# Off

#### Obama is selling the Iranian deal now – Stars are aligned – needs to hold off congress from more action

PARSI 2/18/14—President of the National Iranian American Council [Trita Parsi, US-Iran deal: Compromise is key, <http://www.aljazeera.com/indepth/opinion/2014/02/us-iran-deal-compromise-key-201421845935181913.html>]

As a new phase of nuclear talks begins between Iran and the five permanent members of the UN Security Council plus Germany (P5+1) in Vienna on February 18, one thing is clear: From here onwards, diplomacy depends primarily on the ability of the presidents of Iran and the US to absorb and sell compromise.

The stars could not be better aligned for a US-Iran breakthrough. Regional developments - from the instability following the Arab spring to the civil war in Syria - have significantly increased the cost of continued conflict, as has the escalation of the nuclear issue with steadily growing Iranian capabilities and ever tightening economic sanctions.

Domestically, developments are also favourable for a deal. Iran's hardliners and proponents of a narrative of resistance have been put on the defensive by Hassan Rouhani's election victory in June 2013. And Iran's Supreme Leader Ayatollah Ali Khamenei has thus far firmly backed Rouhani's negotiation strategy.

In Washington, proponents of Israeli Prime Miinister Benjamin Netanyahu's line have suffered several defeats over the past year, from the nomination of Senator Chuck Hagel for Secretary of Defense, to the call for military action in Syria, to the failure to pass new sanctions on Iran, rendering their influence less decisive. All three defeats were, in no small part, due to the mobilisation of pro-diplomacy groups in the US. Timing-wise, striking a deal during Rouhani's first year and during Obama's last years in office is also ideal.

That doesn't mean, however, that negotiations will be easy. On the contrary, the hard part begins now.

In the interim deal, the main concessions exchanged were increased transparency and inspections of Iran's nuclear facilities, halting the expansion of the enrichment program, and ending it at the 20 percent level. In return, Iran would get Western acceptance of enrichment on Iranian soil, and agreement that Iran eventually will enjoy all rights granted by the Non-Proliferation Treaty (NPT), as well as some minor sanctions relief.

Going forward, Obama will face severe difficulties offering relief on key sanctions such as those on oil and banking, since these are controlled by Congress.

Obama can temporarily waive Congressional sanctions, but the utility of waivers is questionable due to the proportionality principle established in the Istanbul talks in the spring of 2012.

Reversible Western concessions, the Istanbul talks established, will have to be exchanged for reversible Iranian measures and vice versa. To extract irreversible concessions, similarly irreversible measures have to be offered.

Sanctions waivers are fundamentally reversible. They usually last only six months and have to be actively renewed by the president - including by whoever occupies the White House after 2016.

If Obama can only offer Iran waivers, Tehran will likely respond in kind. Its implementation of the Additional Protocol - a pivotal transparency instrument - would be time limited and subject to continuous renewal (just like the waivers) rather than being permanent. This is tantamount to adding a self-destruction mechanism to the deal. Such a deal is harder to sell, and even harder to keep. To be durable, the deal must have strong elements of permanence to it, which requires irreversible measures. It is foreseeable that waivers could be used during the first phase of the implementation of a final deal; partly to test Iranian intentions, partly because actually lifting sanctions can take years.

Washington, however, will push for the implementation phase of the final deal to be very lengthy - up to 25 years - and for waivers to be used throughout this period. According to this plan, sanctions wouldn't be fully lifted until a quarter century after the final deal has been agreed upon, i.e. when Iran's nuclear file has been fully normalised.

#### Plan causes causes internal Democrat defection

LOOMIS 7—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.

#### New sanctions will cause war – prefer newest comprehensive study

ARMBRUSTER 2/18/14—National Security Editor for ThinkProgress.org at the Center for American Progress Action Fund [Ben Armbruster, Bipartisan Expert Group Says New Iran Sanctions Will Undermine Diplomacy, http://thinkprogress.org/world/2014/02/18/3300741/iran-project-sanctions-diplomacy/]

A new report from a bipartisan group of experts at the Iran Project released on Tuesday finds that opponents of new sanctions on Iran at this time are largely correct in that they would lead to a break-down of diplomacy, isolate the U.S. from its negotiating partners and embolden hard-liners in Tehran.

The Iran sanctions battle in the Senate has stalled for now, but it’s unclear if the House will take up the matter again, as Majority Leader Eric Cantor (R-VA) is reportedly working on language with other House leaders.

The Iran Project’s report analyzes arguments for and against the Senate Iran sanctions bill that was introduced last December by Sens. Mark Kirk (R-IL) and Robert Menendez (D-NJ), who have argued that new sanctions will give the U.S. more leverage in nuclear talks with Iran.

But, the report says, “It is diﬃcult to argue that a new sanctions bill is intended to support the negotiations when all the countries doing the negotiating oppose it.”

Kirk, Menendez and other supporters of the bill say the sanctions have a delayed trigger and will kick in in six months or if Iran backs out of the deal. Not so, the Iran Project says. “After carefully reading the bill line by line and consulting with both current and retired Senate staff the relevant committees, it appears that the critics are correct: the change in sanctions law takes effect upon passage,” the report says, which would most likely put the United States in violation of the interim nuclear agreement reached in Geneva in November

On whether new sanctions will weaken the international coalition on imposing existing sanctions, “some countries would continue to honor some sanctions,” the Iran Project says if the Senate sanctions bill passes. “Still, it would seem that on balance, the net result would be less pressure on Iran.” The report also says that unilateral congressional action on sanctions now “would feed an unwelcome narrative” to America’s partners, the U.K., France, China, Russia, Germany and others, that the U.S. can’t live up to its promises and is an unreliable partner.

Many, like Sen. Patrick Murphy (D-CT), have argued that placing new sanctions on Iran will undermine relative moderate Iranian President Hassan Rouhani, who supports a diplomatic approach with the U.S. The Iran Project agrees. “It is very diﬃcult to imagine that the sanctions bill would do anything but undermine Rouhani, as he attempts to steer Iran on a diﬀerent path. This is an assessment shared not only by Iran experts, and Iranian expats who have opposed the regime, but also by Israeli military intelligence, which has concluded that Rouhani may represent a fundamental shift in Iranian politics.”

“[I]t is difficult to escape the conclusion that a new sanctions bill would increase the probability of war, even if it does not guarantee such an outcome,” the report says.

The bipartisan Iran Project has issued several reports on the Iran nuclear issue. In 2012, the group concluded that attacking Iran would risk an “all out regional war” lasting “several years” and that In order to achieve regime change, the report says, “the occupation of Iran would require a commitment of resources and personnel greater than what the U.S. has expended over the past 10 years in the Iraq and Afghanistan wars combined.”

#### That escalates to World War III

**Reuveny 10** - Professor of political economy @ Indiana University [Dr. Rafael Reuveny (PhD in Economics and Political Science from the University of Indiana), “Guest Opinion: Unilateral strike on Iran could trigger world depression,” McClatchy Newspaper, Aug 9, 2010, pg. http://www.indiana.edu/~spea/news/speaking\_out/reuveny\_on\_unilateral\_strike\_Iran.shtml]

BLOOMINGTON, Ind. -- 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.  
A regional war  
Unlike Iraq, whose nuclear program Israel destroyed in 1981, Iran has a second-strike capability comprised of a coalition of Iranian, Syrian, Lebanese, Hezbollah, Hamas, and, perhaps, Turkish forces. Internal pressure might compel Jordan, Egypt, and the Palestinian Authority to join the assault, turning a bad situation into a regional war.  
During the 1973 Arab-Israeli War, at the apex of its power, Israel was saved from defeat by President Nixon’s shipment of weapons and planes. Today, Israel’s numerical inferiority is greater, and it faces more determined and better-equipped opponents.  
Despite Israel’s touted defense systems, Iranian coalition missiles, armed forces, and terrorist attacks would likely wreak havoc on its enemy, leading to a prolonged tit-for-tat.  
In the absence of massive U.S. assistance, Israel’s military resources may quickly dwindle, forcing it to use its alleged nuclear weapons, as it had reportedly almost done in 1973.  
An Israeli nuclear attack would likely destroy most of Iran’s capabilities, but a crippled Iran and its coalition could still attack neighboring oil facilities, unleash global terrorism, plant mines in the Persian Gulf and impair maritime trade in the Mediterranean, Red Sea and Indian Ocean.  
Middle Eastern oil shipments would likely slow to a trickle as production declines due to the war and insurance companies decide to drop their risky Middle Eastern clients. Iran and Venezuela would likely stop selling oil to the United States and Europe.  
The world economy would head into a tailspin; international acrimony would rise; and Iraqi and Afghani citizens might fully turn on the United States, immediately requiring the deployment of more American troops. Russia, China, Venezuela, and maybe Brazil and Turkey — all of which essentially support Iran — could be tempted to form an alliance and openly challenge the U.S. hegemony.  
Replaying Nixon’s nightmare  
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.

# Off

**Judicial review doesn’t remove authority**

**GILBERT 98** Lieutenant Colonel USAF Academy; MSBA, Boston University; J.D., McGeorge School of Law; LL.M., Harvard Law School [Michael H. Gilbert, The Military and the Federal Judiciary: an Unexplored Part of the Civil-Military Relations Triangle, USAFA Journal of Legal Studies, 8 USAFA J. Leg. Stud. 197]

Conclusion

The judiciary can perform the critical function of judicial review of cases involving the military **without** unconstitutionally impinging upon the authority of Congress and the President. In matters of policy [\*224] concerning the conduct or preparation of war, courts can cautiously examine the facts to determine the propriety of their review. The greater the nexus to national security and to the conduct of purely military affairs, the greater the hesitancy courts should exercise in their review. In today's military, which is increasingly used for actions other than military operations, the concern with harming good order and discipline is less material.

By interpreting the framers' intent to grant virtually exclusive, plenary control of the military to the Congress, which regulates and maintains the armed forces, and to the President, who is the Commander-in-Chief of the armed forces, the Supreme Court removes the judiciary from the issue of civil-military relations. Entrusting the other two branches of the government to lawfully care for the military results in strengthening the authority of civilian control by two branches of Government but only at the cost of removing civilian control which should be exercised by the courts.

**VOTE NEG ---**

**A) Limits --- allowing review without *restricting* *authority* expands aff ground --- justifies tons of “modify policies” affs and affs that require *conditions* for use which access distinct and unpredictable advantages --- makes it impossible to debate**

**B) Ground --- review affs skirt core negative disads about authority and strong judicial acts --- independently STEALS neg CP ground because review CP’s test the desirability of RESTRICTIONS on authority**

# Off

**Congress DA**

**Precedent for war powers deliberation now. It will check US militarism**

**Hunter 8/31**/13 - Chair of the Council for a Community of Democracies [Robert E. Hunter (US ambassador to NATO (93-98) and Served on Carter’s National Security Council as the Director of West European Affairs and then as Director of Middle East Affairs, “Restoring Congress’ Role In Making War,” Lobe Log, August 31, 2013, pg. <http://www.lobelog.com/restoring-congress-role-in-making-war/>

But the most remarkable element of the President’s statement is the likely precedent he is setting in terms of engaging Congress in decisions about the use of force, not just through “consultations,” but in formal authorization. This gets into complex constitutional and legal territory, and will lead many in Congress (and elsewhere) to expect Obama — and his successors — to show such deference to Congress in the future, as, indeed, many members of Congress regularly demand.

But seeking authorization for the use of force from Congress as opposed to conducting consultations has long since become the exception rather than the rule. The last formal congressional declarations of war, called for by Article One of the Constitution, were against Bulgaria, Romania, and Hungary on June 4, 1942. Since then, even when Congress has been engaged, it has either been through non-binding resolutions or under the provisions of the [War Powers Resolution of November 1973](http://www.policyalmanac.org/world/archive/war_powers_resolution.shtml). That congressional effort to regain some lost ground in decisions to send US forces into harm’s way was largely a response to administration actions in the Vietnam War, especially the [Tonkin Gulf Resolution](https://www.mtholyoke.edu/acad/intrel/pentagon3/ps12.htm) of August 1964, which was actually prepared in draft before the triggering incident. The War Powers Resolution does not prevent a president from using force on his own authority, but only imposes post facto requirements for gaining congressional approval or ending US military action. In the current circumstances, military strikes of a few days’ duration, those provisions would almost certainly not come into play.

There were two basic reasons for abandoning the constitutional provision of a formal declaration of war. One was that such a declaration, once turned on, would be hard to turn off, and could lead to a demand for unconditional surrender (as with Germany and Japan in World War II), even when that would not be in the nation’s interests — notably in the Korean War. The more compelling reason for ignoring this requirement was the felt need, during the Cold War, for the president to be able to respond almost instantly to a nuclear attack on the United States or on very short order to a conventional military attack on US and allied forces in Europe.

With the Cold War now on “the ash heap of history,” this second argument should long since have fallen by the wayside, but it has not.  Presidents are generally considered to have the power to commit US military forces, subject to the provisions of the War Powers Resolution [WPR], which have never been properly tested. But why? Even with the 9/11 attacks on the US homeland, the US did not respond immediately, but took time to build the necessary force and plans to overthrow the Taliban regime in Afghanistan (and, anyway, if President George W. Bush had asked on 9/12 for a declaration of war, he no doubt would have received it from Congress, very likely unanimously).

As times goes by, therefore, what President Obama said on August 29, 2013 could well be remembered less for what it will mean regarding the use of chemical weapons in Syria and more for what it implies for the reestablishment of a process of full deliberation and fully-shared responsibilities with the Congress for decisions of war-peace, as was the historic practice until 1950. This proposition will be much debated, as it should be; but if the president’s declaration does become precedent (as, in this author’s judgment, it should be, except in exceptional circumstances where a prompt military response is indeed in the national interest), he will have done an important and lasting service to the nation, including a potentially significant step in reducing the excessive militarization of US foreign policy.

There would be one added benefit: members of Congress, most of whom know little about the outside world and have not for decades had to take seriously their constitutional responsibilities for declaring war, would be required to become better-informed participants in some of the most consequential decisions the nation has to take, which, not incidentally, also involve risks to the lives of America’s fighting men and women.

**Dismantling war powers justiciability undermines deliberation. Our link is unique**

**Broughton 01** – Asst Attorney General of Texas [[Broughton, J. Richard](http://www.heinonline.org.proxy.library.emory.edu/HOL/LuceneSearch?specialcollection=&terms=creator%3A%22Broughton,%20J.%20Richard%22&yearlo=&yearhi=&subject=ANY&journal=ALL&sortby=relevance&collection=journals&searchtype=advanced&submit=Search&base=js&all=true&solr=true" \t "_blank" \o "Search for results by Broughton, J. Richard) (LL.M., with distinction, Georgetown University Law Center), “What Is It Good For--War Power, Judicial Review, and Constitutional Deliberation,” Oklahoma Law Review, Vol. 54, Issue 4 (Winter 2001), pp. 685-726

Judicial abstention from war powers disputes can mitigate the effects of the judicial overhang by encouraging Congress and the President to think more seriously about constitutional structure."' In the Vietnam era, for example, Congress enacted the War Powers Resolution to assert its own constitutional prerogatives only after the courts had consistently refused to intervene. Perhaps this was no accident. Without resort to the judiciary, Congress was forced to take responsibility for using its Article I powers in its own defense. Whatever the other flaws of the War Powers Resolution, it at least represents Congress's assertiveness in attempting to define the boundaries of constitutional war power, as the Constitution provides. (Wther Congress got it right is a separate matter, beyond the scope of this article.) Similarly, rather than resort to the courts to challenge the constitutionality of the Resolution, presidents since Nixon have simply deployed troops at their discretion, forcing Congress to either authorize the action, reject such authorization, withdraw funding, or, perhaps as a last resort, impeach the President. Thus, the modem trend of cases leaving war powers controversies to the political branches has produced somewhat more responsible political institutions, though much work must still be done to truly effectuate the Constitution's vision of prudent and reasoned constitutional discourse among the Congress and the White House.' In keeping therefore with constitutional history and design, political actors best serve republican government when they give careful attention to constitutional boundaries and constitutional weapons in the course of adopting military and foreign policy. Political actors will be more likely to do so if they have only themselves, and not the courts, to do the work.

IV. Conclusion

There is much we can learn from Madison and Marshall, statesmen who understood the value of prudent constitutional reasoning to the practical governance of a large republic. Importantly, not all such reasoning occurs in the courts, nor should it. Those matters not "of a judiciary nature," in Madison's words, must find resolution in other fora. Controversies between Congress and the President regarding the Constitution's allocation of war powers are among this class of disputes. This is not to say that courts must leave all cases involving foreign affairs to the vicissitudes of political institutions; the Constitution explicitly vests the judiciary with authority over admiralty and maritime cases, as well as cases affecting ambassadors, public ministers, and consuls, all of which may invariably touch upon foreign relations. War powers disputes are constitutionally unique, however, because the Constitution itself commits the resolution of those disputes to legislators and the chief executive. The courts have, for the most part, appropriately left these disputes where they belong, in the hands of the political branches. Through the doctrine of justiciability, courts have helped to preserve the separation of powers by recognizing both the limits on their Article In authority and the broa prerogatives that the Constitution grants to political actors who are charged with making and effecting American military and foreign policy. By continuing this trend, as the District of Columbia Circuit did in Campbell, the judiciary can encourage deliberation about constitutional structure in the political branches, as Madison and Marshall envisioned. Pg. 724-725

**Global nuclear war**

**Boyle 12** - Professor of International Law @ University of Illinois College of Law [Francis A. Boyle (PhD. degrees in Political Science from [Harvard University](http://en.wikipedia.org/wiki/Harvard_University)), “Unlimited Imperialism and the Threat of World War III. U.S. Militarism at the Start of the 21st Century,” Global Research, December 25, 2012, pg. http://www.globalresearch.ca/unlimited-imperialism-and-the-threat-of-world-war-iii-u-s-militarism-at-the-start-of-the-21st-century/5316852

Historically, this latest eruption of American militarism at the start of the 21st Century is akin to that of America opening the 20th Century by means of the U.S.-instigated Spanish-American War in 1898.  Then the Republican administration of President  William McKinley stole their colonial empire from Spain in Cuba, Puerto Rico, Guam, and the Philippines; inflicted a near genocidal war against the Filipino people; while at the same time illegally annexing the Kingdom of Hawaii and subjecting the Native Hawaiian people (who call themselves the Kanaka Maoli) to near genocidal conditions.  Additionally, McKinley’s military and colonial expansion into the Pacific was also designed to secure America’s economic exploitation of China pursuant to the euphemistic rubric of the “open door” policy.   But over the next four decades America’s aggressive presence, policies, and practices in the “Pacific” would ineluctably pave the way for Japan’s attack at Pearl Harbor on Dec. 7, 194l, and thus America’s precipitation into the ongoing Second World War.

Today a century later the serial imperial aggressions launched and menaced by the Republican Bush Jr. administration and now the Democratic Obama administration are threatening to set off World War III.

By shamelessly exploiting the terrible tragedy of 11 September 2001 [9/11], the Bush Jr. administration set forth to steal a hydrocarbon empire from the Muslim states and peoples living in Central Asia and the Persian Gulf and Africa under the bogus pretexts of (1) fighting a war against international terrorism; and/or (2) eliminating weapons of mass destruction; and/or (3) the promotion of democracy; and/or (4) self-styled “humanitarian intervention”/responsibility to protect.  Only this time the geopolitical stakes are infinitely greater than they were a century ago:  control and domination of two-thirds of the world’s hydrocarbon resources and thus the very fundament and energizer of the global economic system – oil and gas.  The Bush Jr./ Obama  administrations  have  already targeted the remaining hydrocarbon reserves of Africa, Latin America, and Southeast Asia for further conquest or domination, together with the strategic choke-points at sea and on land required for their transportation.  In this regard, the Bush Jr. administration  announced the establishment of the U.S. Pentagon’s Africa Command (AFRICOM) in order to better control, dominate, and exploit both the natural resources and the variegated peoples of the continent of Africa, the very cradle of our human species.  Libya and the Libyans became the first victims to succumb to AFRICOM under the Obama administration. They will not be the last.

This current bout of U.S. imperialism is what Hans Morgenthau denominated “unlimited imperialism” in his seminal work Politics Among Nations (4th ed. 1968, at 52-53):

“The outstanding historic examples of unlimited imperialism are the expansionist policies of Alexander the Great, Rome, the Arabs in the seventh and eighth centuries, Napoleon I, and Hitler. They all have in common an urge toward expansion which knows no rational limits, feeds on its own successes and, if not stopped by a superior force, will go on to the confines of the political world. This urge will not be satisfied so long as there remains anywhere a possible object of domination–a politically organized group of men which by its very independence challenges the conqueror’s lust for power. It is, as we shall see, exactly the lack of moderation, the aspiration to conquer all that lends itself to conquest, characteristic of unlimited imperialism, which in the past has been the undoing of the imperialistic policies of this kind… “

 It is the Unlimited Imperialists along the lines of Alexander, Rome, Napoleon and Hitler who are now in charge of conducting American foreign policy. The factual circumstances surrounding the outbreaks of both the First World War and the Second World War currently hover like twin Swords of Damocles over the heads of all humanity.

# Off

**Counterplan text: The United States Federal Judiciary should conduct judicial ex post review of United States’ targeted killing operations, with liability falling on the government for any constitutional violation, on the grounds that current bars to justiciability of cases against the military violates substantive due process.**

**CP solves the case --- substantive Due Process is at risk of unraveling – it is critical to check tyranny and rights abuses – legal precedent also means in the world of the permutation the Supreme Court would only rule on procedural due process which destroys the substantive due process doctrine**

Peter J. **Rubin**, Associate Professor of Law, Georgetown University [103 Colum. L. Rev. 833] May, **2003**

The concept of "substantive due process" has long since earned its place as a crucial constraint on the untrammeled power of those who govern and a vital source of protection for the dignity and autonomy of those who are governed. Yet at the same time that there is substantial evidence of a slow but growing acceptance by the Supreme Court of the role of the doctrine in our constitutional structure, the Court continues sporadically to generate rules that seem to undermine its very legitimacy, rules that appear to reflect continuing deep discomfort with the project of substantive due process. Discomfort in the application of substantive due process - while understandable and even appropriate for a judicial actor - cannot justify limitations that threaten to render the doctrine incoherent, that fail to come to terms with its internal logic and structure, [\*834] or that, ultimately, are in deep tension with the structural rules governing claims of federal rights under the Fourteenth Amendment. Yet that discomfort appears to have been given concrete expression not only in some of the rhetoric that has surrounded invocation of substantive due process, and in the Court's reluctance to expand the substantive scope of the doctrine, but in largely unexamined restrictions that have been placed or urged upon the use of substantive due process, restrictions that have just these characteristics. In this Article, I will examine two such restrictions that involve superficially different but deeply connected doctrinal moves. The first involves a rule, announced by the Supreme Court in Graham v. Connor, [1](https://www.lexis.com/research/retrieve?_m=ea5f72d5e56a98ede90df8946da53f1b&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVlz-zSkAz&_md5=7ac07f71c7a862222e278b1f29343fc5" \l "n1" \t "_self) that substantive due process may not be invoked where a claim is "covered by" another, more explicit, constitutional provision.

**Decision rule – reject every instance**

**Petro 74** (Sylvester, Professor of Law at NYU, Toledo Law Review, Spring, p. 480, http://www.ndtceda.com/archives/200304/0783.html)

However, one may still insist, echoing Ernest Hemingway - "I believe in only one thing: liberty." And it is always well to bear in mind David Hume's observation: "It is seldom that liberty of any kind is lost all at once." Thus, it is unacceptable to say that the invasion of one aspect of freedom is of no importance because there have been invasions of so many other aspects. That road leads to chaos, tyranny, despotism, **and the end of all human aspiration.** Ask Solzhenitsyn. Ask Milovan Dijas. In sum, if one believed in freedom as a supreme value and the proper ordering principle for any society aiming to maximize spiritual and material welfare, then **every invasion of freedom must be** emphatically **identified and resisted with undying spirit.**

**Ruling on the Political Question Doctrine still leaves it intact --- ruling that it’s not okay in some instances is the same as saying it is okay in others --- this grounds is rooted in legal exceptionalism**

**Contreras 08** (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 notion of exception within the Political Question Doctrine is the root cause of the aff and makes global violence inevitable**

**MCGOWAN 2009** (Todd McGowan, Associate Professor, film theory, University of Vermont, PhD, Ohio State University, studies the intersection of Hegel, psychoanalysis, and existentialism and cinema, “The Exceptional Darkness of The Dark Knight,” Jump Cut, No. 51, Spring 2009, http://www.ejumpcut.org/archive/jc51.2009/darkKnightKant/text.html)

Italian philosopher Giorgio Agamben sees the great danger inherent in the **exception**. It **leads not just to abuses of civil rights but to large-scale horrors** like the Holocaust, which functions as a major point of reference for Agamben’s thought. Exceptionality, for Agamben, launches a legal civil war and thereby plays the key role in the transition from democracy to fascist authoritarianism. The declaration of the state of exception attempts “to produce a situation in which the emergency becomes the rule, and the very distinction between peace and war (and between foreign and civil war) becomes impossible.”[10] The problem is that the exceptional time never comes to an end, and the disappearance of the distinction between an emergency and everyday life pushes the society toward a state of civil war that the very exception itself was supposed to quell. Rather than acting as a temporary stopgap for a society on the brink of self-annihilation, the state of exception actually **pushes** the **society** further **down the path to** this **annihilation** **by undermining the distinction between law and criminality and** thereby **helping to foster a** Hobbesian **war of all against all, in which every act of sovereign power becomes justified** in the name of order. The Dark Knight begins with a focus on the problem engendered by the state of exception embodied by Batman. He is a figure outside the law on whom the law relies to respond to the most recalcitrant criminal elements in Gotham. But Batman’s very success at fighting crime outside the law has, when the film opens, spawned numerous imitators — vigilantes who dress like Batman and spend their nights fighting crime. The result is an increased degree of lawlessness and insecurity in the city. Through these copycat vigilantes, the film begins by making clear the danger of the sanctioned exception that exists outside the law. Once one embraces the exception, the need for exceptionality will constantly expand insofar as the exception augments the very problem that it is created to fight against.

# Off

**The United States federal government should**

**---conduct judicial ex post review of United States’ targeted killing operations, with liability falling on the government for any constitutional violation. This decision should explicitly not rule on the grounds that the political question doctrine should not bar justiciability of cases against the military**

**---take any legal efforts to adopt legal standards in the context of targeted killing that matches relevant European legal interpretations**

**---give the Department of Defense flexibility to manage sequestration cuts**

**---substantially increase its development and utilization of carbon dioxide scrubbers, super chimneys for the purpose of offsetting global warming, deep-sea sediment storage for CO2 emissions, and autonomous ships for necessary enhancement of cloud albedo**

**---increase public service announcemenjts about the dangers of global warming and climate change, and pass legislation that mandates consistently declining emissions levels while simultaneously propping up replacement sources of energy**

---[increase accountability and transparency regulations and restrictions on private military contractors]

**CP solves CMR way better than the aff**

**Feaver 13** - professor of political science and public policy @ Duke University. He is a leading scholar in civil-military relations [[Peter Feaver](http://www.foreignpolicy.com/profiles/Peter-Feaver), “[How to Better Navigate the Coming Civil-Military Challenges](http://shadow.foreignpolicy.com/posts/2013/10/14/how_to_better_navigate_the_coming_civil_military_challenges),” Foreign Policy, OCTOBER 14, 2013 - 03:00 PM, pg. http://tinyurl.com/nyjau3m

Curiously, Zenko left off what is arguably the most important driver of civil-military tensions, now and especially going forward: the persistent fiscal crisis that has resulted in sequestration.

Sequestration was designed to be something so horrible that it never would be implemented. Almost everyone in the Defense Department, whether in or out of uniform, still views it that way. But there is a growing sense that the White House, and the commander in chief in particular, has come to view the first round of sequestration as tolerable. Worse, the president's refusal to negotiate with Republicans has raised fears that perhaps he is willing to prolong sequestration, at least insofar as it applies to the Defense Department.

This is a real civil-military problem -- much more consequential than the Obama administration's odd decision to [prevent World War II veterans](http://www.washingtontimes.com/news/2013/oct/9/park-service-relents-opens-wwii-memorial-somewhat/) from visiting their open-air monument as a way of ratcheting up pressure on Republicans. Harassing wheelchair vets makes for compelling television, but imposing arbitrary cuts on the order of hundreds of billions of dollars across the FYDP undermines national security. There is no question which hurts civil-military relations more.

Restoring the lost funding would go a long way to improving civil-military relations, but that is not plausible. What, short of that, could the administration do?

First, the Obama administration should seek a deal that would give the Defense Department greater flexibility in managing the cuts. Republicans are willing to grant that, but the Obama administration has been unwilling to accept it unless it can get similar flexibility for favored domestic programs. In today's partisan climate, we may not be able to get such a grand bargain. Let's take the incremental improvements on offer and build out from there.

Second, if the administration will not provide the resources its strategy requires, it must issue a new strategy that is viable at the funding levels that are achievable. The prevailing strategic guidance for the U.S. military [is the one](http://www.defense.gov/news/defense_strategic_guidance.pdf) Obama issued in January 2012. I had my [quibbles](http://shadow.foreignpolicy.com/posts/2012/01/05/quick_reactions_to_the_obama_strategy_roll_out) with it at the time, but in retrospect it was better than the absence of guidance that prevails right now. Let us be clear: That strategy was designed to accommodate the deep cuts Obama ordered before the sequester took effect. The administration claimed the strategy would be viable, provided there were no further cuts. None. Since then, the sequester has taken effect, with no relief in sight. Worse, another round of sequestration could be looming. There is simply no way that the old strategy could be viable in a post-sequester environment. The administration has to come to terms with this, and do so candidly.

Third, while the president is free to decide issues of policy irrespective of the advice he receives from the military, he should take greater pains not to misrepresent what that advice actually is. As far as civil-military relations go, this was Obama's biggest foul in the Syria episode. When Obama decided to reverse course and delay the planned airstrikes, he [explicitly claimed](http://www.whitehouse.gov/the-press-office/2013/08/31/statement-president-syria) that Gen. Martin Dempsey had told him the delay would not matter. Obama and his White House staff went on at some length to justify the decision in Dempsey's counsel, but in doing so they fundamentally misrepresented the content of Dempsey's advice, as Dempsey's subsequent congressional testimony [makes clear](http://freebeacon.com/misfire/) (see also [here](http://www.weeklystandard.com/blogs/did-dempsey-say-timing-syria-strike-doesnt-matter_752759.html)). The president's prerogative to overrule his generals is a precious aspect of civilian control. But it will lead to civil-military conflict when the military believes that civilians are not just choosing to go in a direction other than what the military advises, but are actively misleading others about what that advice was in the first place. The more budget cuts require civilians to make painful choices across military programs and choose between competing military counsels, the more important preserving this principle, and all its associated obligations on civilians, will become.

