University, Peter Roopnarine (California Academy of Sciences), Geerat Vermeij (Professor of Geology @ UC Davis) John W. Williams (Professor of Geography @ University of Wisconsin), Rosemary Gillespie (Professor of Environmental Science@ UC Berkeley) Justin Kitzes (Professor of Environmental Science@ UC Berkeley), Charles Marshall (Department of Integrative Biology, UC Berkeley), Nicholas Matzke(Department of Integrative Biology, UC Berkeley), David P. Mindell (Department of Biophysics and Biochemistry @ UC San Francisco), Eloy Revilla (Department of Conservation Biology, Estación Biológica de Doñana) & Adam B. Smith (Center for Conservation and Sustainable Development, Missouri Botanical Garden) “Approaching a state shift in Earth’s biosphere,” Nature 486, (07 June 2012) pg. 52–58

Humans now dominate Earth, changing it in ways that threaten its ability to sustain us and other species1, 2, 3. This realization has led to a growing interest in forecasting biological responses on all scales from local to global4, 5, 6, 7.

However, most biological forecasting now depends on projecting recent trends into the future assuming various environmental pressures5, or on using species distribution models to predict how climatic changes may alter presently observed geographic ranges8, 9. Present work recognizes that relying solely on such approaches will be insufficient to characterize fully the range of likely biological changes in the future, especially because complex interactions, feedbacks and their hard-to-predict effects are not taken into account6, 8, 9, 10, 11.

Particularly important are recent demonstrations that ‘critical transitions’ caused by threshold effects are likely12. Critical transitions lead to state shifts, which abruptly override trends and produce unanticipated biotic effects. Although most previous work on threshold-induced state shifts has been theoretical or concerned with critical transitions in localized ecological systems over short time spans12, 13, 14, planetary-scale critical transitions that operate over centuries or millennia have also been postulated3, 12, 15, 16, 17, 18. Here we summarize evidence that such planetary-scale critical transitions have occurred previously in the biosphere, albeit rarely, and that humans are now forcing another such transition, with the potential to transform Earth rapidly and irreversibly into a state unknown in human experience.

Two conclusions emerge. First, to minimize biological surprises that would adversely impact humanity, it is essential to improve biological forecasting by anticipating critical transitions that can emerge on a planetary scale and understanding how such global forcings cause local changes. Second, as was also concluded in previous work, to prevent a global-scale state shift, or at least to guide it as best we can, it will be necessary to address the root causes of human-driven global change and to improve our management of biodiversity and ecosystem services3, 15, 16, 17, 19.

It is now well documented that biological systems on many scales can shift rapidly from an existing state to a radically different state12. Biological ‘states’ are neither steady nor in equilibrium; rather, they are characterized by a defined range of deviations from a mean condition over a prescribed period of time. The shift from one state to another can be caused by either a ‘threshold’ or ‘sledgehammer’ effect. State shifts resulting from threshold effects can be difficult to anticipate, because the critical threshold is reached as incremental changes accumulate and the threshold value generally is not known in advance. By contrast, a state shift caused by a sledgehammer effect—for example the clearing of a forest using a bulldozer—comes as no surprise. In both cases, the state shift is relatively abrupt and leads to new mean conditions outside the range of fluctuation evident in the previous state.

Threshold-induced state shifts, or critical transitions, can result from ‘fold bifurcations’ and can show hysteresis12. The net effect is that once a critical transition occurs, it is extremely difficult or even impossible for the system to return to its previous state. Critical transitions can also result from more complex bifurcations, which have a different character from fold bifurcations but which also lead to irreversible changes20.

