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#### Interpretation –

#### War powers authority is the power to take actions of war successfully

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(Mariah, *War Powers: The Politics of Constitutional Authority*, 2013, p. 50)

**The power to take the actions of war-**to fund troops, engage in policies antagonistic to other nations, give speeches that amplify the likelihood of war, place armies in disputed territory, order them to shoot, legally declare hostilities**-are dispersed between Congress and the presidency. Many of these institutions' other powers become war powers when** used in a context of war**.** The relational conception of war authority insists that the branches use their powers according to the Constitution's substantive and processual standards**. It also insists that the authority to review and judge behavior and rhetoric follows the Constitution's distribution of war powers.** When the branches act and judge in ways that summon the governance capacities the Constitution makes available, using their capacities to determine good allocations of constitutional war authority in the context of their own times, then their acts of power become constitutionally authoritative.

#### Violation –The affirmative doesn’t specify that they are restricting indefinite detention war powers, which means they also restrict immigration detention, which isn’t a war power---AND---Immigration is under completely different authority – not presidential war power

Siskin 2012

[Alison Siskin, Specialist in Immigration Policy, January 12, 2012, Immigration-Related Detention: Current Legislative Issues, http://www.fas.org/irp/crs/RL32369.pdf]jap

The Immigration and Nationality Act (INA) provides broad authority to detain aliens while ¶ awaiting a determination of whether they should be removed from the United States and ¶ mandates that certain categories of aliens are subject to mandatory detention (i.e., the aliens must ¶ be detained) by DHS. Aliens not subject to mandatory detention may be detained, paroled, or ¶ released on bond. “Enemy combatants” at the Guantanamo U.S. military base in Cuba are not ¶ under the authority of DHS, nor are noncitizens incarcerated in federal, state, and local ¶ penitentiaries for criminal acts. ¶ Any alien can be detained while DHS determines whether the alien should be removed from the ¶ United States. The large majority of the detained aliens have committed a crime while in the ¶ United States, have served their criminal sentence, and are detained while undergoing deportation ¶ proceedings. Other detained aliens include those who arrive at a port-of-entry without proper ¶ documentation (e.g., fraudulent or invalid visas, or no documentation), but most of these aliens ¶ are quickly returned to their country of origin through a process known as expedited removal.¶ 3¶ The majority of aliens arriving without proper documentation who claim asylum are held until ¶ their “credible fear hearing,” but some asylum seekers are held until their asylum claims have been adjudicated.

#### Reasons to vote negative:

#### 1. Limits - "Indefinite detention" happens in a variety of areas – medical quarantine, legal commitment, and immigration – that doubles the size of the topic by adding 3 more areas to the 4 listed in the topic.

#### 2. Ground – Presidential power to make war is the core of the topic – focusing on immigration sidesteps all our DAs about presidential flexibility, the war on terrorism, and the US military.  That leaves bad kritiks and the politics DA.

### DA 1

#### Presidential war powers high

Posner 13 President Ruthless, Eric Posner, professor at the University of Chicago Law School, May 23, 2013, http://www.slate.com/articles/news\_and\_politics/view\_from\_chicago/2013/05/obama\_s\_speech\_he\_s\_just\_like\_bush\_in\_pushing\_the\_limits\_of\_executive\_power.html

In his speech today about the future of American counterterrorism operations, President Obama said that he will order drone strikes less frequently and redouble efforts to transfer some detainees out of Guantánamo. He suggested a more focused approach to terrorist threats in light of the diminished capacity of al-Qaida. Yet he also maintained the administration’s long-standing legal approach. The speech thus may well confirm the view among Obama’s civil libertarian critics that he is the most lawless executive since, um, George Bush. They are right to see the continuity from one president to the next, but they are wrong to believe that Obama has violated the law.

#### Restrictions on detention kill exec flex—key to prevent terrorism

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

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

#### Judicial restrictions undermine the executive- tanks heg

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

Supreme Court Justices--along with legal advocates--need to conceptualize and prioritize big theoretical matters of institutional design and form and function in the American national security tripartite constitutional system. By way of an excellent introduction to these vital issues of legal theory, the Justices should pull down from the library shelf of the sumptuous Supreme Court Library in Washington, D.C. (or more likely have a clerk do this chore) the old chestnut, The Legal Process: Basic Problems in the Making and Application of Law by the late Harvard University law professors Henry M. Hart and Albert M. Sacks. n7 Among the rich insights on institutional design coupled with form and function in the American legal system that are germane to the Court's interpretation of national security law-making and decision-making by the President are several pertinent points. First, "Hart and Sacks' intellectual starting point was the interconnectedness of human beings, and the usefulness of law in helping us coexist peacefully together." n8 By implication, therefore, the Court should be mindful of the unique [\*883] constitutional role played by the POTUS in preserving peace and should prevent imprudent judicial actions that would undermine American national security. Second, Hart and Sacks, continuing their broad insights of social theory, noted that legal communities establish "institutionalized[] procedures for the settlement of questions of group concern" n9 and regularize "different procedures and personnel of different qualifications . . . appropriate for deciding different kinds of questions" n10 because "every modern society differentiates among social questions, accepting one mode of decision for one kind and other modes for others-e.g., courts for 'judicial' decisions and legislatures for 'legislative' decisions" n11 and, extending their conceptualization, an executive for "executive" decisions. n12 Third, Professors Hart and Sacks made seminal theoretical distinctions between rules, standards, principles, and policies. n13 While all four are part of "legal arrangements [\*884] in an organized society," n14 and all four of these arrangements are potentially relevant in judicial review of presidential national security decisions, principles and policies n15 are of special concern because of the sprawling, inchoate, and rapidly changing nature of national security threats and the imperative of hyper-energy in the Executive branch in responding to these threats. n16¶ The Justices should also consult Professor Robert S. Summers's masterful elaboration and amplification of the Hart and Sacks project on enhancing a flourishing legal system: the 2006 opus, Form and Function in a Legal System: A General Study. n17 The most important points that [\*885] Summers makes that are relevant to judicial review of American national security presiprudence are three key considerations. First, a "conception of the overall form of the whole of a functional [legal] unit is needed to serve the founding purpose of defining, specifying, and organizing the makeup of such a unit so that it can be brought into being and can fulfill its own distinctive role" n18 in synergy with other legal units to serve overarching sovereign purposes for a polity. The American constitutional system of national security law and policy should be appreciated for its genius in making the POTUS the national security sentinel with vast, but not unlimited, powers to protect the Nation from hostile, potentially catastrophic, threats. Second, "a conception of the overall form of the whole is needed for the purpose of organizing the internal unity of relations between various formal features of a functional [legal] unit and between each formal feature and the complementary components of the whole unit." n19 Thus, Supreme Court Justices should have a thick understanding of the form of national security decision-making conceived by the Founders to center in the POTUS; the ways the POTUS and Congress historically organized the processing of national security through institutions like the National Security Council and the House and Senate intelligence committees; and the ways the POTUS has structured national security process through such specific legal forms as Presidential Directives, National Security Decision Directives, National Security Presidential Decision Directives, Presidential Decision Directives, and National Security Policy Directives in classified, secret documents along with typically public Executive Orders. n20 Third, according to Summers, "a conception of the overall form of the whole functional [legal] unit is needed to organize further the mode of operation and the instrumental capacity of the [legal] unit." n21 So, the Supreme Court should be aware that tinkering with national security decisions of the POTUS--unless clearly necessary to counterbalance an indubitable violation of the text of the Constitution--may lead to unforeseen negative second-order consequences in the ability of the POTUS (with or without the help of Congress) to preserve, protect, and defend the Nation. n22¶ [\*886] B. Geopolitical Strategic Considerations Bearing on Judicial Interpretation¶ Before the United States Supreme Court Justices form an opinion on the legality of national security decisions by the POTUS, they should immerse themselves in judicially-noticeable facts concerning what national security expert, Bruce Berkowitz, in the subtitle of his recent book, calls the "challengers, competitors, and threats to America's future." n23 Not that the Justices need to become experts in national security affairs, n24 but every Supreme Court Justice should be aware of the following five basic national security facts and conceptions before sitting in judgment on presiprudential national security determinations.¶ (1) "National security policy . . . is harder today because the issues that are involved are more numerous and varied. The problem of the day can change at a moment's notice." n25 While "[y]esterday, it might have been proliferation; today, terrorism; tomorrow, hostile regional powers" n26, the twenty-first century reality is that "[t]hreats are also more likely to be intertwined--proliferators use the same networks as narco-traffickers, narco-traffickers support terrorists, and terrorists align themselves with regional powers." n27¶ (2) "Yet, as worrisome as these immediate concerns may be, the long-term challenges are even harder to deal with, and the stakes are higher. Whereas the main Cold War threat--the Soviet Union--was brittle, most of the potential adversaries and challengers America now faces are resilient." n28¶ (3) "The most important task for U.S. national security today is simply to retain the strategic advantage. This term, from the world of military doctrine, refers to the overall ability of a nation to control, or at least influence, the course of events." n29 Importantly, "[w]hen you hold [\*887] the strategic advantage, situations unfold in your favor, and each round ends so that you are in an advantageous position for the next. When you do not hold the strategic advantage, they do not." n30¶ (4) While "keeping the strategic advantage may not have the idealistic ring of making the world safe for democracy and does not sound as decisively macho as maintaining American hegemony," n31 maintaining the American "strategic advantage is critical, because it is essential for just about everything else America hopes to achieve--promoting freedom, protecting the homeland, defending its values, preserving peace, and so on." n32¶ (5) The United States requires national security "agility." n33 It not only needs "to refocus its resources repeatedly; it needs to do this faster than an adversary can focus its own resources." n34¶ [\*888] As further serious preparation for engaging in the jurisprudence of American national security presiprudence in hotly contested cases and controversies that may end up on their docket, our Supreme Court Justices should understand that, as Walter Russell Mead pointed out in an important essay a few years ago, n35 the average American can be understood as a Jacksonian pragmatist on national security issues. n36 "Americans are determined to keep the world at a distance, while not isolating ourselves from it completely. If we need to take action abroad, we want to do it on our terms." n37 Thus, recent social science survey data paints "a picture of a country whose practical people take a practical approach to knowledge about national security. Americans do not bother with the details most of the time because, for most Americans, the details do not matter most the time." n38 Indeed, since the American people "do know the outlines of the big picture and what we need to worry about [in national security affairs] so we know when we need to pay greater attention and what is at stake. This is the kind of knowledge suited to a Jacksonian." n39¶ Turning to how the Supreme Court should view and interpret American presidential measures to oversee national security law and policy, our Justices should consider a number of important points. First, given the robust text, tradition, intellectual history, and evolution of the institution of the POTUS as the American national security sentinel, n40 and the unprecedented dangers to the United States national security after 9/11, n41 national security presiprudence should be accorded wide latitude by the Court in the adjustment (and tradeoffs) of trading liberty and security. n42 Second, Justices should be aware that different presidents [\*889] institute changes in national security presiprudence given their unique perspective and knowledge of threats to the Nation. n43 Third, Justices should be restrained in second-guessing the POTUS and his subordinate national security experts concerning both the existence and duration of national security emergencies and necessary measures to rectify them. "During emergencies, the institutional advantages of the executive are enhanced", n44 moreover, "[b]ecause of the importance of secrecy, speed, and flexibility, courts, which are slow, open, and rigid, have less to contribute to the formulation of national policy than they do during normal times." n45 Fourth, Supreme Court Justices, of course, should not give the POTUS a blank check--even during times of claimed national emergency; but, how much deference to be accorded by the Court is "always a hard question" and should be a function of "the scale and type of the emergency." n46 Fifth, the Court should be extraordinarily deferential to the POTUS and his executive subordinates regarding questions of executive determinations of the international laws of war and military tactics. As cogently explained by Professors Eric Posner and Adrian Vermeule, n47 "the United States should comply with the laws of war in its battle against Al Qaeda"--and I would argue, other lawless terrorist groups like the Taliban--"only to the extent these laws are beneficial to the United States, taking into account the likely response of [\*890] other states and of al Qaeda and other terrorist organizations," n48 as determined by the POTUS and his national security executive subordinates.

#### Weak executive causes global instability- goes nuclear

Coes 11 The disease of a weak president, Ben Coes, a former speechwriter in the George H.W. Bush administration, managed Mitt Romney’s successful campaign for Massachusetts Governor in 2002, 09/30/2011, http://dailycaller.com/2011/09/30/the-disease-of-a-weak-president/2/

Unfortunately, President Obama’s weakness in his response to Israel and Iran is a cause for real concern, not only for our Israeli allies, but for other American allies as well. A weak U.S. president emboldens our enemies. A good example of this is what happened the last time we had a weak president, namely Jimmy Carter.¶ The disease of a weak president usually begins with the Achilles’ heel all politicians are born with — the desire to be popular. It leads to pandering to different audiences, people and countries and creates a sloppy, incoherent set of policies. Ironically, it ultimately results in that very politician losing the trust and respect of friends and foes alike. ¶ In the case of Israel, those of us who are strong supporters can at least take comfort in the knowledge that Tel Aviv will do whatever is necessary to protect itself from potential threats from its unfriendly neighbors. While it would be preferable for the Israelis to be able to count on the United States, in both word and deed, the fact is right now they stand alone. Obama and his foreign policy team have undercut the Israelis in a multitude of ways. Despite this, I wouldn’t bet against the soldiers of Shin Bet, Shayetet 13 and the Israeli Defense Forces.¶ But Obama’s weakness could — in other places — have implications far, far worse than anything that might ultimately occur in Israel. The triangular plot of land that connects Pakistan, India and China is held together with much more fragility and is built upon a truly foreboding foundation of religious hatreds, radicalism, resource envy and nuclear weapons.¶ If you can only worry about preventing one foreign policy disaster, worry about this one.¶ Here are a few unsettling facts to think about:¶ First, Pakistan and India have fought three wars since the British de-colonized and left the region in 1947. All three wars occurred before the two countries had nuclear weapons. Both countries now possess hundreds of nuclear weapons, enough to wipe each other off the map many times over.¶ Second, Pakistan is 97% Muslim. It is a question of when — not if — Pakistan elects a radical Islamist in the mold of Ayatollah Khomeini as its president. Make no mistake, it will happen, and when it does the world will have a far greater concern than Ali Khamenei or Mahmoud Ahmadinejad and a single nuclear device.¶ Third, China sits at the northern border of both India and Pakistan. China is strategically aligned with Pakistan. Most concerning, China covets India’s natural resources. Over the years, it has slowly inched its way into the northern tier of India-controlled Kashmir Territory, appropriating land and resources and drawing little notice from the outside world. In my book, Coup D’Etat, I consider this tinderbox of colliding forces in Pakistan, India and China as a thriller writer. But thriller writers have the luxury of solving problems by imagining solutions on the page. In my book, when Pakistan elects a radical Islamist who then starts a war with India and introduces nuclear weapons to the theater, America steps in and removes the Pakistani leader through a coup d’état.¶ I wish it was that simple.¶ The more complicated and difficult truth is that we, as Americans, must take sides. We must be willing to be unpopular in certain places. Most important, we must be ready and willing to threaten our military might on behalf of our allies. And our allies are Israel and India. There are many threats out there — Islamic radicalism, Chinese technology espionage, global debt and half a dozen other things that smarter people than me are no doubt worrying about. But the single greatest threat to America is none of these. The single greatest threat facing America and our allies is a weak U.S. president. It doesn’t have to be this way. President Obama could — if he chose — develop a backbone and lead. Alternatively, America could elect a new president. It has to be one or the other. The status quo is simply not an option.