**Deep-sea sediments solve warming**

**House et al 06** (Kurt Zenz House, Department of Earth and Planetary Sciences, Harvard University, Daniel P. Schrag, Department of Earth and Planetary Sciences, Harvard University, Charles F. Harvey, Department of Civil and Environmental Engineering, and Klaus S. Lackner, Earth Engineering Center, Columbia University, “Permanent Carbon Dioxide Storage in Deep-Sea Sediments,” Proceedings of the National Academy of Sciences of the United States of America, August 6, 2006, http://www.pnas.org/content/103/33/12291.abstract)

Stabilizing the concentration of atmospheric CO2 may require storing enormous quantities of captured anthropogenic CO2 in near-permanent geologic reservoirs. Because of the subsurface temperature profile of terrestrial storage sites, CO2 stored in these reservoirs is buoyant. As a result, a portion of the injected CO2can escape if the reservoir is not appropriately sealed. We show that **injecting CO2 into deep-sea sediments** <3,000-m water depth and a few hundred meters of sediment **provides permanent geologic storage even with large geomechanical perturbations.** At the high pressures and low temperatures common in deep-sea sediments, CO2 resides in its liquid phase and can be denser than the overlying pore fluid, causing the injected CO2 to be gravitationally stable. Additionally, CO2 hydrate formation will impede the flow of CO2 (l) and serve as a second cap on the system. The evolution of the CO2 plume is described qualitatively from the injection to the formation of CO2 hydrates and finally to the dilution of the CO2(aq) solution by diffusion. If calcareous sediments are chosen, then the dissolution of carbonate host rock by the CO2(aq) solution will slightly increase porosity, which may cause large increases in permeability. Karst formation, however, is unlikely because total dissolution is limited to only a few percent of the rock volume. **The total CO2 storage capacity** within the 200-mile economic zone of the U.S. coastline **is enormous, capable of storing thousands of years of current** U.S. CO2 **emissions.**

**The CP solves warming – it only takes 10 chimneys to pull it off**

**ABC 08** (Atlanta Business Chronicle, “Super Chimney: A Unique Way to Resolve Global Warming, Generate Clean Energy and Irrigate Deserts.” 11-11-08. http://www.bizjournals.com/atlanta/prnewswire/press\_releases/national/New\_Jersey/2008/11/11/NY44841)

With the world's attention focusing more acutely on global warming and energy diversity, former engineer Michael Pesochinsky has developed the idea of utilizing super-chimney technology as a unique way to avert a global warming catastrophe at the same time as lucratively generating clean energy and desert irrigation. There is no shortage of information on global warming scenarios where climate and ecological changes are depicted along with gloomy predictions for the future. Yet, there is hardly any information on how to deal with the problem. The only viable solution being discussed now is to do away with fossil fuels. But even the most optimistic predictions agree that, for many years to come, humankind will continue to use fossil fuels, which will continue to emit greenhouse gases that advance global warming. Moreover, we are running out of time because at some point global warming will become irreversible. However, according to Pesochinsky, "there is a feasible solution to the problem which, if implemented, will not only stop global warming, but will also bring those involved substantial profits." The mysterious remedy is based on the utility of a structure called Super-Chimney. "Upon proper explanation, many will be able to understand how this technology works," says Pesochinsky. "In fact, it's based on a relatively simple scientific concept such that I suspect that some may wonder why nobody else previously suggested it." In this regard, the invention uses the natural property of hot air to rise and suggests using extremely tall chimneys as facilitators of that upward air-movement. "Suppose we construct a super-chimney three miles tall," theorizes Pesochinsky, such a structure will yield the following positive results: \* produce as much energy as 15 super powerful nuclear stations; \* induce rain generation in surrounding areas and will produce millions of tons of fresh water precipitation \* it will transform at least 300 square miles of desert into arable land, will allow **trap** approximately **1,500,000 tons of CO2 per year** in the newly created arable area. Pesochinsky recently launched a website at www.SuperChimney.org which details his invention, and he encourages all interested parties to visit. According to Pesochinsky, **"Just 10 chimneys** like the one I propose **will offset global warming."**

**The CP captures CO2 from the atmosphere – solves warming**

**Jacquot 08** (Jeremy Elton Jacquot, PhD, Marine Environmental Biology, University of Southern California, “Scientists Develop Air ‘Scrubber’ Capable of Sucking Up One Ton of CO2 a Day,” May 31, 2008, http://www.treehugger.com/clean-technology/scientists-develop-air-scrubber-capable-of-sucking-up-one-ton-of-co2-a-day.html)

This sounds too good to be true: a machine that can vacuum the equivalent of a ton of atmospheric carbon dioxide a day in a cost-effective way. We've seen our fair share of CO2 "sucking" devices in the past -- everything from modified plastic membranes to industrial-scale paper mill "scrubbers" -- but they've typically tended toward the expensive or unwieldy. So how does this particular device stand out? Well, for one thing, its inventors, a team of U.S. scientists led by Columbia University's Klaus Lackner, say they'll be able to get a prototype up and running within the next 2 years. Secondly, they claim that **the device,** which is small enough to fit inside a shipping container, **will be able to capture a ton of CO2 a day from the air** -- at a fraction of the cost of similar technologies. The initial cost of the device, roughly $200,000, would be more than offset by the amount of carbon each would trap, they assert. "Our project has reached the stage where it is quite clear we can do it. We need to start dealing with all these emissions. I'd rather have a technology that allows us to use fossil fuels without destroying the planet, because people are going to use them anyway," Lackner told The Guardian's David Adam.

# Allied Coop

**They solve nothing—Europe doesn’t like any drone use and thinks U.S. policy is illegal. They want us to articulate transparent standards for how we go about TK. Plus they want zones restrictions—not ex post review**

Dworkin, 1ac author, 7/17/13 (Anthony, Senior Policy Fellow at the European Council on Foreign Relations, “Actually, drones worry Europe more than spying” http://globalpublicsquare.blogs.cnn.com/2013/07/17/actually-drones-worry-europe-more-than-spying/)

Relations between the United States and Europe hit a low point following revelations that Washington was spying on European Union buildings and harvesting foreign email messages. Behind the scenes, though, it is not data protection and surveillance that produces the most complications for the transatlantic intelligence relationship, but rather America's use of armed drones to kill terrorist suspects away from the battlefield. Incidents such as the recent killing of at least 17 people in Pakistan are therefore only likely to heighten European unease. In public, European governments have displayed a curiously passive approach to American drone strikes, even as their number has escalated under Barack Obama’s presidency. Many Europeans believe that the majority of these strikes are unlawful, but their governments have maintained an uneasy silence on the issue. This is partly because of the uncomfortable fact that information provided by European intelligence services may have been used to identify some targets. It is also because of a reluctance to accuse a close ally of having violated international law. And it is partly because European countries have not worked out exactly what they think about the use of drones and how far they agree within the European Union on the question. Now, however, Europe’s muted stance on drone strikes looks likely to change. Why? For one thing, many European countries are now trying to acquire armed drones themselves, and this gives them an incentive to spell out clearer rules for their use. More importantly, perhaps, Europeans have noticed that drones are proliferating rapidly, and that countries like China, Russia and Saudi Arabia are soon likely to possess them. There is a clear European interest in trying to establish some restrictive standards on drone use before it is too late. For all these reasons, many European countries are now conducting internal reviews of their policy on drones, and discussions are also likely to start at a pan-European level. But as Europeans begin to articulate their policy on the use of drones, a bigger question looms. Can Europe and the United States come together to agree on when drone strikes are permissible? Until now, that would have seemed impossible. Since the September 11 attacks, the United States has based its counterterrorism operations on the claim that it is engaged in a worldwide armed conflict with al Qaeda and associated forces — an idea that President Obama inherited from President George W. Bush and has been kept as the basis for an expanded drone strike campaign. European countries have generally rejected this claim. However, the changes to American policy that President Obama announced in May could open the way to at least the possibility of a dialogue. Obama suggested that he anticipated a time in the not-too-distant future when the armed conflict against al Qaeda might come to an end. More substantially, he made clear that his administration was in the process of switching its policy so that, outside zones of hostilities, it would only use drone strikes against individuals who posed a continuing and imminent threat to the U.S. That is a more restrictive standard than the claim that any member of al Qaeda or an associated force could lawfully be killed with a drone strike at any time. European countries might be more willing to accept an approach based on this kind of “self-defense” idea. However, there remain some big stumbling blocks. First, a good deal about Obama’s new standards is still unclear. How does he define a “zone of hostilities,” where the new rules will not apply? And what is his understanding of an “imminent” threat? European countries are likely to interpret these key terms in a much narrower way than the United States. Second, Obama’s new approach only applies as a policy choice. His more expansive legal claims remain in the background so that he is free to return to them if he wishes. But if the United States is serious about working toward international standards on drone strikes, as Obama and his officials have sometimes suggested, then Europe is the obvious place to start. And there are a number of steps the administration could take to make an agreement with European countries more likely. For a start, it should cut back the number of drone strikes and be much more open about the reasons for the attacks it conducts and the process for reviewing them after the fact. It should also elaborate its criteria for determining who poses an imminent threat in a way that keeps attacks within tight limits. And, as U.S. forces prepare to withdraw from Afghanistan in 2014, it should keep in mind the possibility of declaring the war against al Qaeda to be over. All this said, Europe also has some tough decisions to make, and it is unclear whether European countries are ready to take a hard look at their views about drone strikes, addressing any weaknesses or inconsistencies in their own position. If they are, the next few years could offer a breakthrough in developing international standards for the use of this new kind of weapon, before the regular use of drones spreads across the globe.

**Spying alt cause**

Skinner 10/25/13—Kiron K. Skinner is the director of the Center for International Relations and Politics at Carnegie Mellon University and a research fellow at Stanford University's Hoover Institution [October 25, 2013, “Diplomacy Requires Trust Among Allies,” <http://www.nytimes.com/roomfordebate/2013/10/24/if-were-spying-are-we-still-allies/diplomacy-requires-trust-among-allies>]

Trust is so central to maintaining a healthy alliance that the alleged U.S. policy of monitoring the phone conversations or phone records of German Chancellor Angela Merkel and French citizens should be curtailed.

Since the 1963 Elysée Treaty was signed, France and Germany have been the anchors for Europe’s democracies. Without these two leading economies, the European Union could not function and a peaceful Europe would be all but impossible to maintain.

Their membership in NATO is vital on both sides of the Atlantic. They have provided troops to the U.S.-led international security forces in Afghanistan. Even when they differ, they work together, as in the case of France’s intervention in Mali, when Germany ultimately offered the use of its cargo planes.

Diplomacy is based on trust, so when trust is compromised, cooperation -- no matter how longstanding -- gives way to discord. The Obama administration contends that a large portion of U.S. espionage activities are carried out to combat terrorism, but this does not justify the actions brought to light by the recent Edward Snowden-originated revelations. If Washington undermines its own leadership or that of its allies, the collective ability of the West to combat terrorism will be compromised. Allied leaders will have no incentive to put their own militaries at risk if they cannot trust U.S. leadership. Foreign leaders and their publics -- not just the ideological and murderous nonstate actors that have made terrorism a global phenomenon -- may demand retribution against Washington.

Robust U.S. counterterrorism policies are premised on credibility with those who join the U.S. on the front lines. Even though spying on allies has always occurred (U.S. spying on France provided important intelligence in World War II, for example), the digital age allows public revelations of classified behavior to happen in real time -- not decades after the fact. It is little wonder that President Obama has been on the phone with his European counterparts this week. U.S. credibility is on the line.

**Their Brzezinski evidence doesn’t actually provide a warrant for NATO solving anything—it just lists a bunch of problems and then says “NATO is globally significant.”**

**NATO fails**

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.

**They don’t fix accountability or standards of imminence—Goldsmith is about needing Congress to force transparency regarding the targeting process. Ex post review doesn’t do that**

Goldsmith, 1ac author, 13 (Jack Goldsmith teaches at Harvard Law School and is a member of the Hoover Institution Task Force on National Security and Law, “How Obama Undermined the War on Terror,” <http://www.newrepublic.com/article/112964/obamas-secrecy-destroying-american-support-counterterrorism>)

For official secrecy abroad to work, the secrets must be kept at home as well. In speeches, interviews, and leaks, Obama's team has tried to explain why its operations abroad are lawful and prudent. But to comply with rules of classified information and covert action, the explanations are conveyed in limited, abstract, and often awkward terms. They usually raise more questions than they answer—and secrecy rules often preclude the administration from responding to follow-up questions, criticisms, and charges. ¶ As a result, much of what the administration says about its secret war—about civilian casualties, or the validity of its legal analysis, or the quality of its internal deliberations—seems incomplete, self-serving, and ultimately non-credible. These trust-destroying tendencies are exacerbated by its persistent resistance to transparency demands from Congress, from the press, and from organizations such as the aclu that have sought to know more about the way of the knife through Freedom of Information Act requests.¶ A related sin is the Obama administration's surprising failure to secure formal congressional support. Nearly every element of Obama's secret war rests on laws—especially the congressional authorization of force (2001) and the covert action statute (1991)—designed for different tasks. The administration could have worked with Congress to update these laws, thereby forcing members of Congress to accept responsibility and take a stand, and putting the secret war on a firmer political and legal foundation. But doing so would have required extended political efforts, public argument, and the possibility that Congress might not give the president precisely what he wants.¶ The administration that embraced the way of the knife in order to lower the political costs of counterterrorism abroad found it easier to avoid political costs at home as well. But this choice deprived it of the many benefits of public argumentation and congressional support. What Donald Rumsfeld said self-critically of Bush-era unilateralism applies to Obama's unilateralism as well: it fails to "take fully into account the broader picture—the complete set of strategic considerations of a president fighting a protracted, unprecedented and unfamiliar war for which he would need sustained domestic and international support." ¶ Instead of seeking contemporary congressional support, the administration has relied mostly on government lawyers' secret interpretive extensions of the old laws to authorize new operations against new enemies in more and more countries. The administration has great self-confidence in the quality of its stealth legal judgments. But as the Bush administration learned, secret legal interpretations are invariably more persuasive within the dark circle of executive branch secrecy than when exposed to public sunlight. On issues ranging from proper targeting standards, to the legality of killing American citizens, to what counts as an "imminent" attack warranting self-defensive measures, these secret legal interpretations—so reminiscent of the Bushian sin of unilateral legalism—have been less convincing in public, further contributing to presidential mistrust.¶ Feeling the heat from these developments, President Obama promised in his recent State of the Union address "to engage with Congress to ensure not only that our targeting, detention, and prosecution of terrorists remains consistent with our laws and system of checks and balances, but that our efforts are even more transparent to the American people and to the world." So far, this promise, like similar previous ones, remains unfulfilled. ¶ The administration has floated the idea of "[shifting] the CIA's lethal targeting program to the Defense Department," as The Daily Beast reported last month. Among other potential virtues, this move might allow greater public transparency about the way of the knife to the extent that it would eliminate the covert action bar to public discussion. But JSOC's non-covert targeted killing program is no less secretive than the CIA's, and its congressional oversight is, if anything, less robust. ¶ A bigger problem with this proposed fix is that it contemplates executive branch reorganization followed, in a best-case scenario, by more executive branch speeches and testimony about what it is doing in its stealth war. The proposal fails to grapple altogether with the growing mistrust of the administration's oblique representations about secret war. The president cannot establish trust in the way of the knife through internal moves and more words. Rather, he must take advantage of the separation of powers. Military detention, military commissions, and warrantless surveillance became more legitimate and less controversial during the Bush era because adversarial branches of government assessed the president's policies before altering and then approving them. President Obama should ask Congress to do the same with the way of the knife, even if it means that secret war abroad is harder to conduct.

**Allied terror coop is high now, despite frictions**

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>]

As part of the EU’s efforts to combat terrorism since September 11, 2001, the EU made improving law enforcement and intelligence cooperation with the United States a top priority. The previous George W. Bush Administration and many Members of Congress largely welcomed this EU initiative in the hopes that it would help root out terrorist cells in Europe and beyond that could be planning other attacks against the United States or its interests. Such growing U.S.-EU cooperation was in line with the 9/11 Commission’s recommendations that the United States should develop a “comprehensive coalition strategy” against Islamist terrorism, “exchange terrorist information with trusted allies,” and improve border security through better international cooperation. Some measures in the resulting Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458) and in the Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53) mirrored these sentiments and were consistent with U.S.-EU counterterrorism efforts, especially those aimed at improving border controls and transport security. U.S.-EU cooperation against terrorism has led to a new dynamic in U.S.-EU relations by fostering dialogue on law enforcement and homeland security issues previously reserved for bilateral discussions. Despite some frictions, most U.S. policymakers and analysts view the developing partnership in these areas as positive. Like its predecessor, the Obama Administration has supported U.S. cooperation with the EU in the areas of counterterrorism, border controls, and transport security. At the November 2009 U.S.-EU Summit in Washington, DC, the two sides reaffirmed their commitment to work together to combat terrorism and enhance cooperation in the broader JHA field. In June 2010, the United States and the EU adopted a new “Declaration on Counterterrorism” aimed at deepening the already close U.S.-EU counterterrorism relationship and highlighting the commitment of both sides to combat terrorism within the rule of law. In June 2011, President Obama’s National Strategy for Counterterrorism asserted that in addition to working with European allies bilaterally, “the United States will continue to partner with the European Parliament and European Union to maintain and advance CT efforts that provide mutual security and protection to citizens of all nations while also upholding individual rights.”

**Drone court won’t solve—it’s proceedings are secret.**

Johnson 13—Jeh Johnson, former Pentagon General Counsel [March 18, 2013, “Keynote address at the Center on National Security at Fordham Law School: A “Drone Court”: Some Pros and Cons,” <http://www.lawfareblog.com/2013/03/jeh-johnson-speech-on-a-drone-court-some-pros-and-cons/>]

The problem is that the American public is suspicious of executive power shrouded in secrecy. In the absence of an official picture of what our government is doing, and by what authority, many in the public fill the void by envisioning the worst. They see dark images of civilian and military national security personnel in the basement of the White House—acting, as Senator Angus King put it, as “prosecutor, judge, jury and executioner”—going down a list of Americans, deciding for themselves who shall live and who shall die, pursuant to a process and by standards no one understands. Our government, in speeches given by the Attorney General,[2] John Brennan,[3] Harold Koh,[4] and myself,[5] makes official disclosures of large amounts of information about its efforts, and the legal basis for those efforts, but it is never enough, because the public doesn’t know what it doesn’t know, but knows there are things their government is still withholding from them. The revelation 11 days ago that the executive branch does not claim the authority to kill an American non-combatant—something that was not, is not, and should never be an issue—is big news, and trumpeted as a major victory for congressional oversight. A senator who filibusters the government’s secrecy is compared in iconic terms to Jimmy Stewart. At the same time, through continual unauthorized leaks of sensitive information, our government looks to the American public as undisciplined and hypocritical. One federal court has characterized the government’s position in FOIA litigation as “Alice in Wonderland,”[6] while another, this past Friday, referred to it as “neither logical nor plausible.”[7] An anonymous, unclassified white paper leaked to NBC News prompts more questions than it answers. Our government finds itself in a lose-lose proposition: it fails to officially confirm many of its counterterrorism successes, and fails to officially confirm, deny or clarify unsubstantiated reports of civilian casualties. Our government’s good efforts for the safety of the people risks an erosion of support by the people. It is in this atmosphere that the idea of a national security court as a solution to the problem—an idea that for a long time existed only on the margins of the debate about U.S. counterterrorism policy but is now entertained by more mainstream thinkers such as Senator Diane Feinstein and a man I respect greatly, my former client Robert Gates—has gained momentum. To be sure, a national security court composed of a bipartisan group of federal judges with life tenure, to approve targeted lethal force, would bring some added levels of credibility, independence and rigor to the process, and those are worthy goals. In the eyes of the American public, judges are for the most part respected for their independence. In the eyes of the international community, a practice that is becoming increasingly controversial would be placed on a more credible footing. A national security court would also help answer the question many are asking: what do we say to other nations who acquire this capability? A group of judges to approve targeted lethal force would set a standard and an example. Further, as so-called “targeted killings” become more controversial with time, I believe there are some decision-makers within the Executive Branch who actually wouldn’t mind the added comfort of judicial imprimatur on their decisions. But, we must be realistic about the degree of added credibility such a court can provide. Its proceedings would necessarily be ex parte and in secret, and, like a FISA court, I suspect almost all of the government’s applications would be granted, because, like a FISA application, the government would be sure to present a compelling case. So, at the same time the New York Times editorial page promotes a FISA-like court for targeted lethal force, it derides the FISA court as a “rubber stamp” because it almost never rejects an application.[8] How long before a “drone court” operating in secret is criticized in the same way?

**They don’t solve NATO—problem is competing legal regimes for whether the U.S. and its allies are at war with al Qaeda. Their Parker ev is about indefinite detention, not just TK, and is 2 years old. Either NATO isn’t going to collapse, or it already has an it’s irrelevant**

Parker, 1ac author, 9/17/12 (Tom, former policy director for Terrorism, Counterterrorism and Human Rights at Amnesty International USA. He is also a former officer in the British Security Service (MI5), “U.S. Tactics Threaten NATO” <http://nationalinterest.org/commentary/us-tactics-threaten-nato-7461?page=1>)

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. Attitudes across the Atlantic are hardening fast. This isn’t knee-jerk, man-on-the-street anti-Americanism. European governments that have tried to turn a blind eye to U.S. counterterrorism practices over the past decade are now forced to pay attention by their own courts, which will restrict cooperation in the future. As recently as last month, the German federal prosecutor’s office opened a probe into the October 2010 killing of a German national identified only as “Buenyamin E.” in a U.S. drone strike in Pakistan. There are at least four other similar cases involving German nationals and several reported strikes involving legal residents of the United Kingdom. In March, Polish prosecutors charged the former head of Polish intelligence, Zbigniew Siemiatkowski, with “unlawfully depriving prisoners of the their liberty” because of the alleged role he played in helping to establish a CIA secret prison in northeastern Poland in 2002–2003. Last December, British Special Forces ran afoul of the UK courts for informally transferring two Al Qaeda suspects detained in Iraq, Yunus Rahmatullah and Amanatullah Ali, to U.S. forces. The British government has been instructed to recover the men from U.S. custody or face legal sanctions that could result in two senior ministers being sent to prison. Perhaps the most dramatic example illustrating the gap that has opened up between the United States and its European allies concerns the 2009 in absentia conviction of twenty-three U.S. agents in an Italian court for the role they played in the extraordinary rendition of radical Imam Hassan Mustafa Osama Nasr from Milan to Cairo. Britain, Poland, Italy and Germany are among America’s closest military partners. Troops from all four countries are currently serving alongside U.S. forces in Afghanistan, but they are now operating within a very different set of constraints than their U.S. counterparts. The European Court of Human Rights established its jurisdiction over stabilization operations in Iraq, and by implication its writ extends to Afghanistan as well. The British government has lost a series of cases before the court relating to its operations in southern Iraq. This means that concepts such as the right to life, protection from arbitrary punishment, remedy and due process apply in areas under the effective control of European forces. Furthermore, the possibility that intelligence provided by any of America’s European allies could be used to target a terrorism suspect in Somalia or the Philippines for a lethal drone strike now raises serious criminal liability issues for the Europeans. The United States conducts such operations under the legal theory that it is in an international armed conflict with Al Qaeda and its affiliates that can be pursued anywhere on the globe where armed force may be required. But not one other member of NATO shares this legal analysis, which flies in the face of established international legal norms. The United States may have taken issue with the traditional idea that wars are fought between states and not between states and criminal gangs, but its allies have not. The heads of Britain’s foreign and domestic intelligence services have been surprisingly open about the “inhibitions” that this growing divergence has caused the transatlantic special relationship, telling Parliament that it has become an obstacle to intelligence sharing. European attitudes are not going to change—the European Court of Human Rights is now deeply embedded in European life, and individual European governments cannot escape its oversight no matter how well disposed they are to assist the United States. The United States has bet heavily on the efficacy of a new array of counterterrorism powers as the answer to Al Qaeda. In doing so it has evolved a concept of operations that has much more in common with the approach to terrorist threats taken by Israel and Russia than by its European partners. There has been little consideration of the wider strategic cost of these tactics, even as the Obama administration doubles down and extends their use. Meanwhile, some of America’s oldest and closest allies are beginning to place more and more constraints on working with U.S. forces. NATO cannot conduct military operations under two competing legal regimes for long. Something has to give—and it may just be the Atlantic alliance.

# PQD

**The plan doesn’t repudiate the PQD— they just expand the interpretation of what is justiciable to include causes of action against U.S. TK policy. They don’t fiat the Court will continue to assert itself in targeting decisions. The Court will just defer to the executive post-plan**

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.

**CMR impact is about the need for civilian oversight, specifically the Court, over the military. Plan doesn’t change that relationship**

**CMR is screwed – conflict is inev**

Davidson 13 (Janine Davidson is assistant professor at George Mason University’s Graduate School of Public Policy. From 2009-2012 she served as the Deputy Assistant Secretary of Defense, Plans in the Pentagon, Presidential Studies Quarterly, March 2013, " Civil-Military Friction and Presidential Decision Making: Explaining the Broken Dialogue", Vol. 43, No. 1, Ebsco)

Such mutual frustration between civilian leadership and the military is not unique to the Obama administration. In the run-up to the Iraq War in 2002, Secretary of Defense Donald Rumsfeld famously chastised the military for its resistance to altering the invasion plan for Iraq. The military criticized him for tampering with the logistical details and concepts of operations, which they claimed led to the myriad operational failures on the ground (Gordon and Trainor 2006; Ricks 2007; Woodward 2004). Later, faced with spiraling ethnic violence and rising U.S. casualties across Iraq, George W. Bush took the advice of retired four-star General Jack Keane and his think tank colleagues over the formal advice of the Pentagon in his decision to launch the so-called surge in 2007 (Davidson 2010; Feaver 2011; Woodward 2010). A similar dynamic is reflected in previous eras, from John F. Kennedy’s famous debates during the Cuban Missile Crisis (Allison and Zelikow 1999) to Lyndon Johnson’s quest for options to turn the tide in Vietnam (Berman 1983; Burke and Greenstein 1991), and Bill Clinton’s lesser-known frustration with the military over its unwillingness to develop options to counter the growing global inﬂuence of al-Qaeda.2 In each case, exasperated presidents either sought alternatives to their formal military advisors or simply gave up and chose other political battles. Even Abraham Lincoln resorted to simply ﬁring generals until he got one who would fight his way (Cohen 2002). What accounts for this perennial friction between presidents and the military in planning and executing military operations? Theories about civilian control of the military along with theories about presidential decision making provide a uskentuckeful starting point for this question. While civilian control literature sheds light on the propensity for friction between presidents and the military and how presidents should cope, it does not adequately address the institutional drivers of this friction. Decision-making theories, such as those focused on bureaucratic politics and institutional design (Allison 1969; Halperin 1974; Zegart 2000) motivate us to look inside the relevant black boxes more closely. What unfolds are two very different sets of drivers informing the expectations and perspectives that civilian and military actors each bring to the advising and decisionmaking table. This article suggests that the mutual frustration between civilian leaders and the military begins with cultural factors, which are actually embedded into the uniformed military’s planning system. The military’s doctrine and education reinforce a culture of “military professionalism,” that outlines a set of expectations about the civil-military decision-making process and that defines “best military advice” in very speciﬁc ways. Moreover, the institutionalized military planning system is designed to produce detailed and realistic military plans for execution—and that will ensure “victory”—and is thus ill suited to the rapid production of multiple options desired by presidents. The output of this system, framed on specific concepts and definitions about “ends,” “ways,” “means,” and expectations about who provides what type of planning “guidance,” is out of synch with the expectations of presidents and their civilian advisors, which in turn have been formed from another set of cultural and institutional drivers. Most civilian leaders recognize that there is a principal-agent issue at work, requiring them to rely on military expertise to provide them realistic options during the decision-making process. But, their definition of “options” is framed by a broader set of political objectives and a desire to winnow decisions based, in part, on advice about what various objectives are militarily feasible and at what cost. In short, civilians’ diverse political responsibilities combined with various assumptions about military capabilities and processes, create a set of expectations about how advice should be presented (and how quickly), how options might be defined, and how military force might or might not be employed. These expectations are often considered inappropriate, unrealistic, or irrelevant by the military. Moreover, as discussed below, when civilians do not subscribe to the same “hands off” philosophy regarding civilian control of the military favored by the vast majority of military professionals, the table is set for what the military considers “meddling” and even more friction in the broken dialogue that is the president’s decision-making process. This article identifies three drivers of friction in the civil-military decision-making dialogue and unpacks them from top to bottom as follows: The first, civil-military, is not so much informed by theories of civilian control of the military as it is driven by disagreement among policy makers and military professionals over which model works best. The second set of drivers is institutional, and reflects Graham Allison’s organizational process lens (“model II”). In this case, the “outputs” of the military’s detailed and slow planning process fail to produce the type of options and advice civilians are hoping for. Finally, the third source of friction is cultural, and is in various ways embedded into the first two. Powerful cultural factors lead to certain predispositions by military planners regarding the appropriate use of military force, the best way to employ force to ensure “victory,” and even what constitutes “victory” in the American way of war. These cultural factors have been designed into the planning process in ways that drive certain types of outcomes. That civilians have another set of cultural predispositions about what is appropriate and what “success” means, only adds more fuel to the flame.

**Internal disputes about Afghanistan withdrawal policies proves CMR doesn’t spillover and is resilient**

**No impact to CMR --- it doesn’t solve war and won’t hurt the military**

Murdie 12 (Department of Political Science, Kansas State University, Jan 18, 2012 “The Bad, the Good, and the Ugly: The Curvilinear Effects of Civil−Military Conflict on International Crisis Outcome Armed Forces & Society 2013 39: 233 originally published online 18 January 2012)

What explains the crisis defeats in these situations? Did civil–military relations¶ play a part in the crisis outcomes here? For Pakistan, the typical answer is a resounding¶ yes. The military ineffectiveness of Pakistan during the Kargil conflict, together¶ with the coup later that year, are events long thought to be linked to issues of bad or¶ unhealthy civil–military relations.4 Without civilian control of the military, military¶ forces cannot be used advantageously by civilian leadership, leading to fewer victories¶ in international crises.5 Additionally, without civilian control, civilians run the¶ risk of being overrun by the very forces designed to protect them. In short, too much¶ civil–military conflict leads to military ineffectiveness, as well as a host of domestic¶ problems, including increased risk of military coup.

In this article, the author first develops the theoretical underpinnings of this argument¶ and then empirically tests the somewhat controversial ‘‘Goldilocks’’ hypothesis¶ using newly created data that captures quantitatively the extent and degree of¶ conflict between the armed forces and executive leaders for all countries involved¶ in an international crisis from 1990 to 2004. Using this new data, the author finds¶ much support for the idea that not all civil–military conflict is problematic for military effectiveness. Intermediate levels of civil–military conflict, hereafter¶ referred to as civil–military ‘‘friction,’’ can heighten the probability of victory in¶ crisis bargaining situations.7

**CMR disputes won’t collapse hegemony**

**Hooker 4** (Colonel Richard, Ph.D. from the University of Virginia in IR and is a member of the Council on Foreign Relations, Winter 2004, “Soldiers of the State: Reconsidering American Civil-Military Relations,” Parameters, DA: 7/22/2010, http://findarticles.com/p/articles/mi\_m0IBR/is\_4\_33/ai\_111852934////)

The arguments advanced herein attempt to show that the dynamic tension which exists in civil-military relations today, while in many cases sub-optimal and unpleasant, is far from dangerous. Deeply rooted in a uniquely American system of separated powers, regulated by strong traditions of subordination to civilian authority, and enforced by a range of direct and indirect enforcement mechanisms, modern US civil-military relations remain sound, enduring, and stable. The American people need fear no challenge to constitutional norms and institutions from a military which—however aggressive on the battlefield—remains faithful to its oath of service. Not least of the Framer’s achievements is the willing subordination of the soldiers of the state.