Recent theoretical work suggests that state shifts due to fold bifurcations are probably preceded by general phenomena that can be characterized mathematically: a deceleration in recovery from perturbations (‘critical slowing down’), an increase in variance in the pattern of within-state fluctuations, an increase in autocorrelation between fluctuations, an increase in asymmetry of fluctuations and rapid back-and-forth shifts (‘flickering’) between states12, 14, 18. These phenomena can theoretically be assessed within any temporally and spatially bounded system. Although such assessment is not yet straightforward12, 18, 20, critical transitions and in some cases their warning signs have become evident in diverse biological investigations21, for example in assessing the dynamics of disease outbreaks22, 23, populations14 and lake ecosystems12, 13. Impending state shifts can also sometimes be determined by parameterizing relatively simple models20, 21.

In the context of forecasting biological change, the realization that critical transitions and state shifts can occur on the global scale3, 12, 15, 16, 17, 18, as well as on smaller scales, is of great importance. One key question is how to recognize a global-scale state shift. Another is whether global-scale state shifts are the cumulative result of many smaller-scale events that originate in local systems or instead require global-level forcings that emerge on the planetary scale and then percolate downwards to cause changes in local systems. Examining past global-scale state shifts provides useful insights into both of these issues.

Earth’s biosphere has undergone state shifts in the past, over various (usually very long) timescales, and therefore can do so in the future (Box 1). One of the fastest planetary state shifts, and the most recent, was the transition from the last glacial into the present interglacial condition12, 18, which occurred over millennia24. Glacial conditions had prevailed for ~100,000 yr. Then, within ~3,300 yr, punctuated by episodes of abrupt, decadal-scale climatic oscillations, full interglacial conditions were attained. Most of the biotic change—which included extinctions, altered diversity patterns and new community compositions—occurred within a period of 1,600 yr beginning ~12,900 yr ago. The ensuing interglacial state that we live in now has prevailed for the past ~11,000 yr.

Occurring on longer timescales are events such as at least four of the ‘Big Five’ mass extinctions25, each of which represents a critical transition that spanned several tens of thousands to 2,000,000 yr and changed the course of life’s evolution with respect to what had been normal for the previous tens of millions of years. Planetary state shifts can also substantially increase biodiversity, as occurred for example at the ‘Cambrian explosion’26, but such transitions require tens of millions of years, timescales that are not meaningful for forecasting biological changes that may occur over the next few human generations (Box 1).

Despite their different timescales, past critical transitions occur very quickly relative to their bracketing states: for the examples discussed here, the transitions took less than ~5% of the time the previous state had lasted (Box 1). The biotic hallmark for each state change was, during the critical transition, pronounced change in global, regional and local assemblages of species. Previously dominant species diminished or went extinct, new consumers became important both locally and globally, formerly rare organisms proliferated, food webs were modified, geographic ranges reconfigured and resulted in new biological communities, and evolution was initiated in new directions. For example, at the Cambrian explosion large, mobile predators became part of the food chain for the first time. Following the K/T extinction, mammalian herbivores replaced large archosaur herbivores. And at the last glacial–interglacial transition, megafaunal biomass switched from being dominated by many species to being dominated by Homo sapiens and our domesticated species27.

All of the global-scale state shifts noted above coincided with global-scale forcings that modified the atmosphere, oceans and climate (Box 1). These examples suggest that past global-scale state shifts required global-scale forcings, which in turn initiated lower-level state changes that local controls do not override. Thus, critical aspects of biological forecasting are to understand whether present global forcings are of a magnitude sufficient to trigger a global-scale critical transition, and to ascertain the extent of lower-level state changes that these global forcings have already caused or are likely to cause.

Global-scale forcing mechanisms today are human population growth with attendant resource consumption3, habitat transformation and fragmentation3, energy production and consumption28, 29, and climate change3, 18. All of these far exceed, in both rate and magnitude, the forcings evident at the most recent global-scale state shift, the last glacial–interglacial transition (Box 1), which is a particularly relevant benchmark for comparison given that the two global-scale forcings at that time—climate change and human population growth27, 30—are also primary forcings today. During the last glacial–interglacial transition, however, these were probably separate, yet coincidental, forcings. Today conditions are very different because global-scale forcings including (but not limited to) climate change have emerged as a direct result of human activities.