### DA 2

#### Budget agreement will pass---PC is key

Calmes & Parker 10/10 Jackie Calmes and Ashley Parker are NYT Staff Reporters, “No Quick Deal, but Offer by G.O.P. on Debt Shifts the Tone,” 10-10-13, <http://www.nytimes.com/2013/10/11/us/politics/debt-limit-debate.html?_r=0>, DOA: 10-10-13, y2k

In statements afterward that struck the most positive tone in weeks of acrimony, House Republicans described their hour-and-a-half-long meeting with Mr. Obama as “a useful and productive conversation,” while the White House described “a good meeting,” though “no specific determination was made” about the Republicans’ offer. Both agreed to continue talks through the night. People familiar with the meeting said that Mr. Obama pressed Republicans to reopen the government, and that Republicans raised the possibility that financing could be restored by early next week if terms for broad budget negotiations could be reached. Twenty Republicans, led by Speaker John A. Boehner, went to the White House at Mr. Obama’s invitation after a day of fine-tuning their proposal to increase the Treasury Department’s authority to borrow money to pay existing obligations through Nov. 22. The government is expected to reach its borrowing limit next week. In exchange, they sought a commitment by the president to negotiate a deal for long-term deficit reduction and a tax overhaul. The president “didn’t say yes, didn’t say no,” said Representative Paul D. Ryan, Republican of Wisconsin and chairman of the House Budget Committee. He added, “We agreed to continue talking and continue negotiating.” An initial report that Mr. Obama had rejected the Republicans’ offer was too definitive and came before Republican leaders or the White House had made it clear to reporters that the negotiations would continue. Still, the House Republican offer represented a potentially significant breakthrough. Even if Democrats found fault with the Republicans’ immediate proposal — for example, it would prevent a Treasury secretary from engaging in accounting maneuvers to stave off potential default — it was seen as an opening gambit in the legislative dance toward some resolution before the government is expected to breach its debt limit on Thursday. Even before the meeting, the White House and its Democratic allies in Congress were all but declaring victory at the evidence that Republicans — suffering the most in polls, and pressured by business allies and donors not to provoke a government default — were seeking a way out of the impasse. After some fretful weeks, the Democrats believe, Mr. Obama was seeing some payoff for his big gamble this year. Burned by his experience with House Republicans in mid-2011, when brinkmanship over the debt limit hobbled the already weak economy, Mr. Obama began his second term vowing never again to negotiate over raising the ceiling or to give any concessions to Republicans for performing an act that is their constitutional responsibility. “The good news is that Republicans have accepted the principle that they’re not going to attach conditions to the debt ceiling,” said Representative Chris Van Hollen of Maryland, the senior Democrat on the House Budget Committee. “The bad news is they’ve only extended the debt ceiling for six weeks, which will continue to generate huge amounts of destructive uncertainty in the economy. And, of course, they also continue to keep the government shut down.” For House Republicans, the maneuvers represented a near complete reversal of their original strategy in September of going to the mat over the debt limit but not shutting down the government. Now, under pressure from falling poll numbers and angry business supporters, they are seeking a compromise on the debt ceiling. Yet for now, they are still refusing to finance and reopen the government without some concessions. Mr. Boehner and his colleagues left the White House without speaking to waiting reporters, and quickly gathered in his Capitol suite for further discussion. Their debt limit proposal could come to a vote as soon as Friday. Before the White House meeting, administration and Congressional Democrats said they were skeptical that House Republican leaders could pass the proposal. A large faction of Tea Party conservatives campaigned on promises never to vote to increase the nation’s debt limit, and they say they do not believe the warnings that failing to act could provoke a default and economic chaos globally. And Congressional Democrats vowed to oppose any proposal that did not also fully finance a government now shuttered since the fiscal year began Oct. 1. “We’ll see what they’re able to pass,” said Mr. Obama’s press secretary, Jay Carney. Senate Democrats had their own White House meeting with Mr. Obama and Vice President Joseph R. Biden Jr. three hours before the House Republicans arrived, and the majority leader, Senator Harry Reid of Nevada, declined to embrace the Republicans’ debt limit proposal until he saw it. He told reporters that Democrats would not negotiate on further deficit reductions until House Republicans agreed to the measure passed by the Senate to finance and open the government through mid-November. “Not going to happen,” Mr. Reid said. “Open the government,” he added. “There is so much pain and suffering out there. It is really tear-jerking, to say the least.” Mr. Ryan said before the White House meeting that Republicans were now willing to formally negotiate with Senate Democrats over a long-term, comprehensive budget framework. The Republicans have resisted such a move since April, fearing that it would require compromises, like raising additional tax revenues, that would enrage the party’s conservative base heading into the 2014 midterm elections. Many House Republicans, leaving a closed-door party caucus earlier Thursday that at times grew contentious, said they would support their leadership’s short-term debt limit proposal. But they said they would do so only if Mr. Obama agreed to negotiate a broader deficit reduction deal, with big savings from entitlement programs. But the president has insisted he will not agree to significant reductions in projected Medicare and Medicaid spending — even his own tentative proposals — unless Republicans agree to raise revenues by curbing tax breaks for corporations and wealthy individuals. And Mr. Boehner in recent days reaffirmed the party’s anti-tax stance, suggesting future talks could founder on the same tax-and-entitlement spending divide that caused past negotiations to collapse. Economists across a broad spectrum agree that breaching the debt limit would damage the economy and could be calamitous if it is prolonged. The new Republican proposal could temporarily remove that threat.

#### The plan costs political capital – sparks huge fight and trades off with other agenda items

Hansen, America Associate Editor, 2013,

(Luke, "A Permanent Prison?", America, January, PAS) americamagazine.org/issue/article/permanent-prison 9-26-13

Growing Opposition¶ In “The Fall of Greg Craig, Obama’s Top Lawyer” (11/19/2009), Time magazine provides an account of what unfolded inside the White House during those first weeks of the Obama administration as they grappled with closing Guantánamo.¶ Just one day before Mr. Craig pitched his plan to the national security team, President Obama publicly released a series of memos from the U.S. Central Intelligence Agency that detailed the “enhanced interrogation” techniques used by the Bush administration. Michael Hayden, former C.I.A. director, had organized internal opposition to releasing the memos, but Mr. Obama did it anyway—consistent with his promise of greater transparency as well as taking the moral high road in the fight against terrorism.¶ Meanwhile Mr. Craig’s plan of releasing the Uighurs onto U.S. soil became public, and Republican leaders unleashed three weeks of relentless attacks against President Obama’s early foreign policy decisions. They claimed that Mr. Obama had emboldened America’s enemies by releasing the memos, and now he would endanger Americans by transferring prisoners into the United States—for release, further detention or trial.¶ Suddenly it was becoming too costly, politically, to take the moral high road. Time reported that, in late April, “Democratic pollsters charted a disturbing trend: a drop in Obama’s support among independents, driven in part by national-security issues.” Inside the White House, the early optimism and momentum faded. The administration was also concerned that the fight to close Guantánamo might distract from domestic priorities like health care and strengthening the economy.¶ In early May, Mr. Obama decided against releasing the Uighur detainees into the United States. “It was a political decision, to put it bluntly,” an aide told Time. Two weeks later, President Obama sought to address growing public discontent with a major speech on national security. In the speech, he not only announced that he would work with Congress to revamp the Bush-era military commissions, but he also embraced the use of indefinite detention without charges or trials for a group of detainees “who cannot be prosecuted yet who pose a clear danger to the American people.”¶ America’s Prison Problem¶ There are many plausible explanations for why President Obama failed to close the prison in his first term. He did not push hard enough. Conservative leaders successfully played on Americans’ fears. The administration was not prepared—or willing—to respond to the political attacks. Then the Congress, in bipartisan fashion, refused to allocate funds for closing the prison (and still continues to place restrictions on transferring detainees out of Guantánamo). Americans, collectively, are also responsible. If it had been politically popular for Mr. Obama to follow through on his promise to close Guantánamo, he would have.

#### Weakening Obama guts PC necessary to raise the debt ceiling

Lillis and Wasson 9/7 Fears of wounding Obama weigh heavily on Democrats ahead of vote, Fears of wounding Obama weigh heavily on Democrats ahead of vote, Mike Lillis and Erik Wasson, 09/07/13, http://thehill.com/homenews/house/320829-fears-of-wounding-obama-weigh-heavily-on-democrats

The prospect of wounding President Obama is weighing heavily on Democratic lawmakers as they decide their votes on Syria.¶ Obama needs all the political capital he can muster heading into bruising battles with the GOP over fiscal spending and the debt ceiling.¶ Democrats want Obama to use his popularity to reverse automatic spending cuts already in effect and pay for new economic stimulus measures through higher taxes on the wealthy and on multinational companies.¶ But if the request for authorization for Syria military strikes is rebuffed, some fear it could limit Obama's power in those high-stakes fights. ¶ That has left Democrats with an agonizing decision: vote "no" on Syria and possibly encourage more chemical attacks while weakening their president, or vote "yes" and risk another war in the Middle East.¶ “I’m sure a lot of people are focused on the political ramifications,” a House Democratic aide said.¶ Rep. Jim Moran (D-Va.), a veteran appropriator, said the failure of the Syria resolution would diminish Obama's leverage in the fiscal battles.¶ "It doesn't help him," Moran said Friday by phone. "We need a maximally strong president to get us through this fiscal thicket. These are going to be very difficult votes."¶ “Clearly a loss is a loss,” a Senate Democratic aide noted.¶ Publicly, senior party members are seeking to put a firewall between a failed Syria vote — one that Democrats might have a hand in — and fiscal matters.¶ Rep. Gerry Connolly (D-Va.) said Friday that the fear of damaging Obama just eight months into his second term "probably is in the back of people's minds" heading into the Syria vote. But the issue has not percolated enough to influence the debate.¶ "So far it hasn't surfaced in people's thinking explicitly," Connolly told MSNBC. "People have pretty much been dealing with the merits of the case, not about the politics of it — on our side." ¶ Moran said he doesn't think the political aftershocks would be the “deciding factor” in their Syria votes.¶ "I rather doubt that most of my colleagues are looking at the bigger picture," he said, "and even if they were, I don't think it would be the deciding factor."¶ Moran said the odds of passing the measure in the House looked slim as of Friday. ¶ Other Democrats are arguing that the Syria vote should be viewed in isolation from other matters before Congress.¶ “I think it’s important each of these major issues be decided on its own — including this one,” Rep. Sander Levin (Mich.), senior Democrat on the House Ways and Means Committee, said Friday.¶ With Obama scheduled to address the country Tuesday night, several Democrats said the fate of the Syria vote could very well hinge on the president's ability to change public opinion.¶ “This is going to be a fireside chat, somewhat like it was in the Thirties," Levin said. "I wasn’t old enough to know, one has to remember how difficult it was for President Roosevelt in WWII."¶ Rep. Elijah Cummings (D-Md.), who remains undecided on the Syria question, agreed.¶ "It's very, very important that the case for involvement in Syria not only be made to the members of Congress and the Senate, but it must also be made to the American people," Cummings said Friday in the Capitol. ¶ Still other Democrats, meanwhile, are arguing that the ripple effects of a Syria vote are simply too complicated to game out in advance. Some said the GOP has shown little indication it will advance Obama’s agenda even after his reelection, so a Syria failure would do little damage. ¶ “There is a constant wounding [of Obama] going on with the Tea Party on budgets, appropriations and the debt ceiling,” said Rep. Sheila Jackson Lee (D-Texas). “I am going to reach out to my colleagues, Tea Party or not, and ask is this really the way you want to project the political process?” ¶ Jackson Lee said using Syria to score political points would be “frolicking and frivolity” by the Tea Party. ¶ Yet others see a more serious threat to the Democrats' legislative agenda if the Syria vote fails.¶ A Democratic leadership aide argued that Republicans — some of whom are already fundraising on their opposition to the proposed Syria strikes — would only be emboldened in their fight against Obama's agenda if Congress shoots down the use-of-force resolution.¶ "It's just going to make things harder to do in Congress, that's for sure," the aide said Friday.

#### Debt ceiling kills economy- its on the brink

Kurtzleben 10/2 How Each New Fiscal Crisis Makes the Economy a Little Shakier, DANIELLE KURTZLEBEN, business and economics reporter for U.S. News & World Report, October 2, 2013, http://www.usnews.com/news/articles/2013/10/02/how-each-new-fiscal-crisis-makes-the-economy-a-little-shakier

That prospect is made exponentially more scary with a debt ceiling deadline fast-approaching as soon as Oct. 17.¶ "The problem this time is markets are used to people in Washington screaming, 'Oh my goodness, we're going off the cliff,'" says Justin Wolfers, professor of public policy and economics at the University of Michigan. "They've stopped paying attention to that. As a result we're not yet seeing financial markets substantially enough concerned about the debt ceiling. And that raises the possibility of Congress doing something reckless, because markets aren't giving them the wake-up call they've given them in the past."¶ [ALSO: Wall Street CEOs Meet at White House for Shutdown Talks]¶ "Reckless" action, like not raising the debt limit, could have effects that are, quite literally, unimaginable. The nation has never defaulted before, and if that should happen this time around, there's no telling exactly how it would play out. It could mean a spike in interest rates, making borrowing for businesses and homebuyers – not to mention the U.S. government – much harder, and potentially dragging the nation into recession. Even tiptoeing over the limit could shake confidence in the U.S. economy.¶ "Even if [lawmakers] decide they're going to raise the debt limit on the 18th or 19th or 20th of October, they will have done significant damage, and that will show up in the economic data," Zandi said.¶ Similarly, individual investors have remained calm in comparison with 2011.¶ "So far, the market reaction has been muted, especially when compared to the debt ceiling debate in 2011," says a Wednesday note from investment banking firm Keefe, Bruyette, & Woods.¶ In the weeks leading up to and following the 2011 debt ceiling debacle, the Dow fell by 14 percent. Stocks have slipped slightly in the past week, but it is uncertain how they will fare ahead of a debt limit crisis.¶ True, there are a few reasons why investors may be less shaky than in 2011. The U.S. and global economies alike have healed since then, and European debt crises in particular are not the threat they once were. In addition, rating agencies do not appear to be ready to downgrade the U.S. credit rating, as they were in 2011.¶ Still, whether the economy is in sorry shape or slowly recovering (as it is now), the possibility of hitting the debt ceiling could be disastrous. And analysts at Keefe, Bruyette, & Woods believe volatility in the stock market will pick up as Oct. 17 approaches.

#### Decline goes nuclear

Royal 10 director of Cooperative Threat Reduction at the U.S. Department of Defense, 2010¶ Jedediah, Economics of War and Peace: Economic, Legal, and Political Perspectives, pg 213-215

Less intuitive is how periods of economic decline may increase the likelihood of external conflict. Political science literature has contributed a moderate degree of attention to the impact of economic decline and the security and defense behavior of interdependent states. Research in this vein has been considered at systemic, dyadic and national levels. Several notable contributions follow. First, on the systemic level, Pollins (2008) advances Modelski and Thompson’s (1996) work on leadership cycle theory, finding that rhythms in the global economy are associated with the rise and fall of a pre-eminent power and the often bloody transition from one pre-eminent leader to the next. As such, exogenous shocks such as economic crises could usher in a redistribution of relative power (see also Gilpin, 1981) that leads to uncertainty about power balances, increasing the risk of miscalculation (Fearon 1995). Alternatively, even a relatively certain redistribution of power could lead to a permissive environment for conflicts as a rising power may seek to challenge a declining power (Werner, 1999). Separately, Pollins (1996) also shows that global economic cycles combined with parallel leadership cycles impact the likelihood of conflict among major, medium and small powers, although he suggests that the causes and connections between global economic conditions and security conditions remains unknown. Second, on a dyadic level, Copeland’s (1996, 2000) theory of trade expectations suggest that “future expectation of trade” is a significant variable in understanding economic conditions and security behavior of states. He argues that interdependent states are likely to gain pacific benefits from trade so long as they have an optimistic view of future trade relations. However, if the expectations of future trade decline, particularly for difficult to replace item such as energy resources, the likelihood for conflict increases, as states will be inclined to use force to gain access to those resources. Crises could potentially be the trigger for decreased trade expectations either on its own or because it triggers protectionist moves by interdependent states. Third, others have considered the link between economic decline and external armed conflict at a national level. Blomberg and Hess (2002) find a strong correlation between internal conflict and external conflict, particularly during periods of economic downturn. They write, The linkages between internal and external conflict and prosperity are strong and mutually reinforcing. Economic conflict tends to spawn internal conflict, which in turn returns the favor. Moreover, the presence of a recession tends to amplify the extent to which international and external conflicts self-reinforce each other. (Blomberg and Hess, 2002, p. 89) Economic decline has also been linked with an increase in the likelihood of terrorism (Blomberg, Hess and Weerapana, 2004), which has the capacity to spill across borders and lead to external tensions. Furthermore, crises generally reduce the popularity of a sitting government. “Diversionary theory” suggests that, when facing unpopularity arising from economic decline, sitting governments have increased incentives to fabricate external military conflicts to create a “rally around the flag” effect. Wang (1996), DeRouen (1995) and Blomberg, Hess and Thacker (2006) find supporting evidence showing that economic decline and use of force are at least indirectly correlated. Gelpi (1997), Miller (1999), and Kisangani and Pickering (2009) suggest that the tendency towards diversionary tactics are greater for democratic states than autocratic states due to the fact the democratic leaders are generally more susceptible to being removed from office due to lack of domestic support. De DeRouen (2000) has provided evidence showing that periods of weak economic performance in the United States and thus weak Presidential popularity are statically linked to an increase in the use of force. In summary, recent economic scholarship positively correlates economic integration with an increase in the frequency of economic crises, whereas political science scholarship links economic decline with external conflict at systemic, dyadic and national levels. This implied connection between integration, crises and armed conflict has not featured prominently in economic-security debate and deserves more attention. This observation is not contradictory to other perspectives that link economic interdependence with a decrease in the likelihood of external conflict, such as those mentioned in the first paragraph of this chapter. Those studies tend to focus on dyadic interdependence instead of global interdependence and do not specifically consider