**Warming is irreversible**

Romm 13 [Joe, PhD in Physics from MIT, Senior Fellow at American Progress, editor of Climate Progress, former acting assistant secretary of energy for energy efficiency and renewable energy in 1997, “The Dangerous Myth that Climate Change is Reversible,” March 18, http://theenergycollective.com/josephromm/199981/dangerous-myth-climate-change-reversible]

The CMO (Chief Misinformation Officer) of the climate ignorati, Joe Nocera, has a new piece, “A Real Carbon Solution.” The biggest of its many errors comes in this line:¶ A reduction of carbon emissions from Chinese power plants would do far more to help reverse climate change than — dare I say it? — blocking the Keystone XL oil pipeline.¶ Memo to Nocera: As a NOAA-led paper explained 4 years ago, climate change is “largely irreversible for 1000 years,” with permanent Dust Bowls in Southwest and around the globe (if we don’t slash emissions ASAP).¶ This notion that we can reverse climate change by cutting emissions is one of the most commonly held myths — and one of the most dangerous, as explained in this 2007 MIT study, “Understanding Public Complacency About Climate Change: Adults’ mental models of climate change violate conservation of matter.”¶ The fact is that, as RealClimate has explained, we would need “an immediate cut of around 60 to 70% globally and continued further cuts over time” merely to stabilize atmospheric concentrations of CO2 – and that would still leave us with a radiative imbalance that would lead to “an additional 0.3 to 0.8ºC warming over the 21st Century.” And that assumes no major carbon cycle feedbacks kick in, which seems highly unlikely.¶ We’d have to drop total global emissions to zero now and for the rest of the century just to lower concentrations enough to stop temperatures from rising. Again, even in this implausible scenario, we still aren’t talking about reversing climate change, just stopping it — or, more technically, stopping the temperature rise. The great ice sheets might well continue to disintegrate, albeit slowly.¶ This doesn’t mean climate change is unstoppable — only that we are stuck with whatever climate change we cause before we get desperate and go all WWII on emissions. That’s why delay is so dangerous and immoral. I’ll discuss this further below the jump.¶ First, though, Nocera’s piece has many other pieces of misinformation. He leaves people with the impression that coal with carbon capture and storage (CCS) is a practical, affordable means of reducing emissions from existing power plants that will be available soon. In fact, most demonstration projects around the world have been shut down, the technology Nocera focuses on would not work on the vast majority of existing coal plants, and CCS is going to be incredibly expensive compared to other low-carbon technologies — see Harvard stunner: “Realistic” first-generation CCS costs a whopping $150 per ton of CO2 (20 cents per kWh)! And that’s in the unlikely event it proves to be practical, permanent, and verifiable (see “Feasibility, Permanence and Safety Issues Remain Unresolved”).¶ Heck, guy who debated me on The Economist‘s website conceded things are going so slowly, writing “The idea is that CCS then becomes a commercial reality and begins to make deep cuts in emissions during the 2030s.” And he’s a CCS advocate!!¶ Of course, we simply don’t have until the 2030s to wait for deep cuts in emissions. No wonder people who misunderstand the irreversible nature of climate change, like Nocera, tend to be far more complacent about emissions reductions than those who understand climate science.¶ The point of Nocera’s piece seems to be to mock Bill McKibben for opposing the idea of using captured carbon for enhanced oil recovery (EOR): “his answer suggests that his crusade has blinded him to the real problem.”¶ It is Nocera who has been blinded. He explains in the piece:¶ Using carbon emissions to recover previously ungettable oil has the potential to unlock vast untapped American reserves. Last year, ExxonMobil reportedthat enhanced oil recovery would allow it to extend the life of a single oil field in West Texas by 20 years.¶ McKibben’s effort to stop the Keystone XL pipeline is based on the fact that we have believe the vast majority of carbon in the ground. Sure, it wouldn’t matter if you built one coal CCS plant and used that for EOR. But we need a staggering amount of CCS, as Vaclav Smil explained in “Energy at the Crossroads“:¶ “Sequestering a mere 1/10 of today’s global CO2 emissions (less than 3 Gt CO2) would thus call for putting in place an industry that would have to force underground every year the volume of compressed gas larger than or (with higher compression) equal to the volume of crude oil extracted globally by [the] petroleum industry whose infrastructures and capacities have been put in place over a century of development. Needless to say, such a technical feat could not be accomplished within a single generation.”¶ D’oh! What precisely would be the point of “sequestering” all that CO2 to extract previously “ungettable oil” whose emissions, when burned, would just about equal the CO2 that you supposedly sequestered?¶ Remember, we have to get total global emissions of CO2 to near zero just to stop temperatures from continuing their inexorable march toward humanity’s self-destruction. And yes, this ain’t easy. But it is impossible if we don’t start slashing emissions soon and stop opening up vast new sources of carbon.¶ For those who are confused on this point, I recommend reading the entire MIT study, whose lead author is John Sterman. Here is the abstract:¶ ¶ Public attitudes about climate change reveal a contradiction. Surveys show most Americans believe climate change poses serious risks but also that reductions in greenhouse gas (GHG) emissions sufficient to stabilize atmospheric GHG concentrations or net radiative forcing can be deferred until there is greater evidence that climate change is harmful. US policymakers likewise argue it is prudent to wait and see whether climate change will cause substantial economic harm before undertaking policies to reduce emissions. Such wait-and-see policies erroneously presume climate change can be reversed quickly should harm become evident, underestimating substantial delays in the climate’s response to anthropogenic forcing. We report experiments with highly educated adults–graduate students at MIT–showing widespread misunderstanding of the fundamental stock and flow relationships, including mass balance principles, that lead to long response delays. GHG emissions are now about twice the rate of GHG removal from the atmosphere. GHG concentrations will therefore continue to rise even if emissions fall, stabilizing only when emissions equal removal. In contrast, results show most subjects believe atmospheric GHG concentrations can be stabilized while emissions into the atmosphere continuously exceed the removal of GHGs from it. These beliefs-analogous to arguing a bathtub filled faster than it drains will never overflow-support wait-and-see policies but violate conservation of matter. Low public support for mitigation policies may be based more on misconceptions of climate dynamics than high discount rates or uncertainty about the risks of harmful climate change.

**Court will ultimately rule in favor of EPA now because of deference.**

[Robert Percival](http://www.law.umaryland.edu/faculty/profiles/faculty.html?facultynum=091), 2/6/2014. Robert F. Stanton Professor of Law and Director of the Environmental Law Program at the University of Maryland Francis King Carey School of Law. “Symposium: The climate wars return to the Court as a narrower skirmish,” SCOTUS Blog, <http://www.scotusblog.com/2014/02/symposium-the-climate-wars-return-to-the-court-as-a-narrower-skirmish/#more-204967>.

The starting point for handicapping the greenhouse gas cases is to consider the line-up of Justices in the Court’s previous GHG decisions.  The four dissenters in Massachusetts v. EPA remain on the Court.  In American Electric Power they continued to assert their belief that climate change did not give rise to standing, though only Justices Alito and Thomas registered continuing disagreement with the Massachusetts holding that GHGs are covered by the CAA.  Two Justices from the Massachusetts majority (Justices Stevens and Souter) no longer are on the Court, but their successors (Justices Kagan and Sotomayor) are likely to adhere to the same views.  This could leave Justice Kennedy in his familiar position as the decisive vote.

**If the Court applies normal doctrines of judicial deference**, this should not produce another five-to-four decision.  The Justices do not relish delving into the intricacies of the CAA because it is one of the most complex regulatory statutes on the planet.  Indeed CAA regulations are what spawned the Chevron doctrine of deference to agency decisions. The papers of the late Justice Blackmun reveal that Justice Stevens, the author of Chevron, declared at conference “when I get so confused, I go with the agency.”

Congress gave the D.C. Circuit exclusive venue to review challenges to CAA regulations.  The D.C.  Circuit panel that heard the case included Chief Judge Sentelle, who is no fan of environmental regulation, and it unanimously upheld the EPA’s actions.

The cert. grant here likely was inspired by Judge Kavanaugh’s dissent from the denial of rehearing en banc, which Judge Brown joined.   Kavanaugh concluded that the phrase “any air pollutant” should not be interpreted to refer to any pollutant regulated under the CAA but rather only to the six pollutants for which EPA has promulgated national ambient air quality standards (NAAQS).  While acknowledging that EPA’s interpretation initially appears “plausible,” he concluded that it cannot be correct because it would produce absurd results by requiring millions of small sources to obtain permits.  But this is precisely why the EPA promulgated the Tailoring Rule, which avoids this problem by initially applying PSD permit requirements only to the largest sources of GHGs.  Even if the Court views the statutory language “any air pollutant” to be ambiguous, **the EPA’s position should be entitled to**Chevron **deference**.

**Solves warming**

**Pooley 12** – Senior vice president for strategy and communications @ Environmental Defense Fund. [Eric Pooley, “Natural Gas – A Briefing Paper for Candidates,” Environmental Defense Fund, Published: August 10, 2012, pg. <http://tinyurl.com/buveju2>

Reducing Methane Leakage

In the absence of responsible natural gas oversight, increased reliance on the resource could result in a future in which the U.S. emits as much or more climate disrupting pollution as it does with our current energy mix. This outcome is possible if enough uncombusted natural gas is allowed to leak into the atmosphere from well sites, gas processing plants, pipelines and distribution systems. Though it burns cleaner than coal, uncombusted natural gas is extremely damaging to the climate: It is mostly made up of methane, a greenhouse gas far more potent than carbon dioxide. (For the first 20 years after it is emitted, a pound of methane is 72 times more potent as a heat-trapping emission than a pound of carbon dioxide. Over 100 years, a pound of methane is 25 times more potent as a greenhouse gas than a pound of carbon dioxide.) Small amounts of natural gas are lost into the air as it makes its way from the wells and through the processing and pipeline system that brings it to consumers; the cumulative impact of those leaks is highly significant. The potential for damaging methane leakage will only grow if, as expected, the use of natural gas expands in the coming years. Now and in the future, the United States cannot afford to be wasting a valuable American energy resource by allowing unchecked leakage to occur. As Americans, none of us should be content to stand idly by and let this important resource be squandered through fugitive emissions and unnecessary venting. Nor can we ignore the national security consequences of allowing our climate to deteriorate through easily avoidable greenhouse gas pollution. Reducing methane emissions isn’t just an environmental issue, it’s an important part of any candidate's plan for domestic energy security. Uncertainty remains about just how much methane is currently being emitted along the supply chain, from the well site to the end-user. Estimates vary widely — from less than 2% to more than 7% of total production. The Environmental Protection Agency (EPA) has estimated the methane leak rate at about 2.3%, while a study by the National Oceanic and Atmospheric Administration (NOAA) suggested that in northern Colorado it might be roughly twice as high. If the higher estimates turn out to be correct, the leaks could eat up the short-term climate benefit equivalent to closing one-third of the nation’s coal plants. If the lower EPA estimate is correct, leak rates of two to three percent still leave significant and cost-effective greenhouse gas reductions on the table. Accurate measurement of actual leakage rates is a crucial next step. A recent paper by Alvarez et al. published in the Proceedings of the National Academy of Sciences identified the critical leak rates at which use of natural gas would produce climate benefits at all points in time. The study found that natural gas can always produce a greenhouse gas advantage over other fossil fuels for electric power and transportation, including the conversion of much of the nation’s 3.2 million big rig trucks, if methane leakage rates are capped at 1%.\* Though methane is a far more potent climate disruptor than carbon dioxide, it is also more short-lived; it breaks down in the atmosphere over time. The permanent, long-term solution to climate change involves stabilizing CO2 emissions. However, the shorter time frames affected by methane emissions are also crucially important because they increase the risk of undesirable climate outcomes **in the near future**. Accelerated rates of warming mean ecosystems and humans have **less time to adapt** to climate change. Given the dire need for concerted global action on climate change, current energy policy should, at a minimum, abide by a "Do No Harm" policy: no policy should contribute to increased climate forcing on any time frame. There is **no tech**nological **barrier** to reducing leakage. We just have to do it. That's enormously encouraging. As mentioned above, many practices and technologies are **already being used** in states such as Colorado and Wyoming to reduce gas losses, which result in greater recovery and sale of natural gas, and thus increased economic gains. The return on the initial investment for many of these practices *is* sometimes as short as a few months and almost always less than two years. In these tough economic times, it would seem wise to eliminate waste, save money and reduce environmental impact. Candidates should come out in favor of rules to measure and limit methane leakage at a level that avoids short term climate damage. In the coming days, Environmental Defense Fund would be pleased to present the elements of a possible approach. As crucial voices in the public debate, candidates have the opportunity to take a leadership position on the methane leakage issue; if influential office-seekers choose to do so, others will likely follow. This would mark a major step on the road to safe and sustainable development of America's shale gas resource. The first order of business is getting the data necessary to better understand where the leaks are occurring and under what conditions, then using that data to reduce leaks and ensure that natural gas will help mitigate climate change. Such as strategy could yield enormous environmental and health benefits on a global basis. No candidate in 2012 can afford to stand against transparency and public access to data. Such a candidate would be out of step with the public mood and the public interest. We need to get information on methane leakage out there. It needs to be presented in useful, user-friendly formats so the public can look at it and start to understand what’s going on. We need our regulators to be able to slice and dice this data, so they can identify challenges and opportunities. As mentioned, the good news is that leaks can be detected, measured – and reduced. EDF is currently collaborating with industry and academic partners on a series of five major scientific studies designed to quantify the methane leakage rate across the natural gas supply chain. The five studies are on: the production of natural gas, natural gas processing, long-distance pipelines and storage, local distribution systems and natural gas vehicles. For the production study, we are working with the University of Texas and nine major natural gas companies to determine the leak rates from their wells. For the local distribution module we are working with Duke University, Harvard University and Boston University. EDF aims to complete the entire study by December 2013 and to submit the results of each module for publication. Conclusion: Improving Corporate Performance The natural gas industry has a **credibility problem**. This diverse industry, made up of hundreds of drilling companies ranging from tiny operations to huge multinationals, cannot afford to regard strong environmental performance as a luxury or a marketing strategy. It is a public right, and a **requirement for continued corporate operation**. Improved performance is clearly in industry’s bottom-line interest, whether by reducing wasted product lost to leaks, reducing regulatory and financial risk, or earning back the public trust. Companies will benefit from this too. First, because good data and good science lays the foundation for having fact-based conversations about risks and how to mitigate them. And second, because transparency is an end in itself. Candidates should encourage natural gas executives not to wait for slow-moving producer associations to reach agreement. By speaking in favor of common-sense environmental strategies, such as disclosure and green completions, some leaders in the natural gas industry are already charting the path forward. They are proving that industry can meet new standards, such as the **EPA’s air quality rules** for oil and gas drilling, and thrive. Pg. 5-8

**Deference prevents nuclear first strikes**

**Green 97 –** Associate at McNair Law Firm, JD Magna Cum Laude at Univ of South Carolina (Tracey Cotton, South Carolina Environmental Law Journal, 6 S.C Envtl. L.J. 137, Fall)

The deployment of nuclear weapons, however, is a DoD action for which secrecy is crucial and, thus, is classified by Executive Order. 59 According to the American policy of deterrence through mutually assured destruction (MAD), nuclear weapons are essential to an effective deterrent. 60 If DoD disclosed the location of these weapons, disclosure would reduce or destroy the deterrent. An adversary could destroy all nuclear weapons with an initial strike, leaving the country exposed to nuclear terror. 61 Additionally, terrorists would know where to strike to obtain material for nuclear blackmail. In short, secrecy regarding nuclear weapons has enormous implications for national security. While the armed services must consider the environmental effects of maintaining nuclear weapons, they cannot release any information regarding the storage of these weapons. However, some public interest groups have an agenda at odds with DoD and see NEPA's review process as a method of achieving their goals. Environmental groups generally distrust the efforts of federal agencies, and arms control groups want to hamper or stop weapons deployment. These groups sue the Army or Navy in court, requesting that the judiciary review the agency's actions, review or order the preparation of an EIS, and order the agency to conform to NEPA. 62 Through the suit, public review accompanies judicial review. In these situations, a conflict arises between the judiciary's duty to avoid interfering with national security and its duty to enforce federal law passed by Congress. 63 [\*145]

**Judicial intervention breakdown leads to international instability --- rogue states will escalate**

**Nzelibe and Yoo 6** (Jide Nzelibe, Professor of Law at Northwestern and John Yoo, Professor of Law at UC Berkeley, “Rational War and Constitutional Design,” The Yale Law Journal, Vol. 115, No. 9, The Most Dangerous Branch? Mayors, Governors, Presidents, and the Rule of Law: A Symposium on Executive Power (2006), pp. 2512-2541, http://www.jstor.org/stable/20455704)

D. The Dangers of judicial Intervention Faced with the prospect that congressional participation can sometimes play a salutary role in avoiding unnecessary wars, an antecedent question naturally arises. Should the courts decide if such a congressional role would be appropriate? Indeed, a recurring theme running through much of the Congress-first literature is that judicial intervention is necessary to vindicate the congressional role in initiating conflicts. But if one accepts the signaling model developed here, there are significant reasons why one ought to be wary of a judicial role in resolving war powers controversies. First, under our model of international crisis bargaining, **judicial review** would likely undermine the value of signals sent by the President when he seeks legislative authorization to go to war. In other words, it is the fact that the signal is both costly and discretionary that often makes it valuable. Once one understands that regime characteristics can influence the informational value of signaling, it makes sense that the President should have the maximum flexibility to choose less costly signals when dealing with **rogue states or terrorist organizations.** The alternative- a **judicial rule** that mandates costly signals in all circumstances, even when such signals have little or no informational value to the foreign adversary-would **dilute the overall value of such signals.** Second, **judicial review** would preclude the possibility of beneficial bargaining between the President and Congress by forcing warmaking into a procedural straitjacket. In this picture, judicial review would constrain the political branches to adopt only the tying hands type of signal regardless of the nature or stage of an international crisis. But the supposed restraining effect attributed to the tying hands signal can vary considerably depending on whether the democracy is deciding to initiate an international crisis or is already in the midst of an escalating crisis. Requiring legislative authorization may make it less likely that the democracy will be willing to back out of a conflict once it starts. Thus, tying hand signals and judicial insistence that the President seek legislative authorization **will contribute to greater international instability** once a conflict has already started.

**Deference key to military cohesion and readiness—judicial interference kills it**

**Wilkinson 96 –** Chief Judge US Court of Appeals (Thomasson v. Perry, Fourth Circuit, Majority Opinion, 80 F.3d 915, 4/5, http://www.ncgala.org/cases/thomasson.htm, AD)

Aside from the Constitution itself, the need for deference also arises from the unique role that national defense plays in a democracy. Because our nation's very preservation hinges on decisions regarding war and preparation for war, the nation collectively, as expressed through its elected officials, faces "'the delicate task of balancing the rights of servicemen against the needs of the military.'" Weiss, supra (quoting Solorio v. United States, 483 U.S. 435, 447-48 (1987)). To the degree that the judiciary is permitted to circumscribe the national security options of our elected officials, it "decreases the ability of the political branches to impose their will on another [nation and at] the worst, it permits the imposition of the will of another [nation] on the United States." James M. Hirschhorn, “The Separate Community: Military Uniqueness and Servicemen's Constitutional Rights,” 62 N.C. L. Rev. 177, 237-238 (1983). After all, "unless a society has the capability . . . to defend itself from the aggressions of others, constitutional protections of any sort have little meaning." Wayte v. United States, 470 U.S. 598, 612 (1985). National defense decisions not only implicate each citizen in the most profound way. Such decisions also require policy choices, which the legislature is equipped to make and the judiciary is not. "Congress, working with the Executive Branch, has developed a system of military criminal and administrative law that carefully balances the rights of individual servicemembers and the needs of the armed forces." Sam Nunn, “The Fundamental Principles of the Supreme Court's Jurisprudence in Military Cases,” 29 Wake Forest L. Rev. 557, 566 (1994). While Congress and the President have access to intelligence and testimony on military readiness, the federal judiciary does not. While Congress and the members of the Executive Branch have developed a practiced expertise by virtue of their day-to-day supervision of the military, the federal judiciary has not. The judiciary has no Armed Services Committee, Foreign Relations Committee, Department of Defense, or Department of State. As the Supreme Court has noted, "the lack of competence on the part of the courts [with respect to military judgments] is marked." Rostker, supra. In fact, It is difficult to conceive of an area of governmental activity in which the courts have less competence. The complex, subtle, and professional decisions as to the composition, training, equipping, and control of a military force are essentially professional military judgments, subject always to civilian control of the Legislative and Executive Branches. Gilligan v. Morgan, 413 U.S. 1, 10 (1973). Finally, the imprimatur of the President, the Congress, or both imparts a degree of legitimacy to military decisions that courts cannot hope to confer. Even when there is opposition to a proposed change --as when Congress abolished flogging in the 19th century or when President Truman ended the military's racial segregation in 1948, see Hirschhorn, supra --the fact that the change emanates from the political branches minimizes both the likelihood of resistance in the military and the probability of prolonged societal division. In contrast, when courts impose military policy in the face of deep social division, the nation inherently runs the risk of long-term social discord because large segments of our population have been deprived of a democratic means of change. In the military context, such divisiveness could constitute an independent threat to national security. Parallel to the deference owed Congressional and Presidential policies is deference to the decision-making authority of military personnel who "have been charged by the Executive and Legislative Branches with carrying out our Nation's military policy." Goldman v. Weinberger, 475 U.S. 503, 508 (1986). Judicial interference with the subordinate decisions of military authorities frustrates the national security goals that the democratic branches have sought to achieve. The Supreme Court has recognized the need for deference when facing challenges to a variety of military decisions: a policy that prohibited the wearing of headgear in certain circumstances, Goldman, supra (noting that the military is "a specialized society separate from civilian society"); an Air Force regulation that required service members to obtain permission before circulating petitions on bases, Brown v. Glines, 444 U.S. 348, 357 (1980) (noting that "the military must possess substantial discretion over its internal discipline"); a base policy that prohibited certain political activity on base premises, Greer v. Spock, 424 U.S. 828, 837 (1976) (noting "the special constitutional function of the military in our national life"); and military court-martial proceedings, Schlesinger v. Councilman, 420 U.S. 738, 757 (1975) (noting that "to prepare for and perform its vital role, the military must insist upon a respect for duty and discipline without counterpart in civilian life"). The need for deference also derives from the military's experience with the particular exigencies of military life. Among these is the attainment of unit cohesion--"the subordination of personal preferences and identities in favor of the overall group mission" and "the habit of immediate compliance with military procedures and orders." Goldman, supra. **Should the judiciary interfere** with the intricate mix of morale and discipline that fosters unit cohesion**, it is simply impossible to estimate the damage that a particular change could inflict upon national security**--"there is no way to determine and correct the mistake until it has produced the substantial and sometimes irreparable cost of [military] failure." Hirschhorn, supra.

Military effectiveness is key to deter large-scale aggression and prevent conflict escalation

Spencer 3 (Jack, Senior Defense Policy Analyst @ Heritage, "Focusing Defense Resources to Meet National Security Requirements," 3/21, [www.heritage.org/Research/NationalSecurity/bg1638.cfm](http://www.heritage.org/Research/NationalSecurity/bg1638.cfm))

Be prepared to fight with little or no warning in unanticipated places**.** The emergence of global communications, advances in technology, and the globalization of terrorism provide many opportunities for surprise attacks against the United States and its interests. Maintaining the ability to fight and win wars in diverse situations and environments can **discourage many of America's enemies from hostile acts**. Maintain adequate capability to deter aggression against America's allies. America faces enduring threats beyond terrorism, as demonstrated by North Korea's nuclear weapons program. There are nations in every region of the world that threaten America's vital interests in the near term. Assuring stability in those regions and protecting U.S. interests requires the ability to defeat any nation or group that threatens America's allies, which itself provides **effective deterrence against large-scale aggression**. This should include both conventional forces and other capabilities such as an effective ballistic missile defense and reliable nuclear forces. The Administration should take every step to strengthen its important alliances and be ready to respond forcefully and immediately to aggression against America's allies.

**Aff leads to disclosure of special ops intel --- devastates special ops effectiveness**

**VFW 10** (The Veterans of Foreign Wars of the United States, Brief of The veterans of Foreign Wars of the United States As amicus curiae in support of defendants and dismissal, 09/30/10, http://www.lawfareblog.com/wp-content/uploads/2010/10/VFW\_Brief\_PACER.pdf)

D. Special Operations Require Protection From This Type of Suit Finally, the VFW’s membership includes many current and former members of the U.S. armed forces’ elite special operations forces—Army Rangers and Special Forces, Navy SEALs, Air Force parajumpers and combat controllers, and Marine Corps Force Reconnaissance personnel, among others. These elite warriors conduct highly dangerous missions today in Iraq, Afghanistan, and other countries around the world. By definition, special operations “are operations conducted in hostile, denied, or politically sensitive environments to achieve military, diplomatic, informational, and/or economic objectives employing military capabilities for which there is no broad conventional force requirement. These operations often require covert, clandestine, or low-visibility capabilities.” U.S. Joint Chiefs of Staff, Joint Pub. 3-05, Doctrine for Joint Special Operations, at I-1 (2003), available at http://www.dtic.mil/doctrine/new\_pubs/jp3\_05.pdf. Special operations are differentiated from conventional operations in many ways, but foremost among these are their “degree of physical and political risk, operational techniques, mode of employment, independence from friendly support, and dependence on detailed operational intelligence and indigenous assets.” Id. “Surprise is often the most important principle in the conduct of successful [special operations] and the survivability of employed [special operations forces],” and the very nature of special operations requires “high levels of security . . . to protect the clandestine/covert nature of missions.” Id. at I-6. More than mission accomplishment is at stake—“[g]iven their operating size, [special operations teams] are more vulnerable to potential hostile reaction to their presence than larger conventional units,” and therefore the protection of sources and methods is essential for the survival of special operations forces. Id. To preserve this element of surprise, special operations forces must broadly conceal their tactics, techniques and procedures, including information about unit locations and movements, targeting decisions, and operational plans for future missions. Disclosure of this information would allow this nation’s adversaries to defend themselves more effectively, potentially inflicting more casualties upon U.S. special operations forces. Such disclosure would also provide information about how the U.S. military gathers information about its adversaries, enabling terrorist groups like Al Qaeda to alter its communications and activities in order to evade future detection and action by the U.S. Government. Such harm would not be limited to just this instance or terrorist group group; these disclosures would also provide future terrorist adversaries and military adversaries with insight into U.S. special operations capabilities which would enable them to counter such capabilities in future conflicts. Cf. Public Declaration of Robert M. Gates, Secretary of Defense, Govt. Exhibit 4, September 23, 2010, at ¶¶ 6-7. In this matter, the Plaintiff asks the Court to pull back the veil on the U.S. special operations community, exposing special operations sources and methods to the public, including this nation’s enemies. This would do tremendous harm to current special operations personnel, including VFW members, who are operating abroad in Iraq, Afghanistan, and elsewhere, and who depend on stealth, security and surprise for their survival and mission accomplishment. Further, in his prayer for relief, Plaintiff asks the Court to order the disclosure of “the criteria that are used in determining whether the government will carry out the targeted killing of a U.S. citizen.” As Secretary Gates states in his public declaration filed by the Government, without confirming or denying any allegation made by Plaintiff, this type of information “constitutes highly sensitive and classified military information that cannot be disclosed without causing serious harm to the national security of the United States.” Id*.* at ¶ 5. These criteria necessarily reflect the sources, methods and analytic processes used to produce them, and would tend to reveal other information about military sources and methods which are essential to the success and survival of special operations personnel.

**Special forces readiness and effectiveness key to solve nuclear war**

Jim Thomas 13, Vice President and Director of Studies at the Center for Strategic and Budgetary Assessments, and Chris Dougherty is a Research Fellow at the Center for Strategic and Budgetary Assessments, 2013, “BEYOND THE RAMPARTS THE FUTURE OF U.S. SPECIAL OPERATIONS FORCES,” http://www.csbaonline.org/wp-content/uploads/2013/05/SOF-Report-CSBA-Final.pdf

WMD do not represent new threats to U.S. security interests, but as nascent nuclear powers grow their arsenals and aspirants like Iran continue to pursue nuclear capabilities, the threat of nuclear proliferation, as well as the potential for the actual use of nuclear weapons, will increase. Upheaval in failing or outlaw states like Libya and Syria, which possess chemical weapons and a range of missiles, highlights the possibility that in future instances of state collapse or civil war, such weapons could be used by failing regimes in an act of desperation, fall into the hands of rebel forces, or be seized by parties hostile to the United States or its interests. SOF can contribute across the spectrum of counter-WMD efforts, from stopping the acquisition of WMD by hostile states or terrorist groups to preventing their use. The global CT network SOF have built over the last decade could be repurposed over the next decade to become a global counter-WMD network, applying the same logic that it takes a network to defeat a network. Increasing the reach and density of a global counter-WMD network will require expanding security cooperation activities focused on counter-proliferation. Finally, SOF may offer the most viable strategic option for deposing WMD-armed regimes through UW campaigns should the need arise.