### DA 3

#### Obama is prioritizing capture over drone strikes now

David Corn 13, Washington Bureau Chief at Mother Jones, 5/23/13, “Obama's Counterterrorism Speech: A Pivot Point on Drones and More?,” http://www.motherjones.com/mojo/2013/05/obama-speech-drones-civil-liberties

So Obama's speech Thursday on counterterrorism policies—which follows his administration's acknowledgment yesterday that it had killed four Americans (including Anwar al-Awlaki, an Al Qaeda leader in Yemen)—is a big deal, for with this address, Obama is self-restricting his use of drones and shifting control of them from the CIA to the military. And the president has approved making public the rules governing drone strikes.¶ The New York Times received the customary pre-speech leak and reported:¶ A new classified policy guidance signed by Mr. Obama will sharply curtail the instances when unmanned aircraft can be used to attack in places that are not overt war zones, countries like Pakistan, Yemen and Somalia. The rules will impose the same standard for strikes on foreign enemies now used only for American citizens deemed to be terrorists.¶ Lethal force will be used only against targets who pose "a continuing, imminent threat to Americans" and cannot feasibly be captured, Attorney General Eric H. Holder Jr. said in a letter to Congress, suggesting that threats to a partner like Afghanistan or Yemen alone would not be enough to justify being targeted.¶ These moves may not satisfy civil-liberties-minded critics on sthe right and the left. Obama is not declaring an end to indefinite detention or announcing the closing of Gitmo—though he is echoing his State of the Union vow to revive efforts to shut down that prison. Still, these moves would be unimaginable in the Bush years. Bush and Cheney essentially believed the commander in chief had unchallenged power during wartime, and the United States, as they saw it, remained at war against terrorism. Yet here is Obama subjecting the drone program to a more restrictive set of rules—and doing so publicly. This is very un-Cheney-like. (How soon before the ex-veep arises from his undisclosed location to accuse Obama of placing the nation at risk yet again?)¶ Despite Obama's embrace of certain Bush-Cheney practices and his robust use of drones, the president has tried since taking office to shift US foreign policy from a fixation on terrorism. During his first days in office, he shied away from using the "war on terrorism" phrase. And his national security advisers have long talked of Obama's desire to reorient US foreign policy toward challenges in the Pacific region. By handing responsibility for drone strikes to the military, Obama is helping CIA chief John Brennan, who would like to see his agency move out of the paramilitary business and devote more resources to its traditional tasks of intelligence gathering and analysis.¶ With this speech, Obama is not renouncing his administration's claim that it possesses the authority to kill an American overseas without full due process. The target, as Holder noted in that letter to Congress, must be a senior operational leader of Al Qaeda or an associated group who poses an "imminent threat of violent attack against the United States" and who cannot be captured, and Holder stated that foreign suspects now can only be targeted if they pose "a continuing, imminent threat to Americans." (Certainly, there will be debates over the meaning of "imminent," especially given that the Obama administration has previously used an elastic definition of imminence.) And Obama is not declaring an end to the dicey practice of indefinite detention or a conclusion to the fight against terrorism.

#### Detention closure increases drones use- undermines counter terrorism

Goldsmith 12 Proxy Detention in Somalia, and the Detention-Drone Tradeoff, Jack Goldsmith, Henry L. Shattuck Professor at Harvard Law School, served as Assistant Attorney General, Office of Legal Counsel from 2003–2004, and Special Counsel to the Department of Defense from 2002–2003, member of the Hoover Institution Task Force on National Security and Law, June 29, 2012, http://www.lawfareblog.com/2012/06/proxy-detention-in-somalia-and-the-detention-drone-tradeoff/

There has been speculation about the effect of the Obama administration’s pinched detention policy – i.e. no new detainees brought to GTMO, and no new detainees to Parwan (Afghanistan) from outside Afghanistan – on its other counterterrorism policies. I have long believed there must be some tradeoff between narrowing U.S. detention capabilities and other counterterrorism options, at least implicitly, and not necessarily for the better. As I wrote three years ago, in response to news reports that the Obama administration’s cutback on USG detentions resulted in more USG drone strikes and more outsourcing of rendition, detention, and interrogation:¶ There are at least two problems with this general approach to incapacitating terrorists. First, it is not ideal for security. Sometimes it would be more useful for the United States to capture and interrogate a terrorist (if possible) than to kill him with a Predator drone. Often the United States could get better information if it, rather than another country, detained and interrogated a terrorist suspect. Detentions at Guantanamo are more secure than detentions in Bagram or in third countries.The second problem is that terrorist suspects often end up in less favorable places. Detainees in Bagram have fewer rights than prisoners at Guantanamo, and many in Middle East and South Asian prisons have fewer yet. Likewise, most detainees would rather be in one of these detention facilities than be killed by a Predator drone. We congratulate ourselves when we raise legal standards for detainees, but in many respects all we are really doing is driving the terrorist incapacitation problem out of sight, to a place where terrorist suspects are treated worse.

#### Unchecked drone usage causes great power war and hotspot escalation

Dowd 13 (Alan W. Dowd, widely published writer on national defense, foreign policy, and international security including contributions to Parameters, Policy Review, The Journal of Diplomacy and International Relations, World Politics Review, American Outlook, The Baltimore Sun, The Washington Times, The National Post, The Wall Street Journal Europe, The Jerusalem Post, and The Financial Times Deutschland, Winter-Spring 2013, “Drone Wars: Risks and Warnings,” Parameters, <http://www.strategicstudiesinstitute.army.mil/pubs/parameters/Issues/WinterSpring_2013/1_Article_Dowd.pdf>)

If these geo-political consequences of remote-control war do not get ¶ our attention, then the looming geo-strategic consequences should. If ¶ we make the argument that UCAV pilots are in the battlespace, then we are effectively saying that the battlespace is the entire earth. If that is the ¶ case, the unintended consequences could be dramatic.¶ First, if the battlespace is the entire earth, the enemy would seem to ¶ have the right to wage war on those places where UCAV operators are based. ¶ That’s a sobering thought, one few policymakers have contemplated.¶ Second, power-projecting nations are following America’s lead and ¶ developing their own drones to target their distant enemies by remote. ¶ An estimated 75 countries have drone programs underway.45 Many of ¶ these nations are less discriminating in employing military force than ¶ the United States—and less skillful. Indeed, drones may usher in a new ¶ age of accidental wars. If the best drones deployed by the best military ¶ crash more than any other aircraft in America’s fleet, imagine the accident rate for mediocre drones deployed by mediocre militaries. And then ¶ imagine the international incidents this could trigger between, say, India and Pakistan; North and South Korea; Russia and the Baltics or Poland ¶ or Georgia; China and any number of its wary neighbors.¶ China has at least one dozen drones on the drawing board or in production, and has announced plans to dot its coastline with 11 drone bases ¶ in the next two years.46 The Pentagon’s recent reports on Chinese military power detail “acquisition and development of longer-range UAVs ¶ and UCAVs . . . for long-range reconnaissance and strike”; development ¶ of UCAVs to enable “a greater capacity for military preemption”; and ¶ interest in “converting retired fighter aircraft into unmanned combat ¶ aerial vehicles.”47 At a 2011 air show, Beijing showcased one of its newest drones by playing a video demonstrating a pilotless plane tracking a US ¶ aircraft carrier near Taiwan and relaying targeting information.48¶ Equally worrisome, the proliferation of drones could enable nonpower-projecting nations—and nonnations, for that matter—to join the ¶ ranks of power-projecting nations. Drones are a cheap alternative to ¶ long-range, long-endurance warplanes. Yet despite their low cost, drones ¶ can pack a punch. And owing to their size and range, they can conceal ¶ their home address far more effectively than the typical, nonstealthy ¶ manned warplane. Recall that the possibility of surprise attack by drones ¶ was cited to justify the war against Saddam Hussein’s Iraq.49¶ Of course, cutting-edge UCAVs have not fallen into undeterrable ¶ hands. But if history is any guide, they will. Such is the nature of proliferation. Even if the spread of UCAV technology does not harm the ¶ United States in a direct way, it is unlikely that opposing swarms of ¶ semiautonomous, pilotless warplanes roaming about the earth, striking at will, veering off course, crashing here and there, and sometimes ¶ simply failing to respond to their remote-control pilots will do much to ¶ promote a liberal global order.¶ It would be ironic if the promise of risk-free warpresented by drones ¶ spawned a new era of danger for the United States and its allies.

### CP 1

#### Text: The President of the United States should issue a National Security Directive requiring the Department of Defense include in its Quadrennial Defense Review a recommendation to restrict the President of the United States authority to detain individuals indefinitely. The President should not de-classify information regarding this National Security Directive.

#### QDR solves- reduces war powers

Parsons, National Defense Magazine Staff Writer, 2013,

(Dan, "Analyst: 2014 Defense Review Offers Opportunity for Real Reform", National Defense Magazine, 6-17, PAS) [www.nationaldefensemagazine.org/blog/lists/posts/post.aspx?ID=1182](http://www.nationaldefensemagazine.org/blog/lists/posts/post.aspx?ID=1182) 9-2-13

Instead of shoehorning its current force structure within a confined budget, the U.S. military should decide what it wants to be able to accomplish in the future and then design an affordable force to achieve those goals, a new study on the upcoming Quadrennial Defense Review contends. ¶ ¶ “We have a very capable force today. But the QDR is supposed to look out into the future, 20 years in the future and detect trends in the threats, trends in technology and where we should put our resources to be prepared for those future threats.,” Mark Gunzinger, author of “Shaping America’s Military: Toward a New Force Planning Construct, said June 13 during a presentation of the report. ¶ ¶ “We need to decide what capabilities we need for the future, before we decide what cuts we’re going to make today,” added Gunzinger, a senior fellow at the Center for Strategic and Budgetary Assessments, the Washington, D.C.-based think tank that published the report. ¶ ¶ Gunzinger’s concern is that the QDR that is scheduled to be published in 2014 will simply cut the current military down to a size that is affordable based on the current constrained fiscal environment. Mandated by law, next year’s QDR is the first in 11 years that will be drafted without a seemingly endless pot of money to fund its objectives. In fact, this and the next QDR fall squarely into a timeframe when Pentagon officials can count on shrinking budgets.¶ ¶ “The QDR could become another budget-dominated drill, which could lead the U.S. military to cut force structure, personnel and programs resulting in a force structure that is a smaller version of what we have today — a force structure that is, frankly, best prepared for fading threats,” Gunzinger said. “You should invest in the future first, before you balance the budget.”¶

### CP 2

#### Text: The United States Supreme Court should rule that Bahrain’s right to democracy requires civil society assistance.

#### CIL right to democracy creates a legal obligation for promotion

**Glen ‘11** Georgetown law professor, 2011 (Patrick, “Democracy Promotion in the Obama Administration: An Opportunity to Match Action to Rhetoric”, Georgetown Public Law and Legal Theory Research Paper No. 10-31 http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1494&context=facpub)

Advocacy for a “right to democracy” under international human rights law is nothing new, and has roots extending at least as far back as the early 1990’s and the period of expansive democratization following the fall of the Soviet Union.138 Since that time, an explicit right to democracy has been recognized and institutionalized by the Organization of American States,139 and been pronounced by the former United Nations Commission on Human Rights.140 Moreover, the United Nations General Assembly has itself advocated on behalf of promoting democracy and consolidating democratic gains.141 Besides these explicit pronouncements of a right to democracy, it is clear that prevailing international law largely protects all those rights, both substantive and procedural, that comprise modern conceptions of liberal democracy.142 Prevailing international law protects participatory rights in government, as well as the most important substantive rights, including the freedoms of assembly, free speech, and the press. Although it seems that these international instruments are more honored in the breach, at times, it cannot be said that they do not reflect the current status of the international legal order. Some have even argued that the existence of these legal obligations coupled with state observance thereof have created a customary international law right to democracy.143 To the contrary, others contend that these instruments solely contain a hortatory obligation on the part of states to develop towards democracy.14 The view that there is a customary international law right to democracy may assume too much, at least at this stage, but the view that these instruments establish a bare obligation to develop towards democracy degrades the rights already recognized under international law. It seems clear that if a state were to respect the rights contained in the established human rights treaties, including the International Covenant on Civil and Political Rights, that state could not be anything but a democracy. A state that would adhere to the precepts contained in these treaties would respect the populace’s participatory rights in governance, as well as a substantial swath of substantive rights, from the rights to due process, life, and liberty, to the specific freedoms of assembly, free speech, and the press, to mention just a few. Looked at in this way, the right to democracy becomes a kind of second-order right, itself derived from the respect for these other discrete rights, as well as a right culminative in nature – the end result of the state’s respect for its citizens’ particular human rights. The United States should be at the forefront of this effort to advocate on behalf of a right to democracy in the present, as it has been previously in both the former Human Rights Commission and the Organization of American States. This advocacy should continue in the form of non-binding resolutions and pronouncements, such as those made by the OAS and United Nations General Assemblies, but it could also take the form of a more legally binding convention or treaty, either regional in nature or under the auspices of the United Nations.145 Such an approach would have the benefit of grouping together in one instrument all those rights and freedoms deemed necessary for democratic governance to flourish, and declaring that respect for the listed rights and freedoms is the baseline a country will have to meet in order to be deemed democratic under international law. However the United States proceeds in this area, it should rest assured that its advocacy of a right to democracy serves its long-term strategic interests as well as representing the global realization of those ideals and imperatives that lead to its own founding over two centuries ago.

#### Normal means is the executive---upsets the deference.

NRC ‘8 (Committee on Evaluation of USAID Democracy Assistance Programs, National Research Council- “Improving Democracy Assistance: Building Knowledge Through Evaluations and Research, <http://iis-db.stanford.edu/pubs/22159/12164_EXS.pdf>

Within the U.S. government the U.S. Agency for International Development (USAID) has principal responsibility for providing democracy assistance. Since 1990, USAID has supported democracy and governance (DG) programs in approximately 120 countries and territories, spending an estimated total of $8.47 billion (in constant 2000 U.S. dollars) between 1990 and 2005. The request for DG programs for fiscal year 2008 was $1.45 billion, which includes some small programs in the U.S. Department of State.

### Terror

#### Released detainees go back to terrorism

Hains 11 [William M. received his Juris Doctor from the J. Reuben Clark Law School, Brigham Young University, in April 2011. He currently serves as a law clerk for the Honorable J. Frederic Voros Jr. on the Utah Court of Appeals Brigham Young University Law Review 2011 B.Y.U.L. Rev. 2283 Lexis Nexis, Accessed 5/21/2013 DMW

[\*2287] Two events occurred in late 2010 that provided the catalyst for Congress to take a more aggressive approach: the return of a verdict in the case of U.S. embassy bomber Ahmed Khalfan Ghailani, and the release of a report from the Director of National Intelligence (DNI) on recidivism rates among detainees released to other countries.¶ On November 17, 2010, a jury returned a verdict on the first Guantanamo Bay detainee prosecution in federal courts. n18 The jury found Ghailani guilty of one count of conspiracy to destroy government property; he was acquitted of the remaining 284 counts. n19 Key testimony that may have proved dispositive was found inadmissible because it had been obtained by coercive interrogation techniques. n20 The Justice Department and supporters of civilian trials for suspected terrorists hailed the guilty verdict as a victory for the Administration and a sign of the potential for further successful criminal prosecutions. n21 Critics saw it differently. They feared that the verdict came too close to letting a Guantanamo Bay detainee free on U.S. soil. n22¶ Three weeks after the Ghailani verdict, the DNI released a report at the request of Congress which provided further fodder for the Administration's critics. The report declared that twenty-five percent of detainees released to other countries were suspected or confirmed to have "reengaged in terrorist or insurgent activities after transfer." n23 Furthermore, the report predicted that future releases [\*2288] would also result in at least some degree of recidivism. n24 When the report was released, it was instantly used as a talking point for critics of the Administration's detention policies. n25

#### Massive alt causes---Doesn’t assume other counter-terror policies like drones kills hearts and minds.

#### Not a recruiting tool- AQ doesn’t care

McNeal 11 [Gregory McNeal, Associate Professor of Law, Pepperdine University School of Law; "PREVENTIVE DETENTION: THE STATUS QUO BIAS AND COUNTERTERRORISM DETENTION," Summer, 2011, 101 J. Crim. L. & Criminology 855, lexis]cd

The main argument made by think tanks in support of preventive detention and in opposition to the notion that Guantanamo serves as a recruiting tool is that Guantanamo is rarely mentioned in the messages delivered by top al Qaeda leaders. Assuming that the list of collected statements and interviews from top al Qaeda leaders are representative of al Qaeda's recruiting propaganda, n43 those past statements reveal that top al Qaeda officials rarely mention preventive detention or Guantanamo. n44 Moreover, even in the messages where Guantanamo is referenced, it is incorrectly conflated with Abu Ghraib n45 (though this does not necessarily preclude the fact that preventive detention may act as a recruiting tool) and when mentioned it is mentioned very briefly. For example, Dr. Ayman al-Zawahiri, one of al Qaeda's top strategists, gave a twelve-page statement entitled "Nine Years After the Start of the Crusader Campaign" with four pages devoted to Pakistan, two pages to Afghanistan, nearly two to Egypt, two to Palestinians, and two to al Qaeda's prospects for victory. n46 In this [\*867] same statement, only a single sentence mentioned how the Koran was desecrated in Guantanamo, Iraq, and elsewhere. n47 In fact, a keyword search of all the messages by top al Qaeda leaders yielded only seven mentions of Guantanamo, while there are numerous more mentions of words like Israel/Israeli/Israelis (ninety-eight mentions), Jew/Jews (ninety-four mentions), Zionist(s) (ninety-four mentions), and other words that focus on the overall Zionist-Crusader conspiracy narrative against Muslims. n48¶ The think tank message has not penetrated as deeply into media depictions of preventive detention as the opposition message has. In fact there are few sources directly arguing that preventive detention is not a recruiting tool. The only colorable argument could be that there will be no less recruiting by al Qaeda once Guantanamo is closed, n49 which suggests that Guantanamo exclusively cannot be a major recruiting tool for al Qaeda if the next detention facility and its complete absence of civil liberties violations, would be denounced by al Qaeda in the same manner. This notion reinforces the idea that a change from the status quo is unlikely if the new policy will face the same critiques as the status quo policies.

#### Indefinite detention checks terror – incapacitation, deterrence, disruption, and intel

Waxman 9, Matthew C. Waxman\*, \* Associate Professor, Columbia Law School; Adjunct Senior Fellow, Council on Foreign Relations; Member of the Hoover Institution Task Force on National Security and Law, 2009¶ Journal of National Security Law & Policy¶ 3 J. Nat'l Security L. & Pol'y 1, Article: Administrative Detention of Terrorists: Why Detain, and Detain Whom?, Lexis,

[\*14] This notion of prevention, however, needs to be further unpacked. There are at least four major ways in which detention contributes to terrorism prevention:¶ . incapacitation¶ . deterrence¶ . disruption¶ . information-gathering¶ Each of these sub-elements of prevention has implications for how administrative detention laws should be crafted and how institutions for adjudicating cases should be designed.¶ The most natural inclination of a government facing threats of terrorism is to incapacitate suspected terrorists: If someone has the will and capability to commit terrorism, keep [them] ~~him~~ off the streets. The purpose of such detention is not punitive or retributive (though such desires might lurk in the background); it is protective and preemptive, to put poten-tial threats out of action. Secretary of Defense Rumsfeld described the Guantanamo detainees in 2002, for example, as "among the most dangerous, best-trained, vicious killers on the face of the earth," n66 justifying the camp as necessary to stop them from carrying out their violent objectives. This preventive purpose underlies the law of war's detention rules, in that those rules aim to block captured soldiers from returning to an ongoing fight. n67 As former Attorney General Mukasey explained:¶ ¶ The United States has every right to capture and detain enemy combatants in this conflict, and we need not simply release them to return to the battlefield... . We have every right to prevent them from returning to kill our troops or those fighting with us, and to target innocent civilians. n68¶ ¶ Beyond incapacitating existing threats, a government might wield the threat of detention to deter future terrorist re-cruits from joining the cause or participating in terrorist activities. In other words, the possibility of getting caught and held by the government may dissuade terrorists or future terrorists from joining terrorist groups or perpetrating terrorist acts. n69 The [\*15] more credible the threat of capture and detention, and the more severe the consequences (say, the longer the threatened period of detention, or the more severe its conditions), so the theory goes, the greater the deterrent pressure.¶ These notions of incapacitating or deterring terrorists or future terrorists may potentially point at large groups of in-dividuals and their dangerous activities: If we can discern who has the intent and capability - or potential to develop that intent and capability - to commit or support terrorist acts, we will try to block or dissuade them. But a narrower way to formulate a preventive purpose of administrative detention is to disrupt terrorist plots: A group of individuals is preparing to carry out a terrorist attack or campaign of attacks, so use the detention of certain persons to foil that plot. n70 Whereas incapacitation focuses heavily on the characteristics of categories of individuals, disruption focuses on their joint or individual activities. It is not so much about neutralizing very dangerous people as neutralizing their impending schemes.¶ Each of these preventive strategies contains some key assumptions about the government's knowledge of the ter-rorist threat. An incapacitation strategy assumes the state's ability to assess accurately who is likely to pose a future danger and to therefore devote resources to stemming their future dangerous activities. A prevention strategy emphasizing deterrence assumes the state's ability to manipulate sufficiently the fears of future terrorists at large. And a disruption strategy assumes the state's ability to identify plots in advance and their key individual enablers. n71¶ A fourth preventive reason to detain is therefore to gather information. Thwarting terrorist plots requires getting in-side the heads of network members, to understand their intentions, capabilities, and modes of operation. Detention can facilitate such intelligence collection through, most obviously, interrogation, but also through monitoring conversations among prisoners or even "turning" terrorist agents and sending them back out as government informants. Governments usually justify publicly counterterrorism detentions on incapacitation or disruption grounds, but no doubt infor-mation-gathering was at the forefront of the Bush administration's detention policies, n72 as demonstrated by the lengths to [\*16] which that Administration went to defend permissive interrogation standards and CIA detention programs. n73 "These are dangerous men with unparalleled knowledge about terrorist networks and their plans for new attacks," explained President Bush in September 2006, in disclosing publicly the CIA secret detention program. "The security of our nation and the lives of our citizens depend on our ability to learn what these terrorists know." n74¶ This last point about facilitating information-gathering shows that there are often synergies among the preventive approaches. Incapacitating individuals suspected of posing serious dangers may deter individuals from engaging in or supporting dangerous activities. Disrupting major plots and interrogating the plotters may reveal a lot about how future schemes will be hatched and who among the many dangerous individuals remaining at large are most likely to play critical roles in those schemes. Any sound counterterrorism strategy will combine all of these elements to some degree. n75

#### No impact to terrorism- threats are low and SQ solves- doesn’t escalate beyond conventional weapons

Mockli 12 Daniel mockli is a Senior Researcher @ Center for Security Studies in International Relations and Security Network, "Terrorism as a Manageable Risk -- Yes it is," http://www.isn.ethz.ch/Digital-Library/Articles/Special-Feature/Detail/?lng=en&id=152973&tabid=1453321093&contextid774=152973&contextid775=152971 9-21-13, DOA: 7-20-13, y2k

Eleven years after al-Qaida’s coor­dinated mass-casualty attacks on the US, many effects of 11 Septem­ber 2001 are still visible. Islamist extremist violence continues to be widely perceived as a major threat to global security. Recurring terrorism alerts and news about successful or foiled attacks serve as forceful remind­ers that this is a threat that could hit anyone anytime. Aviation security and infrastructure protection remain ma­jor public concerns. Counterterrorism capabilities in law enforcement, intel­ligence, and the military have all been enhanced. For all these repercussions, 9/11 has not brought about strategic change to the international system. It illustrated the globalization of security threats and the empowerment of non-state actors. It also had a tremendous im­pact on US foreign policy for several years. Yet, with the US gradually mod­ifying its counterterrorism approach, al-Qaida has not succeeded in pro­voking the West into a clash of civilizations. This is notwithstanding growing anti-Muslim and anti-Amer­ican sentiment in certain parts of the world. Nor has al-Qaida become a mass movement. The core organization of al-Qaida has been significant­ly weakened. Al-Qaida’s ideology has lost much support in Muslim coun­tries. The vast majority of Islamist extremist groups have not answered the call for global jihad and continue to pursue more local agendas. Seen from the perspective of West­ern security, Islamist extremist violence has not become an existential threat as was frequently predicted after 9/11. Rather, it should be perceived as an ongoing but manageable risk. Current counter-terrorism policies are effective to the extent that the likelihood of com­plex and catastrophic attacks against the homeland of Western countries has substantially decreased. The jihadist threat to Europe and the US no doubt remains real, with ‘home­grown’ radicals that have ties to al-Qaida-related terror organizations being a particular source of concern. However, potential terrorist attacks are likely to be limited in scale and conventional in nature over the com­ing years. Shifting from ‘managing’ to ‘resolving’ the problem of jihadist ter­rorism may be too ambitious an objective, as strategic counterterror­ism is beset with major challenges. The fight against terrorism is set to stay and will continue to require considerable resources. Yet, terrorism is a threat that should no longer be overemphasized at the expense of other security challenges. Issues relating to the transformation of the international system and regional developments in Europe, the Middle East, and elsewhere will likely top the strategic agenda of Western countries in the coming years. An evolving threat The jihadist threat has evolved significantly in the past years. The capacity of al-Qaida Central to launch complex and catastrophic attacks has been dimin­ished. Al-Qaida’s ideology and brand have, however, been taken up by some other terror organizations. These regional al-Qaida affiliates embrace the call for global jihad to some extent. But their grievances and objectives – and in most cases, also their operative range – are tied to specific local contexts. The same holds true for most other Islamist extremist groups. Al-Qaida’s concept of global jihad is being marginalized in Islamic religious and political discourse. Most of the groups that operate on the premise of jihad continue to follow the classical interpretation of a defensive struggle against oppression in Muslim coun­tries. Going after the ‘near enemy’, they still may hit not just national regimes and security forces, but also local Western targets. But they do not subscribe to al-Qaida’s reinter­pretation of jihad in global and more offensive terms. Hitting the ‘far en­emy’, i.e. launching attacks against the US homeland and other Western countries, is not what they are after. In Europe, and increasingly in the US as well, there is the additional threat of homegrown radicalization. Evidence suggests that the damage homegrown jihadists can cause de­pends significantly on whether they are self-inspired and acting autono­mously or trained and guided by established terrorist organizations. The most likely current scenarios of homegrown terrorism concern attacks of limited scale with traditional terrorist methods such as armed assault and improvised explo­sives. Overall, the diversification of Islam­ist extremist violence in recent years has rendered the jihadist threat more diffuse. It has also meant that the threat for Western homelands, while still real, has been reduced. Muslim-majority countries, rather than the West, are the main target of terrorist attacks. A largely non-Western threat The decreasing appeal of global jihad and the limited operational capacity of jihadists willing to strike European or US targets suggest a reduced scale of threat emanating from Islamist ex­tremist violence to Western countries. A typical attack in the coming years will likely be of limited scale and sophistication, carried out with con­ventional weapons like assault rifles or small improvised explosive devices. In its methods, jihadist terrorism in­creasingly resembles traditional IRA-or ETA-type terrorism. It continues to differ, however, in that it is often aimed at indiscriminate mass casual­ties and may target any country, irre­spective of secessionist conflicts. It is due to this last reason that Islamist extremist violence will likely remain a major concern to Western publics and policy-makers. It works to the advantage of al-Qaida that even failed attacks arouse public atten­tion, emotion, and fear. It is impor­tant to note, however, that it is non- OECD countries, and predominantly Muslim-majority countries, that suffer the bulk of terrorism attacks and casu­alties. In 2010, the ‘top five’ countries in terms of both attacks and deaths were Afghanistan, Iraq, Pakistan, India, and Somalia. Collectively, they accounted for 76 per cent of all attacks and 83 per cent of all deaths. Europe and the United States rank last on this global list of terror incidents. In Europe, there have been few attacks, and the figures for arrests have been decreasing since 2006. According to Europol data covering 26 European Union (EU) member states (excluding the UK), six mem­ber states reported 294 failed, foiled, or successfully perpetrated terrorist attacks in 2009. Only one of these attacks was categorized as Islamist, as opposed to 237 attacks related to ETA in Spain and France. In the fig­ures for 2010, the number of Islam­ist attacks may go up slightly [note: in 2011, no religiously-inspired attack was reported by EU member-states], but the major trend may well be a rise in attacks by anarchist (left-wing) groups in Greece, Italy, and Spain. In the UK, there were 173 terrorism arrests in 2009/10 [note: 62 in 2011], compared to an annual average of 216 since 2002. As for the US, few would have expected that there would ‘only’ be 14 homeland deaths caused by Islamist extremist violence in the decade post- 9/11 – a figure that contrasts with the 168 people killed in the right-wing Oklahoma bombing of 1995. The bottom line is that while jihad­ist terrorism hits hard some of the Muslim countries, it is a manageable risk in Western countries. There is of course a price tag attached to manag­ing this risk effectively. Also, new large-scale attacks on West­ern homelands can never be ruled out. Nevertheless, the likelihood of such an attack appears lower today than some counterterrorist bureaucracies and analysts continue to argue. This is also why two worst-case scenarios are unlikely today: for example, links between anti-Western Muslim re­gimes and global jihadists have not materialized in any substantial way. Iran does support Hezbollah and Hamas, but has been tough on Al Qaeda. Nor did Saddam Hussein cooperate with global jihadists. There are ties between the Pakistani Inter-Services Intelligence (ISI) and al-Qaida and Lashkar-e-Taiba in Pakistan. Yet, these are tactical alliances that are not geared against the West, but must be seen in the context of the ISI’s strate­gic calculations concerning Pakistan’s relations with India. Without state sponsorship of global jihadism, the scenario of terrorism based on weapons of mass destruction (WMD) appears unlikely too. Again, there are concerns about the safety of nuclear weapons, especially should Pakistan descend into political chaos. US President Barack Obama’s characterization of nuclear terrorism as ‘the most extreme threat to global security’ is cer­tainly justified, and there is no doubt that a WMD attack could be a game-changer in international relations. But it is doubtful that Obama is also right in calling this ‘the most immediate threat’. Getting the materials and the know-how to launch an effective WMD attack remains exceedingly difficult. As for the use of conventional explosives to disperse radioactive materials, such ‘dirty bombs’ are unlikely to cause mass casualties, though they may cause mass panic.

#### Err on the side of terrorist failure- 90% risk

Michael Levi, 4/17/2007, is David M. Rubenstein Senior Fellow for Energy and the Environment and Director of the Program on Energy Security and Climate Change, CFR, “ <http://www.cfr.org/weapons-of-mass-destruction/likely-nuclear-terrorist-attack-united-states/p13097>

We should not, however, underestimate the odds of terrorist failure. There isn’t enough space here to make that point comprehensively, but I’ll try to convince you that simple arguments for why failure is highly unlikely may be weaker than they seem. The case for the ease of building a gun-type weapon provides a good example of how we often overestimate how easy a terrorist task may be. I certainly won’t debate the fact that Manhattan Project scientists “were so confident about this design that they persuaded military authorities to drop the bomb, untested, on Hiroshima.” But we should parse the word “untested” carefully. During the Manhattan Project, scientists and engineers spent years testing the gun itself; testing their casting and machining of the uranium metal to avoid fires and criticality accidents during production, and impurities in the product; testing the initiator that would trigger the chain reaction; and testing how different configurations of materials would behave, a project that led to the death of one physicist. No one conducted a full-scale test explosion, but that hardly means that building the weapon was trivial. A terrorist group would have to do many of the same things (though technological progress would make some steps easier) all while attempting to hide from law enforcement and intelligence. This doesn’t mean that terrorists couldn’t build a gun-type bomb, but it suggests that their chances of failure aren’t negligible. This takes on special importance in the context of a broader defense. Imagine a terrorist group faces only a twenty percent chance of failure while building a bomb. But imagine it also faces a similarly small chance of failure while attempting to purchase nuclear materials, while attempting to recruit scientists and engineers, while raising money for its plot, while smuggling materials into the United States, while purchasing non-nuclear components for its weapon, while assembling the bomb in a safehouse, and in other elements of its plot. If we combine, for example, ten such hurdles, we get a ninety percent chance of failure. We can debate the numbers, but this suggests that we shouldn’t be too quick to ignore small chances of terrorist failure.