# pic – kritik

**the aff focuses on tactics rather than strategy --- cherry-picking a single instance of state violence to criticize rather than broader systems means their method is doomed to fail and recreates the imperial state of exception**

Gorelick 08 [Nathan Gorelick is a Ph.D. student of Comparative Literature at the State University of New York at Buffalo, where he holds a Presidential Fellowship. His research concerns theories of excess from Blanchot, Bataille and Foucault, and these thinkers' indebtedness to 18th century literatures of death and sexuality in England and France.] “Imagining Extraordinary Renditions: Terror, Torture and the Possibility of an Excessive Ethics in Literature” http://muse.jhu.edu/journals/theory\_and\_event/v011/11.2.gorelick.html)

The problem with legal confrontations, though, is not simply that they continue to be side-stepped by the offending parties, but that **they presuppose the legitimacy of the war on terror,** a project which has become a floating signifier for neoconservative political agendas, easily attaching itself to any effort toward the advancement of Pax Americana, the geopolitical hegemony of a militarized, neoliberal United States. The most disturbing and violent of state secrets remain tenable, necessary war-fighting tactics precisely because they are secret, and they will not be revealed through any strategy of confrontation or representation that acquiesces to the ground rules for political participation laid out by the state. **Any such strategy grants legitimacy to the violent state apparatus of which torture is only a small part, and strengthens the humanitarian legitimacy of neoimperialism**. Prior to the publication of his report to the Council of Europe, Marty demonstrated the truth of this contention when he explained the "moral obligation" to reveal any illegal detention or interrogation activities: "We do not want to weaken the fight against terrorism... but this fight has to be fought by legal means. Wrongdoing only gives ammunition to the terrorists and their sympathizers."31 Here, Marty is clearly not criticizing the larger project underpinning the war on terror; rather the **specific tactics** through which this project attempts to actualize itself are considered in need of adjustment, **so that the moral authority of American expansionism may be preserved.**

**this displaces our individual agency recreating our own complacency in this violence**

**KAPPELER 1995** (Susanne Kappeler, associate professor, Al-Akhawayn University, “The Will to Violence: The Politics of Personal Behavior,” 1995, pg. 10-11)

We are the war' does not mean that the responsibility for a war is shared collectively and diffusely by an entire society which would be equivalent to exonerating warlords and politicians and profiteers or, as Ulrich Beck says, upholding the notion of `collective irresponsibility', where people are no longer held responsible for their actions, and where the conception of universal responsibility becomes the equival­ent of a universal acquittal.' On the contrary, the object is precisely to analyse the specific and differential responsibility of everyone in their diverse situations. Decisions to unleash a war are indeed taken at particular levels of power by those in a position to make them and to command such collective action. We need to hold them clearly responsible for their decisions and actions without lessening theirs by any collective `assumption' of responsibility. Yet our habit of focusing on the stage where the major dramas of power take place tends to **obscure** our sight in relation to our own sphere of competence, **our own power** and **our own responsibility** leading to the well-known **illusion of** our apparent **‘powerlessness’** and its accompanying phe­nomenon, our so-called political disillusionment. Single citizens even more so those of other nations have come to feel secure in their obvious non-responsibility for such large-scale political events as, say, the wars in Croatia and Bosnia-Hercegovina or Somalia since the decisions for such events are always made elsewhere. Yet our insight that indeed we are not responsible for the decisions of a Serbian general or a Croatian president tends to mislead us into thinking that therefore we have no responsibility at all, not even for forming our own judgement, and thus into underrating the respons­ibility we do have within our own sphere of action. In particular, it seems to **absolve** us from having to try to see any relation between our own actions and those events, or to recognize the connections between those political decisions and our own personal decisions. It not only shows that we participate in what Beck calls `organized irresponsibility', upholding the apparent lack of connection between bureaucratically, institutionally, nationally and also individually or­ganized separate competences. It also proves the phenomenal and unquestioned alliance of our personal thinking with the thinking of the major powermongers: For we tend to think that we cannot `do' anything, say, about a war, because we deem ourselves to be in the wrong situation; because we are not where the major decisions are made. Which is why many of those not yet entirely disillusioned with politics tend to engage in a form of mental deputy politics,

in the style of ‘What would I do if I were the general, the prime minister, the president, the foreign minister or the minister of defence?’ Since we seem to regard their mega spheres of action as the only worthwhile and truly effective ones, and since our political analyses tend to dwell there first of all, any question of what I would do if I were indeed myself tends to peter out in the comparative insignificance of having what is perceived as ‘virtually no possibilities’: what I could do seems petty and futile. For my own action I obviously desire the range of action of a general, a prime minister, or a General Secretary of the UN — finding expression in ever more prevalent formulations like ‘I want to stop this war’, ‘I want military intervention’, ‘I want to stop this backlash’, or ‘I want a moral revolution.’7 ‘We are this war’, however, even if we do not command the troops or participate in so—called peace talks, namely as Drakuli~ says, in our non-comprehension’: our willed refusal to feel responsible for our own thinking and for working out our own understanding, preferring innocently to drift along the ideological current of prefabricated arguments or less than innocently taking advantage of the advantages these offer. And we ‘are’ the war in our ‘unconscious cruelty towards you’, our tolerance of the ‘fact that you have a yellow form for refugees and I don’t’ — our readiness, in other words, to build identities, one for ourselves and one for refugees, one of our own and one for the ‘others’. We share in the responsibility for this war and its violence in the way we let them grow inside us, that is, in the way we shape ‘our feelings, our relationships, our values’ according to the structures and the values of war and violence. “destining” of revealing insofar as it “pushes” us in a certain direction. Heidegger does not regard destining as determination (he says it is not a “fate which compels”), but rather as the implicit project within the field of modern practices to subject all aspects of reality to the principles of order and efficiency, and to pursue reality down to the finest detail. Thus, insofar as modern technology aims to order and render calculable, the objectification of reality tends to take the form of an increasing classification, differentiation, and fragmentation of reality. The possibilities for how things appear are increasingly reduced to those that enhance calculative activities. Heidegger perceives the real danger in the modern age to be that human beings will continue to regard technology as a mere instrument and fail to inquire into its essence. He fears that all revealing will become calculative and all relations technical, that the unthought horizon of revealing, namely the “concealed” background practices that make technological thinking possible, will be forgotten. He remarks: The coming to presence of technology threatens revealing, threatens it with the possibility that all revealing will be consumed in ordering and that everything will present itself only in the unconcealedness of standing-reserve. (QT, 33) 10 Therefore, it is not technology, or science, but rather the essence of technology as a way of revealing that constitutes the danger; for the essence of technology is existential, not technological. 11 It is a matter of how human beings are fundamentally oriented toward their world vis a vis their practices, skills, habits, customs, and so forth. Humanism contributes to this danger insofar as it fosters the illusion that technology is the result of a collective human choice and therefore subject to human control. 12

**Legal challenges to state violence are intrinsically tied to systems of thought- criticism is a pre-requisite even if the plan is good**

Gorelick 08[Nathan Gorelick is a Ph.D. student of Comparative Literature at the State University of New York at Buffalo, where he holds a Presidential Fellowship. His research concerns theories of excess from Blanchot, Bataille and Foucault, and these thinkers' indebtedness to 18th century literatures of death and sexuality in England and France.] “Imagining Extraordinary Renditions: Terror, Torture and the Possibility of an Excessive Ethics in Literature” http://muse.jhu.edu/journals/theory\_and\_event/v011/11.2.gorelick.html

III. Literature Beyond Ethics

Extraordinary rendition, torture, the war on terror and the security of the state are thus various nodal points within the larger epistemology of liberal humanism -- a humanism that produces its dark chambers in its flight from the black void at its own core. Césaire's "thingification" is the product of this flight. It would therefore be misguided to assume that the violence endemic to the war on terror can be cured by simply exposing its contradictions. If images from Abu Ghraib become a common rallying cry against American militarism for disparate political factions around the globe, this cry is unheeded. If legal challenges to abominable state violence are successful, inventive re-interpretations of the law emerge, or lawlessness is simply driven underground. Instead, it is necessary to challenge the systems of thought from which these practices emerge; the task of criticism must be to interrupt the epistemology of the burrow.

The dark chamber (extraordinary rendition) ought to be understood as a metaphor for this epistemology, and ethical criticism must expose the totality of violence that this metaphor represents without enabling morally totalizing recuperations of the larger world ordering project currently embodied and deployed by the United States. Such a project entails a reconfiguration of the political terrain, or a reconstitution of the limits of political antagonism, but it also implies the need for an even more profound challenge to the ways in which discourses and representations of "self" and "other" are constituted. The task is not simple: as Michael J. Shapiro suggests, "Recognition of the extraordinary lengths to which one must go to challenge a given structure of intelligibility, to intervene in resident meanings by bringing what is silent and unglimpsed into focus, is an essential step toward opening up possibilities for a politics and ethics of discourse."45 If, however, an ethical regard is rendered possible through the work of rigorous critique -- through the establishment of a critical distance between the critic and the object of criticism then the question for critique concerns the very nature of the ethical itself.

Because the crisis in representation by which the dark chamber is constantly being suppressed is constitutive of politics as such, then the problem, as Coetzee reminds us, is "how not to play the game by the rules of the state, how to establish one's own authority, how to imagine torture and death on one's own terms."46 Coetzee's suggestion that torture and death might be "imagined" implies that an effective intervention should not adopt a strategy of representational verisimilitude -- the goal should not be to take and disseminate photographs of Uzbek or Russian torture chambers, or to produce comprehensive, anatomical descriptions of horrendous state-sanctioned violence. Such efforts risk a different kind of satisfaction than that which is demonstrated by a smiling prison guard at Abu Ghraib, a voyeuristic pleasure in consuming images of a suffering other and a dangerous appropriation of that suffering as something to be easily understood and made one's own. The image thus commodified, its subject's pain is reduced to a political bargaining chip, a source for aesthetic elaboration, a sensational news item; the singularly unrepresentable experience of torture -- the reason for which it is inexcusable -- is polluted by its representation.

So, it is necessary to expose and criticize torture, but the brutality of the experience must somehow be represented in its unrepresentability. A criticism in search of ethical possibilities, in whatever form, must find ways to avoid "either looking on in horrified fascination as the blows fall or turning one's eyes away."47 It must situate itself at the level of epistemology, rather than fixating on singular eruptions of violence and state brutality**.** Otherwise, critique is already "play[ing] the game by the rules of the state," operating within the dialectic of visibility endemic to the epistemology of the burrow.

# --cmr

**CP solves CMR way better than the aff**

**Feaver 13** - professor of political science and public policy @ Duke University. He is a leading scholar in civil-military relations [[Peter Feaver](http://www.foreignpolicy.com/profiles/Peter-Feaver), “[How to Better Navigate the Coming Civil-Military Challenges](http://shadow.foreignpolicy.com/posts/2013/10/14/how_to_better_navigate_the_coming_civil_military_challenges),” Foreign Policy, OCTOBER 14, 2013 - 03:00 PM, pg. http://tinyurl.com/nyjau3m

Curiously, Zenko left off what is arguably the most important driver of civil-military tensions, now and especially going forward: the persistent fiscal crisis that has resulted in sequestration.

Sequestration was designed to be something so horrible that it never would be implemented. Almost everyone in the Defense Department, whether in or out of uniform, still views it that way. But there is a growing sense that the White House, and the commander in chief in particular, has come to view the first round of sequestration as tolerable. Worse, the president's refusal to negotiate with Republicans has raised fears that perhaps he is willing to prolong sequestration, at least insofar as it applies to the Defense Department.

This is a real civil-military problem -- much more consequential than the Obama administration's odd decision to [prevent World War II veterans](http://www.washingtontimes.com/news/2013/oct/9/park-service-relents-opens-wwii-memorial-somewhat/) from visiting their open-air monument as a way of ratcheting up pressure on Republicans. Harassing wheelchair vets makes for compelling television, but imposing arbitrary cuts on the order of hundreds of billions of dollars across the FYDP undermines national security. There is no question which hurts civil-military relations more.

Restoring the lost funding would go a long way to improving civil-military relations, but that is not plausible. What, short of that, could the administration do?

First, the Obama administration should seek a deal that would give the Defense Department greater flexibility in managing the cuts. Republicans are willing to grant that, but the Obama administration has been unwilling to accept it unless it can get similar flexibility for favored domestic programs. In today's partisan climate, we may not be able to get such a grand bargain. Let's take the incremental improvements on offer and build out from there.

Second, if the administration will not provide the resources its strategy requires, it must issue a new strategy that is viable at the funding levels that are achievable. The prevailing strategic guidance for the U.S. military [is the one](http://www.defense.gov/news/defense_strategic_guidance.pdf) Obama issued in January 2012. I had my [quibbles](http://shadow.foreignpolicy.com/posts/2012/01/05/quick_reactions_to_the_obama_strategy_roll_out) with it at the time, but in retrospect it was better than the absence of guidance that prevails right now. Let us be clear: That strategy was designed to accommodate the deep cuts Obama ordered before the sequester took effect. The administration claimed the strategy would be viable, provided there were no further cuts. None. Since then, the sequester has taken effect, with no relief in sight. Worse, another round of sequestration could be looming. There is simply no way that the old strategy could be viable in a post-sequester environment. The administration has to come to terms with this, and do so candidly.

Third, while the president is free to decide issues of policy irrespective of the advice he receives from the military, he should take greater pains not to misrepresent what that advice actually is. As far as civil-military relations go, this was Obama's biggest foul in the Syria episode. When Obama decided to reverse course and delay the planned airstrikes, he [explicitly claimed](http://www.whitehouse.gov/the-press-office/2013/08/31/statement-president-syria) that Gen. Martin Dempsey had told him the delay would not matter. Obama and his White House staff went on at some length to justify the decision in Dempsey's counsel, but in doing so they fundamentally misrepresented the content of Dempsey's advice, as Dempsey's subsequent congressional testimony [makes clear](http://freebeacon.com/misfire/) (see also [here](http://www.weeklystandard.com/blogs/did-dempsey-say-timing-syria-strike-doesnt-matter_752759.html)). The president's prerogative to overrule his generals is a precious aspect of civilian control. But it will lead to civil-military conflict when the military believes that civilians are not just choosing to go in a direction other than what the military advises, but are actively misleading others about what that advice was in the first place. The more budget cuts require civilians to make painful choices across military programs and choose between competing military counsels, the more important preserving this principle, and all its associated obligations on civilians, will become.

# --warming 1nc

**Deep-sea sediments solve warming**

**House et al 06** (Kurt Zenz House, Department of Earth and Planetary Sciences, Harvard University, Daniel P. Schrag, Department of Earth and Planetary Sciences, Harvard University, Charles F. Harvey, Department of Civil and Environmental Engineering, and Klaus S. Lackner, Earth Engineering Center, Columbia University, “Permanent Carbon Dioxide Storage in Deep-Sea Sediments,” Proceedings of the National Academy of Sciences of the United States of America, August 6, 2006, http://www.pnas.org/content/103/33/12291.abstract)

Stabilizing the concentration of atmospheric CO2 may require storing enormous quantities of captured anthropogenic CO2 in near-permanent geologic reservoirs. Because of the subsurface temperature profile of terrestrial storage sites, CO2 stored in these reservoirs is buoyant. As a result, a portion of the injected CO2can escape if the reservoir is not appropriately sealed. We show that **injecting CO2 into deep-sea sediments** <3,000-m water depth and a few hundred meters of sediment **provides permanent geologic storage even with large geomechanical perturbations.** At the high pressures and low temperatures common in deep-sea sediments, CO2 resides in its liquid phase and can be denser than the overlying pore fluid, causing the injected CO2 to be gravitationally stable. Additionally, CO2 hydrate formation will impede the flow of CO2 (l) and serve as a second cap on the system. The evolution of the CO2 plume is described qualitatively from the injection to the formation of CO2 hydrates and finally to the dilution of the CO2(aq) solution by diffusion. If calcareous sediments are chosen, then the dissolution of carbonate host rock by the CO2(aq) solution will slightly increase porosity, which may cause large increases in permeability. Karst formation, however, is unlikely because total dissolution is limited to only a few percent of the rock volume. **The total CO2 storage capacity** within the 200-mile economic zone of the U.S. coastline **is enormous, capable of storing thousands of years of current** U.S. CO2 **emissions.**

**The CP solves warming – it only takes 10 chimneys to pull it off**

**ABC 08** (Atlanta Business Chronicle, “Super Chimney: A Unique Way to Resolve Global Warming, Generate Clean Energy and Irrigate Deserts.” 11-11-08. http://www.bizjournals.com/atlanta/prnewswire/press\_releases/national/New\_Jersey/2008/11/11/NY44841)

With the world's attention focusing more acutely on global warming and energy diversity, former engineer Michael Pesochinsky has developed the idea of utilizing super-chimney technology as a unique way to avert a global warming catastrophe at the same time as lucratively generating clean energy and desert irrigation. There is no shortage of information on global warming scenarios where climate and ecological changes are depicted along with gloomy predictions for the future. Yet, there is hardly any information on how to deal with the problem. The only viable solution being discussed now is to do away with fossil fuels. But even the most optimistic predictions agree that, for many years to come, humankind will continue to use fossil fuels, which will continue to emit greenhouse gases that advance global warming. Moreover, we are running out of time because at some point global warming will become irreversible. However, according to Pesochinsky, "there is a feasible solution to the problem which, if implemented, will not only stop global warming, but will also bring those involved substantial profits." The mysterious remedy is based on the utility of a structure called Super-Chimney. "Upon proper explanation, many will be able to understand how this technology works," says Pesochinsky. "In fact, it's based on a relatively simple scientific concept such that I suspect that some may wonder why nobody else previously suggested it." In this regard, the invention uses the natural property of hot air to rise and suggests using extremely tall chimneys as facilitators of that upward air-movement. "Suppose we construct a super-chimney three miles tall," theorizes Pesochinsky, such a structure will yield the following positive results: \* produce as much energy as 15 super powerful nuclear stations; \* induce rain generation in surrounding areas and will produce millions of tons of fresh water precipitation \* it will transform at least 300 square miles of desert into arable land, will allow **trap** approximately **1,500,000 tons of CO2 per year** in the newly created arable area. Pesochinsky recently launched a website at www.SuperChimney.org which details his invention, and he encourages all interested parties to visit. According to Pesochinsky, **"Just 10 chimneys** like the one I propose **will offset global warming."**

**The CP captures CO2 from the atmosphere – solves warming**

**Jacquot 08** (Jeremy Elton Jacquot, PhD, Marine Environmental Biology, University of Southern California, “Scientists Develop Air ‘Scrubber’ Capable of Sucking Up One Ton of CO2 a Day,” May 31, 2008, http://www.treehugger.com/clean-technology/scientists-develop-air-scrubber-capable-of-sucking-up-one-ton-of-co2-a-day.html)

This sounds too good to be true: a machine that can vacuum the equivalent of a ton of atmospheric carbon dioxide a day in a cost-effective way. We've seen our fair share of CO2 "sucking" devices in the past -- everything from modified plastic membranes to industrial-scale paper mill "scrubbers" -- but they've typically tended toward the expensive or unwieldy. So how does this particular device stand out? Well, for one thing, its inventors, a team of U.S. scientists led by Columbia University's Klaus Lackner, say they'll be able to get a prototype up and running within the next 2 years. Secondly, they claim that **the device,** which is small enough to fit inside a shipping container, **will be able to capture a ton of CO2 a day from the air** -- at a fraction of the cost of similar technologies. The initial cost of the device, roughly $200,000, would be more than offset by the amount of carbon each would trap, they assert. "Our project has reached the stage where it is quite clear we can do it. We need to start dealing with all these emissions. I'd rather have a technology that allows us to use fossil fuels without destroying the planet, because people are going to use them anyway," Lackner told The Guardian's David Adam.

# --ships

**Cartlidge 08** (Edwn Cartlidge, science journalist, “Cloud-Seeding Ships Could Combat Climate Change,” Physics World, September 4, 2008, http://physicsworld.com/cws/article/news/2008/sep/04/cloud-seeding-ships-could-combat-climate-change)

It should be possible to counteract the global warming associated with a **doubling of carbon dioxide** levels by **enhancing the reflectivity** of low-lying clouds above the oceans, according to researchers in the US and UK. John Latham of the National Center for Atmospheric Research in Boulder, US, and colleagues say that this can be done using a worldwide fleet of autonomous ships spraying salt water into the air. Clouds are a key component of the Earth’s climate system. They can both heat the planet by trapping the longer-wavelength radiation given off from the Earth’s surface and cool it by reflecting incoming shorter wavelength radiation back into space. The greater weight of the second mechanism means that, on balance, clouds have a cooling effect. ’Twomey effect’ boosts reflectivity Latham’s proposal, previously put forward by himself and a number of other scientists, involves increasing the reflectivity, or “albedo”, of clouds lying about 1 km above the ocean’s surface. The idea relies on the “Twomey effect”, which says that increasing the concentration of water droplets within a cloud raises the overall surface area of the droplets and thereby enhances the cloud’s albedo. By spraying fine droplets of sea water into the air, the small particles of salt within each droplet act as new centres of condensation when they reach the clouds above, leading to a greater concentration of water droplets within each cloud.

# --nepa

Massive readiness DA

GARTLAND 12 USAF judge advocate. Serves as Envt’l Liaison Officer for the Air Force Materiel Command, Major, BA U-Alaska, JD Gonzaga, LLM George Washington. [Charles J. Gartland, AT WAR AND PEACE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT: WHEN POLITICAL QUESTIONS AND THE ENVIRONMENT COLLIDE, Air Force Law Review, 68 A.F. L. Rev. 27]

V. ANALYSIS

The preceding cases illustrate, at best, inconsistent application of injunction analyses and the political question doctrine. n375 At worst they illustrate no injunction analysis and total disregard of the political question doctrine. n376 A lasting solution to this problem calls for more than merely advocating that the policy preference [\*67] that happened to be imposed by five Justices in Winter be universally applied. Over forty years of NEPA case law shows that when it collides with national defense, not all judges will agree with how the scales tipped in Winter; indeed, many judges will not agree that the factual scenario in Winter presents a Constitutional issue at all. n377 Consequently, the most manageable solution is one that removes the grounds for a disagreement over all the foregoing issues: amending NEPA to create a national defense exception. The remainder of this article will further expound on the necessity of this solution, the form this solution might take, and finally show that it is consistent with both the Constitutionally prescribed role for national defense and the statutorily prescribed role for NEPA.

A. The Basis for a National Defense Exemption

Entertaining political questions in the courtroom has consequences, both legal and practical. The argument for a national defense exemption to NEPA can be reduced to three bases: (1) the impracticality of hearing national defense political questions in the courtroom; (2) the real-world impact that results; and (3) that the very nature of injunction law causes the first two bases to blend in a manner that is particularly virulent to national defense.

1. Policy and Politics in the Courtroom

Trident, Weinberger v. Wisconsin, and Callaway amply illustrate the issues that trial courts are unequipped to resolve, as tactical, strategic, and foreign policy elements figure into national defense undertakings. n378 One District Court judge hearing a NEPA case with foreign policy implications remarked on the oddity of the testimony given in his courtroom, more akin to a "legislative hearing" than a trial. n379 As noted in McQueary v. Laird, national security does not blend well with evidentiary hearings. n380

2. Real-World Adverse Impact to the National Defense

The consequences of judicial intervention in national defense can be more than academic: Army units n381 and **naval fleets not training adequately** or at all, n382 [\*68] nuclear tests jeopardized, n383 and **diplomatic missions put at risk**. n384 Winter is but the most recent and highest profile example of unwieldy judicial process outcomes: uniformed personnel devoted to being lookouts with binoculars and adjusting sonar decibel levels as whales approach and disperse--in the middle of a warfighting exercise. n385

3. The Nature of Injunction Law Forces Judicial Policy-Making

# --asw

1nc

**This will bait North Korean submarine aggression --- lack of detection grants plausible deniability**

**Finch 11** (Lieutenant Commander David P. Finch, EA Chief of Transformation, “Anti-submarine Warfare (ASW) Capability Transformation: Strategy of Response to Effects Based Warfare,” Collective C2 in Multinational Civil-Military Operations, Command and Control Research Program, 16th ICCRTS, Paper ID 103, <http://www.dodccrp.org/events/16th_iccrts_2011/papers/103.pdf>)

---note ASW = anti-submarine warfare

The importance of our ability to achieve a traditional **ASW deterrence** posture was recently reinforced with the sinking of the ROK Cheonan destroyer by a probable PRK submarine. Despite the authoritative findings of an International team that forensically examined the evidence of the sinking implicating PRK, North Korea continues to maintain its innocence and deny any involvement, especially since there is no eye witness to attribute their involvement in the event. Less obtrusive but no less confrontational was the sighting of a previously undetected Song Class Chinese diesel submarine within potential weapons range of an US Navy Aircraft Carrier in 2006. The resurgence of the Cold War adversary was noted in 2009 with a tandem deployment of Russian Akula attack SSN’s to positions along the North American coastline that positioned them well within range of likely cruise missile weapons loads of major North American centres. 8 Submarine capability and emergent UUV technologies enable nations to leverage the inherent stealth of the platform to force reactive defensive measures. As witnessed with the Koreas incident, the **stealth and plausible deniability** of undersea actions is of Strategic value to the nation willing to apply the capability to achieve national objectives.

**Global nuclear war – submarine attacks uniquely cause escalation and means NK gets to strike fist**

**Stratfor 10** (5/26/10, “North Korea, South Korea: The Military Balance on the Peninsula,” http://www.stratfor.com/analysis/20100526\_north\_korea\_south\_korea\_military\_balance\_peninsula)

Managing Escalation But no one, of course, is interested in another war on the Korean Peninsula. Both sides will posture, but at the end of the day, neither benefits from a major outbreak of hostilities. And despite the specter of North Korean troops streaming under the DMZ through tunnels and wreaking havoc behind the lines in the south (a scenario for which there has undoubtedly been significant preparation), neither side has any intention of invading the other. So the real issue is the potential for escalation — or an accident that could precipitate escalation — that would be beyond the control of Pyongyang or Seoul. With both sides on high alert, both adhering to their own national (and contradictory) definitions of where disputed boundaries lie and with rules of engagement loosened, the potential for sudden and rapid escalation is quite real. Indeed, **North Korea’s** navy, though sizable on paper, is largely a hollow shell of old, laid-up vessels. What remains are small fast attack craft and **submarines** — mostly Sang-O “Shark” class boats and midget submersibles. These vessels **are** best **employed in the cluttered littoral environment to bring asymmetric tactics** to bear — not unlike those Iran has prepared for use in the Strait of Hormuz. These kinds of vessels and tactics — including, especially, the deployment of naval mines — are **poorly controlled** when dispersed in a crisis and are often impossible to recall. For nearly 40 years, tensions on the Korean Peninsula were managed within the context of the wider Cold War. During that time it was feared that a second Korean War could all too easily escalate into and a **thermonuclear World War III,** so both Pyongyang and Seoul were being heavily managed from their respective corners. In fact, USFK was long designed to ensure that South Korea could not independently provoke that war and drag the Americans into it, which for much of the Cold War period was of far greater concern to Washington than North Korea attacking southward. Today, those constraints no longer exist. There are certainly still constraints — neither the United States nor China wants war on the peninsula. But current tensions are quickly escalating to a level unprecedented in the post-Cold War period, and the constraints that do exist have never been tested in the way they might be if the situation escalates much further.

## 1nc – japan ospreys

**Unique link --- Osprey Helipads in Japan have already hurt the environment but are still in violation of environmental regulations --- the plan would force a kick-out**

**Ito 2k** (Yosiaki Ito, Professor of Molecular and Cell Biology – Cancer Science Institute of Singapore, et al., “Imminent Extinction Crisis Among the Endemic Species of the Forests of Yanbaru, Okinawa, Japan”, Onyx, 34(4), p. 312)

Other problems associated with clear-cutting and undergrowth removal are the destruction of 'living reservoirs' (forests) and soil erosion. Chronic water shortage is a major social problem in Okinawa and the government has established many reservoirs in an attempt to address it. Without good natural forests, however, reservoirs cannot receive a constant supply of water. Heavy rainfalls generated by typhoons, which are quite common in Okinawa, may soak through several layers of leaves and accumulate in the soil, which is bound by a high density of roots. Undergrowth removal, however, deprives the watershed of this sponge-like effect. Erosion of soil into the coastal ecosystem kills corals and **inhibits** their **recovery,** and no large living coral reef remains around Yanbaru today (Ohmija, 1997). The estuaries of about 80 per cent of rivers in the Yanbaru area have been blocked by the soil and sand (Ito, 1995,1997a). Although water can pass into the sea through infiltration, diadromous fish and crustaceans, including several endemic species, are thus unable to swim up to rivers or to return to the sea. During the 20th century, the NTA provided large natural areas for the conservation of biodiversity and endemic species. However, a new problem arose in 1999. According to The Special Action Committee on Okinawa (by the governments of Japan and the USA), the northern portion of the NTA will be returned to Japan. Following a request from the US Government, the DFAA is planning to construct seven helipads in southern part of the NTA area. The sites proposed are shown in Fig. 1; both lie in Yanburu's best natural forest areas. **The** individual **helipads** are not very large (75 m in diameter), but numerous access roads for construction and maintenance **will break up** existing **habitats,** and noise from helicopters and lorries will **interrupt breeding** activities and the movement of mammals, birds and amphibians. We do not know why the US Marine Corps or the DFAA selected these two sites given the existence of large areas of secondary forest (none of the endemic species shown in the Appendix are present in these areas) occupied by the US Government in the middle of Okinawa Honto. The Ecological Society of Japan, The Entomological Society of Japan and The Ornithological Society of Japan drew up a series of recommendations to the DFAA, urging it to reconsider the location of the proposed sites. Furthermore, during the 43rd annual congress of the Japanese Society of Applied Entomology and Zoology in April 1999, members of the Society started a petition to request the DFAA to reconsider its plans. The petition was signed by 677 members and was handed to Mr. K. Omori, Secretary Officer of DFAA, on 9 July 1999. Mr. Omori replied that 'we will carefully consider the biota of proposed sites before making the final decision', but there is still a risk that **nothing will be done to revise the plans.** Under the 1960 Sikes Act (USA), activities and manipulations that would cause serious destruction of endemic biota in military bases can be halted. We hope that our colleagues in the USA and other countries will support our attempts to mitigate the extinction of a large number of endangered animals and plants in Okinawa.

**This introduction of delays in Osprey operations destroys deterrence over the Senkaku islands --- risks Chinese aggression**

**Watanabe 12** (Watanabe Tsuneo, Director, Policy Research, Senior Fellow, The Tokyo Foundation, Adjunct Fellow, Center for Strategic and International Studies, Senior Fellow, Okinawa Peace Assistance Center, former senior fellow at the Mitsui Global Strategic Studies Institute in Tokyo, “Between Okinawa and the Senkakus: Charting a Third Way on Japanese Security,” The Tokyo Foundation, November 22, 2012, http://www.tokyofoundation.org/en/articles/2012/between-okinawa-and-senkaku)

From the standpoint of international security, further **delays in** the **deployment** of the Osprey was not a realistic option for either government, especially in view of mounting tensions between Japan and China over the Senkaku Islands. With a maximum speed of 509 kilometers per hour, the Osprey can fly almost twice as fast as the CH-46E. Its 3,334 km flying range is almost eight times that of its predecessor, and it has four to five times the mission radius. This means that the Ospreys at Futenma would enable rapid deployment of Marine combat forces to the Senkaku Islands. **This capability constitutes a major psychological deterrent for the Chinese,** now that American officials have made it clear that the disputed islands are under Japanese jurisdiction and are covered by the Japan-US Security Treaty.

**Draws in the US and goes nuclear**

**Blaxland 13** (John Blaxland, Senior Fellow at the Strategic and Defence Studies Centre, the Australian National University, and Rikki Kersten, Professor of modern Japanese political history in the School of International, Political and Strategic Studies at the College of Asia and the Pacific, the Australian National University, 2/13/13, “Escalating territorial tension in East Asia echoes Europe’s descent into world war,” http://www.eastasiaforum.org/2013/02/13/escalating-territorial-tension-in-east-asia-echoes-europes-descent-into-world-war/)

But Japan’s recent allegation that China used active radars is a significant escalation. Assuming it happened, this latest move could trigger a stronger reaction from Japan. China looks increasingly as if it is not prepared to abide by UN-related conventions. International law has been established mostly by powers China sees as having exploited it during its ‘century of humiliation’. Yet arguably, it is in the defence of these international institutions that the peaceful rise of China is most likely to be assured. China’s refusal to submit to such mechanisms as the ICJ increases the prospect of conflict. For the moment, Japan’s conservative prime minister will need to exercise great skill and restraint in managing domestic fear and resentment over China’s assertiveness and the military’s hair-trigger defence powers. A near-term escalation cannot be ruled out. After all, Japan recognises that China is not yet ready to inflict a major military defeat on Japan without **resorting to nuclear weapons** and without triggering a damaging response from the United States. And Japan does not want to enter into such a conflict without strong US support, at least akin to the discreet support given to Britain in the Falklands War in 1982. Consequently, Japan may see an escalation sooner rather than later as being in its interests, particularly if China appears the aggressor.

**Exemptions for the military now --- plan rolls them back --- destroys readiness and the ability to fight global irregular warfare**

**Wood 02** (Daniel B. Wood, staff writer at the Christian Science Monitor, “US Military Eyes More Environmental Leeway,” June 3, 2002, <http://www.csmonitor.com/2002/0603/p03s01-usmi.html>)

The war on terrorism, especially in Afghanistan, is giving Americans a new window into the future of global conflict: guerrilla and special-forces tactics with unseen foes, without the front lines and battalion-force battles of yesteryear. But as US forces continue to prepare for this future of unconventional war with new maneuvers, weaponry, and strategy defense officials say America's military readiness is increasingly running smack-dab into an unlikely foe: regulations protecting endangered plants and animals on military-training installations. In California's Mojave Desert, Marine commanders say they can train only in the daytime because endangered desert tortoises might be trampled at night. Navy SEALs on Coronado Island say the snowy plover has restricted beach exercises. In Camp Lejeune, N.C., nesting turtles hamper amphibious landing practice, and a rare species of woodpeckers halts inland training. In the Northern Marianas, a court injunction has banned live-fire training exercises because migratory birds might be hit. Now, however, in a move that defense officials say is **necessary for sufficient quick-strike capability** in a post-Sept. 11 world, the House has adopted a measure that exempts the military from strict environmental laws on its vast holdings.