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

Kristin Archick, European affairs specialist @ CRS, 9-4-2013, “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.”

### JI

#### No modeling

Law & Versteeg 12 Professor of Comparative Constitutional Law @ Washington University & Professor of Comparative Constitutional Law @ University of Virginia [David S. Law & Mila Versteeg, “The Declining Influence of the United States Constitution,” New York University Law Review, Vol. 87, 2012

The appeal of American constitutionalism as a model for other countries appears to be waning in more ways than one. Scholarly attention has thus far focused on global judicial practice: There is a growing sense, backed by more than purely anecdotal observation, that foreign courts cite the constitutional jurisprudence of the U.S. Supreme Court less frequently than before.267 But the behavior of those who draft and revise actual constitutions exhibits a similar pattern. Our empirical analysis shows that the content of the U.S. Constitution is¶ becoming increasingly atypical by global standards. Over the last three decades, other countries have become less likely to model the rights-related provisions of¶ their own constitutions upon those found in the Constitution. Meanwhile, global adoption of key structural features of the Constitution, such as federalism, presidentialism, and a decentralized model of judicial review, is at best stable and at worst declining. In sum, rather than leading the way for global¶ constitutionalism, the U.S. Constitution appears instead to be losing its appeal as¶ a model for constitutional drafters elsewhere. The idea of adopting a constitution may still trace its inspiration to the United States, but the manner in which constitutions are written increasingly does not.¶ If the U.S. Constitution is indeed losing popularity as a model for other countries, what—or who—is to blame? At this point, one can only speculate as to the actual causes of this decline, but four possible hypotheses suggest themselves: (1) the advent of a superior or more attractive competitor; (2) a general decline in American hegemony; (3) judicial parochialism; (4) constitutional obsolescence; and (5) a creed of American exceptionalism.¶ With respect to the first hypothesis, there is little indication that the U.S. Constitution has been displaced by any specific competitor. Instead, the notion that a particular constitution can serve as a dominant model for other countries may itself be obsolete. There is an increasingly clear and broad consensus on the types of rights that a constitution should include, to the point that one can articulate the content of a generic bill of rights with considerable precision.269 Yet it is difficult to pinpoint a specific constitution—or regional or international human rights instrument—that is clearly the driving force behind this emerging paradigm. We find only limited evidence that global constitutionalism is following the lead of either newer national constitutions that are often cited as influential, such as those of Canada and South Africa, or leading international and regional human rights instruments such as the Universal Declaration of Human Rights and the European Convention on Human Rights. Although Canada in particular does appear to exercise a quantifiable degree of constitutional influence or leadership, that influence is not uniform and global but more likely reflects the emergence and evolution of a shared practice of constitutionalism among common law countries.270 Our findings suggest instead that the development of global constitutionalism is a polycentric and multipolar¶ process that is not dominated by any particular country.271 The result might be likened to a global language of constitutional rights, but one that has been collectively forged rather than modeled upon a specific constitution.¶ Another possibility is that America’s capacity for constitutional leadership is at least partly a function of American “soft power” more generally.272 It is reasonable to suspect that the overall influence and appeal of the United States and its institutions have a powerful spillover effect into the constitutional arena. The popularity of American culture, the prestige of American universities, and the efficacy of American diplomacy can all be expected to affect the appeal of American constitutionalism, and vice versa. All are elements of an overall American brand, and the strength of that brand helps to determine the strength of each of its elements. Thus, any erosion of the American brand may also diminish the appeal of the Constitution for reasons that have little or nothing to do with the Constitution itself. Likewise, a decline in American constitutional influence of the type documented in this Article is potentially indicative of a broader decline in American soft power. ¶ There are also factors specific to American constitutionalism that may be¶ reducing its appeal to foreign audiences. Critics suggest that the Supreme Court has undermined the global appeal of its own jurisprudence by failing to acknowledge the relevant intellectual contributions of foreign courts on questions of common concern,273 and by pursuing interpretive approaches that lack acceptance elsewhere.274 On this view, the Court may bear some responsibility for the declining influence of not only its own jurisprudence, but also the actual U.S. Constitution: one might argue that the Court’s approach to constitutional issues has undermined the appeal of American constitutionalism more generally, to the point that other countries have become unwilling to look either to American constitutional jurisprudence or to the U.S. Constitution itself for inspiration.275¶ It is equally plausible, however, that responsibility for the declining appeal of American constitutionalism lies with the idiosyncrasies of the Constitution itself rather than the proclivities of the Supreme Court. As the oldest formal constitution still in force, and one of the most rarely amended constitutions in the world,276 the U.S. Constitution contains relatively few of the rights that have become popular in recent decades,277 while some of the provisions that it does contain may appear increasingly problematic, unnecessary, or even undesirable with the benefit of two hundred years of hindsight.278 It should therefore come as little surprise if the U.S. Constitution¶ strikes those in other countries–or, indeed, members of the U.S. Supreme Court279–as out of date and out of line with global practice.280 Moreover, even if the Court were committed to interpreting the Constitution in tune with global fashion, it would still lack the power to update the actual text of the document.¶ Indeed, efforts by the Court to update the Constitution via interpretation may actually reduce the likelihood of formal amendment by rendering such amendment unnecessary as a practical matter.281 As a result, there is only so much that the U.S. Supreme Court can do to make the U.S. Constitution an¶ attractive formal template for other countries. The obsolescence of the Constitution, in turn, may undermine the appeal of American constitutional jurisprudence: foreign courts have little reason to follow the Supreme Court’s lead on constitutional issues if the Supreme Court is saddled with the interpretation of an unusual and obsolete constitution.282 No amount of ingenuity or solicitude for foreign law on the part of the Court can entirely divert attention from the fact that the Constitution itself is an increasingly atypical document.¶ One way to put a more positive spin upon the U.S. Constitution’s status as a global outlier is to emphasize its role in articulating and defining what is unique about American national identity. Many scholars have opined that formal constitutions serve an expressive function as statements of national identity.283 This view finds little support in our own empirical findings, which suggest instead that constitutions tend to contain relatively standardized packages of rights.284 Nevertheless, to the extent that constitutions do serve such a function, the distinctiveness of the U.S. Constitution may simply reflect the uniqueness of America’s national identity. In this vein, various scholars have argued that the U.S. Constitution lies at the very heart of an “American creed of exceptionalism,” which combines a belief that the United States occupies a unique position in the world with a commitment to the qualities that set the United States apart from other countries.285 From this perspective, the Supreme Court’s reluctance to make use of foreign and international law in constitutional cases amounts not to parochialism, but rather to respect for the exceptional character of the nation and its constitution.286¶ Unfortunately, it is clear that the reasons for the declining influence of American constitutionalism cannot be reduced to anything as simple or attractive as a longstanding American creed of exceptionalism. Historically, American exceptionalism has not prevented other countries from following the example set by American constitutionalism. The global turn away from the American model is a relatively recent development that postdates the Cold War. If the U.S. Constitution does in fact capture something profoundly unique about the United States, it has surely been doing so for longer than the last thirty years. A complete explanation of the declining influence of American constitutionalism in other countries must instead be sought in more recent history, such as the wave of constitution-making that followed the end of the Cold War.287 During this period, America’s newfound position as lone superpower might have been expected to create opportunities for the spread of American constitutionalism. But this did not come to pass.¶ Once global constitutionalism is understood as the product of a polycentric evolutionary process, it is not difficult to see why the U.S. Constitution is playing an increasingly peripheral role in that process. No evolutionary process favors a specimen that is frozen in time. At least some of the responsibility for the declining global appeal of American constitutionalism lies not with the Supreme Court, or with a broader penchant for exceptionalism, but rather with the static character of the Constitution itself. If the United States were to revise the Bill of Rights today—with the benefit of over two centuries of experience, and in a manner that addresses contemporary challenges while remaining faithful to the nation’s best traditions—there is no guarantee that other countries would follow its lead. But the world would surely pay close attention. Pg. 78-83

#### Court will defer- many procedural doctrines

Bradley and Morrison 13 - \*William Van Alstyne Professor of Law, Duke Law School AND \*\* Liviu Librescu Professor of Law, Columbia Law School (Curtis A. Bradley AND Trevor W. Morrison, "Presidential Power, Historical Practice, And Legal Constraint”, January 15, 2013, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2191700>)

The Executive Branch’s attention to historical practice is also reflected in presidential issuance of “constitutional signing statements.” These statements, made when the President is signing a bill into law, call into question the constitutionality of one or more provisions in the bill and suggest that the President might **not comply** with the provisions, often on the ground that the provisions threaten to interfere with presidential authority. 36 As the Executive Branch has explained, “[p]articularly since omnibus bills have become prevalent, signing statements have often been used to ensure that concerns about the constitutionality of discrete statutory provisions do not require a veto of the entire bill.” 37 Although issued by both Democratic and Republican presidents, 38 these statements are controversial, with some critics claiming that the rule of law and separation of powers are offended when a President reserves the ability to disregard part of bill that he signs into law. 39 It does not appear, however, that Presidents commonly disregard the provisions to which they object in signing statements. This was true even during the George W. Bush Administration, which had a reputation for being particularly aggressive in its issuance of signing statements. 40 Thus, instead of signaling an active intent to disregard the identified provision, signing statements may be better understood as attempts by the Executive Branch to prevent a claim that it has acquiesced in congressional intrusions on executive authority. In other words, these statements appear to be designed, at least in part, to prevent historical gloss from developing in a way that might limit presidential authority. 41¶ Legal scholarship relating to presidential power, especially in the area of foreign affairs, also frequently refers to historical practice. A number of scholars have referenced such practice, for example, in assessing whether and to what extent the President has the constitutional authority to initiate military operations in the absence of congressional authorization. 42 Other scholars have emphasized practice in considering the circumstances under which the President may conclude international agreements without obtaining the consent of two-thirds of the Senate. 43 Even outside the foreign affairs area, academic debates about presidential authority—such as about the President’s power to remove executive officials from office 44 —are greatly influenced by considerations of historical practice. ¶ B. Limitations on Judicial Review ¶ If courts routinely reviewed contested issues of presidential power, they could decide whether and when to credit historical practice in this area. They could also decide whether novel presidential assertions of authority were justified, before such assertions became established practice. But judicial review in this area is **anything but routine**. Courts obviously do review issues of presidential power in some instances, especially when individual rights are perceived to be at stake, as both Youngstown and the series of Supreme Court decisions concerning the “war on terror” illustrate. 45 When individual rights are not directly implicated, however, courts **often abstain** from addressing questions surrounding the allocation of authority between Congress and the President. ¶ Judicial abstention is particularly common in the foreign affairs area. Consider, for example, the question whether the President is constitutionally required to obtain congressional authorization before initiating military hostilities. Despite numerous presidential initiations of hostilities without congressional authorization in the post-World War II period, courts have generally refused to consider the issue. 46 Courts have similarly avoided addressing whether presidents must obtain congressional or senatorial approval before terminating a treaty, 47 and whether and to what extent presidents may use executive agreements in lieu of treaties. 48¶ Courts invoke a **variety of doctrines** in support of this abstention. They enforce general standing requirements **strictly** and, at least since the Supreme Court’s 1997 decision in Raines v. Byrd, 49 they typically find that individual members of Congress lack standing to challenge presidential action. 50 Some lower courts also invoke ideas of “political ripeness,” pursuant to which they **will not intervene** in inter-branch disputes until the affected branch has exhausted its own political resources to address the purported problem, a requirement that is rarely if ever satisfied. 51 Another potential barrier to judicial review is the political question doctrine, which the lower courts apply with some frequency in the foreign affairs area. 52 ¶ Academic defenders of this judicial abstention have argued either that the political branches have adequate resources to protect their interests, 53 or that the courts lack sufficient competence to resolve separation of powers issues, especially in the foreign affairs and national security areas. 54 Other scholars have bemoaned this abstention as an abdication of the judicial role and have blamed it for contributing to what they perceive to be an undesirable growth in executive power in the modern era. 55 The key point for present purposes is that many issues of presidential power are resolved, if at all, outside the courts. Moreover, even when the courts do intervene, they are likely to give significant deference to patterns of governmental practice, especially if the patterns are longstanding and appear to reflect inter-branch agreement. 56

#### Latin America is stable.

Business Insights 12 “Trends Driving Opportunities in Latin America,” March 19th, 2012, <http://aircargoinsights.com/fslider/business-with-latin-america-top-trends/> Accessed Date: 2-16-13 y2k

For much of the 20th century, Latin American economies showed little growth and weak demand, particularly when compared against other booming global markets. In recent years, however, changing economic policies, globalization, energy discoveries and myriad other factors have given rise to budding economies boasting robust exports and wealthier middle classes. During the most recent global financial crisis, many Latin American markets weathered the economic storm better than other regions in the world. While the International Monetary Fund lowered its 2011 economic growth forecast for Latin America citing slower demand given tighter macroeconomic policies and weaker global growth, Latin America and Caribbean economies, driven by commodity producers, should expand 4.5 percent this year. Brazil – one of the famed BRIC countries – has the sixth largest economy in the world, with a GDP of more than $2.2 trillion, but other Latin America countries are also showing growing demand and exports. By this, Latin America is one of the most promising regions for air cargo. At the Air Cargo 2012 Conference on March 19, American presented the top five trends driving growth and opportunity in Latin America. Trend One: Political Stability Political stability in Latin America is growing. Many people in the region live under an elected, civilian government, which encourages foreign investment and fosters economic growth. Colombia, Chile, and Peru enjoy relatively stable democracies favoring foreign capital and investment. In 2011, Standard & Poor’s upgraded Argentina’s credit rating to a “B” and classified the country as “stable.” And the economic powerhouse, Brazil, which also has a stable political environment, has one of the fastest growing markets in the world, poised to grow stronger with the World Cup in 2014 and the Olympic Games in 2016. Chamber of Deputies of Brazil Not all Latin American countries have found the same levels of political stability. Bolivia, Ecuador and Venezuela can be unstable, with problems found in absent infrastructure and poor rule of the law. Yet, the overall trend for the region is one of increasing stability and opening markets. The kind of statist, populist solutions that probably cost Latin America decades of economic growth in the 20th century are viewed today largely with suspicion, even in the countries where they still hold sway. In many places, things that once held business back, such as monetary instability and shortages of even the most basic items, are becoming things of the past.

#### No extinction

Posner 4 Richard, Judge – US Court of Appeals, Catastrophe: Risk and Response, p. 22-24

Yet the fact that Homo sapiens has managed to survive every disease to assail it in the 200,000 years or so of its existence is a source of genuine comfort, at least if the focus is on extinction events. There have been enormously destructive plagues, such as the Black Death, smallpox, and now AIDS, but **none has come close** to destroying the entire human race. There is a biological reason. Natural selection favors germs of **limited lethality**; they are fitter in an evolutionary sense because their genes are more likely to be spread if the germs do not kill their hosts too quickly. The AIDS virus is an example of a lethal virus, wholly natural, that by lying dormant yet infectious in its host for years maximizes its spread. Yet there is no danger that AIDS will destroy the entire human race. The likelihood of a natural pandemic that would cause the extinction of the human race is probably **even less today** than in the past (except in prehistoric times, when people lived in small, scattered bands, which would have limited the spread of disease), despite wider human contacts that make it more difficult to localize an infectious disease. The reason is improvements in medical science. But the comfort is a small one. Pandemics can still impose enormous losses and resist prevention and cure: the lesson of the AIDS pandemic. And there is always a lust time.

#### No Africa war

Barrett 5 Robert, Ph.D. Student in the Centre for Military and Strategic Studies – University of Calgary, “Understanding the Challenges of African Democratization through Conflict Analysis”, 6-1, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=726162

Westerners eager to promote democracy must be wary of African politicians who promise democratic reform without sincere commitment to the process. Offering money to corrupt leaders in exchange for their taking small steps away from autocracy may in fact be a way of pushing countries into anocracy. As such, world financial lenders and interventionists who wield leverage and influence must take responsibility in considering the ramifications of African nations who adopt democracy in order to maintain elite political privileges. The obvious reason for this, aside from the potential costs in human life should conflict arise from hastily constructed democratic reforms, is the fact that Western donors, in the face of intrastate war would then be faced with channeling funds and resources away from democratization efforts and toward conflict intervention based on issues of human security. This is a problem, as Western nations may be increasingly wary of intervening in Africa hotspots after experiencing firsthand the unpredictable and unforgiving nature of societal warfare in both Somalia and Rwanda. On a costbenefit basis, the West continues to be somewhat **reluctant to get to get involved in Africa’s** dirty **wars**, evidenced by its political hesitation when discussing ongoing sanguinary grassroots conflicts in Africa. Even as the world apologizes for bearing witness to the Rwandan genocide without having intervened, the United States, recently using the label ‘genocide’ in the context of the Sudanese conflict (in September of 2004), has only proclaimed sanctions against Sudan, while dismissing any suggestions at actual intervention (Giry, 2005). Part of the problem is that traditional military and diplomatic approaches at separating combatants and enforcing ceasefires have yielded little in Africa. No powerful nations want to get embroiled in conflicts they cannot win – especially those conflicts in which the intervening nation has very little interest.

#### No draw in

Taire 4 Morenike, Vanguard (Nigeria), Global News Wire – Asia Africa Intelligence Wire, 4-9, Lexis

Defining our role may not have to be as difficult as it might first seem. In the first instance, in spite of Libya feat in WMD technology, borrowed and invented, and despite the feat of others who, like Libya, has flirted and romanced with terrorism in the past, it is unlikely that Africa would be in a position to involve itself in any conflicts with any States outside its own shores. [It] She does not have the technology, and might have trouble summoning the collective will. And so while America grapples with impending energy troubles or rumours of it and Europe battles with the European Union, Africa battles with hunger, and pretty much everything else that has ceased to be of any significance to anyone in the first world. It was Sting, appropriately enough, who’d coined the lyrics and sang the song: “We have just one world, but we live in different ones”. Indeed, we do. Unfortunately, we live, also, in perpetual danger of being sucked into the faster, more complicated vortex of the worlds of others. We can no longer be calm, cool and collected.

#### Nuclear weapons spreading slowly- causes states to act with caution- empirics prove

Waltz 7 Ken Waltz is a professor of political science at the University of California at Berkley. “A Nuclear Iran”, Journal of International Affairs, Spring/Summer 2007, Vol. 60 Issue 2, Last Accessed 7/18/13) ELJ

First, nuclear proliferation is not a problem because nuclear weapons have not proliferated. "Proliferation" means to spread like wildfire. We have had nuclear military capability for over fifty years, and we have a total of nine militarily capable nuclear states. That's hardly proliferation; that is, indeed, glacial spread. If another country gets nuclear weapons, and if it does so for good reasons, then that isn't an object of great worry. Every once in a while, some prominent person says something that's obviously true. Recently, Jacques Chirac [president of France] said that if Iran had one or two nuclear weapons, it would not pose a danger. Well, he was right. Of course, he had to quickly retract it and say, "Oh no, that slipped out, I didn't know the microphone was on!" Second, it doesn't matter who has nuclear weapons. Conversely, the spread of conventional weapons makes a great deal of difference. For instance, if a Hitler-type begins to establish conventional superiority, it becomes very difficult to contain and deter him. But, with nuclear weapons, it's been proven without exception that whoever gets nuclear weapons behaves with caution and moderation. Every country--whether they are countries we trust and think of as being highly responsible, like Britain, or countries that we distrust greatly, and for very good reasons, like China during the Cultural Revolution--behaves with such caution. It is now fashionable for political scientists to test hypotheses. Well, I have one: If a country has nuclear weapons, it will not be attacked militarily in ways that threaten its manifestly vital interests. That is 100 percent true, without exception, over a period of more than fifty years. Pretty impressive.

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### DA

#### DA comes faster- plan collapses perception of deterrence

Zeisberg 4 Mariah Zeisberg, PhD in Politics from Princeton, Postdoc Research Associate at the Political Theory Project of Brown University; “INTERBRANCH CONFLICT AND CONSTITUTIONAL MAINTENANCE: THE CASE OF WAR POWERS”; June 2004; found in Word document, can be downloaded from [www.brown.edu/Research/ppw/files/Zeisberg%20Ch5.doc](http://www.brown.edu/Research/ppw/files/Zeisberg%20Ch5.doc)

The first significant argument of pro-Presidency insularists is that flexibility is a prime value in the conduct of foreign affairs, and especially war. Implicit in this argument is the recognition that the executive is functionally superior to Congress in achieving flexibility and swiftness in war operations, a recognition I share. The Constitution cannot be meant to curtail the very flexibility that may be necessary to preserve the nation; and yet, according to the insularists, any general norm which would include Congress in decision-making about going to war could only undermine that flexibility. Writing on the War Powers Act, Eugene Rostow predicts that it would, “**put the Presidency in a straightjacket of a rigid code**, and prevent new categories of action from emerging, **in response** to the necessities of a tense and unstable world.” In fact, Rostow believes, “[t]he centralization of authority in the president is particularly crucial in matters of national defense, war, and foreign policy, where a unitary executive can evaluate threats, consider policy choices, and mobilize national resources **with a speed and energy** that is **far superior to any other branch.”** Pro-presidency insularists are fond of quoting Hamilton, who argued that “[o]f all the cares or concerns of government, the direction of war most peculiarly demands those qualities which distinguish the exercise of power by a single hand.” This need for flexibility, some insularists argue, is especially acute given modern conditions, where devastating wars can develop quickly. Today, “many foreign states have the power to attack U.S. forces - and some even the U.S. mainland - almostinstantly**,”** and in such a world it is impracticable to require the President to seek advance authorization for hostilities. Such a requirement would simply be too risky to U.S. security. We furthermore face a nuclear age, and the system of deterrence that operates to contain that threat requires that a **single person** be capable of responding to nuclear attack with nuclear weapons immediately. Rostow writes, “the requirement for advance authorization would collapse the system of deterrence**, making preemptive strikes by our enemies** more **likely**.” Hence, “modern conditions” require the President to “act quickly, and often alone.” While this does not mean that Congress has no role to play in moments of crisis, it does mean that Congress should understand its role largely in terms of cooperating with the President to support his negotiations and decisions regarding relationships with foreign powers. Rostow writes, “Congress should be able to act effectively both before and after moments of crisis or potential crisis. It may join the President in seeking to deter crisis by publicly defining national policy in advance, through the sanctioning of treaties or other legislative declarations. Equally, Congress may participate formally in policymaking after the event through legislative authorization of sustained combat, either by means of a declaration of war, or through legislative action having more limited legal and political consequences. Either of these devices, or both in combination, should be available in situations where cooperation between the two branches is indicated at many points along an arc ranging from pure diplomacy at one end to a declaration of war at the other.” In other words, for Congress to understand itself as having any justifiable role in challenging executive security determinations, especially at moments of crisis, would be to undermine the strength that the executive requires in order to protect the nation. Conflict in this domain represents political degradation.

#### Emboldened rogue states threaten nuclear war

Dibb 6 Emeritus Prof of IR @ Australian National University, Sydney Morning Herald (Australia), August 15, 2006 Tuesday, As one nuclear flashpoint reaches a lull, another simmers away, Pg. 11, Lexis

NOW that the building blocks for achieving a cessation in hostilities in the crisis involving Israel and Hezbollah in Lebanon are in place, the focus can shift back to the main game - Iran and North Korea. Both flashpoints have the potential to escalate out of control if they are not managed carefully. Yet neither region is noted for the success of its diplomacy. Both the Middle East and North-East Asia are heavily armed parts of the world characterised by deep-seated hatreds and long-standing territorial disputes. Historically, such situations have been a recipe for disaster. Not so long ago we were being told that we were living in a peaceful, interdependent world. Yet the fact is that the constraints and understandings of the bipolar Cold War world have been replaced by a more uncertain world, where there is much more jockeying for position and influence. In the Middle East, the destruction of Saddam Hussein's regime and its replacement, at least for now, by a weakened Iraq has allowed Iran to become the dominant regional power. The regime in Tehran is hell-bent on exporting terrorism and acquiring nuclear weapons. For Israel, the ceasefire may stall the military action, but the longer-term real strategic threat it faces - the spectre of a nuclear-armed Iran equipped with ballistic missiles of sufficient range and accuracy to target Israel without taking out Palestinian or neighbouring Arab territories - will not go away. Israel will not tolerate this and the US needs to make it clear to Tehran that any such attack on Israel will bring about Iran's destruction. That was a good enough understanding with the USSR at the height of the Cold War. But this discipline no longer applies because now there is only one superpower, which cannot control both Israel and Arab-Iranian protagonists. In North Korea a similar situation applies. Having seen the destruction of Saddam's regime, North Korea's Kim Jong-il is intent on acquiring nuclear weapons to preserve his regime. But the end of the Cold War has eroded the influence of North Korea's allies over its military ambitions and sense of security. China has been embarrassed by its inability to restrain North Korea from testing nuclear-capable ballistic missiles and Russia no longer wields any influence over the rogue state. In many ways, the situation in North-East Asia is potentially even more dire than in the Middle East. North Korea's recalcitrance in dismantling its nuclear weapons program comes at a time of unprecedented tensions between China and Japan and South Korea and Japan where one false move could spell disaster. North Korea is playing a dangerous game of bellicose brinkmanship; it continues to keep more than a million troops on high-alert status, including heavy artillery concentrations only 50 kilometres from Seoul, a city of more than 10 million people. North Korea's acquisition of nuclear weapons threatens to seriously destabilise North-East Asia and result in a nuclear arms race developing there. As it is, the North's belligerence is encouraging Japan to build up its military capabilities. This at a time when China's poor relations with Japan are worrying. The Chinese communist leadership drums up anti-Japanese nationalism whenever it suits, while China's military build-up greatly concerns Japan. The pace of Beijing's defence spending is puzzling, particularly as China faces no military threat for the first time in many decades. Similarly, Japan's relations with South Korea are at a low point, partly over Japan's view of the history of World War II but also because of territorial disputes, which Seoul has elevated to the level of national pride, threatening the use of military force. This is occurring when, from Tokyo's perspective, South Korea is drifting from the orbit of the US alliance and getting uncomfortably close to China, as well as appeasing North Korea. All this is an unhealthy mix of great power tensions and deep-seated historical distrust and growing military capabilities. The bigger worry is that Pyongyang's adventurism will incinerate any efforts to stabilise a region full of dangerous rivalries, as will the inevitable collision between Iran and Israel in the Middle East.

#### Court involvement crushes judicial legitimacy

Robert M. Chesney 9, Professor, University of Texas School of Law, NATIONAL SECURITY FACT DEFERENCE, 95 Va. L. Rev. 1361

Judicial involvement in national security litigation, as noted at the outset, poses unusual risks for the judiciary as an institution. Such cases are more likely than most to involve claims of special, or even exclusive, executive branch authority. They are more likely than most to involve a perception - on the part of the public, the government, or judges themselves - of unusually high stakes. They are more likely than most to be in the media spotlight and hence in view of the public in a meaningful sense. These cases are, as a result of all this, especially salient as a political matter. And therein lies the danger for the courts. Because of these elements, an inappropriate judicial intervention in national security litigation is unusually likely to generate a response from the other branches or the public at large that might harm the institutional interests of the judiciary, either by undermining its prestige and authority or perhaps even by triggering some form of concrete political response.

#### Inflexibility causes terrorism

Royal 11JOHN PAUL ROYAL, Institute of World Politics, “War Powers and the Age of Terrorism,” Center for the Study of the Presidency & Congress The Fellows Review http://www.thepresidency.org/storage/Fellows2011/Royal-\_Final\_Paper.pdf

The international system itself and national security challenges to the United States in particular, underwent rapid and significant change in the first decade of the twenty-first century. War can no longer be thought about strictly in the terms of the system and tradition created by the Treaty of Westphalia over three and a half centuries ago. Non-state actors now possess a level of destructiveness **formerly enjoyed only by nation states.** Global terrorism, coupled with the threat of weapons of mass destruction developed organically or obtained from rogue regimes, presents new challenges to U.S. national security and place innovative demands on the Constitution’s system of making war. ¶ In the past, as summarized in the 9/11 Commission Report, threats emerged due to hostile actions taken by enemy states and their ability to muster large enough forces to wage war: “Threats emerged slowly, often visibly, as weapons were forged, armies conscripted, and units trained and moved into place. Because large states were more powerful, they also had more to lose. They could be deterred" (National Commission 2004, 362). This mindset assumed that peace was the default state for American national security. ¶ **Today however, we know that threats can emerge quickly**. Terrorist organizations half-way around the world are able to wield weapons of unparalleled destructive power. These attacks are more difficult to detect and deter due to their unconventional and asymmetrical nature. In light of these new asymmetric threats and the resultant changes to the international system, **peace can no longer be considered the default state of** American national **security**. ¶ Many have argued that the Constitution permits the president to use unilateral action only in response to an imminent direct attack on the United States. In the emerging security environment described above, **pre-emptive action taken by the executive branch may be needed more often than when nation-states were the principal threat** to American national interests. Here again, the 9/11 Commission Report is instructive as it considers the possibility of pre-emptive force utilized over large geographic areas due to the diffuse nature of terrorist networks: ¶ In this sense, 9/11 has taught us that terrorism against American interests “over there” should be regarded just as we regard terrorism against America “over here.” In this sense, the American homeland is the planet (National Commission 2004, 362). ¶ Furthermore, the report explicitly describes the global nature of the threat and the global mission that must take place to address it. Its first strategic policy recommendation against terrorism states that the: ¶ U.S. government must identify and prioritize actual or potential terrorist sanctuaries. For each, it should have a realistic strategy to keep possible terrorists insecure and on the run, using all elements of national power (National Commission 2004, 367). ¶ Thus, fighting continues against terrorists in Afghanistan, Yemen, Iraq, Pakistan, the Philippines, and beyond, as we approach the tenth anniversary of the September 11, 2001 attacks. ¶ Proliferation of weapons of mass destruction (WMD), especially nuclear weapons, into the hands of these terrorists **is the most dangerous threat to the U**nited **S**tates. We know from the 9/11 Commission Report that Al Qaeda has attempted to make and obtain nuclear weapons for at least the past fifteen years. Al Qaeda considers the acquisition of weapons of mass destruction to be a religious obligation while “more than **two dozen other terrorist groups** are pursing CBRN [**chemical, biological, radiological, and nuclear] materials**” (National Commission 2004, 397). Considering these statements, rogue regimes that are openly hostile to the United States and have or seek to develop nuclear weapons capability such as North Korea and Iran, or extremely unstable nuclear countries such as Pakistan, pose a special threat to American national security interests. These nations were not necessarily a direct threat to the United States in the past. Now, however, due to proliferation of nuclear weapons and missile technology, **they can inflict damage at considerably higher levels and magnitudes than in the past**. In addition, these regimes may pursue proliferation of nuclear weapons and missile technology to other nations and to allied terrorist organizations. ¶ The United States must pursue condign punishment and appropriate, **rapid action against hostile terrorist organizations, rogue nation states, and nuclear weapons proliferation threats** in order to protect American interests both at home and abroad. Combating these threats are the “top national security priority for the United States…**with the full support of Congress**, both major political parties, the media, and the American people” (National Commission 2004, 361). Operations may take the form of pre-emptive and sustained action against those who have expressed hostility or declared war on the United States. **Only the executive branch can effectively execute this mission**, authorized by the 2001 AUMF. If the national consensus or the nature of the threat changes, Congress possesses the intrinsic power to rescind and limit these powers.

**Lack of crisis containment turns the case**

Laura Young 13, Ph.D., Purdue University Associate Fellow, June 2013, Unilateral Presidential Policy Making and the Impact of Crises, Presidential Studies Quarterly, Volume 43, Issue 2

A president looks for chances to increase his power (Moe and Howell 1999). Windows of opportunity provide those occasions. These **openings create an environment where the president faces** little backlash **from Congress, the judicial branch, or even the public**. Though institutional and behavioral conditions matter, domestic and international crises play a pivotal role in aiding a president who wishes to increase his power (Howell and Kriner 2008, 475). These events overcome the obstacles faced by the institutional make-up of government. They also allow a president lacking in skill and will or popular support the opportunity to shape the policy formation process. In short, focusing events increase presidential unilateral power.