Bennett 08 (John T., Defense News, “JFCOM Releases Study on Future Threats”, Dec. 4, http://www.defensenews.com/story.php?i=3850158, The study = U.S. Joint Forces Command study)

The study predicts future U.S. forces' missions will range "from regular and irregular wars in remote lands, to relief and reconstruction in crisis zones, to sustained engagement in the global commons." Some of these missions will be spawned by "rational political calculation," others by "uncontrolled passion." And future foes will attack U.S. forces in a number of ways. "Our enemy's capabilities will range from explosive vests worn by suicide bombers to long-range precision-guided cyber, space, and missile attacks," the study said. **"The threat of** mass destruction - from **nuclear, biological, and chemical weapons - will** likely **expand from** stable nation-states to less stable states and even **non-state networks."** The document also echoes Adm. Michael Mullen, chairman of the Joint Chiefs of Staff, and other U.S. military leaders who say America is likely in "an era of persistent conflict." During the next 25 years, it says, "There will continue to be those who will hijack and exploit Islam and other beliefs for their own extremist ends. There will continue to be opponents who will try to disrupt the political stability and deny the free access to the global commons that is crucial to the world's economy." The study gives substantial ink to what could happen in places of strategic import to Washington, like Russia, China, Africa, Europe, Asia and the Indian Ocean region. Extremists and Militias But it calls the Middle East and Central Asia "the center of instability" where U.S. troops will be engaged for some time against radical Islamic groups. The study does not rule out a fight against a peer nation's military, but stresses preparation for irregular foes like those that complicated the Iraq war for years. Its release comes three days after Deputy Defense Secretary Gordon England signed a new Pentagon directive that elevates irregular warfare to equal footing - for budgeting and planning - as traditional warfare. The directive defines irregular warfare as encompassing counterterrorism operations, guerrilla warfare, foreign internal defense, counterinsurgency and stability operations. **Leaders must avoid "the failure to recognize and fully confront the irregular fight that we are in.** The requirement to prepare to meet a wide range of threats is going to prove particularly difficult for American forces in the period between now and the 2030s," the study said. "The difficulties involved in training to meet regular and nuclear threats must not push preparations to fight irregular war into the background, as occurred in the decades after the Vietnam War." Irregular wars are likely to be carried out by terrorist groups, "modern-day militias," and other non-state actors, the study said. It noted the 2006 tussle between Israel and Hezbollah, a militia that "combines state-like technological and war-fighting capabilities with a 'sub-state' political and social structure inside the formal state of Lebanon." One retired Army colonel called the study "the latest in a serious of glaring examples of massive overreaction to a truly modest threat" - Islamist terrorism. "It is causing the United States to essentially undermine itself without terrorists or anyone else for that matter having to do much more than exploit the weaknesses in American military power the overreaction creates," said Douglas Macgregor, who writes about Defense Department reform at the Washington-based Center for Defense Information. "Unfortunately, the document echoes the neocons, who insist the United States will face the greatest threats from insurgents and extremist groups operating in weak or failing states in the Middle East and Africa." Macgregor called that "delusional thinking," adding that he hopes "Georgia's quick and decisive defeat at the hands of Russian combat forces earlier this year [is] a very stark reminder why terrorism and fighting a war against it using large numbers of military forces should never have been made an organizing principle of U.S. defense policy." Failing States The study also warns about weak and failing states, including Mexico and Pakistan. "Some forms of collapse in Pakistan would carry with it the likelihood of a sustained violent and bloody civil and sectarian war, an even bigger haven for violent extremists, and the question of what would happen to its nuclear weapons," said the study. "That 'perfect storm' of uncertainty alone might require the engagement of U.S. and coalition forces into a situation of immense complexity and danger with no guarantee they could gain control of the weapons and with the real possibility that a nuclear weapon might be used." On Mexico, JFCOM warns that how the nation's politicians and courts react to a "sustained assault" by criminal gangs and drug cartels will decide whether chaos becomes the norm on America's southern border. "Any descent by Mexico into chaos would demand an American response based on the serious implications for homeland security alone," said the report.

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**India and China will flip us the middle finger --- THAT”S our arg, they will establish a treaty but NOBODY Will follow meaning we’ll impose TONS Of punishments and it will MESS our foreign policy**

**Mead 10** (Walter Russell, senior fellow for U.S. foreign policy at the Council on Foreign Relations, The Death of Global Warming, February 1, <http://blogs.the-american-interest.com/wrm/2010/02/01/the-death-of-global-warming/>)

But even if somehow, miraculously, the United States and all the other countries involved not only accepted the agreements but ratified them and wrote domestic legislation to incorporate them into law, it is extremely unlikely that all this activity would achieve the desired result. Countries would cheat, either because they chose to do so or because their domestic systems are so weak, so corrupt or so both that they simply wouldn’t be able to comply. Governments in countries like China and India aren’t going to stop pushing for all the economic growth they can get by any means that will work — and even if central governments decided to move on global warming, state and local authorities have agendas of their own. The examples of blatant cheating would inevitably affect compliance in other countries; it would also very likely erode what would in any case be an extremely fragile consensus in rich countries to keep forking over hundreds of billions of dollars to poor countries — many of whom would not be in anything like full compliance with their commitments. For better or worse, the global political system isn’t capable of producing the kind of result the global warming activists want. It’s like asking a jellyfish to climb a flight of stairs; you can poke and prod all you want, you can cajole and you can threaten. But you are asking for something that you just can’t get — and at the end of the day, you won’t get it. The grieving friends and relatives aren’t ready to pull the plug; in a typical, whistling-past-the-graveyard comment, the BBC first acknowledges that even if the current promises are kept, temperatures will rise above the target level of two degrees Celsius — but let’s not despair! The BBC quotes one of its own reporters: “BBC environment reporter Matt McGrath says the accord lacks teeth and does not include any clear targets on cutting emissions. But if most countries at least signal what they intend to do to cut their emissions, it will mark the first time that the UN has a comprehensive written collection of promised actions, he says.”

**Localities will ignore governmental policies anyways**

**Economy, 7** — C. V. Starr Senior Fellow and Director for Asia Studies at the Council on Foreign Relations (Elizabeth C., “The Great Leap Backward?: The Costs of China's Environmental Crisis”, Foreign Affairs, September/October 2007, Lexis)

Unfortunately, much of this enthusiasm stems from the widespread but misguided belief that what Beijing says goes. **The central government sets the country's agenda, but** it **does not control** all aspects of its **implementation**. In fact, local officials rarely heed Beijing's environmental mandates**, preferring to concentrate** their energies and resources **on** further advancing **economic growth**. The truth is that turning the environmental situation in China around will require something far more difficult than setting targets and spending money; it will require revolutionary bottom-up political and economic reforms. For one thing, China's leaders need to make it easy for local officials and factory owners to do the right thing when it comes to the environment by giving them the right incentives. At the same time, they must loosen the political restrictions they have placed on the courts, nongovernmental organizations (NGOs), and the media in order to enable these groups to become independent enforcers of environmental protection. The international community, for its part, must focus more on assisting reform and less on transferring cutting-edge technologies and developing demonstration projects. Doing so will mean diving into the trenches to work with local Chinese officials, factory owners, and environmental NGOs; enlisting international NGOs to help with education and enforcement policies; and persuading multinational corporations (MNCs) to use their economic leverage to ensure that their Chinese partners adopt the best environmental practices. Without such a clear-eyed understanding not only of what China wants but also of what it needs, China will continue to have one of the world's worst environmental records, and the Chinese people and the rest of the world will pay the price. SINS OF EMISSION China's rapid development, often touted as an economic miracle, has become an environmental disaster. Record growth necessarily requires the gargantuan consumption of resources, but in China energy use has been especially unclean and inefficient, with dire consequences for the country's air, land, and water. The coal that has powered China's economic growth, for example, is also choking its people. Coal provides about 70 percent of China's energy needs: the country consumed some 2.4 billion tons in 2006 -- more than the United States, Japan, and the United Kingdom combined. In 2000, China anticipated doubling its coal consumption by 2020; it is now expected to have done so by the end of this year. Consumption in China is huge partly because it is inefficient: as one Chinese official told Der Spiegel in early 2006, "To produce goods worth $10,000 we need seven times the resources used by Japan, almost six times the resources used by the U.S. and -- a particular source of embarrassment -- almost three times the resources used by India." Meanwhile, this reliance on coal is devastating China's environment. The country is home to 16 of the world's 20 most polluted cities, and four of the worst off among them are in the coal-rich province of Shanxi, in northeastern China. As much as 90 percent of China's sulfur dioxide emissions and 50 percent of its particulate emissions are the result of coal use. Particulates are responsible for respiratory problems among the population, and acid rain, which is caused by sulfur dioxide emissions, falls on one-quarter of China's territory and on one-third of its agricultural land, diminishing agricultural output and eroding buildings. Yet coal use may soon be the least of China's air-quality problems. The transportation boom poses a growing challenge to China's air quality. Chinese developers are laying more than 52,700 miles of new highways throughout the country. Some 14,000 new cars hit China's roads each day. By 2020, China is expected to have 130 million cars, and by 2050 -- or perhaps as early as 2040 -- it is expected to have even more cars than the United States. Beijing already pays a high price for this boom. In a 2006 survey, Chinese respondents rated Beijing the 15th most livable city in China, down from the 4th in 2005, with the drop due largely to increased traffic and pollution. Levels of airborne particulates are now six times higher in Beijing than in New York City. China's grand-scale urbanization plans will aggravate matters. China's leaders plan to relocate 400 million people -- equivalent to well over the entire population of the United States -- to newly developed urban centers between 2000 and 2030. In the process, they will erect half of all the buildings expected to be constructed in the world during that period. This is a troubling prospect considering that Chinese buildings are not energy efficient -- in fact, they are roughly two and a half times less so than those in Germany. Furthermore, newly urbanized Chinese, who use air conditioners, televisions, and refrigerators, consume about three and a half times more energy than do their rural counterparts. And although China is one of the world's largest producer of solar cells, compact fluorescent lights, and energy-efficient windows, these are produced mostly for export. Unless more of these energy-saving goods stay at home, the building boom will result in skyrocketing energy consumption and pollution. China's land has also suffered from unfettered development and environmental neglect. Centuries of deforestation, along with the overgrazing of grasslands and overcultivation of cropland, have left much of China's north and northwest seriously degraded. In the past half century, moreover, forests and farmland have had to make way for industry and sprawling cities, resulting in diminishing crop yields, a loss in biodiversity, and local climatic change. The Gobi Desert, which now engulfs much of western and northern China, is spreading by about 1,900 square miles annually; some reports say that despite Beijing's aggressive reforestation efforts, one-quarter of the entire country is now desert. China's State Forestry Administration estimates that desertification has hurt some 400 million Chinese, turning tens of millions of them into environmental refugees, in search of new homes and jobs. Meanwhile, much of China's arable soil is contaminated, raising concerns about food safety. As much as ten percent of China's farmland is believed to be polluted, and every year 12 million tons of grain are contaminated with heavy metals absorbed from the soil. WATER HAZARD And then there is the problem of access to clean water. Although China holds the fourth-largest freshwater resources in the world (after Brazil, Russia, and Canada), skyrocketing demand, overuse, inefficiencies, pollution, and unequal distribution have produced a situation in which two-thirds of China's approximately 660 cities have less water than they need and 110 of them suffer severe shortages. According to Ma Jun, a leading Chinese water expert, several cities near Beijing and Tianjin, in the northeastern region of the country, could run out of water in five to seven years. Growing demand is part of the problem, of course, but so is enormous waste. The agricultural sector lays claim to 66 percent of the water China consumes, mostly for irrigation, and manages to waste more than half of that. Chinese industries are highly inefficient: they generally use 10-20 percent more water than do their counterparts in developed countries. Urban China is an especially huge squanderer: it loses up to 20 percent of the water it consumes through leaky pipes -- a problem that China's Ministry of Construction has pledged to address in the next two to three years. As urbanization proceeds and incomes rise, the Chinese, much like people in Europe and the United States, have become larger consumers of water: they take lengthy showers, use washing machines and dishwashers, and purchase second homes with lawns that need to be watered. Water consumption in Chinese cities jumped by 6.6 percent during 2004-5. China's plundering of its ground-water reserves, which has created massive underground tunnels, is causing a corollary problem: some of China's wealthiest cities are sinking -- in the case of Shanghai and Tianjin, by more than six feet during the past decade and a half. In Beijing, subsidence has destroyed factories, buildings, and underground pipelines and is threatening the city's main international airport. Pollution is also endangering China's water supplies. China's ground water, which provides 70 percent of the country's total drinking water, is under threat from a variety of sources, such as polluted surface water, hazardous waste sites, and pesticides and fertilizers. According to one report by the government-run Xinhua News Agency, the aquifers in 90 percent of Chinese cities are polluted. More than 75 percent of the river water flowing through China's urban areas is considered unsuitable for drinking or fishing, and the Chinese government deems about 30 percent of the river water throughout the country to be unfit for use in agriculture or industry. As a result, nearly 700 million people drink water contaminated with animal and human waste. The World Bank has found that the failure to provide fully two-thirds of the rural population with piped water is a leading cause of death among children under the age of five and is responsible for as much as 11 percent of the cases of gastrointestinal cancer in China. One of the problems is that although China has plenty of laws and regulations designed to ensure clean water, factory owners and local officials do not enforce them. A 2005 survey of 509 cities revealed that only 23 percent of factories properly treated sewage before disposing of it. According to another report, today one-third of all industrial wastewater in China and two-thirds of household sewage are released untreated. Recent Chinese studies of two of the country's most important sources of water -- the Yangtze and Yellow rivers -- illustrate the growing challenge. The Yangtze River, which stretches all the way from the Tibetan Plateau to Shanghai, receives 40 percent of the country's sewage, 80 percent of it untreated. In 2007, the Chinese government announced that it was delaying, in part because of pollution, the development of a $60 billion plan to divert the river in order to supply the water-starved cities of Beijing and Tianjin. The Yellow River supplies water to more than 150 million people and 15 percent of China's agricultural land, but two-thirds of its water is considered unsafe to drink and 10 percent of its water is classified as sewage. In early 2007, Chinese officials announced that over one-third of the fish species native to the Yellow River had become extinct due to damming or pollution. China's leaders are also increasingly concerned about how climate change may exacerbate their domestic environmental situation. In the spring of 2007, Beijing released its first national assessment report on climate change, predicting a 30 percent drop in precipitation in three of China's seven major river regions -- around the Huai, Liao, and Hai rivers -- and a 37 percent decline in the country's wheat, rice, and corn yields in the second half of the century. It also predicted that the Yangtze and Yellow rivers, which derive much of their water from glaciers in Tibet, would overflow as the glaciers melted and then dry up. And both Chinese and international scientists now warn that due to rising sea levels, Shanghai could be submerged by 2050. COLLATERAL DAMAGE China's environmental problems are already affecting the rest of the world**. Japan and South Korea have long suffered from the acid rain produced by China**'s coal-fired power plants and from the eastbound dust storms that sweep across the Gobi Desert in the spring and dump toxic yellow dust on their land. **Researchers in the U**nited **S**tates **are tracking dust, sulfur, soot, and** trace **metals** as these travel across the Pacific **from China**. The U.S. Environmental Protection Agency estimates that on some days, 25 percent of the particulates in the atmosphere in Los Angeles originated in China. Scientists have also traced rising levels of mercury deposits on U.S. soil back to coal-fired power plants and cement factories in China. (When ingested in significant quantities, mercury can cause birth defects and developmental problems.) Reportedly, 25-40 percent of all mercury emissions in the world come from China. **What China dumps into its waters is also polluting the rest of the world**. According to the international NGO the World Wildlife Fund, China is now the largest polluter of the Pacific Ocean. As Liu Quangfeng, an adviser to the National People's Congress, put it, "Almost no river that flows into the Bo Hai [a sea along China's northern coast] is clean." China releases about 2.8 billion tons of contaminated water into the Bo Hai annually, and the content of heavy metal in the mud at the bottom of it is now 2,000 times as high as China's own official safety standard. The prawn catch has dropped by 90 percent over the past 15 years. In 2006, in the heavily industrialized southeastern provinces of Guangdong and Fujian, almost 8.3 billion tons of sewage were discharged into the ocean without treatment, a 60 percent increase from 2001. More than 80 percent of the East China Sea, one of the world's largest fisheries, is now rated unsuitable for fishing, up from 53 percent in 2000. Furthermore, **China is** already **attracting international attention for its rapidly growing contribution to climate change**. According to a 2007 report from the Netherlands Environmental Assessment Agency, it has already surpassed the United States as the world's largest contributor of carbon dioxide, a leading greenhouse gas**, to the atmosphere. Unless China rethinks its** use of various sources of **energy** and adopts cutting-edge environmentally friendly technologies, warned Fatih Birol, the chief economist of the International Energy Agency, last April, **in 25 years China will emit twice as much carbon dioxide as all the countries of the O**rganization for **E**conomic **C**ooperation and **D**evelopment **combined**. China's close economic partners in the developing world face additional environmental burdens from China's economic activities. Chinese multinationals, which are exploiting natural resources in Africa, Latin America, and Southeast Asia in order to fuel China's continued economic rise, are devastating these regions' habitats in the process. China's hunger for timber has exploded over the past decade and a half, and particularly since 1998, when devastating floods led Beijing to crack down on domestic logging. China's timber imports more than tripled between 1993 and 2005. According to the World Wildlife Fund, China's demand for timber, paper, and pulp will likely increase by 33 percent between 2005 and 2010. China is already the largest importer of illegally logged timber in the world: an estimated 50 percent of its timber imports are reportedly illegal. Illegal logging is especially damaging to the environment because it often targets rare old-growth forests, endangers biodiversity, and ignores sustainable forestry practices. In 2006, the government of Cambodia, for example, ignored its own laws and awarded China's Wuzhishan LS Group a 99-year concession that was 20 times as large as the size permitted by Cambodian law. The company's practices, including the spraying of large amounts of herbicides, have prompted repeated protests by local Cambodians. According to the international NGO Global Witness, Chinese companies have destroyed large parts of the forests along the Chinese-Myanmar border and are now moving deeper into Myanmar's forests in their search for timber. In many instances, illicit logging activity takes place with the active support of corrupt local officials. Central government officials in Myanmar and Indonesia, countries where China's loggers are active, have protested such arrangements to Beijing, but relief has been limited. These activities, along with those of Chinese mining and energy companies, raise serious environmental concerns for many local populations in the developing world. SPOILING THE PARTY **In the view of China's leaders**, however, **damage to the environment** itself **is a secondary problem. Of greater concern** to them **are** its indirect effects: **the threat it poses to the** continuation of the Chinese **economic miracle** and to public health, social stability, and the country's international reputation. Taken together, these challenges could undermine the authority of the Communist Party. China's leaders are worried about the environment's impact on the economy. Several studies conducted both inside and outside China estimate that environmental degradation and pollution cost the Chinese economy between 8 percent and 12 percent of GDP annually. The Chinese media frequently publish the results of studies on the impact of pollution on agriculture, industrial output, or public health: water pollution costs of $35.8 billion one year, air pollution costs of $27.5 billion another, and on and on with weather disasters ($26.5 billion), acid rain ($13.3 billion), desertification ($6 billion), or crop damage from soil pollution ($2.5 billion). The city of Chongqing, which sits on the banks of the Yangtze River, estimates that dealing with the effects of water pollution on its agriculture and public health costs as much as 4.3 percent of the city's annual gross product. Shanxi Province has watched its coal resources fuel the rest of the country while it pays the price in withered trees, contaminated air and water, and land subsidence. Local authorities there estimate the costs of environmental degradation and pollution at 10.9 percent of the province's annual gross product and have called on Beijing to compensate the province for its "contribution and sacrifice." China's Ministry of Public Health is also sounding the alarm with increasing urgency. In a survey of 30 cities and 78 counties released in the spring, the ministry blamed worsening air and water pollution for dramatic increases in the incidence of cancer throughout the country: a 19 percent rise in urban areas and a 23 percent rise in rural areas since 2005. One research institute affiliated with SEPA has put the total number of premature deaths in China caused by respiratory diseases related to air pollution at 400,000 a year. But this may be a conservative estimate: according to a joint research project by the World Bank and the Chinese government released this year, the total number of such deaths is 750,000 a year. (Beijing is said not to have wanted to release the latter figure for fear of inciting social unrest.) Less well documented but potentially even more devastating is the health impact of China's polluted water. Today, fully 190 million Chinese are sick from drinking contaminated water. All along China's major rivers, villages report skyrocketing rates of diarrheal diseases, cancer, tumors, leukemia, and stunted growth. Social unrest over these issues is rising. In the spring of 2006, China's top environmental official, Zhou Shengxian, announced that there had been 51,000 pollution-related protests in 2005, which amounts to almost 1,000 protests each week. Citizen complaints about the environment, expressed on official hotlines and in letters to local officials, are increasing at a rate of 30 percent a year; they will likely top 450,000 in 2007. But few of them are resolved satisfactorily, and so people throughout the country are increasingly taking to the streets. For several months in 2006, for example, the residents of six neighboring villages in Gansu Province held repeated protests against zinc and iron smelters that they believed were poisoning them. Fully half of the 4,000-5,000 villagers exhibited lead-related illnesses, ranging from vitamin D deficiency to neurological problems. Many pollution-related marches are relatively small and peaceful. But when such demonstrations fail, the protesters sometimes resort to violence. After trying for two years to get redress by petitioning local, provincial, and even central government officials for spoiled crops and poisoned air, in the spring of 2005, 30,000-40,000 villagers from Zhejiang Province swarmed 13 chemical plants, broke windows and overturned buses, attacked government officials, and torched police cars. The government sent in 10,000 members of the People's Armed Police in response. The plants were ordered to close down, and several environmental activists who attempted to monitor the plants' compliance with these orders were later arrested. China's leaders have generally managed to prevent -- if sometimes violently -- discontent over environmental issues from spreading across provincial boundaries or morphing into calls for broader political reform. In the face of such problems, China's leaders have recently injected a new urgency into their rhetoric concerning the need to protect the country's environment. On paper, this has translated into an aggressive strategy to increase investment in environmental protection, set ambitious targets for the reduction of pollution and energy intensity (the amount of energy used to produce a unit of GDP), and introduce new environmentally friendly technologies. In 2005, Beijing set out a number of impressive targets for its next five-year plan: by 2010, it wants 10 percent of the nation's power to come from renewable energy sources, energy intensity to have been reduced by 20 percent and key pollutants such as sulfur dioxide by 10 percent, water consumption to have decreased by 30 percent, and investment in environmental protection to have increased from 1.3 percent to 1.6 percent of GDP. Premier Wen Jiabao has issued a stern warning to local officials to shut down some of the plants in the most energy-intensive industries -- power generation and aluminum, copper, steel, coke and coal, and cement production -- and to slow the growth of other industries by denying them tax breaks and other production incentives. These goals are laudable -- even breathtaking in some respects -- but history suggests that only limited optimism is warranted; achieving such targets has proved elusive in the past. In 2001, the Chinese government pledged to cut sulfur dioxide emissions by 10 percent between 2002 and 2005. Instead, emissions rose by 27 percent. Beijing is already encountering difficulties reaching its latest goals: for instance, it has failed to meet its first target for reducing energy intensity and pollution. Despite warnings from Premier Wen, the six industries that were slated to slow down posted a 20.6 percent increase in output during the first quarter of 2007 -- a 6.6 percent jump from the same period last year. According to one senior executive with the Indian wind-power firm Suzlon Energy, only 37 percent of the wind-power projects the Chinese government approved in 2004 have been built. Perhaps worried that yet another target would fall by the wayside, in early 2007, Beijing revised its announced goal of reducing the country's water consumption by 30 percent by 2010 to just 20 percent. Even the Olympics are proving to be a challenge. Since Beijing promised in 2001 to hold a "green Olympics" in 2008, the International Olympic Committee has pulled out all the stops. Beijing is now ringed with rows of newly planted trees, hybrid taxis and buses are roaming its streets (some of which are soon to be lined with solar-powered lamps), the most heavily polluting factories have been pushed outside the city limits, and the Olympic dormitories are models of energy efficiency. Yet in key respects, Beijing has failed to deliver. City officials are backtracking from their pledge to provide safe tap water to all of Beijing for the Olympics; they now say that they will provide it only for residents of the Olympic Village. They have announced drastic stopgap measures for the duration of the games, such as banning one million of the city's three million cars from the city's streets and halting production at factories in and around Beijing (some of them are resisting). Whatever progress city authorities have managed over the past six years -- such as increasing the number of days per year that the city's air is deemed to be clean -- is not enough to ensure that the air will be clean for the Olympic Games. Preparing for the Olympics has come to symbolize the intractability of China's environmental challenges and the limits of Beijing's approach to addressing them. PROBLEMS WITH THE LOCALS Clearly, something has got to give. The costs of inaction to China's economy, public health, and international reputation are growing. And perhaps more important, social discontent is rising. The Chinese people have clearly run out of patience with the government's inability or unwillingness to turn the environmental situation around. And the government is well aware of the increasing potential for environmental protest to ignite broader social unrest. One event this spring particularly alarmed China's leaders. For several days in May in the coastal city of Xiamen, after months of mounting opposition to the planned construction of a $1.4 billion petrochemical plant nearby, students and professors at Xiamen University, among others, are said to have sent out a million mobile-phone text messages calling on their fellow citizens to take to the streets on June 1. That day, and the following, protesters reportedly numbering between 7,000 and 20,000 marched peacefully through the city, some defying threats of expulsion from school or from the Communist Party. The protest was captured on video and uploaded to YouTube. One video featured a haunting voice-over that linked the Xiamen demonstration to an ongoing environmental crisis near Tai Hu, a lake some 400 miles away (a large bloom of blue-green algae caused by industrial wastewater and sewage dumped in the lake had contaminated the water supply of the city of Wuxi). It also referred to the Tiananmen Square protest of 1989. The Xiamen march, the narrator said, was perhaps "the first genuine parade since Tiananmen." In response, city authorities did stay the construction of the plant, but they also launched an all-out campaign to discredit the protesters and their videos. Still, more comments about the protest and calls not to forget Tiananmen appeared on various Web sites. Such messages, posted openly and accessible to all Chinese, represent the Chinese leadership's greatest fear, namely, that its failure to protect the environment may someday serve as the catalyst for broad-based demands for political change. Such public demonstrations are also evidence that China's environmental challenges cannot be met with only impressive targets and more investment. They must be tackled with a fundamental reform of how the country does business and protects the environment. So far, Beijing has structured its environmental protection efforts in much the same way that it has pursued economic growth: by granting local authorities and factory owners wide decision-making power and by actively courting the international community and Chinese NGOs for their expertise while carefully monitoring their activities. Consider, for example, China's most important environmental authority, SEPA, in Beijing. SEPA has become a wellspring of China's most innovative environmental policies: it has promoted an environmental impact assessment law; a law requiring local officials to release information about environmental disasters, pollution statistics, and the names of known polluters to the public; an experiment to calculate the costs of environmental degradation and pollution to the country's GDP; and an all-out effort to halt over 100 large-scale infrastructure projects that had proceeded without proper environmental impact assessments. But SEPA operates with barely 300 full-time professional staff in the capital and only a few hundred employees spread throughout the country. (The U.S. Environmental Protection Agency has a staff of almost 9,000 in Washington, D.C., alone.) And **authority for enforcing** SEPA's **mandates rests overwhelmingly with local officials** and the local environmental protection officials they oversee. In some cases, this has allowed for exciting experimentation. In the eastern province of Jiangsu, for instance, the World Bank and the Natural Resources Defense Council have launched the Greenwatch program, which grades 12,000 factories according to their compliance with standards for industrial wastewater treatment and discloses both the ratings and the reasons for them. More often, however, **China's highly decentralized system has meant limited progress**: only seven to ten percent of China's more than 660 cities meet the standards required to receive the designation of National Model Environmental City from SEPA. According to Wang Canfa, one of China's top environmental lawyers, barely ten percent of China's environmental laws and regulations are actually enforced. One of the problems is that **local officials have few incentives to place a priority on environmental protection**. Even as Beijing touts the need to protect the environment, Premier Wen has called for quadrupling the Chinese economy by 2020. The price of water is rising in some cities, such as Beijing, but in many others it remains as low as 20 percent of the replacement cost. That ensures that factories and municipalities have little reason to invest in wastewater treatment or other water-conservation efforts. Fines for polluting are so low that factory managers often prefer to pay them rather than adopt costlier pollution-control technologies. One manager of a coal-fired power plant explained to a Chinese reporter in 2005 that he was ignoring a recent edict mandating that all new power plants use desulfurization equipment because the technology cost as much as would 15 years' worth of fines. **Local governments also turn a blind eye to** serious **pollution problems out of self-interest. Officials** sometimes **have a** direct **financial stake in factories** or personal relationships with their owners. And the **local environmental protection** bureaus **tasked with guarding against** such **corruption must report to the local governments, making them** easy **targets for political pressure**. In recent years, the Chinese media have uncovered cases in which local officials have put pressure on the courts, the press, or even hospitals to prevent the wrongdoings of factories from coming to light. (Just this year, in the province of Zhejiang, officials reportedly promised factories with an output of $1.2 million or more that they would not be subjected to government inspections without the factories' prior approval.) Moreover, **local officials** frequently **divert environmental** protection **funds and spend them on** unrelated or **ancillary endeavors**. The Chinese Academy for Environmental Planning, which reports to SEPA, disclosed this year that only **half of the** 1.3 percent of the country's annual **GDP dedicated to environmental protection** between 2001 and 2005 had **found its way to legitimate projects**. According to the study, about 60 percent of the environmental protection funds spent in urban areas during that period went into the creation of, among other things, parks, factory production lines, gas stations, and sewage-treatment plants rather than into waste- or wastewater-treatment facilities. Many local **officials** also **thwart efforts to hold them accountable for their failure to protect the environment**. I n 2005, SEPA launched the "Green GDP" campaign, a project designed to calculate the costs of environmental degradation and pollution to local economies and provide a basis for evaluating the performance of local officials both according to their economic stewardship and according to how well they protect the environment. Several provinces balked, however, worried that the numbers would reveal the extent of the damage suffered by the environment. SEPA's partner in the campaign, the National Bureau of Statistics of China, also undermined the effort by announcing that it did not possess the tools to do Green GDP accounting accurately and that in any case it did not believe officials should be evaluated on such a basis. After releasing a partial report in September 2006, the NBS has refused to release this year's findings to the public. Another problem is that many **Chinese companies see little** direct **value in ratcheting up their environmental protection efforts**. The computer manufacturer Lenovo and the appliance manufacturer Haier have received high marks for taking creative environmental measures, and the solar energy company Suntech has become a leading exporter of solar cells. But a recent poll found that **only 18 percent of Chinese companies believed** that **they could thrive** economically **while doing the right thing environmentally**. Another poll of **business executives** found that an overwhelming proportion of them **do not understand the benefits of** responsible corporate behavior, such as **environmental protection**, or consider the requirements too burdensome. NOT GOOD ENOUGH The limitations of the formal authorities tasked with environmental protection in China have led the country's leaders to seek assistance from others outside the bureaucracy. Over the past 15 years or so, China's NGOs, the Chinese media, and the international community have become central actors in the country's bid to rescue its environment. But the Chinese government remains wary of them. China's homegrown environmental activists and their allies in the media have become the most potent -- and potentially explosive -- force for environmental change in China. From four or five NGOs devoted primarily to environmental education and biodiversity protection in the mid-1990s, the Chinese environmental movement has grown to include thousands of NGOs, run primarily by dynamic Chinese in their 30s and 40s. These groups now routinely expose polluting factories to the central government, sue for the rights of villagers poisoned by contaminated water or air, give seed money to small newer NGOs throughout the country, and go undercover to expose multinationals that ignore international environmental standards. They often protest via letters to the government, campaigns on the Internet, and editorials in Chinese newspapers. The media are an important ally in this fight: they shame polluters, uncover environmental abuse, and highlight environmental protection successes. Beijing has come to tolerate NGOs and media outlets that play environmental watchdog at the local level, but it remains vigilant in making sure that certain limits are not crossed, and especially that the central government is not directly criticized. The penalties for misjudging these boundaries can be severe. Wu Lihong worked for 16 years to address the pollution in Tai Hu (which recently spawned blue-green algae), gathering evidence that has forced almost 200 factories to close. Although in 2005 Beijing honored Wu as one of the country's top environmentalists, he was beaten by local thugs several times during the course of his investigations, and in 2006 the government of the town of Yixing arrested him on dubious charges of blackmail. And Yu Xiaogang, the 2006 winner of the prestigious Goldman Environmental Prize, honoring grass-roots environmentalists, was forbidden to travel abroad in retaliation for educating villagers about the potential downsides of a proposed dam relocation in Yunnan Province. The Chinese government's openness to environmental cooperation with the international community is also fraught**. Beijing** has welcomed bilateral agreements for technology development or financial assistance for demonstration projects, but it **is concerned about** other **endeavors**. On the one hand, it lauds international environmental NGOs for their contributions to China's environmental protection efforts. On the other hand, it fears that some of them will become advocates for democratization.