#### Judicial restrictions spill over and guts broader executive war powers.

Green 9 Craig, Associate Professor, Temple Law School; University Fellowship, Princeton History Department; J.D., Yale Law School, “Ending the Korematsu Era: A Modern Approach ,” http://works.bepress.com/cgi/viewcontent.cgi?article=1002&context=roger\_craig\_green

Another lesson from sixty years of wartime cases concerns the role of precedent itself in guiding presidential action. Two viewpoints merit special notice, with each having roots in opinions by Justice Jackson. On one hand is his explanation in Korematsu that courts must not approve illegal executive action: A military order, however unconstitutional, is not apt to last longer than the military emergency. . . . But once a judicial opinion . . . show[s] that the Constitution sanctions such an order, the Court for all time has validated the principle of racial discrimination in criminal procedure and of transplanting American citizens. The principle then lies about like a loaded weapon, ready for the hand of any authority that can bring forward a plausible claim of an urgent need. Every repetition imbeds that principle more deeply in our law and thinking and expands it to new purposes. . . . A military commander may overstep the bounds of constitutionality, and it is an incident. But if we review and approve, that passing incident becomes the doctrine of the Constitution. There it has a generative power of its own, and all that it creates will be in its own image.270 This “loaded weapon” idea is orthodox in analysis of Korematsu as a racist morality play. The passage is cited as evidence that Supreme Court precedents really matter, and that tragically racist errors retain their menacing power throughout the decades.271 Students are reminded that Korematsu has never been directly overruled, thereby inviting imagination that Korematsu itself is a loaded weapon just waiting for a President to grasp and fire.272 This conventional approach is incomplete. As we have seen, the first and decisive precedent supporting World War II’s racist policies was not Korematsu but Hirabayashi; thus, Jackson himself helped to “load” the doctrinal “weapon” over which he worried just a year later.273 Jackson’s willingness to eviscerate Hirabayashi in Korematsu only exemplifies (as if anyone could doubt it) that no Supreme Court decision can fiat a legal principle “for all time.”274 Past cases can be overruled, disfavored, ignored, or reinterpreted if the Court finds reason to do so, and this is effectively what has happened to Korematsu and Hirabayashi themselves in the wake of Brown, the civil rights era, and other modern history.275 Korematsu was a direct “repetition” of Hirabayshi’s racism for “expand[ed]” purposes, yet it only launched these two cases farther toward their current pariah status.276 A second perspective on war-power precedents is Jackson’s Youngstown concurrence, which rejected President Truman’s effort to seize steel mills and maintain output for the Korean War.277 Jackson’s opinion ends with selfreferential pessimism about judicial authority itself: I have no illusion that any decision by this Court can keep power in the hands of Congress if it is not wise and timely in meeting its problems. . . . If not good law, there was worldly wisdom in the maxim attributed to Napoleon that “The tools belong to the man who can use them.” We may say that power to legislate for emergencies belongs in the hands of Congress, but only Congress itself can prevent power from slipping through its fingers.278 This “no illusion” realism about presidential authority views judicial limitations on the President as contingent on Congress’s political wisdom and responsiveness — without any bold talk about precedents as “loaded weapons” or stalwart shields. On the contrary, if taken seriously, Jackson’s opinion almost suggests that judicial decisions about presidential wartime activities are epiphenomenal: When Congress asserts its institutional prerogatives and uses them wisely, the executive might be restrained, but the Court cannot do much to swing that political balance of power. Jackson’s hardnosed analysis may seem intellectually bracing, but it understates the real-world power **of judicial precedent to shape what is politically possible**.279 Although Presidents occasionally assert their willingness to disobey Supreme Court rulings, actual disobedience of this sort is vanishingly rare and would carry grave political consequences.280 Even President Bush’s repeated losses in the GWOT did not spur serious consideration of noncompliance, despite strong and obvious support from a Republican Congress.281 Likewise, from the perspective of strengthening presidential power, Korematsu-era precedents clearly emboldened President Bush in his twenty-first-century choices about Guantanamo and military commissions.282 The modern historical record thus shows that judicial precedent can both expand and limit the operative sphere of presidential action. Indeed, the influence of judicial precedent is stronger than a court-focused record might suggest. The past sixty years have witnessed a massive bureaucratization and legalization of all levels of executive government.283 From the White House Counsel, to the Pentagon, to other entities addressing intelligence and national security issues, lawyers have risen to such high levels of governmental administration that almost no significant policy is determined without multiple layers of internal legal review.284 And these executive lawyers are predominantly trained to think — whatever else they may believe — that Supreme Court precedent is authoritative and binding.285 Some middle ground seems therefore necessary between the “loaded weapon” and “no illusion” theories of precedent. Although Supreme Court decisions almost certainly influence the scope of presidential war powers, such practical influence is neither inexorable nor timeless. A more accurate theory of war-power precedents will help explain why it matters that American case law includes a reservoir of Korematsu-era decisions supporting excessive executive war power, and will also suggest how lawyers, judges, and scholars might eviscerate such rulings’ force. Korematsu is the kind of iconic negative precedent that few modern lawyers would cite for its legal holding. Yet even as Korematsu’s negative valence is beyond cavil, the breadth and scope of that negativity are not clear. Everyone knows that Korematsu is wrong, yet like other legal icons — Marbury, Dred Scott, Lochner, Erie, and Brown — its operative meaning is debatable. Just as Korematsu was once an authoritative precedent and is now discredited, this Article has sought to revise Korematsu’s cultural meaning even further, transforming it from an isolated and irrelevant precedent about racial oppression to a broadly illuminating case about how courts supervise presidential war

#### Courts cant execute foreign policy- the executive is comparatively better

Ku and Yoo 6 Hamdan v. Rumsfeld: The Functional Case for Foreign Affairs Deference to the Executive Branch, Julian Ku, Associate Professor of Law, Hofstra University School of Law; Visiting Associate Professor of Law, William & Mary Marshall-Wythe School of Law, John Yoo, Professor of Law, University of California at Berkeley School of Law (Boalt Hall); Visiting Scholar, American Enterprise Institute, 2006, University of California at Berkeley, Public Law and Legal Theory, Research Paper Series, Research Paper No. 945454

While courts are the primary institutions in the U.S. system for interpreting and applying laws, some of their key institutional charac- teristics undercut their ability in the foreign affairs law context. In particular, courts have access to limited information in foreign affairs cases and are unable to take into account the broader factual context underlying the application of laws in such areas.¶ These limitations are not a failing. They are part of the inherent design of the federal court system, which is intended to be independ- ent from politics, to allow parties to drive litigation in particular cases, and to receive information in highly formal and limited ways. While these characteristics are helpful for the purposes of neutral de- cisionmaking, they also may render courts less effective tools in re- solving ambiguities in laws designed to achieve national goals in in- ternational relations.¶ Courts do not actively gather information about a particular case or a particular law. Rather, that information is provided to them by the contending parties, in many cases through the expensive process of discovery. Any information provided to the court for evidentiary pur- poses must survive rules that impose tests for relevance, credibility, and reliability that are designed to ensure fairness toward the contend- ing parties. In the criminal context, such information is further limited to prevent violating a defendant’s constitutional rights.¶ By contrast, the executive branch itself collects a wide variety of information through its own institutional experts and a wide global network of contacts without the necessity of strict rules of evidentiary exclusion. While this information may be presented to the executive branch at any time, a court generally cannot account for new informa- tion except in the context of a new case.71 Courts also cannot update statutory mandates to reflect new information, but instead must con- tinue to enforce policies even when they are no longer appropriate. For instance, once the political branches have enacted a statute or ap- proved a treaty, the courts cannot alter or refuse to execute those laws, even if the original circumstances that gave rise to the statute or treaty have changed or even if the national interest would be harmed.72¶ Aside from the judiciary’s information-gathering limitations, there are strong reasons to doubt the ability of the members of the federal judiciary to resolve effectively foreign affairs laws ambigui- ties. Judges are not chosen based on their expertise in a particular field. Federal judges, with a few minor exceptions, handle a wide va- riety of cases without any subject matter specialties. None, for in- stance, is chosen because of his or her expertise on matters relating to foreign affairs or foreign affairs laws.¶ Courts are also highly decentralized. With 94 district courts and 667 judges, differing interpretations of ambiguous foreign affairs laws could result in broad conflicts between different judicial districts. Al- though the appellate process can eventually unify inconsistent inter- pretations, the process is notoriously slow and limited. The Supreme Court itself hears about 70-85 cases a year compared to the estimated 325,000 appeals that are filed from district court decisions annually. As a result, the system is poorly designed for achieving a speedy and unified interpretation of an ambiguous statute, treaty, or rule of cus- tomary international law.¶ Such inflexibility surely advances the goals of a domestic legal system in uniformity, predictability, and stability in the interpretation and application of federal law. For these reasons, deference doctrines do not require judicial abdication to the executive branch. Rather, they typically allow the courts to make the initial judgment about the proper meaning of a statute or treaty. Where such statutes or treaties are ambiguous or broadly phrased, however, a continued resort to a rigid, slow, inflexible and decentralized decisionmaking process based upon limited information is hard to justify.¶ This is not to say that courts could not interpret ambiguous stat- utes if necessary. Rather, the central question is, from a comparative institutional perspective, whether there is reason to think that courts would be equal or superior to other branches of government in re- solving ambiguities in laws designed to achieve national foreign poli- cies. If the judiciary is not the ideal institution for resolving ambigui- ties in foreign affairs laws, the deference doctrines may still not be worth following if the executive branch does not possess any advan- tages over the courts. We believe, however, that the executive branch has superior institutional competence that justifies the existence of the deference doctrines¶ As Chevron recognized,73 the executive branch possesses two in- stitutional characteristics that make it superior to courts in the inter- pretations of certain kinds of laws. First, executive agencies usually possess expertise in the administration of certain statutes, particularly those in complex areas. Second, the executive branch is subject to greater political accountability than the judiciary, and the electorate could ultimately change unwanted interpretations.74 As Justice Ste- vens himself explained in Chevron, “Judges are not experts in the field, and are not part of either political branch of the Government.”75 While agencies are not directly accountable to the people, the Chief Executive is, and it is entirely appropriate for this political branch of the Government to make such policy choices—resolving the compet- ing interests which Congress itself either inadvertently did not re-solve, or intentionally left to be resolved by the agency charged with the administration of the statute in light of everyday realities. One way to think about the executive branch’s comparative ad- vantage is in terms of the likelihood of errors. Agencies which pos- sess greater expertise over a complex and technical statute are less likely to depart from Congressional intent in their interpretations of those statutes, especially ambiguous provisions in those statutes. While agencies may well incur greater costs in making those deci- sions, such costs reflect the likelihood that they will seek a broader set of information about their legal interpretation than that presented to courts. Indeed, unlike courts, the executive branch is designed to de- velop specialized competence. In the area of foreign policy, the ex- ecutive branch is composed of large bureaucracies solely focused on designing and implementing foreign policy. The more common criticism of the executive branch is that it is likely to manipulate its expertise in the service of political goals. While this may seem like a criticism, it is actually a virtue in the con- text of resolving ambiguities in laws implicating foreign affairs. Such laws nearly always implicate broad policy decisions or political val- ues and the political nature of the executive branch gives it advan- tages in making such decisions. If Congress leaves ambiguities in a foreign affairs statute, for instance, it is reasonable to assume it would prefer such ambiguities to be resolved by the more politically respon- sive institution. Indeed, it is doubtful that there is substantial popular support for transferring authority to the judiciary in cases where the law relates to how to deal with a serious external threat.76

#### Courts should defer to the executive- sends bad signal in foreign policy

Abebe and Posner 11 The Flaws of Foreign Affairs Legalism, DANIEL ABEBE & ERIC A. POSNER, Assistant Professor and Kirkland & Ellis Professor, University of Chicago Law School, Jan 29, 2011, VIRGINIA JOURNAL OF INTERNATIONAL LAW, Volume 51 — Issue 3 — Page 507, http://www.vjil.org/assets/pdfs/vol51/issue3/Abebe\_\_\_Posner.pdf

Similar points can be made about courts. There are several reasons why courts try to minimize their involvement in foreign affairs. As we have just seen, there is a practical problem: the absence of congressional involvement. Because Congress passes so few foreign affairs statutes, or passes statutes that simply delegate to the President without clear stand- ards, judges have little statutory law to enforce. Accordingly, if courts are to constrain the executive, they will have to rely on constitutional norms. However, the written constitutional rules touching on foreign af- fairs are extremely vague, consisting only of the Vesting Clause, the Commander-in-Chief Clause, the Ambassadors Clause, a handful of congressional powers (to declare war, to define the law of nations), and the Treaty Clause.¶ To constrain the executive, the courts would have to apply subsidiary rules and doctrines that flesh out the vague written standards in the Con- stitution, as they have for the President’s domestic powers. Why have they not devised similar rules for his foreign affairs powers? Imagine, for example, that the Bill of Rights were applied to foreign policy to the same extent that it is applied to domestic policy. The answer seems to be that judges are even less informed about foreign affairs than legisla- tors and even less able to inform themselves. A legislature can at least create a committee that specializes in foreign affairs and takes a leader- ship role. Courts have no similar ability to divide labor internally and thereby enable specialization. Courts are also very slow and highly decentralized. An important for- eign policy issue arrives on the judiciary’s doorstep in the context of a specific legal dispute that might have only a glancing relationship with the issue. Consider Mingtai v. UPS,183 the run-of-the-mill contract dis- pute between two private firms over liability for a lost package turning on the explosive issue of whether Taiwan is part of China for purposes of the Warsaw Convention.184 Supposing a judge is even capable of an- swering this question, one must doubt whether it makes sense to wait for a contract dispute to arise before addressing an issue at the heart of the relationship between the United States and the most populous nation in the world. The district court judge may get the answer right or wrong, with appeals up the chain. In the meantime, other district and appellate court judges may disagree. The upshot would be a muddy and potential- ly destabilizing message produced by a group of non-experts over many years.

#### Lawfare undermines executive wartime decision-making

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Another cost of lawfare is the fragmentation of authority within the executive branch during war. The Commander in Chief traditionally had unified hierarchical command over the executive branch that empowered him to act quickly and that promoted accountability to the public by identifying him as the person responsible for all executive action. This understanding has broken down in the last decade. We have seen how consequential independent inspectors general are in checking the presidency's national security goals. Lawyers too have gained more independence and power that the President cannot effectively control, especially in the military, but in other pockets of the executive branch as well. These lawyers enforce the law (when they interpret it correctly), but they also attenuate the unity of accountability and command. The increasing involvement of courts and other outside actors in military and intelligence decisions does not violate the theory of the unitary executive, but it has a similar effect on the executive branch. As we have seen, judicial **review of wartime tactics has all sorts of hard-to-see** constraining consequences on presidential decision-making. The decentralized legal enforcers that have risen in power in the last decade splinter the Commander in Chief's executive unity like nothing in American wartime history. Benjamin Wittes closes his book Detention and Denial by speculating what would happen if a prisoner released from GTMO is later found in an al Qaeda leadership position. "We have no accountability when our system fails," he says, before asking, "Were these releases the fault of courts (whose threats of review spurred them), the Bush administration (which carried them out), . . . or the left and the international community (which ruthlessly pushed for them)?"' The problem is deeper and wider than Wittes describes. It is deeper because he does not mention the independent players inside the executive branch who shape and constrain presidential action through investigation and legal interpretation. And it is broader because it applies far beyond the detention context to surveillance, targeting, and every element of the war on terrorism. Moreover, the opposite of Wittes's speculation is also possible, indeed likely: the President will be blamed when something goes wrong even if because of the splintering of executive authority, he lacked the effective power to do what in retrospect should have been done. Distributed accountability can bring many benefits, but its undoubted costs are the difficulty of identifying the locus of accountability when something goes wrong, and the possibility that the leader of the flattened organization will be blamed even though he lacked effective control. A related cost of lawfare is the weakening of wartime presidential initiative and dispatch. When more eyes have to review an operation in advance, it takes longer. Covert operations have many layers of review and approval beginning with many in the CIA and moving up through other bureaucracies to the President. Decisions on the targets in this war often go through a similarly extensive review process for targets off the traditional battlefield, and less extensive but still elaborate reviews for targets on a tradi-tional battlefield. In general, all military and intelligence actions of any significance have elaborate and law-heavy preclearance processes. These up-front reviews delay action and can be so burdensome to negotiate that they result in otherwise useful and appropriate actions not being taken at all. Another factor slowing down and sometimes precluding executive action is the anticipated personal and professional costs of accountability. The rise of powerful, networked, and harshly critical NGOs has meant that not only top government officials, but midlevel ones as well, are subject to vivid, reputation-harming charges published globally on the Internet, as well as the possibility of lawsuits in the United States and abroad. The "mere threat of lawsuits and legal charges effectively bullies American decision makers**, alters their actions, intimidates our security forces, and limits our country's ability to gather intelligence**," says Donald Rumsfeld, lamenting lawfare's effect.' Stripped of its negative connotations, Rumsfeld's judgment—which in less colorful terms applies to every accountability constraint described in this book—should not be controversial. "Bullying" and "intimidating" are forms of influencing, and influencing government behavior to make it more prudent and lawful is the point of the legalized accountability mechanisms. "I think people should think twice; I think that's a good thing," says the ACLU's Jameel Jaffer upon learning about the effect of legal scrutiny and criticism on government officials. "I don't want people to think twice about doing things that are both in the national interest and consistent with the law but if by think twice you mean think twice before sticking a man in a box with a bug, then absolutely, think twice," he adds, referring to one of the Bush administration's most controversial interrogation techniques.' There is no doubt that lawfare significantly influences and constrains officials, not only by direct prohibitions but also, and more significantly, by **getting them to "think twice" about what they are doing**. The hard question is whether this influence goes too far. The bug-in-the-box is now prohibited by law, partly as a result of Jaffer's efforts, but in many cases what is in the national interest and what is lawful are not black and white, but rather various shades of gray. Government officials every day have to decide how far to push into this gray area. The accountability mechanisms give them pause and lead them not to push as far into the darker shades. Whether that leads them to a place in the gray area where they should be or short of where they should be depends on facts about the future that no one has, as well as one's view of the relevant law, which is not always clear. As a result of the last decade executive officials up and down the chain of command are much more sensitive to law and accountability, and many worry that this sensitivity leads to excessive caution. It is hard to know if they are right, but Jaffer's opposite and easy-sounding injunction—follow the law and act in the national security interest—is far too simple.