# --flynn

#### Climate change litigation is key to solving global warming – 3 warrants

Flynn 13 (James, J.D. Candidate, 2013, Georgia State University College of Law; Assistant Legislation Editor, Georgia State University Law Review; Visiting Student, Florida State University College of Law, “CLIMATE OF CONFUSION: CLIMATE CHANGE LITIGATION IN THE WAKE OF AMERICAN ELECTRIC POWER V. CONNECTICUT”, lexis, accessed 1/5/2014)

2. Turning Up the Heat on Congress: Litigating to Legislate The only solution to anthropogenic global warming is a concerted global effort. 264 Such an effort cannot succeed without the leadership, or at least support, of the United States. 265 Real change in the United States requires comprehensive legislation that covers all facets of global warming: greenhouse gas emissions, land use, efficiency, and sustainable growth. In addition to maximizing time until the EPA either issues regulations or is prevented from doing so by Congress, litigation advances the goal of such comprehensive legislation in three ways. First, litigation keeps the pressure on fossil fuel companies and other large emitters. Comprehensive legislation is a near impossibility as long as the largest contributors to global greenhouse gas emissions are able to exert powerful control over the nation's [\*862] energy policy and the climate change discussion. 266 While the companies have the financial resources to battle in court, it is imperative that advocates and states make them do so. One need only look at the tobacco litigation of the 1960s through the 1990s to understand that success against a major industry is possible. 267 Here, though, the stakes are even higher. The chances of obtaining a largescale settlement from the fossil fuel industry is likely smaller now that the Court has ruled that some federal common law nuisance claims are displaced, because lower courts may hold that nuisance claims for money damages are also displaced. 268 However, advocates of climate change legislation should keep trying to obtain such a settlement through other tort remedies. A substantially damaging settlement may encourage fossil fuel companies to reposition their assets into more sustainable technologies to avoid more settlements, thus minimizing future emissions. Alternatively, if the fossil fuel companies feel threatened enough, they may begin to use their clout to persuade Congress to pass comprehensive legislation to protect their industry from such wide-ranging suits. 269 Second, litigation keeps the issue in the public consciousness during a time when the media is failing at its responsibilities to the public. 270 The media's coverage of climate change has been both inadequate and misleading. 271 Indeed, some polls suggest Americans [\*863] believe less in climate change now than just a few years ago. 272 Litigation, especially high-profile litigation, forces the issue into the public sphere, even though it may receive a negative connotation in the media. The more the public hears about the issue, the greater chance that people will demand their local and state politicians take action. Finally, litigation sends a clear message to Congress that simple appeasements will not suffice. 273 Comprehensive legislation is needed--legislation that mandates consistently declining emissions levels while simultaneously propping up replacement sources of energy. 274 Fill-in measures, like the EPA's authority to regulate emissions from power plants, are not sufficient. Humans need energy, and there can be no doubt that we must strike a balance between energy needs and risks to the environment. Catastrophic climate change, however, is simply a risk that we cannot take; it overwhelms the short-term benefits we receive from the burning of fossil fuels. 275 Advocates and states must demonstrate to Congress [\*864] through continuing litigation that the issue is critical and that plaintiffs like those in Kivalina and Comer are suffering genuine losses that demand redress that current statutes do not currently provide. CONCLUSION American Electric proved less important for the precedent it set than for the questions it left unanswered. While courts wrestled over standing, the political question doctrine, and displacement in climate change nuisance cases in the years preceding American Electric, the Supreme Court relied only on the clear displacement path illuminated by its earlier decision in Massachusetts. While the decision in American Electric narrowed the litigation options that climate change advocates have at their disposal, it subtly sent a message to Congress that greater federal action is needed. In writing such a narrow ruling, Justice Ginsburg also sent a message to states and advocates--whether intentionally or not--that climate change litigation is not dead. Until Congress enacts comprehensive climate change legislation, global warming lawsuits will, and must, continue.

### Ext. Allied Coop High

#### Intel sharing is sustainable

NYT 13 [January 30, 2013, “Drone Strike Prompts Suit, Raising Fears for U.S. Allies,” http://www.nytimes.com/2013/01/31/world/drone-strike-lawsuit-raises-concerns-on-intelligence-sharing.html?\_r=0]

The issue is more complex than drone-strike foes suggest, the current and former officials said, and is based on decades of cooperation rather than a shadowy pact for the United States to do the world’s dirty work. The arrangements for intensive intelligence sharing by Western allies go back to World War II, said Richard Aldrich, professor of international security at the University of Warwick, when the United States, Canada, Britain, Australia and New Zealand agreed to continue to collaborate. “There’s a very high volume of intelligence shared, some of which is collected automatically, so it’s impossible to track what every piece is potentially used for,” said Mr. Aldrich, who is also the author of a history of the Government Communications Headquarters, the British signal-intelligence agency. Britain’s history and expertise in South Asia means that the intelligence it gathers in Pakistan, Afghanistan and the tribal areas in between is in high demand, Mr. Aldrich said. The arrangement has been focused recently by a chill in relations between the United States and Pakistan, and by the shared war in Afghanistan. Other nations, too, intercept communications in the region that are shared broadly with the United States, he said. In Afghanistan, for example, German and Dutch forces run aggressive electronic interception operations, he said, because their rules on collaborating with local interpreters are less stringent than those of the United States. A spokesman for the coalition forces in Afghanistan, Lt. Col. Lester Carroll, declined to give details about intelligence sharing, saying agreements were classified. But he confirmed that American military forces “do share information with other U.S. government organizations on a need-to-know basis.” Few argue against the notion that European nations, many of which have been attacked by terrorists, have benefited from the drone killing, however controversial, of many of the most hardened Islamic extremist leaders.

#### Extremely broad support for intel sharing

Maciej Osowski 11 [March 8, 2011, “EU-US intelligence sharing post 9/11: predictions for the future,” www.e-ir.info/2011/03/08/eu-us-intelligence-sharing-post-911-predictions-for-the-future/]

Intelligence cooperation between the US and other EU member states. The 9/11 attacks started increased intelligence cooperation not only between the ‘old allies’ such as the US and the UK but also by necessity with many other states, many of them European Union member states[37]. Suffice it to mention the words of the Deputy Secretary of State Richard Armitage: “Probably the most dramatic improvement in our intelligence collection and sharing has come in bilateral cooperation with other nations — those we considered friendly before 9/11, and some we considered less friendly. This is marked change, and one that I believe comes not just from collective revulsion at the nature of the attacks, but also the common recognition that such groups present a risk to any nation with an investment in the rule of law”[38]. It is reasonable to assume that all European partners were considered friendly before 9/11. However, what is the most important in this quote is that Armitage recognises that cooperation comes from the common position of states whereby Islamic terrorism is a serious danger for every state, not only European. The majority of academic voices claim that “Since 9/11, liaison relationships between the United States and foreign services have increased in number and, in the case of pre-existing partnerships, have grown deeper”[39]. This is confirmed by many European intelligence responsible civil servants: “Contacts have been increased and there is more cooperation in all areas,”[40] revealed to the journalists the director of Spain’s National Intelligence Centre Jorge Dezcallar. It has been taking place in many areas despite political condemnation of the US military actions in Iraq or covert programs such as extraordinary renditions. Immediately after 9/11 all members of EU and NATO were supporting the US in their anti-terrorist actions and military mission in the Afghanistan. It changed radically when the US started the operation in Iraq on the basis of weak preconditions that Saddam Hussein is in possession of WMD and cooperates with Al-Qaeda. The ‘Old Europe’ (France, Germany) was against this intervention, probably because they knew the weakness of the evidence confirming American assumptions (especially as it was partially delivered by them – the German agent from Iraq known as ‘Curveball’). Despite this withdrawal of the political support, both Germany and France, as well as the rest of Europe have been closely cooperating with the US since after 9/11 and still are, as will be demonstrated in this sub-chapter. Usually reluctant towards Americans, France started close cooperation with the US just after the 9/11 attacks. An article in the daily Le Monde “Nous sommes tous Américains” expressed not only emotions and cultural unity with the USA, but was also a sign of what was bound to happen on the platform of secret intelligence sharing. In 2002, the CIA and the French Direction Générale de la Sécurité Extérieure (DGSE) established an intelligence cooperation centre in Paris called ‘Alliance Base’[41]. According to newspaper articles[42], ‘Alliance Base’ is led by a French general from the DGSE and staffed with intelligence officers from Germany, Britain, France, Australia, Canada and in large numbers from the United States. This secret institution is more than just intelligence sharing body. It is forum for operational collaboration and covert actions in anti-terrorist actions, also those involved extraordinary renditions condemned by whole EU. There is a paradox in the fact that while publicly criticising American program of renditions, European governments took part in it. This kind of hypocrisy was fiercely criticised by the CIA Director Michael Hayden who pointed to European political leaders that they publicly condemn the CIA, but privately enjoy the protection of the enhanced security provided by joint intelligence operations[43]. Indeed, recent history suggests that intelligence cooperation ties are affected by disagreements over ideals, strategy, politics or Human Rights observance, at least within the Transatlantic relationships. This is crucially important to the whole issue of intelligence liaison, as it shows that practice of intelligence sharing is independent of politics. This can have both its advantages and disadvantages. It is surely profitable that the US and the EU members can cooperate in the area of intelligence while disagreeing in politics. However, this bias can be the result of the lack of control by governments and parliaments over European intelligence services actions. Should this be the case, it should be used as food for thought in European capitals. Nevertheless, in the meantime the cooperation between American and EU member states intelligence services has arguably been highly successful. For example, decisions and steps taken by Algemene Inlichtingen- en Veiligheidsdienst (the Dutch General Intelligence and Security Service) allowed to prevent the attack on US embassy just after the 9/11 events in the US[44]. This was possible thanks to the international intelligence cooperation. Germany and the US have share intelligence on terrorism since 1960s. This relation has remained robust after the 9/11 attacks and has even increased, not only through the ‘Alliance Base’ but also in bilateral relation. A case in point here is the unfortunate example of the German intelligence service HUMINT source agent named ‘Curveball’. The final outcome of that case, which led to the US’s invasion of Iraq – based on false suspicions that the country possessed WMD – seems to suggest that sharing information here was faulty and misleading. However, it seems less so in light of the declassified documents[45]. These show that the case of ‘Curveball’ was properly described by Bundesnachrichtendienst, especially as far as his credibility was concerned – it was in fact believed to be dubious and unclear. However, as it was the only American human source, and it was delivering information desired by the Executive, the BND kept sending reports to the United States Defense Intelligence Agency. In other words, cooperation between both services was smooth, it was the American side that used the information despite warnings coming even from home intelligence[46]. Based on this case, it can be assumed that intelligence sharing between Germany and the US has increased to the extent that even not confirmed sources were delivered to the US on special request. Once again, this confirms the argument whereby intelligence cooperation between the US and European partners has existed despite European reluctance to the US international policy. To take this argument even further, it can be argued that the transatlantic intelligence liaison will increase in the future, as long as a new threat in the form of Islamic terrorism is deemed serious danger by both the US and the European Union member states. Apart from the UK, a traditional ally of the US, there has been a group of newly accepted EU members which were, most of them, supporting the US policy after 9/11, including the intervention in Iraq. It can be assumed that those states (Poland, the Czech Republic, Hungary, Romania, Bulgaria, and the Baltic states) were prepared to seek intelligence cooperation with the US. However, it is obvious that these states did not probably have much intelligence to offer, while their first concern has always been Russia and its actions. It this particular case, there are all reasons to suspect that the ‘complex’ intelligence liaison took place. It has been confirmed in the cases of Poland and Romania when both states have hosted the secret CIA prisons used for extraordinary renditions. That they did host such prisons was confirmed by both the European Parliament inquiry[47] and investigative journalists[48]. In exchange, those states received a mixture of military, political and intelligence support. From the above analysis it appears that after the 9/11 attacks the US increased intelligence cooperation with the EU member states. There is also no doubt that most European states were willing to increase this cooperation as they saw real threat that Islamic terrorism constituted not only for the US but also for European states. It was the nature of both in multilateral and bilateral relationships. The level of cooperation has been different depending on a state. Usually, the biggest ally of the US – the UK, has led in intelligence liaison. But it is now visible that the rest of the EU has not stayed behind, and tried to contribute to the liaison in many different ways. All those alleged facts lead to the conclusion that the future liaison between the US and the European member states will increase even further as long as there will be a common strong threat to the security to all participating states.

### 2NC AT: EU Coop

#### EU cooperation on terrorism intel high and inevitable – in their self interest

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]

As part of its drive to bolster its counterterrorism capabilities, the EU has also made promoting law enforcement and intelligence cooperation with the United States a top priority. Washington has largely welcomed these efforts, recognizing that they may help root out terrorist cells both in Europe and elsewhere, and prevent future attacks against the United States or its interests abroad. U.S.-EU cooperation against terrorism has led to a new dynamic in U.S.-EU relations by fostering dialogue on law enforcement and homeland security issues previously reserved for bilateral discussions. Contacts between U.S. and EU officials on police, judicial, and border control policy matters have increased substantially since 2001. A number of new U.S.-EU agreements have also been reached; these include information-sharing arrangements between the United States and EU police and judicial bodies, two new U.S.-EU treaties on extradition and mutual legal assistance, and accords on container security and airline passenger data. In addition, the United States and the EU have been working together to curb terrorist financing and to strengthen transport security.

### 2NC—US Intel Sufficient

#### US anti-terror intel is fine on its own – outstrips everybody else

Barton Gellman and Greg Miller, 8-29-2013 [“Top secret ‘black budget’ reveals US spy agencies’ spending,” LA Daily News, http://www.dailynews.com/government-and-politics/20130829/top-secret-black-budget-reveals-us-spy-agencies-spending]

“The United States has made a considerable investment in the Intelligence Community since the terror attacks of 9/11, a time which includes wars in Iraq and Afghanistan, the Arab Spring, the proliferation of weapons of mass destruction technology, and asymmetric threats in such areas as cyber-warfare,” Director of National Intelligence James Clapper said in response to inquiries from The Post. “Our budgets are classified as they could provide insight for foreign intelligence services to discern our top national priorities, capabilities and sources and methods that allow us to obtain information to counter threats,” he said. Among the notable revelations in the budget summary: Spending by the CIA has surged past that of every other spy agency, with $14.7 billion in requested funding for 2013. The figure vastly exceeds outside estimates and is nearly 50 percent above that of the National Security Agency, which conducts eavesdropping operations and has long been considered the behemoth of the community. The CIA and NSA have launched aggressive new efforts to hack into foreign computer networks to steal information or sabotage enemy systems, embracing what the budget refers to as “offensive cyber operations.” The NSA planned to investigate at least 4,000 possible insider threats in 2013, cases in which the agency suspected sensitive information may have been compromised by one of its own. The budget documents show that the U.S. intelligence community has sought to strengthen its ability to detect what it calls “anomalous behavior” by personnel with access to highly classified material. U.S. intelligence officials take an active interest in foes as well as friends. Pakistan is described in detail as an “intractable target,” and counterintelligence operations “are strategically focused against [the] priority targets of China, Russia, Iran, Cuba and Israel.” In words, deeds and dollars, intelligence agencies remain fixed on terrorism as the gravest threat to national security, which is listed first among five “mission objectives.” Counterterrorism programs employ one in four members of the intelligence workforce and account for one-third of all spending. The governments of Iran, China and Russia are difficult to penetrate, but North Korea’s may be the most opaque. There are five “critical” gaps in U.S. intelligence about Pyongyang’s nuclear and missile programs, and analysts know virtually nothing about the intentions of North Korean leader Kim Jong Un. Formally known as the Congressional Budget Justification for the National Intelligence Program, the “Top Secret” blueprint represents spending levels proposed to the House and Senate intelligence committees in February 2012. Congress may have made changes before the fiscal year began on Oct 1. Clapper is expected to release the actual total spending figure after the fiscal year ends on Sept. 30. The document describes a constellation of spy agencies that track millions of individual surveillance targets and carry out operations that include hundreds of lethal strikes. They are organized around five priorities: combating terrorism, stopping the spread of nuclear and other unconventional weapons, warning U.S. leaders about critical events overseas, defending against foreign espionage and conducting cyber operations. In an introduction to the summary, Clapper said the threats now facing the United States “virtually defy rank-ordering.” He warned of “hard choices” as the intelligence community — sometimes referred to as the “IC” — seeks to rein in spending after a decade of often double-digit budget increases. This year’s budget proposal envisions that spending will remain roughly level through 2017 and amounts to a case against substantial cuts. “Never before has the IC been called upon to master such complexity and so many issues in such a resource-constrained environment,” Clapper wrote. The summary provides a detailed look at how the U.S. intelligence community has been reconfigured by the massive infusion of resources that followed the Sept. 11 attacks. The United States has spent more than $500 billion on intelligence during that period, an outlay that U.S. officials say has succeeded in its main objective: preventing another catastrophic terrorist attack in the United States. The result is an espionage empire with resources and reach beyond those of any adversary, sustained even now by spending that rivals or exceeds the levels reached at the height of the Cold War.

### AT: Drones Outweigh

#### One policy change will not reverse the course. This is a deep and fundamental rights issue for Europe

**UPI 12/20**/13 [United Press International, “Restoring lost trust may take many years: Germany,” Dec. 20, 2013 at 1:42 PM, pg. http://www.upi.com/Top\_News/Special/2013/12/20/Restoring-lost-trust-may-take-many-years-Germany/UPI-99901387564931/

BERLIN, Dec. 20 (UPI) -- Restoring trans-Atlantic trust lost as a result of spying controversies may take some time to repair, new German Foreign Minister Frank-Walter Steinmeier said as he took over from Guido Westerwelle.

"The Transatlantic Alliance is and remains the backbone of our security," Steinmeier said, addressing a Foreign Ministry gathering. But a lot has changed recently and much cannot be taken for granted, he added.

"Despite all placations citing the Western community of shared values, trust has been lost and it will require a great deal of joint effort to restore it," he added.

"Today we are confronted with the question of how we can reconcile freedom and security in a digitally connected world and in light of new threats that have indeed arisen. We must make it clear to our American friends that not everything that is technically possible is politically wise. And this goes far beyond the question of whether spying among friends is permissible or not.

"It also begs the question of how can we ensure that our citizens' fundamental right to privacy remains intact in the 21st century, against a fully transformed communications backdrop. How can we prevent the technical and legal fragmentation of the World Wide Web, on which a large part of our increasing prosperity is based?

"This trust will not be regained overnight, but we will work hard to restore it," Steinmeier said.

He said the transatlantic relationship "is currently under considerable strain -- Iraq war, Guantanamo, [U.S. secrets leaker Edward] Snowden, NSA [National Security Agency] are the words that come to mind in that context."

#### This won’t blow over—governments are boxed in by public perception and will backlash against CT cooperation. This will decimate the alliance/relations now—overwhelms the aff’s internal link

Leonard 10/31—Mark Leonard is Co-Founder and Director of the European Council on Foreign Relations and is a Bosch fellow at the Transatlantic Academy in Washington, D.C. [October 31, 2013, “The NSA and the weakness of American power,” http://blogs.reuters.com/mark-leonard/2013/10/31/the-nsa-and-the-weakness-of-american-power/]

The NSA scandal over phone tapping in Europe will soon blow over, conventional wisdom says. Jack Shafer has argued that, although allied leaders such as Angela Merkel are upset, they will (and have to) get over it.

Don’t believe a word of it. The public outrage that the NSA has spawned could be more damaging to the transatlantic relationship than the Iraq war was a decade ago.

If it was all up to leaders, Shafer might be right. But governments — along with their intelligence services — are increasingly boxed in by public opinion. It’s not the spying or the lying that European citizens find more hurtful. It is the perception that U.S. agencies are as oblivious to the rights of allies as they are scrupulous at upholding the rights of their own citizens.

Seen from Europe, the NSA saga is another episode in the long-running story about the asymmetry of power across the Atlantic. A decade ago, the fight was about Iraq. In an influential essay, author Robert Kagan saw Europe and America as archetypes for power and weakness. “Americans come from Mars and Europeans from Venus,” he said. But President Bush’s invasion of Iraq did not “shock and awe” the rest of the world into submission. It was, in fact, a graphic illustration of the limits of American power, accelerating the arrival of what Fareed Zakaria called a “Post-American World.”

Kagan was honest enough to admit, after the Iraq war, that Europeans helped rein in American behavior by challenging its legitimacy. “If the United States is suffering a crisis of legitimacy,” Kagan wrote, “it is in large part because Europe wants to regain some measure of control over Washington’s behavior.”

The Franco-German response to the hegemony of the NSA has echoes of their response to the “Global War on Terror.” European citizens were not shocked that the NSA spies, but they were surprised by the power and reach of American intelligence.

When I interviewed Jose Ignacio Torreblanca, a Spanish foreign policy expert, he compared the NSA’s approach to data to the Library of Congress’ approach to books. When he asked a librarian about the library’s acquisitions policy, he learned that it didn’t have one. “We just buy everything,” the librarian told him. He compares this approach to the NSA probing the emails of all European citizens and justifying the purpose afterward.

One of the few unwritten laws in international politics is when a country reaches a level of power that is out of control, other countries will come together and balance it. Now two European institutions — the unelected European Commission and the unloved European Parliament — have the power and the incentive to try to take on the region’s closest ally.

The most obvious possibility for this is cooperation on counter-terrorism. Last week the European Parliament voted to suspend the SWIFT agreement, which governs the transfer of some bank data from the EU to anti-terror authorities in the United States. Although the U.S. does not always take Europe seriously as a military power, it does care about cooperation on data-sharing and the regulations that govern it — including bank data. This is one reason why the outgoing American ambassador to the EU, William Kennard, was the former chairman of the FCC.

As the latest revelations show, Europe’s intelligence agencies have often been willing co-conspirators with their counterparts across the Atlantic, but they will now be under much stronger public pressure not to comply.

There could be commercial implications to the NSA’s behavior. The European Commission is the most powerful regulatory body in the world, and it has the strength to impose its will on America’s corporate titans. In 2004, EU regulators hit Microsoft with a record fine of $613 million for violating European Union antitrust laws. Five years later they used the same tactics to force Microsoft to unbundle its Internet Explorer from Windows.

Sebastian Dullien, a German economist, argues that some people might call on the European Commission to use these sorts of tactics against American tech companies. “If they really wanted to hurt the United States, they could pass a law which said that any company that gives personal information on European citizens to foreign intelligence agencies would have to pay a fine of one million dollars per instance,” says Dullien. “If that happened, it might force many of the tech giants to shutter their operations in Europe.”

The European Commission, together with the European Space Agency, successfully funded the $5 billion Galileo project to develop a European answer to GPS. In the wake of the NSA scandal, there are calls for the EU to use similar tactics to develop safe cloud servers for Europe. Such a move could lead to a balkanization — or at least a de-Americanization — of the Internet.

Third, there will be consequences for the much vaunted Transatlantic Trade and Investment Partnership (TTIP), which some have argued would usher in a “New Atlantic Century.” Both sides have called for a “deep” and “comprehensive” agreement to create jobs and forge a “free, open and rules-based world.” But whatever deal that European and American negotiators agree on will have to be ratified by Congress and the European Parliament. The NSA scandal will probably not scupper a deal, but it will make it more difficult to agree a comprehensive one.

Fears about data privacy will make it more difficult to have mutual recognition of regulations on digital services. The same is true of government procurement. There will be resistance to give American companies access to European government programs if they leave the back door open for American intelligence agencies. Rather than become the economic foundation for a new Atlantic century, the deal that emerges could look more like a piece of Swiss cheese — so riddled with opt-outs and exemptions that it has little effect.

The real toxicity of the NSA revelations is that they replace a sense of shared values with deep public mistrust on both sides of the Atlantic. As Torreblanca argues: “Americans do not seem to realize that powers of surveillance that are used not just for counter-terrorism but also for commercial advantage could put them in the same category as China.”

The scars of the Iraq war live on long after the protagonists of that episode have moved on, as we saw in the debates about intervention in Syria. But the NSA scandals have the potential to leave an even deeper impression on an already weaker transatlantic alliance. The intelligence relationships that did so much to unite allies in the Cold War now threaten to blow up their relations during a time of peace.

### AT: Litigation

#### NEPA exemption isn’t the internal link – tons of alt causes make litigation impossible

Frank 13 (Richard, Professor of Environmental Practice and Director of the U. C. Davis School of Law’s California Environmental Law & Policy Center. , http://legal-planet.org/2013/10/24/new-standing-barriers-erected-for-federal-court-climate-change-litigation/)

In 2007, the U.S. Supreme Court’s famously ruled in Massachusetts v. USEPA that petitioners in that case had standing to sue the Environmental Protection Agency in federal court to challenge EPA’s failure to regulate greenhouse gas emissions under the Clean Air Act. Observers then could have been forgiven for thinking that this ruling flung open prospectively the federal courthouse door to climate change litigation.

Subsequent events would have proven that view sadly mistaken. Six years after Massachusetts v. USEPA, that case has been distinguished and ignored by lower federal courts to the point of rendering Massachusetts‘ standing rules a nullity. While subsequent federal court rulings have split on the issue of citizen suit standing in climate change cases, the clear trend is to bar such lawsuits from the federal courthouse on standing grounds.

The latest example of this unfortunate trend is a new decision from the Ninth Circuit Court of Appeals, finding that environmental plaintiffs lack standing to bring a new climate change-related case under the Clean Air Act. That decision, Washington Environmental Council v. Bellon, bodes ill for future climate change litigation, both within the Ninth Circuit and nationwide.

In Washington Environmental Council, environmental groups sued Washington state environmental regulators in federal district court, seeking to compel them to regulate greenhouse gas emissions from oil refineries in that state, under authority delegated to Washington State under the Clean Air Act by the EPA. The oil companies that owned and operated the Washington refineries successfully intervened in the case as defendants, arguing that the environmentalists lacked legal standing to bring the lawsuit.

### AT: “Long 08”

#### This ev says that the courts just need to say things about climate change OR we need to have domestic legislation

Long 08 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, domesticjudicial 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

#### There’s no uniqueness for that

Bloomberg 10/16/13 (“The EPA and the Supreme Court Fight Climate Change”, http://www.bloomberg.com/news/2013-10-16/the-epa-and-the-supreme-court-fight-climate-change.html)

Even as it decided yesterday to critically examine one of the weapons that the Environmental Protection Agency uses in its fight against climate change, the U.S. Supreme Court stood firmly behind the Obama administration’s basic plan: using the EPA to regulate greenhouse gases as harmful pollutants.

That’s because the court refused to consider a broader challenge to the EPA’s fundamental authority in this area. No matter how the court rules on the question it has taken up, it will not threaten President Barack Obama’s strategy of placing broad limits on carbon pollution from new and existing power plants.

Given that these plants, many of which are coal-burners, produce 40 percent of the U.S.’s carbon dioxide emissions and a third of its greenhouse gases, this is good news. The EPA is on a schedule to finish that task well before Obama leaves office.

The question the Supreme Court will address is a relevant one, to be sure. It applies to a second strategy for regulating pollution -- not through national industrywide standards, but through case-by-case reviews of power plants, refineries, factories and other “stationary” sources of greenhouse gases. The court will address whether high levels of carbon emissions should automatically trigger such reviews, based on the EPA’s determination that greenhouse gases threaten human health and welfare.

The EPA has said high levels should prompt a review. But the American Chemistry Council, an industry trade association, and others, including a federal circuit court judge, have argued that they shouldn’t. If the court agrees they shouldn’t, the EPA may still be able to use the permitting process to regulate greenhouse-gas emissions whenever a review of a given plant or factory is triggered because the level of another pollutant is over the limit.

This would enable regulators to press some large industrial emitters, when they expand or rebuild, to use new technology to limit greenhouse gases even beyond any industrywide standards.

The worst outcome would be a broader ruling that would stop the EPA from using the permitting process to regulate greenhouse gases at all. Even if that happens, however, the EPA’s current project of coming up with national standards means that factories and power plants will not be allowed to simply emit unlimited amounts of greenhouse gases.

By restricting its review to this permitting question, the Supreme Court has affirmed the EPA’s judgment that greenhouse gases are a threat to humanity, and therefore within the agency’s power to regulate. The agency has already proposed carbon limits for new power plants and is scheduled to offer a plan for existing plants by next summer. It should now move forward at full speed to put them in place.

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# Treaties

**Soft power fails**

**Gray 11** [COLIN S. GRAY is Professor of International Politics and Strategic Studies at the University of Reading, England. He worked at the International Institute for Strategic Studies (London), and at Hudson Institute (Croton-on-Hudson, NY) before founding the National Institute for Public Policy, a defense-oriented think tank in the Washington, DC, area. Dr. Gray served for 5 years in the Reagan administration on the President’s General Advisory Committee on Arms Control and Disarmament. He has served as an adviser to both the U.S. and British governments (he has dual citizenship). His government work has included studies of nuclear strategy, arms control, maritime strategy, space strategy and the use of special forces. Dr. Gray has written 24 books, including: The Sheriff: America’s Defense of the New World Order (University Press of Kentucky, 2004); Another Bloody Century: Future Warfare (Weidenfeld and Nicolson, 2005); Strategy and History: Essays on Theory and Practice (Routledge, 2007; Potomac Books, 2009); National Security Dilemmas: Challenges and Opportunities (Potomac Books, 2009); and The Strategy Bridge: Theory for Practice (Oxford University Press, 2010). His next book will be Airpower for Strategic Effect. Dr. Gray is a graduate of the Universities of Manchester and Oxford.] April, HARD POWER AND SOFT POWER: THE UTILITY OF MILITARY FORCE AS AN INSTRUMENT OF POLICY IN THE 21ST CENTURY <http://www.strategicstudiesinstitute.army.mil/pdffiles/PUB1059.pdf>

6. Soft power substantially is not discretionary and the concept is more likely to mislead than to enlighten. Soft power is a heroically imprecise concept, save only with respect to what it is not—hard power. If hard power is defined as the ability purposefully to inflict pain or to reward in the pursuit of influence, it is convenient and plausible to identify it with military and economic instruments of policy. Therefore, its opposite, soft power, is the ability to achieve influence by means other than military and economic. Joseph S. Nye, Jr., has been the principal spokesman for soft power. He explains as follows: Everyone is familiar with hard power. We know that military and economic might often get others to change their position. Hard power can rest on inducement (“carrots”) or threats (“sticks”). But sometimes you can get the outcomes you want without tangible threats or payoffs. The indirect way to get what you want has sometimes been called “the second face of power.” A country may obtain the outcomes it wants in world politics because other countries—admiring its values, emulating its example, aspiring to its level of prosperity and openness—want to follow it. In this sense, it is also important to set the agenda and attract others in world politics, and not only to force them to change by threatening military force or economic sanctions. This soft power—getting others to want the outcomes that you want—co-opts people rather than coerces them. 36 Nye did not discover the seemingly glittering gem that is the idea of soft power, and he makes no attempt to suggest otherwise. We can say that he was the first 29 to present the idea in full analytical rigor. Soft power has been enjoyed and exercised from the very beginning of human social interaction. The concept attracts attention today largely because it appears to offer an approach to the achievement of influence in world affairs that is complementary, and possibly even alternative, to that exercised through hard military and economic power. Before proceeding further, it is essential to grasp the particular issue that we must regard as the examination question for this monograph. Specifically, the question is whether or not soft power can and should substitute for hard power. Further, if some substitution is possible, what are likely to be the advantages and disadvantages of each course, that is, of the United States achieving influence either “softly” or by means of the pain and reward of hard-tempered power? Let us explore the proposition that there is, or could be, a soft power substitute for hard military power. Whether or not military power retains an absolute utility, it may be determined that soft power can be as useful, or more so, and probably at only a fraction of the cost. In such comparisons, it is important not to be captured analytically by the posing of unhelpful mutual exclusives: soft power or hard power; utility or disutility; success or failure. Soft power is potentially a dangerous idea not because it is unsound, which it is not, but rather for the faulty inference that careless or unwary observers draw from it. Such inferences are a challenge to theorists because they are unable to control the ways in which their ideas will be interpreted and applied in practice by those unwary observers. Concepts can be tricky. They seem to make sense of what otherwise is intellectually undergoverned space, and thus 30 potentially come to control pliable minds. Given that men behave as their minds suggest and command, it is easy to understand why Clausewitz identified the enemy’s will as the target for influence. 37 Beliefs about soft power in turn have potentially negative implications for attitudes toward the hard power of military force and economic muscle. Thus, **soft power does not lend itself to careful regulation, adjustment, and calibration**. What does this mean? To begin with a vital contrast: whereas military force and economic pressure (negative or positive) can be applied by choice as to quantity and quality, **soft power cannot**. (Of course, the enemy/rival too has a vote on the outcome, regardless of the texture of the power applied.) But hard power allows us to decide how we will play in shaping and modulating the relevant narrative, even though the course of history must be an interactive one once the engagement is joined. In principle, we can turn the tap on or off at our discretion. The reality is apt to be somewhat different because, as noted above, the enemy, contingency, and friction will intervene. But still a noteworthy measure of initiative derives from the threat and use of military force and economic power. But soft power is very different indeed as an instrument of policy. In fact, I am tempted to challenge the proposition that soft power can even be regarded as one (or more) among the grand strategic instruments of policy. The seeming validity and attractiveness of soft power lead to easy exaggeration of its potency. Soft power is admitted by all to defy metric analysis, but this is not a fatal weakness. Indeed, the instruments of hard power that do lend themselves readily to metric assessment can also be unjustifiably seductive. But the metrics of tactical calculation need not be strategically 31 revealing. It is important to win battles, but victory in war is a considerably different matter than the simple accumulation of tactical successes. Thus, **the burden of proof remains on soft power**: (1) What is this concept of soft power? (2) Where does it come from and who or what controls it? and (3) Prudently assessed and anticipated, what is the quantity and quality of its potential influence? Let us now consider answers to these questions. 7. Soft power lends itself too easily to mischaracterization as the (generally unavailable) alternative to military and economic power. The first of the three questions posed above all but invites a misleading answer. Nye plausibly offers the co-option of people rather than their coercion as the defining principle of soft power. 38 The source of possible misunderstanding is the fact that merely by conjuring an alternative species of power, an obvious but unjustified sense of equivalence between the binary elements is produced. Moreover, such an elementary shortlist implies a fitness for comparison, an impression that the two options are like-for-like in their consequences, though not in their methods. By conceptually corralling a country’s potentially attractive co-optive assets under the umbrella of soft power, one is near certain to devalue the significance of an enabling context. Power of all kinds depends upon context for its value, but especially so for the soft variety. For power to be influential, those who are to be influenced have a decisive vote. But the effects of contemporary warfare do not allow recipients the luxury of a vote. They are coerced. On the other hand, the willingness to be coopted by American soft power varies hugely among 32 recipients. In fact, there are many contexts wherein the total of American soft power would add up in the negative, not the positive. When soft power capabilities are strong in their values and cultural trappings, there is always the danger that they will incite resentment, hostility, and a potent “blowback.” In those cases, American soft power would indeed be strong, but in a counterproductive direction. These conclusions imply no criticism of American soft power per se. The problem would lie in the belief that soft power is a reliable instrument of policy that could complement or in some instances replace military force. 8. Soft power is perilously reliant on the calculations and feelings of frequently undermotivated foreigners. The second question above asked about the provenance and ownership of soft power. Nye correctly notes that “soft power **does not belong to the government** in the same degree that hard power does.” He proceeds sensibly to contrast the armed forces along with plainly national economic assets with the “soft power resources [that] are separate from American government and only partly responsive to its purposes.” 39 Nye cites as a prominent example of this disjunction in responsiveness the fact that “[i]n the Vietnam era . . . American government policy and popular culture worked at cross-purposes.” 40 Although soft power can be employed purposefully as an instrument of national policy, such power is notably **unpredictable** in its potential influence, producing net benefit or harm. Bluntly stated, America is what it is, and there are many in the world who do not like what it is. The U.S. Government will have the ability to proj-33 ect American values in the hope, if not quite confident expectation, that “the American way” will be found attractive in alien parts of the world. Our hopes would seem to be achievement of the following: (1) love and respect of American ideals and artifacts (civilization); (2) love and respect of America; and (3) willingness to cooperate with American policy today and tomorrow. Admittedly, this agenda is reductionist, but the cause and desired effects are accurate enough. Culture is as culture does and speaks and produces. The soft power of values culturally expressed that others might find attractive is always at risk to negation by the evidence of national deeds that appear to contradict our cultural persona. Moreover, no contemporary U.S. government owns all of America’s soft power—a considerable understatement. Nor do contemporary Americans and their institutions own all of their country’s soft power. America today is the product of America’s many yesterdays, and the worldwide target audiences for American soft power respond to the whole of the America that they have perceived, including facts, legends, and myths. 41 Obviously, what they understand about America may well be substantially untrue, certainly it will be incomplete. At a minimum, foreigners must react to an American soft power that is **filtered by their local cultural interpretation**. America is a future-oriented country, ever remaking itself and believing that, with the grace of God, history moves forward progressively toward an ever-better tomorrow. This optimistic **American futurism** both **contrasts with foreigners’ cultural pessimism**—their golden ages may lie in the past, not the future—which prevails in much of the world and is liable to mislead Americans as to 34 the reception our soft power story will have. 42 Many people indeed, probably most people, in the world beyond the United States **have a fairly settled view of America**, American purposes, and Americans. This locally held view derives from their whole experience of exposure to things American as well as from the features of their own “cultural thoughtways” and history that shape their interpretation of American-authored words and deeds, past and present. 43 This is not to say that soft power is unimportant or invariably misapprehended. Perceptions of America can and do alter over time. But the soft power of ideas and of practices that non-Americans may be persuaded to adopt and possibly adapt with consequences favorable for U.S. interests, do not constitute a policy instrument (or basket of such instruments) seriously comparable to military force. The greatest among history’s great powers have usually been attractive civilizations worthy of admiration and emulation as well as potent coercers. 44 Many foreigners have desired to join the contemporary winner not only for reasons of crude self-interest, but also to share the hegemonic power’s style of living and advanced thought. The flattery of imitation has an ancient historical lineage. Imperial rule as well as the less mandatory hegemonic influence has always been manifested in the practice of more or less voluntary co-option of those who deemed it prudent, advantageous, and generally sensible to “follow the leader.” All great powers should command respect, and not infrequently they are also feared. But few genuinely inspire a desire in others to emulate them culturally, save for reasons of anticipated material advantage. For example, China today does serve as a model worthy of respect for its thus far successful blending of 35 economic advance with tight political control. However, such respect rests upon no normative element beyond the values of greed and political discipline (values refer only to that which is valued). The Chinese practice of governance might just possibly be an example of soft power, but to label it thus betrays democratic values. One could as well say that Benito Mussolini’s Italy enjoyed some soft-power benefit as an example of strong anti-democratic rule. Indeed, the brutal modernist dictatorships of communism, fascism, and nazism, as well as their more or less pale reflections outside Europe, provided much evidence of soft power. Dictatorial leaders and party functionaries adopted and adapted foreign ideas of a firm hand both because they appeared to work well, and because the ideas of leadership, social discipline, and a congeries of repressive measures held quite genuine appeal. When Americans today think about the appeal of soft power, they often forget that the concept is content-free. It is about voluntary co-option for reason of an attraction of values, but it says nothing about the particular values that are borrowed and somewhat nationalized. A liking for genocide of the “unworthy” has been known to have appeal across political and cultural frontiers. **Soft power is not by definition only the soft power of humane liberal values**. It bears repeating because it passes unnoticed that culture, and indeed civilization itself, are dynamic, not static phenomena. They are what they are for good and sufficient local geographical and historical reasons, and cannot easily be adapted to fit changing political and strategic needs. For an obvious example, the dominant American strategic culture, though allowing exceptions, still retains its principal features, the exploitation of technology and mass. 45 These fea-36 tures can be pathological when circumstances are not narrowly conducive to their exploitation. Much as it was feared only a very few years ago that, in reaction to the neglect of culture for decades previously, the cultural turn in strategic studies was too sharp, so today there is a danger that the critique of strategic culturalism is proceeding too far. 46 The error lies in the search for, and inevitable finding of, “golden keys” and “silver bullets” to resolve current versions of enduring problems. Soft-power salesmen have a potent product-mix to sell, but they fail to appreciate the reality that American soft power is a product essentially unalterable over a short span of years. As a country with a cultural or civilizational brand that is unique and mainly rooted in deep historical, geographical, and ideational roots, America is not at liberty to emulate a major car manufacturer and advertise an extensive and varied model range of persuasive soft-power profiles. Of course, some elements of soft power can be emphasized purposefully in tailored word and deed. However, foreign perceptions of the United States are no more developed from a blank page than the American past can be retooled and fine-tuned for contemporary advantage. Frustrating though it may be, a country cannot easily escape legacies from its past. 9. The domain for the policy utility of soft power typically is either structurally permissive of easy success, or is unduly resistant to such influence. The third fundamental question about soft power in need of answer can best be posed in only two words, “So what?” The combined fallacies of misnaming and over-simplification that threaten the integrity and utility of the concept of soft power are more than merely 37 an academic itch that can be scratched into oblivion. The soft power concept is sufficiently valid intellectually that its contestable evidential base in history and thus its true fragility are easily missed. To explain its logic: soft power resides in the ability to co-opt the willing rather than to coerce or compel the reluctant; American soft power attracts non-Americans because it represents or advances values, ideas, practices, and arrangements that they judge to be in their interest, or at least to which they feel some bond of affinity. Therefore, the soft power of the American hegemon is some conflation of perceived interests with ideological association (by and large more tacit than explicit). Full-blown, the argument holds, first, that America (for example) gains useful political clout if and when foreigners who matter highly to U.S. national security share important American understandings, values, and preferences. The thesis proceeds in its second step to package this thus far commonsense proposition under the banner of “soft power”; it is now dangerously objectified, as if giving something a name causes it to exist. Next, the third and most problematic step in the argument is the logical leap that holds that American soft power, as existing reality—what it is, and its effects—can be approached and treated usefully as an instrument of national policy. This is an attractive proposition: it is unfortunate that its promise is thoroughly unreliable. The problem lies in the extensive middle region that lies between a near harmony of values and perceived interests and, at the opposite end of the spectrum, a close to complete antagonism between those values and interests. **Historical evidence as well as reason suggest that the effective domain of soft power is modest**. The scope and opportunity for co-option by soft power are even less. People and polities have not usually been moved far by argument, 38 enticement, and attractiveness. There will be some attraction to, and imitation of, a great power’s ideas and practical example, but this fact has little consequence for the utility of military force. Indeed, one suspects that on many occasions what might be claimed as a triumph for soft power is in reality no such thing. Societies and their political leaders may be genuinely attracted to some features of American ideology and practice, but the clinching reason for their agreement to sign on to an American position or initiative will be that the United States looks convincing as a guardian state and coalition leader. It is not difficult to identify reasons why military force seems to be less useful as a source of security than it once was. But it is less evident that soft power can fill the space thus vacated by the military and economic tools of grand strategy. Soft power should become more potent, courtesy of the electronic revolution that enables a networked global community. The ideological, political, and strategic consequences of such globalization, however, are not quite as benign as one might have predicted. It transpires that Francis Fukuyama was wrong; the age of ideologically fueled hostility has not passed after all. 47 Also, it is not obvious that the future belongs to a distinctively Western civilization. 48 It is well not to forget that the Internet is content-blind, and it advertises, promotes, and helps enable bloody antagonism in addition to the harmony of worldview that many optimists have anticipated. It does not follow from all this that the hard power of military force retains, let alone increases, its utility as an instrument of policy. But assuredly it does follow that the historical motives behind defense preparation are not greatly diminished. Thus, there is some noteworthy disharmony between the need for hard power 39 and its availability, beset as it increasingly is by liberal global attitudes that heavily favor restraint.

# Congress DA Overview

**AND, We turn the case – Wars role back constitutional rights. President will have unbridled discretion**

**Pushaw 09** – Professor of law @ Pepperdine University [Robert J. Pushaw, Jr., “Justifying Wartime Limits on Civil Rights and Liberties,” Chapman Law Review, Vol. 12, 2009 pg. 675

Initially, it is impossible to say with any certainty whether or not Presidents like Abraham Lincoln and Franklin Roosevelt had to infringe constitutional liberties the way they did in order to win their wars.2 Perhaps they could have achieved the same results with fewer intrusions. But maybe greater solicitude for personal freedoms would have led to defeat, or to a victory that exacted a far greater cost in blood and money. Speculating about such matters is an academic exercise. All we know for sure is that these Presidents took the actions they deemed necessary to prevail, and they did.3 For better or worse, the Constitution commits to the President almost unbridled discretion to determine what must be done to meet a military emergency. 4 These decisions must be made quickly and with imperfect information, and they are then judged by Congress, voters, and posterity. All of these groups tend to be quite forgiving of the President if he triumphs.

Turning to the second issue, the orthodox view is that Americans, out of some blend of fear and patriotism, blindly support Presidents during military crises when they trample civil liberties, 5 but later feel remorseful, vow that such excesses will never happen again, and bestow civil rights generously. 6 I do not believe we can isolate a collective sense of guilt over wartime sins and attempted redemption as the single "cause" of civil rights laws, which reflect multiple political, legal, social, ideological, economic, moral, and religious factors.7

Finally, even if there were such a direct causal connection, determining whether wartime curtailments of civil liberties are justified by subsequent efforts to secure civil rights requires an entirely subjective judgment.8 Most obviously, the immediate victims of government heavy-handedness, such as those denied habeas corpus during the Civil War or Japanese Americans interned during World War II, would find cold comfort in the later extension of civil rights (particularly to some other group). On the other hand, African Americans would conclude that (1) the Thirteenth, Fourteenth, and Fifteenth Amendments were well worth the price of Lincoln's impairments of individual liberties, and (2) the Civil and Voting Rights Acts expiated any of FDR's excesses during World War II. Instead of trying to figure out whether later gains excuse wartime pains, I prefer to concentrate on the dispositive issue: whether the limits on constitutional rights were necessary to achieve the greater good of winning the war. A President can never rationalize a gratuitous abridgment of personal liberties based on the mere possibility of future improvements in civil rights.

The foregoing analysis, which incorporates the lessons of history, has several implications for the War on Terrorism.9 Most importantly, although President Bush asserted aggressive unilateral executive powers, his response to al Qaeda's September 11, 2001 attacks was fairly mild in comparison with the actions of Lincoln, Roosevelt, and other Presidents.1O Furthermore, like his predecessors, Bush can defend his infringements on civil liberties as necessary to achieve his avowed objective: preventing another terrorist assault." In the past, such success has usually been sufficient for a President to deflect charges that he went overboard.

Indeed, the majority of Americans have always solidly supported antiterrorism efforts.12 Although the legal and media intelligentsia have been outraged by conditions at Guantanamo Bay, average people do not appear to feel widespread regret that will result in a compensatory increase in civil rights.13 Rather, any such expansion would be primarily attributable to the election of Barack Obama, who ardently supports this cause. Pg. 675-677

**Link turns solvency – court decisions don’t matter if congress doesn’t support**

**Devins 09** – Professor of Law and Professor of Government @ College of William and Mary [Neal Devins, “Presidential Unilateralism and Political Polarization: Why Today's Congress Lacks the Will and the Way to Stop Presidential Initiatives,” Willamette Law Review, Vol. 45, Issue 3 (Spring 2009), pp. 395-416

Before explaining why lawmakers lacked the incentives to rein in the President, a bit of a recap. At the start of this essay, I quoted Justices Jackson and Ginsburg to make-what I consider-a fairly obvious point. Congress has the power to check the President. But if it does not use that power, the President has incentive to fill the void. That does not mean that the President can do whatever he wants. As was true in the war on terror cases, the Supreme Court can place some limits on presidential power. But without a Congress willing to assert its institutional prerogatives, defeats in court are not likely to stick to the President. Richard Nixon lost several significant cases in court.60 But that is not the reason the presidency was hampered after Nixon left office. The reason was tied to the Watergate-era Congress's willingness to assert itself through numerous legislative enactments and through beefed up oversight. Remember: Dick Cheney's complaint about an imperiled presidency had nothing to do with Supreme Court decision-making and everything to do with congressionally imposed constraints that cut against presidential power.6'

# AT: Exec Warfighting

**Congressional deliberation key to effective operations**

**Griffin 12** – Professor of Constitutional Law @ Tulane University [Stephen Griffin, “The Tragedy of the War Power: Presidential Decisionmaking from Truman to Obama,” APSA 2012 Annual Meeting Paper, July 15, 2012, Pg. <http://ssrn.com/abstract=2107467>

As a comparison of the relative ability of the executive and legislative branches to make speedy decisions, Hamilton’s argument is certainly plausible as far as it goes, but in the kind of government we have had since the Cold War began, it does not take us very far. Swift decisionmaking has little to do with a presidential decision to initiate the kind of war that has occupied us here. Wars involving the potential of thousands of American casualties, millions of foreign casualties, and the expenditure of hundreds of billions of dollars are usually not based on off-the-cuff decisions. Korea (especially taking into consideration the decision to cross the 38th parallel), Vietnam and the 1991 Gulf War were enormous undertakings and required layers of complex interagency decisionmaking, not a single swift move. Indeed, these considerations were part of what made it necessary in 1947 to establish the NSC to coordinate policy within the executive branch. During the Cold War and after, the pre-Pearl Harbor constitutional order was identified with isolationism and no one thought a return to that policy after 1945 was realistic. But while it is relevant to ask if there was an alternative, there is no escaping the ineluctable reality that the post-1945 order was a tragedy waiting to happen. That order was inconsistent with the historical meaning of the Constitution and the original constitutional order remained relevant to making decisions for war. Whether the post-1945 order was necessary or not, it introduced deep tensions into the American system of governance. The case studies presented above show that the interagency process taking place inside the executive branch was not an adequate substitute for the constitutionally mandated interbranch process. The inability of the executive branch to deliberate and make effective decisions on its own manifested itself in surprising ways. The executive branch has repeatedly failed to engage in effective war planning. With respect to Korea, Truman had to cope with the novelty of limited war and the fact that he would have been criticized by Republicans if he had ordered MacArthur to stop at the 38th parallel to restore the status quo ante. Nonetheless, it was his decision alone to unite the peninsula, a decision made essentially on the fly. In turn, that caused China to intervene. Korea then became a conflict of unanticipated scope that ended in stalemate and ruined Truman’s last years in office. True to his initial decision to intervene, Truman did not share responsibility with Congress and so Congress escaped both a valuable learning experience and the blame for the war. In addition, the case studies show that there is considerable evidence that the executive branch has had problems determining on war aims. President George H. W. Bush studiously avoided consulting Congress during the crucial period of decision in fall 1990 when it became possible to contemplate turning Operation Desert Shield into Desert Storm. This meant that he did not have to resolve on a unified set of war aims that would have been a necessary part of convincing Congress to authorize the war. Like Truman, Bush waited until it was too late to convince Congress and the public that the war had a point beyond forcing Iraq out of Kuwait. Thus the war had no substantial implications for policy and could not even help Bush remain in office. Not submitting the war to a timely congressional decision that Bush would have respected turned out not only to be counterproductive in terms of policy, but contrary to Bush’s political interests. Similarly, President George W. Bush failed to clarify what the war in Afghanistan was for beyond the removal of al Qaeda from Afghan territory. Partly as a consequence, the war became an endless struggle against the Taliban in both Afghanistan and Pakistan that is still ongoing as of 2012. It is striking that the executive, often represented by presidentialists as the branch that is most decisive and expert on matters of war, could consistently both fail to deliberate and fail to reach agreement on its goals in going to war. This suggests strongly that the pressures to shirk hard choices are too great to be overcome by one branch working alone. As I have argued throughout this article, the post-1945 constitutional order tended to derange the policy process inside the executive branch, producing not a set of swift successful decisions, but rather a series of policy disasters. The formulation of policy on Vietnam in the Johnson administration, for example, showed serious deficiencies that have not been taken into account by contemporary presidentialists. In essence, the advisers in the White House and the different departments in the executive branch found it impossible to move beyond the narrow orbit established by the president. Rather, the president and the idiosyncratic process he establishes tends to dominate the undoubted policymaking expertise of the different departments. The lack of planning for the aftermath of the Iraq War, with the president and policymakers in the White House falling prey to all sorts of false assumptions, showed that nothing had changed since Vietnam. I have also highlighted the costs of decisions for war on presidents. In doing so, I am not arguing that presidents who go to war suffer some sort of trauma. But there is good evidence that decisions for war are considerably different from other sorts of policy decisions. They can clearly impair presidential decision making, as was the case with Presidents Johnson and Nixon and probably both Bushes, father and son. There can be other, more subtle effects on policy. War can take up so much of the president’s time that other pressing concerns, including those related to foreign affairs, are crowded out. So President Johnson probably lost several chances to negotiate meaningful arms control agreements with the Soviet Union.217 This helped undermine the structure of détente in the 1970s by continuing the arms race. Preparing for and fighting the 1991 Gulf War so exhausted President Bush and his advisers that they had less capacity to make decisions with respect to the postwar environment in Iraq.218 This helped undermined the credibility of Bush’s decision not to depose Saddam Hussein. The 2003 Iraq War so consumed President George W. Bush and his advisers that they lost track of the situation in Afghanistan, leaving to President Obama the knotty task of sorting out the mess. As the discussion in this article has thus demonstrated, the defects of the post-1945 constitutional order are manifest. Experience has shown that the executive branch is incapable of handling the deliberation necessary for decisions for war on its own. Perhaps this is what we should expect, given the continued tidal pull of the original constitutional order. Yet it is still striking how consistently poor executive decision making for war has been in the post-1945 period. These defects create several distinct challenges for executive enthusiasts. For example, supporters of the presidentialist position often stress its unitary character. With a single person at the helm, the executive branch can act quickly to address foreign crises. We can now see more clearly that when the executive branch is not subject to oversight it is too easy either for presidents to dominate their advisers, thus suppressing valuable policy input (Johnson) or to so rearrange the White House policy process that an effective decisionmaking process becomes nearly impossible (Bush II). This supports the inference, which may come as a surprise to presidentialists, that a chief purpose of interbranch deliberation is to ensure that the executive branch is truly unitary and effective with respect to the all-important decision for war. Oversight also has the potential to counter the scenario in which the president totally dominates his advisers. Congressional hearings might give advisers a public forum in which they can finally get through to the president, although this is obviously a more difficult case. Without oversight, policy in the executive branch can be unsound or even deranged. One pathway to policy disaster, seen in Vietnam, is that the various departments responsible for war are never forced to agree on a unified set of goals and what means are necessary to achieve those goals. Without strong external compulsion it is too easy for the different parts of the executive branch to fall to quarreling amongst themselves without any ability to resolve their differences. When the State Department, Defense Department and the CIA fail to agree, the NSC process has been insufficient to create a consensus on a proposed course of policy. While it is reasonable to assume that the nation requires a unified foreign policy, nothing in the internal architecture of the executive branch that guarantees unity. Again, this can strike us as surprising, because the executive branch is a hierarchy and we expect presidents to have the ability to lead. Experience shows, however, that leadership is usually expressed either through domination involving the suppression of dissident views or by the president being unable or unwilling to manage the many different parts of the executive branch together with their often strong-willed department heads. Striking the appropriate balance has been difficult for presidents who are, after all, politicians, not experienced managers. Another pathway to disaster already mentioned is that it has proven difficult for the executive branch to determine war aims. Understandably the president and his advisers tend to respond to the exigencies of the moment, rather than concerning themselves with how a given military operation relates to the overall strategy of the U.S. in foreign affairs. The executive branch does not have any inherent ability to relate short-term responses to long-term goals. As we saw with the 1991 Gulf War, this inability to justify a war in terms of long-term goals can run contrary to the president’s own political interests. It is not necessary to assume anything about the policy knowledge of individual members of Congress or the quality of congressional hearings to appreciate that a world in which the executive branch is required to justify itself publicly provides a significant incentive for the president to insist on a unified approach to policy. It is plausible that repeated iterations of oversight would build up congressional expertise in foreign policy and thus begin a meaningful cycle of accountability where each branch could learn over time from experience. While there is a sense in which everyone accepts that oversight is a traditional function of Congress, it is noteworthy that there was no strong tradition of external review established in the early Cold War. The situation with respect to the CIA eventually became notorious, with a small group of senators handling oversight on a basis akin to a private club.219 But the situation with respect to foreign affairs in general was little better, with many hearings and exchanges held in executive session or off the books in private gatherings. While it is a mistake to think that the congressional leadership had no influence over the early Cold War administrations, the lack of public oversight meant that the proper incentives were never provided to executive branch agencies. As recounted by historian Robert Johnson, later in the Cold War the influence and prestige of the Senate Foreign Relations Committee waned in comparison with the growing power of the Armed Services Committee.220 This further undermined accountability and was emblematic of the dominant militarized approach to the Cold War. While the executive branch was retooled to a certain extent for Cold War duty after 1947, nothing was done to the structure of Congress. Members of Congress assumed that the existing committee structure would suffice. Eventually the costs of this approach became apparent, at least with respect to intelligence policy. Part of the intelligence reforms of the 1970s was to establish committees to oversee the intelligence community. The subsequent difficulties with implementing this oversight have been well analyzed by a number of scholars and presidential commissions, including the 9/11 Commission. Some of the ignored proposals of the 9/11 Commission had to do with changes to congressional oversight of intelligence.221 What oversight there is has been rendered less effective by the use of term limits for service on the intelligence committees and the fact that budgetary authority is located elsewhere.222 As Amy Zegart concluded in her study of Congress, the intelligence community and 9/11: It was no secret that this fragmented oversight system desperately needed fixing. Restructuring the Congress was recommended in seven of the twelve intelligence and terrorism studies between 1991 and 2001. Yet Congress never acted. In fact, Congress was the only government entity that failed to implement a single recommendation for reform during the decade—a record worse than either the CIA’s or the FBI’s.223 One purpose of the interbranch cycle of accountability is to test the executive branch’s claims with respect to war and foreign affairs. Of all the shibboleths of the Cold War, none have arguably done more harm than the idea that the executive branch’s undoubted expertise with respect to diplomacy is relevant to the expertise necessary for planning and running a war. The experience of presidential administrations in the post-1945 period is clear – there is no such thing as a civilian “expert” in making the policy choices and decisions necessary for war. Even if we accept the reasonable point that military leaders are expert in planning and running military operations, this sort of expertise is built up over many years of service and such experience was not available to any post-1945 president except Eisenhower. Consider that the substantial expertise FDR had acquired with respect to foreign policy by the time he was elected to a third term in 1940 is barred to any contemporary president by the 22nd Amendment. Further, cabinet officials and advisers are rarely drawn from a pool of those expert in war. As we drew away from the World War II generation, the Secretaries of State and Defense have usually been different sorts of careerists or politicians. While there is nothing inherently wrong with this, none of them were experts in making war decisions.224 In fact, there have been too few major wars for any civilian adviser to acquire the sort of experience necessary before true expertise is possible. At the same time, the major wars since 1945 show that effective consultation with Congress is pragmatically possible. Because American armies have been fighting far from home in the post-World War II period, considerable time has been required to transport them to the theatre of conflict and assemble the necessary enormous amount of supply material. Aside from true crises such as the 1962 Cuban missile crisis, there has always been plenty of time for interbranch deliberation over the decision to go to war. This has not always been highlighted by presidents. In Korea, many weeks were required before the Inchon landing and break-out from the Pusan perimeter became possible. In Vietnam, it took two years, until 1967, for General Westmoreland to assemble the supply chain necessary to support the kind of military operations he envisioned in 1965.225 The build-up time required to simply provide an effective defense for Saudi Arabia (Operation Desert Shield) in the Gulf War was seventeen weeks. More weeks were required to attain an offensive capability. Months were required after 9/11 before there were sufficient regular armed forces in Afghanistan and the same was true for the Iraq War. The fact of a crisis or apparent emergency that arguably requires a military response does not necessarily mean that there is little time for proper interbranch deliberation. The war powers debate should occur on the terrain of a realistic appraisal of presidential success in making decisions for war and the possible contributions a true interbranch dialogue could make to effective decisionmaking. Such an appraisal is not found in recent works by executive enthusiasts. Eric Posner and Adrian Vermeule, for example, have recently provided a provocative theoretical grounding for executive enthusiasm. 226 They present a tightly woven argument that challenges what they describe as the “Madisonian” understanding of separation of powers. Their target, which they call “liberal legalism,” is the idea that the executive can be constrained primarily through legal means, including the constitutional law promulgated by judges as well as statutes passed by Congress.227 While their argument is wide-ranging, extending to administrative law and “global liberal legalism,” my comments here are directed at the parts of their argument most nearly relevant to war and foreign affairs. There is arguably a subtle bias in the Posner and Vermeule analysis. They criticize the eighteenth-century “Madisonian” view of how an executive should be constrained. But why constrain the executive at all? Here Posner and Vermeule confine themselves to critiquing what might be called an eighteenth-century view of the dangers posed by the executive – chiefly the threat to civil liberties and the possibility, which they rightly discount, that the American term-limited president might turn into a tyrant.228 But they do not consider reasons for caution about the executive branch connected with our twentieth-century experience with war and foreign affairs. They believe one fatal problem with liberal legalism is that Congress can never catch up with emergencies. The nature of emergencies is that rules cannot be created in advance to handle them. By contrast, the executive is well suited to handling fast-changing situations – “in emergencies, only the executive can supply new policies and real-world action with sufficient speed to manage events.”229 While this is superficially plausible, it will have a strange ring to anyone who lived through Hurricane Katrina in 2005. Of course, this does not mean Congress somehow would have done better. Posner and Vermeule’s analysis is relentlessly comparative. The fact that the executive inevitably makes mistakes and fails sometimes does not show that liberal legalism is a workable alternative. What Posner and Vermeule do not consider is the enormous influence, amply demonstrated by the narrative I have presented, of the original constitutional order. Because Posner and Vermeule do not consider how constitutional orders work, they miss the significance of the original constitutional design. My argument has concerned war and foreign affairs. But it supports the general inference that the original design made it difficult for either branch to make good policy on its own. Sound policy with respect to war requires the branches to cooperate. While political parties have made such cooperation more difficult, parties are an example of how constitutional change tends to add to, rather than completely replacing, the original constitutional order.230 The discussion in this article has shown that policymaking in the executive branch becomes deranged without the oversight and input of the legislature. Posner and Vermeule have no way to account for this because they assume that executive branch is generally competent not only to execute the law but to make policy on its own. Strangely, they do not consider the generally poor record of the executive branch in war making in the post-1945 period. This period is littered not simply with mistakes, but with policy catastrophes that undermined the stability of the government as a whole. It is also noteworthy that Posner and Vermeule focus on the executive branch without managing to say much about the person of the president or how the president runs the White House. The post-World War II experience showed that the president was incapable of managing the tasks of war without the substantial support of Congress. Briefly summarized, the biggest problem with the arguments of executive enthusiasts is that they reflect pre-Vietnam understandings of how the executive branch makes decisions in foreign policy. It is as if the substantial and closely documented historical scholarship on the Vietnam War has made no impression on legal scholars who study presidential power. These scholars continue to treat the executive branch as if it were a black box full of the “best and the brightest” – knowledgeable experts willing to make hard choices and swift, yet measured and effective decisions.231 History shows differently. Conclusion War is a unique kind of policy. Even “limited” wars tend to subordinate the rest of the nation’s foreign policy to their requirements rather than the reverse. This has meant that in starting any major military conflict, the president is almost literally betting the ranch. All the more reason to ensure that there is sufficient deliberation before going forward. In the restrained phrasing of political scientist James Kurth, the U.S. would have been better off had “an authentic democratic process” been used to approve wars since 1945.232 The question for the future is whether such a process is possible. Pg. 31-37

# PQD Links

**Judicial review discourages Congressional political self-help and deliberation. Adherence to the political question doctrine provides uniqueness**

**Broughton 07** - Lecturer in Government @ Johns Hopkins University [J. Richard Broughton (Attorney in the Criminal Division @ U.S. Department of Justice), “Judicializing Federative Power,” Texas Review of Law & Politics, Vol. 11, No. 2, 2007

My contention is not simply that courts should be more deferential-or in some instances entirely uninvolved-in many of these cases, although I adhere to these notions. Scholars like Rachel Barkow15 and Jide Nzelibe, 116 have persuasively advocated a robust political question doctrine and doctrines of deference that ensure the courts will only exercise their ability to act in cases where they are specially empowered or otherwise competent to do so. And in response to those who contend that these cases are within the judicial ken because "this is what judges do" (consider Judge Tatel's concurring opinion in Campbell), those like Justice Thomas respond with a compelling assertion grounded in sensible notions of institutional competence: unlike many cases involving domestic affairs, judges lack sufficient competence, expertise, and facilities to delve too deeply into war powers problems."8 In fact, the notion espoused by critics of the doctrine, notably Professor Franck, who argue that the political question approach undermines the rule of law which demands a role for judges in addressing constitutional questions related to the allocation of war and foreign affairs powers, must face "insuperable obstacles," as Professor Nzelibe has explained;"9 notably, its incompatibility with constitutional text, structure, and history. Courts are not the exclusive interpreters of the Constitution; indeed, as Hamilton, Madison, and Marshall explained in the early years of the Republic after ratification, 120 the political branches play an important role in constitutional deliberation and interpretation, 12' and there are multiple provisions of the Constitution that are not amenable to constitutional adjudication in the courts (for example, a congressional determination as to what constitutes "high Crimes or Misdemeanors"1 22 or whether the President has properly exercised his veto powers1 23). Moreover, in addition to the historical constitutional practice of judicial non-intervention in war powers controversies and the Constitution's structural design for allowing the Congress and President to engage in their own constitutional deliberation on the scope and nature of their respective war powers, we can point to the Constitutional Convention, at which Madison argued that the judicial power should extend only to cases of a 'Judiciary Nature," 24 and at which the Framers explicitly rejected a proposed Council of Revision that would have given the Judiciary a joint role in exercising veto power with the Executive. 2 Also, as a textual and structural matter, we know that the Framers approved the placement of certain categories of power belonging to one branch in another branch (for example, the Senate enjoys a judicial power to try impeachments126 and the President enjoys legislative power to return a bill and to recommend legislation to Congress 27). Yet nowhere in Article III or elsewhere do the Framers give any legislative or executive power to the Judiciary (a structural choice further reflected in the Convention's rejection of the Council of Revision).

An approach grounded in a robust political question doctrine is also sensible especially when we think about the nature of federative power theory. Locke based the federative power upon the kind of authority man had in the state of nature; whereas law could direct the exercise of executive power, federative power was not amenable to such directives, but rather relied upon the exercise of prudence and discretion 128 (a notion reaffirmed by Publius and Pacificus). As the Hamdan decision foreshadows, judicial efforts to police such prudence and discretion will invariably involve the courts' own independent judgments about the normative propriety or acceptability of political action. This is not a judgment for politically independent courts.

But beyond these doctrinal constraints-and the problem of competence that I, too, find persuasive as a reason for robust doctrines that keep judicial review from doing mischief-I advocate normative limitations on judicial review grounded in a constitutionalist conception of institutional structure and responsibility. My contention is that the judicialization of federative power-by which I mean a model of judicial review that strictly and aggressively scrutinizes the constitutional allocation of federative power or a particular exercise of federative power-undermines the constitutional scheme for making, enforcing, and restraining American foreign policy. These arrangements are preferable to judicial review because they respect the forms of the Constitution and are more consistent with the institutional structures that the Constitution envisions for the exercise of federative power. In this sense, it is disconcerting that Justice Thomas has so often spoken only for himself on this matter.

Unfortunately, Americans have grown accustomed to resolving essentially political disputes in the courts, and the courts have only encouraged this phenomenon, so much so that today the Supreme Court is viewed as yet another political body, existing to satisfy the immediate appetites of a demanding public. 29 As The Deconstitutionalization of America explains, "the conviction that judicial actors are also political actors can have undesirable effects on the behavior of citizens.' ' 30 Thus, what emerges is a litigation culture that perpetually seeks out the Judiciary for relief from disagreeable policies, bypassing the complexity that accompanies coalitional politics and day-to-day policymaking. 13 War and foreign affairs cases for most of our history have proven to be the exception; no areas of law and public policy have provoked such ready employment of the doctrines of justiciability, or other moments of judicial deference, as war and foreign affairs. Thoughtful scholars like Professor Franck and Dean Koh have disparagingly described this history as "judicial abdication" or "judicial tolerance."'132 I prefer to think of it as prudent circumspection, a virtuous trait for a limited and independent Judiciary. But perhaps the war on¶ terror cases foreshadow a change. I am reluctant to overstate the case; it is important to understand that none of these [the war on terror] cases were cases about the separation of powers in any direct sense, and their holdings did not concern directly the constitutional allocation of federative power. They are, admittedly, imperfect symbols of a shifting approach. Still, the aggressiveness of the Court's review, and of its rebuke of the President's asserted constitutional role, presents an ominous sign.

The contemporary Supreme Court is all about courts. Far from prudently circumspect, this Court possesses an imperial understanding of its own role in the constitutional scheme (provoked by a citizenry that has been asking more and more of the federal government for some sixty years now). It assumes its competence (indeed, its superior judgment) in virtually all areas of political life, in ways that, as I have argued in a recent article concerning the Court's death penalty jurisprudence, signify a kind of judicial omnipotence and omniscience. 133

This is evident in the Court's death penalty cases, like Atkins v. Virginia134 and Raper v. Simmons, 3 5 where the Court constitutionalized the superiority of its moral and political views on capital punishment by holding that the Eighth Amendment contemplated that "in the end, our own judgment will be brought to bear on the question of the acceptability of the death penalty.... It is also evident in the Court's recent political gerrymandering cases. Although four justices have clearly articulated a sound basis for applying the political question doctrine to claims of political gerrymandering, a majority of the Court simply is not prepared to relinquish its power to supervise perceived political inequities in the drawing of legislative districts.137

Modesty, as Judge Posner notes, is not the order of the day in this Supreme Court. 13 The war on terror cases, and the Hamdan case in particular, also suggest that judicial modesty will not prevail in cases involving war-time political decisionmaking either.

The difficulty, however, goes beyond the mere unseemliness of the Court's arrogance. Aggressive judicial review of cases that implicate the allocation and exercise of federative power undermines not just the institutional role of the Court, but of our political institutions, as well. As I have previously argued, in this emerging regime, courts, rather than political institutions, become primary mediating institutions for filtering out and moderating public passions and factious spirit.139 This kind of regime minimizes essential distance between governing institutions and the people. This distance, which the Constitution contemplates and makes real in its description of our institutions, provides the space that institutions need to fulfill their responsibilities (especially their most grave ones), space between the chaotic, often undisciplined cries of public opinion and the measured refinement of popular will through reason, rational deliberation, and sober judgment.'4° Leaders of the founding generation, like Hamilton, Madison, and Marshall, believed that courts should be cognizant of the demands of practical governance in a republic, allowing the political departments to function free of an imprudent Judiciary.' 4' Thus, the distance the Constitution provides for the executive is substantial (though modern practice has intolerably diminished it, too); the distance provided, indeed, mandated, for the Judiciary is even greater, and is necessary to preserve not just the independence of the courts, but their circumspection, as well. Montesquieu and Publius both remind us that political liberty requires that judicial power be separate from the politicalpowers vested in the legislature and executive. 4' By the same token, a regime of omnipotent judicial review also makes practical governance and the object of controlling the governed even more burdensome.

Judicializing federative power diminishes the significance of the Constitution's commitment of competing foreign affairs powers to the political branches, the allocation of which Professor Yoo persuasively demonstrates in his recent scholarship.14 3 As I have argued elsewhere, constitutional deliberation should be encouraged in the political branches, each of which possesses an independent obligation to determine the Constitution's meaning.44 The political branches will be less likely to deliberate seriously about their respective constitutional roles when there exists the prospect of judicial relief and guidance from the courts. And particularly in circumstances where (as is usually the case) it is the President whose assertion of power is challenged, aggressive judicial review will also undermine the significance of the Constitution's provision for political self-help. Congress possesses three important checks on presidential overreaching: its power to fund foreign relations projects,145 its power to legislate (which includes investigative and oversight powers) ,46 and, often forgotten, its impeachment power.' 47 It can employ those checks without a permission slip from the courts.

**Court action undermines constitutional deliberation**

**Broughton 01** – Assistant Attorney General of Texas [[Broughton, J. Richard](http://www.heinonline.org.proxy.library.emory.edu/HOL/LuceneSearch?specialcollection=&terms=creator%3A%22Broughton,%20J.%20Richard%22&yearlo=&yearhi=&subject=ANY&journal=ALL&sortby=relevance&collection=journals&searchtype=advanced&submit=Search&base=js&all=true&solr=true" \t "_blank" \o "Search for results by Broughton, J. Richard) (LL.M., with distinction, Georgetown University Law Center; J.D., cum laude, Widener University School of Law), “What Is It Good For--War Power, Judicial Review, and Constitutional Deliberation,” Oklahoma Law Review, Vol. 54, Issue 4 (Winter 2001), pp. 685-726

Historically, and especially in the Vietnam and post-Vietnam eras, the courts have largely demurred in deciding war powers questions." As this article¶ explains, courts have compelling reasons for doing so that serve our constitutional structure of separate and distinct powers.3 First and foremost, the text of the Constitution commits decisions about the conduct of war and of foreign, military, and diplomatic affairs to the political branches, thus implicating the constitutionally proper and prudent political question doctrine. 2 Second, in particular cases, other existing constitutional doctrines of justiciability may preclude judicial intervention.33 That is, many war powers cases are brought by improper litigants to the suit, are brought by litigants with an insufficient stake in the matter, or contain questions too abstract or hypothetical; thus, these cases lend themselves to resolution that comes either prematurely or too late. Finally, the premise of many such lawsuits - that resort must be had to the courts as an alternative to political branch inaction or as a' remedy for deadlock in the political branches34 - is itself troubling. It ignores not merely the Constitution's commitment of such matters to the political branches alone, but it also undermines constitutional deliberation in the political branches by encouraging political actors to wait comfortably on the constitutional sidelines while the judiciary plays the game. Pg. 690-691

# Link

**Aff plan is unpredictable- normal means for overruling a precedent would involve years of incremental judicial challenges- the fiat of the plan overrides the decision all at once, which destroys precedent**

Gerhardt, 06 (Michael, professor of law at UNC, 90 Minn. L. Rev. 1204, “Super Precedent”, May, lexis)

I agree that time alone is not the measure of a precedent's attainment of special status in constitutional law. Moreover, I concede the impossibility of determining a minimum length of time for a precedent to endure before it may be called a super precedent. It is of course impossible to know what will happen years or centuries from now. No one can prove that the Court will refrain from reconsidering for all time some decisions which we think are firmly settled. Nevertheless, focusing on the longevity of a precedent misses the point. Longstanding precedents, especially in important cases, are rarely overturned in a single bound. A case that can credibly be characterized as a super precedent is distinctive in part because it is so deeply engrained in constitutional law that it cannot be reconsidered - much less overturned - without considerable excavation. In practice, this means that if and when the time ever came to reconsider super precedent it would only occur after persistent warnings and attacks (both on and off the Court). Plessy v. Ferguson, [77](http://web.lexis-nexis.com.proxy.library.emory.edu/universe/document?_m=ae5188de22b9246458c51c58dcf18287&_docnum=1&wchp=dGLbVtz-zSkVA&_md5=6bfa1e1ddc089a33c5e5339a4798332e#n77) for example, was not simply left untouched in a shrine until the Court began to dismantle the decision in the 1950s. To the contrary, it was attacked systematically in a series of lawsuits brought by the NAACP, culminating in Brown. [78](http://web.lexis-nexis.com.proxy.library.emory.edu/universe/document?_m=ae5188de22b9246458c51c58dcf18287&_docnum=1&wchp=dGLbVtz-zSkVA&_md5=6bfa1e1ddc089a33c5e5339a4798332e#n78) Similarly, the so-called right to contract recognized in Lochner v. New York [79](http://web.lexis-nexis.com.proxy.library.emory.edu/universe/document?_m=ae5188de22b9246458c51c58dcf18287&_docnum=1&wchp=dGLbVtz-zSkVA&_md5=6bfa1e1ddc089a33c5e5339a4798332e#n79) was not only overruled sub silentio a few years later [80](http://web.lexis-nexis.com.proxy.library.emory.edu/universe/document?_m=ae5188de22b9246458c51c58dcf18287&_docnum=1&wchp=dGLbVtz-zSkVA&_md5=6bfa1e1ddc089a33c5e5339a4798332e#n80) but the right to contract it recognized was the target of a good deal of litigation for decades. [81](http://web.lexis-nexis.com.proxy.library.emory.edu/universe/document?_m=ae5188de22b9246458c51c58dcf18287&_docnum=1&wchp=dGLbVtz-zSkVA&_md5=6bfa1e1ddc089a33c5e5339a4798332e#n81) Important cases tend not to disappear in the absence of concerted, sustained efforts to overrule them. The time required for precedents to become deeply entrenched and immune to reconsideration is less important than the fact that persistent challenges are indicia of the failure of precedents to achieve super precedent status.

**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.

# Case

**Treaties fail**

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The need for multilateralism is obvious. Nations share concerns about many problems and issues for which coordinated efforts could be mutually beneficial. Yet only rarely do all governments agree on the nature of a problem and the means to address it. At times, negotiations result in a less-than-perfect, but still acceptable, course of action. Disagreements can also lead to no action or the use of force or other confrontational measures. One of the purposes of multilateralism is to minimize the number and intensity of such confrontations. The process itself, however, is fraught with political challenges that can undermine potential solutions and even lead to other problems. For the United States, multilateralism faces its greatest challenge at the United Nations, where U.S. diplomats seek cooperative action among member nations on serious international problems. Therein lies the tension. The United Nations is first and foremost a political body made up of 192 states that rarely agree on any one issue. Even fundamental issues, such as protecting and observing human rights, a key purpose of the U.N. that all member states pledge to uphold when they join it, have become matters of intense debate. A key reason for this difficulty is the fact that the voices and votes of totalitarian and authoritarian regimes have equal weight to those of free nations at the U.N. The all-too-frequent clash of worldviews between liberty and authoritarian socialism has stymied multilateralism more than facilitated it, frequently **leading to institutional paralysis** when a unified response to grave threats to peace and security or human rights and fundamental freedoms was needed. U.S. secretary of state John Foster Dulles, who attended the San Francisco meetings that established the U.N., acknowledged this Achilles’ heel in 1954, when he told reporters: “The United Nations was not set up to be a reformatory. It was assumed that you would be good before you got in and not that being in would make you good.”[1] Fifty-five years later, the ideological fray at the U.N. has turned the terms “democracy” and “freedom” on their heads. Autocracies that deny democratic liberties at home are all too keen to call the Security Council “undemocratic” because in their view not every region, country, or bloc is sufficiently represented. During my time at the State Department, I was told repeatedly by other diplomats at the U.N. that the very concept of “freedom” is taboo because the term is “too ideologically charged.” In this environment, how can the United States or any freedom-loving country advance the purposes set forth in the U.N. Charter, including “encouraging respect for human rights and for fundamental freedoms for all,”[2] when the word “freedom” itself is considered too controversial? More money will not do it. No other nation contributes more to the U.N.’s regular budget, its peacekeeping budget, or the budgets of its myriad affiliated organizations and activities than the United States. America has continued its generous support even though Americans increasingly view the U.N. as inefficient and ineffective at best and fraudulent, wasteful, anti-American, and beyond reform at worst.[3] If the United States is to advance its many interests in the world, it needs to pursue multilateral diplomacy in a smarter, more pragmatic manner. This is especially true when Washington is considering actions taken through the United Nations. A decision to engage multilaterally should meet two criteria: First, it should be in America’s interests, and second, it will serve to advance liberty. Unless the United States can achieve both these ends acting within the U.N. system, it should find ways to work around it. Such “smart multilateralism” is not easy, particularly in multilateral settings. It requires politically savvy leaders who can overcome decades-old bureaucratic inertia at the State Department and in international organizations. **It requires the political will and diplomatic skill** of people who are dedicated to advancing U.S. interests in difficult environments, especially where progress will likely be slow and incremental. It requires a belief in the cause of liberty, gleaned from a thorough study of our nation’s history and the U.S. Constitution, and a deep appreciation for the values and principles that have made America great. Smart multilateralism requires a fundamental awareness of the strengths and weaknesses, capabilities and failings, of the U.N. and other multilateral negotiating forums, so that the United States does not overreach. Perhaps the most critical decision is whether or not to take a matter to the U.N. in the first place. It would be better to restrict U.S. engagement at the U.N. to situations in which success is possible or engagement will strengthen America’s influence and reputation. Selective engagement increases the potential for success, and success breeds success. When America is perceived to be a skillful and judicious multilateral player, it finds it easier to press its case. Smart multilateralism thus requires well-formulated and clear policy positions and a willingness to hold countries accountable when their votes do not align with our interests. Finally, smart multilateralism is not the same thing as “smart power,” a term that Secretary of State Hillary Clinton has used. Suzanne Nossell, a former diplomat at the U.S. Mission to the U.N. in New York, coined that term in 2004 and described it in an article in Foreign Affairs.[4] Smart power is seen as a takeoff of “soft power,” which suggests that America’s leaders downplay the nation’s military might as well as its historic role in establishing an international system based on the values of liberty and democracy, and de-emphasize its immense economic and military (“hard”) power. Smart power seeks to persuade other countries from a position of assumed equality among nations. This assumption has become the Achilles’ heel of the U.N. system and other Cold War–era organizations. Smart multilateralism does not make that same mistake. Challenges to Effective U.S. Multilateralism The United States belongs to dozens of multilateral organizations, from large and well-known organizations such as NATO, the World Trade Organization (WTO), and the International Monetary Fund to relatively small niche organizations such as the Universal Postal Union and the International Bureau of Weights and Measures. The 2009 congressional budget justification[5] for the U.S. Department of State included line items for U.S. contributions to some fifty distinct international organizations and budgets.[6] The United Nations and its affiliated bodies receive the lion’s share of these contributions. While the World Bank and International Monetary Fund weight voting based on contributions, most of these organizations subscribe to the notion of the equality of nations’ votes. With a few exceptions such as Taiwan,[7] all nations---no matter how small or large, free or repressed, rich or poor---have a seat at the U.N. table. Every nation’s vote is equal, despite great differences in geographic size, population, military or economic power, and financial contributions. This one-country, one-vote principle makes the U.N. an extremely difficult venue in which to wage successful multilateral diplomacy. In this environment, multilateralism becomes a double-edged sword. It can sometimes speed up global responses to global problems, as with the avian flu outbreak and the Asian tsunami. At other times, it can slow or prevent timely responses, as with halting Iran’s nuclear weapons program and stopping genocide in Darfur. Too often, multilateralism at the U.N. is the political means by which other countries and regional blocs constrain or block action. Groups of small nations can join together to outvote the great powers on key issues, and this situation can often lead to bizarre outcomes and compromises. Even seemingly noncontroversial issues, such as improving auditing of U.N. expenditures, require days of skillful, almost nonstop negotiations. The U.N. is simply too poorly primed for American multilateralism. It is a vast labyrinth of agencies, offices, committees, commissions, programs, and funds, often with overlapping and duplicative missions.[8] Lines of accountability and responsibility for specific issues or efforts are complex, confused, and often indecipherable. For example, dozens of U.N. bodies focus on development, the environment, and children’s and women’s issues. Coordination is minimal. Reliable means to assess the effectiveness of the bodies’ independent activities is practically nonexistent. Although institutional fiefdoms and bureaucratic interests strongly influence the formulation of U.N. policy, programs, and resolutions, the most powerful actors remain the member states. Each tries to persuade the U.N. as an institution to advocate and adopt its positions on the matters most important to it. The chaos of conflicting priorities rarely results in consensus for decisive action. The most common result is inaction or a lowest-common-denominator outcome. Too often, the United States also finds that other countries’ positions on an issue have been predetermined in their regional or political groupings. These groupings include the European Union; the G-77, or Group of 77 (which is really a caucus of some 130 countries, including China, Iran, and Cuba); the Non-Aligned Movement (NAM); the African Union (AU); the Arab League; and the Organization of the Islamic Conference (OIC). Some countries participate in several of these blocs. Added to this mix is heavy lobbying by “civil society” special interest groups, especially on contentious causes, which helps to explain why the United States faces an uphill battle in successfully husbanding any policy proposal through the U.N. system. Perhaps the most stunning example came under President Bill Clinton, when the United States was trying to negotiate changes to the Rome Statute, which established the International Criminal Court (ICC), so that the United States could sign it. Intense lobbying by nongovernmental organizations at the proceedings culminated in dramatic cheering when 120 countries voted in favor of the statute despite U.S. objections.[9] Of course, the most difficult forum for negotiating multilateral solutions is the Security Council, where the most serious security matters are raised and the greatest failures of multilateralism have occurred. During the Cold War, the Soviet Union largely shut down the council with its veto. As a result, the United States conducted most of its international affairs outside of the U.N., yet very few complaints of unilateralism were heard. That changed when the Soviet Union dissolved, and the hope was that the U.N. would at last become a force for good in the world. Instead, new rivalries have emerged that undermine its effectiveness. Perhaps the most frustrating development for U.S. multilateralism at the U.N. in the post–Cold War era has been the inability of the United States to develop a shared position with some of its best friends in Europe. Often, the allies say that they cannot negotiate with the United States until the European Union has taken a “common European position.” Yet after that common position has been adopted, individual European countries claim far less flexibility to negotiate. The EU also has been known to strong-arm its allies as well as its member states to oppose U.S. positions. For example, on the issue of genocide in Darfur, I witnessed the EU’s most visible leaders pressing the United States to accept the ICC as the international judicial authority to try war crimes committed in Sudan, rather than setting up an ad hoc tribunal. Furthermore, they leaned on Romania to go along with their position, even threatening Romania with punitive action if it did not. Countries hostile to the United States and to economic and political freedoms can and do take full advantage of this crack in the West’s once-unified front. Sometimes, though, the United States is its own worst enemy. Intense interagency discussions must take place before the State Department sends out any instruction cable to its negotiators at the U.N. and diplomats in capitals. Such delays can be costly because they give other countries time to sway votes against the U.S. position, leaving U.S. negotiators with little time to convince others to change their minds. For U.S. negotiators, this process can blur not only the clarity of purpose, but also policy objectives. Even after the State Department, Defense Department, and National Security Council hammer out a policy, U.S. diplomats are sometimes simply unable to advance it. Many who are fairly new to the negotiations must deal with counterparts from other countries who have worked the same issue in international settings for years. Some U.S. diplomats would rather settle for consensus than work for an outcome in which the U.S. will be isolated and which places America alongside pariah states such as Zimbabwe or Sudan, even if those countries voted with the United States for starkly different reasons.

# Aff can’t solve

**They don’t fix accountability or standards of imminence—Goldsmith is about needing Congress to force transparency regarding the targeting process. Ex post review doesn’t do that**

Goldsmith, 1ac author, 13 (Jack Goldsmith teaches at Harvard Law School and is a member of the Hoover Institution Task Force on National Security and Law, “How Obama Undermined the War on Terror,” <http://www.newrepublic.com/article/112964/obamas-secrecy-destroying-american-support-counterterrorism>)

For official secrecy abroad to work, the secrets must be kept at home as well. In speeches, interviews, and leaks, Obama's team has tried to explain why its operations abroad are lawful and prudent. But to comply with rules of classified information and covert action, the explanations are conveyed in limited, abstract, and often awkward terms. They usually raise more questions than they answer—and secrecy rules often preclude the administration from responding to follow-up questions, criticisms, and charges. ¶ As a result, much of what the administration says about its secret war—about civilian casualties, or the validity of its legal analysis, or the quality of its internal deliberations—seems incomplete, self-serving, and ultimately non-credible. These trust-destroying tendencies are exacerbated by its persistent resistance to transparency demands from Congress, from the press, and from organizations such as the aclu that have sought to know more about the way of the knife through Freedom of Information Act requests.¶ A related sin is the Obama administration's surprising failure to secure formal congressional support. Nearly every element of Obama's secret war rests on laws—especially the congressional authorization of force (2001) and the covert action statute (1991)—designed for different tasks. The administration could have worked with Congress to update these laws, thereby forcing members of Congress to accept responsibility and take a stand, and putting the secret war on a firmer political and legal foundation. But doing so would have required extended political efforts, public argument, and the possibility that Congress might not give the president precisely what he wants.¶ The administration that embraced the way of the knife in order to lower the political costs of counterterrorism abroad found it easier to avoid political costs at home as well. But this choice deprived it of the many benefits of public argumentation and congressional support. What Donald Rumsfeld said self-critically of Bush-era unilateralism applies to Obama's unilateralism as well: it fails to "take fully into account the broader picture—the complete set of strategic considerations of a president fighting a protracted, unprecedented and unfamiliar war for which he would need sustained domestic and international support." ¶ Instead of seeking contemporary congressional support, the administration has relied mostly on government lawyers' secret interpretive extensions of the old laws to authorize new operations against new enemies in more and more countries. The administration has great self-confidence in the quality of its stealth legal judgments. But as the Bush administration learned, secret legal interpretations are invariably more persuasive within the dark circle of executive branch secrecy than when exposed to public sunlight. On issues ranging from proper targeting standards, to the legality of killing American citizens, to what counts as an "imminent" attack warranting self-defensive measures, these secret legal interpretations—so reminiscent of the Bushian sin of unilateral legalism—have been less convincing in public, further contributing to presidential mistrust.¶ Feeling the heat from these developments, President Obama promised in his recent State of the Union address "to engage with Congress to ensure not only that our targeting, detention, and prosecution of terrorists remains consistent with our laws and system of checks and balances, but that our efforts are even more transparent to the American people and to the world." So far, this promise, like similar previous ones, remains unfulfilled. ¶ The administration has floated the idea of "[shifting] the CIA's lethal targeting program to the Defense Department," as The Daily Beast reported last month. Among other potential virtues, this move might allow greater public transparency about the way of the knife to the extent that it would eliminate the covert action bar to public discussion. But JSOC's non-covert targeted killing program is no less secretive than the CIA's, and its congressional oversight is, if anything, less robust. ¶ A bigger problem with this proposed fix is that it contemplates executive branch reorganization followed, in a best-case scenario, by more executive branch speeches and testimony about what it is doing in its stealth war. The proposal fails to grapple altogether with the growing mistrust of the administration's oblique representations about secret war. The president cannot establish trust in the way of the knife through internal moves and more words. Rather, he must take advantage of the separation of powers. Military detention, military commissions, and warrantless surveillance became more legitimate and less controversial during the Bush era because adversarial branches of government assessed the president's policies before altering and then approving them. President Obama should ask Congress to do the same with the way of the knife, even if it means that secret war abroad is harder to conduct.

#### One policy change will not reverse the course. This is a deep and fundamental rights issue for Europe

**UPI 12/20**/13 [United Press International, “Restoring lost trust may take many years: Germany,” Dec. 20, 2013 at 1:42 PM, pg. http://www.upi.com/Top\_News/Special/2013/12/20/Restoring-lost-trust-may-take-many-years-Germany/UPI-99901387564931/

BERLIN, Dec. 20 (UPI) -- Restoring trans-Atlantic trust lost as a result of spying controversies may take some time to repair, new German Foreign Minister Frank-Walter Steinmeier said as he took over from Guido Westerwelle.

"The Transatlantic Alliance is and remains the backbone of our security," Steinmeier said, addressing a Foreign Ministry gathering. But a lot has changed recently and much cannot be taken for granted, he added.

"Despite all placations citing the Western community of shared values, trust has been lost and it will require a great deal of joint effort to restore it," he added.

"Today we are confronted with the question of how we can reconcile freedom and security in a digitally connected world and in light of new threats that have indeed arisen. We must make it clear to our American friends that not everything that is technically possible is politically wise. And this goes far beyond the question of whether spying among friends is permissible or not.

"It also begs the question of how can we ensure that our citizens' fundamental right to privacy remains intact in the 21st century, against a fully transformed communications backdrop. How can we prevent the technical and legal fragmentation of the World Wide Web, on which a large part of our increasing prosperity is based?

"This trust will not be regained overnight, but we will work hard to restore it," Steinmeier said.

He said the transatlantic relationship "is currently under considerable strain -- Iraq war, Guantanamo, [U.S. secrets leaker Edward] Snowden, NSA [National Security Agency] are the words that come to mind in that context."