#### President has complete discretion- Courts have struck down injunctions on ID

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

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

#### Court deference now

Jonathan L. Entin 12, Associate Dean for Academic Affairs (School of Law), David L. Brennan Professor of Law, and Professor of Political Science, Case Western Reserve University. War Powers, Foreign Affairs, and the Courts: Some Institutional Considerations, 45 Case W. Res. J. Int'l L. 443

Although these procedural and jurisdictional barriers to judicial review can be overcome, those who seek to limit what they regard as executive excess in military and foreign affairs should not count on the judiciary to serve as a consistent ally. The Supreme Court has shown substantial deference to the president in national security cases. Even when the Court has rejected the executive's position, it generally has done so on relatively narrow grounds.¶ Consider the Espionage Act cases that arose during World War I. Schenck v. United States, n63 which is best known for Justice Holmes's [\*452] announcement of the clear and present danger test, upheld a conviction for obstructing military recruitment based on the defendant's having mailed a leaflet criticizing the military draft although there was no evidence that anyone had refused to submit to induction as a result. Justice Holmes almost offhandedly observed that "the document would not have been sent unless it had been intended to have some effect, and we do not see what effect it could be expected to have upon persons subject to the draft except to influence them to obstruct the carrying of it out." n64 The circumstances in which the speech took place affected the scope of First Amendment protection: "When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight and that no Court could regard them as protected by any constitutional right." n65 A week later, without mentioning the clear and present danger test, the Court upheld the conviction of the publisher of a German-language newspaper for undermining the war effort n66 and of Eugene Debs for a speech denouncing the war. n67 Early in the following term, Justice Holmes refined his thinking about clear and present danger while introducing the marketplace theory of the First Amendment in Abrams v. United States, n68 but only Justice Brandeis agreed with his position. n69 The majority, however, summarily rejected the First Amendment defense on the basis of Holmes's opinions for the Court in the earlier cases. n70¶ Similarly, the Supreme Court rejected challenges to the government's war programs during World War II. For example, the Court rebuffed a challenge to the use of military commissions to try German saboteurs. n71 Congress had authorized the use of military tribunals in such cases, and the president had relied on that authorization in directing that the defendants be kept out of civilian courts. n72 In addition, the Court upheld the validity of the Japanese internment program. n73 Of course, the Court did limit the scope of the [\*453] program by holding that it did not apply to "concededly loyal" citizens. n74 But it took four decades for the judiciary to conclude that some of the convictions that the Supreme Court had upheld during wartime should be vacated. n75 Congress eventually passed legislation apologizing for the treatment of Japanese Americans and authorizing belated compensation to internees. n76¶ The Court never directly addressed the legality of the Vietnam War. The Pentagon Papers case, for example, did not address how the nation became militarily involved in Southeast Asia, only whether the government could prevent the publication of a Defense Department study of U.S. engagement in that region. n77 The lawfulness of orders to train military personnel bound for Vietnam gave rise to Parker v. Levy, n78 but the central issue in that case was the constitutionality of the provisions of the Uniform Code of Military Justice that were the basis of the court-martial of the Army physician who refused to train medics who would be sent to the war zone. n79 The few lower courts that addressed the merits of challenges to the legality of the Vietnam War consistently rejected those challenges. n80¶ The picture in the post-2001 era is less clear. In three different cases the Supreme Court has rejected the executive branch's position, but all of those rulings were narrow in scope. For example, Hamdi v. Rumsfeld n81 held that a U.S. citizen held as an enemy combatant must be given a meaningful opportunity to have a neutral decision-maker determine the factual basis for his detention. There was no majority opinion, however, so the implications of the ruling were ambiguous to say the least. Justice O'Connor's plurality opinion for four members of the Court concluded that Congress had authorized the president to detain enemy combatants by passing the Authorization for Use of Military Force n82 and that the AUMF satisfied the statutory requirement of congressional authorization for the detention of U.S. [\*454] citizens. n83 Justice Souter, joined by Justice Ginsburg, thought that the AUMF had not in fact authorized the detention of American citizens as required by the statute, n84 which suggested that Hamdi should be released. But the Court would have been deadlocked as to the remedy had he adhered to his view of how to proceed. This was because Justices Scalia and Stevens also believed that Hamdi's detention was unlawful and that he should be released on habeas corpus, n85 whereas Justice Thomas thought that the executive branch had acted within its authority and therefore would have denied relief. n86 This alignment left four justices in favor of a remand for more formal proceedings, four other justices in favor of releasing Hamdi, and one justice supporting the government's detention of Hamdi with no need for a more elaborate hearing. To avoid a deadlock, therefore, Justice Souter reluctantly joined the plurality's remand order. n87¶ Hamdi was atypical because that case involved a U.S. citizen who was detained. The vast majority of detainees have been foreign nationals. In Hamdan v. Rumsfeld, n88 the Supreme Court ruled that the military commissions that the executive branch had established in the wake of the September 11 attacks had not been authorized by Congress and therefore could not be used to try detainees. n89 A concurring opinion made clear that the president could seek authorization from Congress to use the type of military commissions that had been established unilaterally in this case. n90¶ Congress responded to that suggestion by enacting the Military Commissions Act of 2006, n91 which sought to endorse the executive's detainee policies and to restrict judicial review of detainee cases. In Boumediene v. Bush, n92 the Supreme Court again rejected the government's position. First, the statute did not suspend the writ of [\*455] habeas corpus. n93 Second, the statutory procedures for hearing cases involving detainees were constitutionally inadequate. n94 At the same time, the Court emphasized that the judiciary should afford some deference to the executive branch in dealing with the dangers of terrorism n95 and should respect the congressional decision to consolidate judicial review of detainee cases in the District of Columbia Circuit. n96¶ Detainees who have litigated in the lower federal courts in the District of Columbia have not found a sympathetic forum. The U.S. Court of Appeals for the D.C. Circuit has not upheld a single district court ruling that granted any sort of relief to detainees, and the Supreme Court has denied certiorari in every post-Boumediene detainee case in which review was sought. n97 In only one case involving a detainee has the D.C. Circuit granted relief, and that case came up from a military commission following procedural changes adopted in the wake of Boumediene. n98 About a month after this symposium took place, in Hamdan v. United States n99 the court overturned a conviction for providing material support for terrorism. The defendant was the same person who successfully challenged the original military commissions in Hamdan v. Rumsfeld. n100 This very recent ruling emphasized that the statute under which he was prosecuted did not apply to offenses committed before its enactment. n101 It remains to be seen how broadly the decision will apply. [\*456] ¶ Meanwhile, other challenges to post-2001 terrorism policies also have failed, and the Supreme Court has declined to review those rulings as well. For example, the lower courts have rebuffed claims asserted by foreign nationals who were subject to extraordinary rendition. In Arar v. Ashcroft, n102 the U.S. Court of Appeals for the Second Circuit affirmed the dismissal of constitutional and statutory challenges brought by a plaintiff holding dual citizenship in Canada and the United States. n103 And in Mohamed v. Jeppesen Dataplan, Inc., n104 the U.S. Court of Appeals for the Ninth Circuit held that the state-secrets privilege barred a separate challenge to extraordinary rendition brought by citizens of Egypt, Morocco, Ethiopia, Iraq, and Yemen. n105 Unlike Arar, in which the defendants were federal officials, n106 this case was filed against a private corporation that allegedly assisted in transporting the plaintiffs to overseas locations where they were subjected to torture. n107 Although at least four judges on the en banc courts dissented from both rulings, n108 the Supreme Court declined to review either case. n109

### Terror

#### Detention restrictions won’t solve terrorism --- only a risk they cause it

McCarthy 9, Andrew C. McCarthy III is a former Assistant United States Attorney for the Southern District of New York, he is most notable for leading the 1995 terrorism prosecution against Sheik Omar Abdel Rahman and eleven others, New York Times best-selling author, 12-7-09, National Review, Gitmo Does Not Cause Terrorism, <http://www.nationalreview.com/articles/228819/gitmo-does-not-cause-terrorism/andrew-c-mccarthy>

So we’re going to shut down the detention center at the U.S. naval base on Guantanamo Bay and move the 200-plus terrorists detained there to a seldom-used civilian correctional center in Thomson, Ill. And we’re doing it, the Obama administration and Sen. Dick Durbin assure us, not because they want to use federal money to indemnify their home state for a white-elephant prison Illinois taxpayers should never have built, but because Guantanamo Bay simply must be closed. Gitmo, they say, causes terrorism.¶ It’s worth remembering that the “Blind Sheikh,” Omar Abdel Rahman, perhaps the world’s most influential jihadist, was never held in Gitmo. Instead, he and eleven of his followers got the gold-plated due-process plan: a nine-month 1995 trial in the criminal justice system for waging war against the American people. (That’s not rhetoric; that was the charge: conspiracy to levy war against the United States — Section 2384 of the federal penal code.)¶ The red-carpet treatment didn’t begin or end with the trial. There were Miranda warnings upon arrest (no one cooperated). Counsel was appointed, with the defendants choosing their lawyers — and, for some, Uncle Sam paid for two or more attorneys. Mountains of evidence were culled from intelligence files and duly shared with overseas terrorist organizations. The defense enjoyed a couple of years to make motions to get more discovery, to suppress evidence, and to dismiss the indictment. When things finally went to trial, there was a two-month defense case (that’s much longer than most criminal trials), which allowed them to put the government on trial for its investigative tactics. There was a post-trial hearing on their motion to vacate their convictions and dismiss the case on the ground of “outrageous government misconduct.” There was elaborate litigation before severe sentences were imposed: The Blind Sheikh got life imprisonment, and the other sentences ranged from 25 years to life. That was followed by a three-year appeals process, during which the court appointed new lawyers to argue that their clients had been railroaded through the incompetence of the old lawyers, while the old lawyers continued arguing that their clients had been railroaded by the malevolence of the government. Finally, when the appeals were done and the convictions upheld, the defendants began filing habeas corpus petitions — a practice that continues to this day — claiming that this or that constitutional right was infringed, or that this or that prison condition was inhumane.¶ So the Islamic world and its sundry terrorist bands were all very impressed with this ostentatious display of our humanity, our benign intentions, and “our values” — right? Wrong. The usual Islamist organizations claimed that America had put Islam on trial — the original slander that was refitted after 9/11 into the equally spurious charge that America is at war with Islam. In early 1997, about a year after sentencing, Sheikh Abdel Rahman’s Egyptian terrorist organization, al-Gama’at al-Islamia (the Islamic Group), issued a statement declaring “all American interests legitimate targets” for “legitimate jihad” until the release of all those convicted terrorists, beginning with their beloved leader.¶ A few months later, Abdel Rahman’s always-helpful American lawyers (one of whom has since been convicted of helping him run Gama’at from his U.S. prison cell) issued a statement pressuring U.S. officials to release him. “It sounds,” they wrote, “like the Sheikh’s condition is deteriorating and obviously could be life-threatening.” On cue, Gama’at publicly warned that if any harm were to come to the sheikh, the group would “target . . . all of those Americans who participated in subjecting his life to danger.” The terrorists elaborated that they considered every American official, from Pres. Bill Clinton down to “the despicable jailer,” to be “partners endangering the Sheikh’s life.” The organization promised to do everything in its power to free Abdel Rahman.¶ On Nov. 17, 1997, they made good on the promise. As 58 foreign tourists visited an archeological site in Luxor, Egypt, they were set upon by six Gama’at murderers. The jihadists brutally shot and stabbed them to death – also killing several Egyptian police. The torso of one victim was slit so the terrorists could insert in it a leaflet demanding the release of the Blind Sheikh. Similar leaflets were scattered about the carnage.¶ Luxor was not the last of these atrocities, but it is the most savage so far, and it is the scene that should leap to mind every time some useful idiot like Senator Durbin makes the absurd claim that Guantanamo Bay must be shut down because it causes terrorism and spurs terrorist recruitment. That this claim is mindlessly repeated by high-ranking military officers and intelligence officials doesn’t make it any less absurd.¶ We are talking about people who live in sharia states where they still stone women for adultery, apostates for daring to abandon Islam, and homosexuals for breathing. We are talking about people who riot and murder over cartoons — people who use mosques to hide weapons and Korans to transmit terrorist messages and then murder non-Muslims for purportedly defaming their religion. It makes no difference to these people that we detain Muslim terrorists in military brigs under the laws of war rather than detaining them in civilian prisons after trial in our criminal justice system.¶ After 17 years of attacks, we should have learned the difference between causes of terrorism and pretexts for terrorism. Terrorism is caused, and terrorist recruitment is driven, by Islamist ideology and by American weakness in the face of terror attacks. In that sense, Senator Durbin causes more terrorism than Gitmo ever will. Terrorist organizations are encouraged when they come to believe they can win — when they come to believe they can outlast America because we lack resolve.¶ The Blind Sheikh, echoed by Osama bin Laden, has promised for years that if “battalions of Islam” keep reprising Hezbollah’s 1983 bombing of the Marine barracks in Beirut, and al-Qaeda’s orchestration of the 1993 “Black Hawk Down” incident in Somalia, then the Americans will pack up and go home. The terrorists tell their recruits we’re soft and won’t defend ourselves if it gets ugly. When a U.S. senator takes to the floor of the chamber and compares heroic American troops to Hitler, Stalin, and Pol Pot, he confirms Abdel Rahman and bin Laden’s views. When he suggests that terrorism is somehow caused by locking up terrorists in a secure, offshore military facility, where they can no longer threaten Americans or anyone else, the Islamic world’s fence-sitters start thinking, “The jihadists are right: America doesn’t have the stomach to tough it out. If we just make it bloody enough, we can win.”¶ The only part of Gitmo that causes terrorism is its front gates, when we allow terrorists to walk out of them so they can go back to the battle. Gitmo is a pretext for terrorism. Terrorists use it because, unlike us, they know it’s irresponsible not to study and understand the enemy. They know the Left exercises outsize influence on the media and that the Left’s key characteristic is projection.

#### Ending detention only costs us vital intelligence

Thiessen & Pompeo 7-9-13 MODERATOR:¶ MARC A. THIESSEN, AEI¶ SPEAKER:¶ MIKE POMPEO, U.S. HOUSE ¶ OF REPRESENTATIVES (R-KS)¶ AMERICAN ENTERPRISE INSTITUTE, CLOSING GITMO? ¶ A CONVERSATION WITH REP. MIKE POMPEO, <http://www.aei.org/files/2013/07/15/-closing-gitmo-transcript_140008739936.pdf>

REP. POMPEO: No, that’s ridiculous. I mean, **it’s ridiculous on its face to say** ¶ **that Guantanamo Bay created more terrorists than it’s stopped**. It’s silly on its face.¶ Look, **those who want to kill us, those who don’t like the Western way and radical** ¶ **Islamic terrorism, can find any of** hundreds of reasons **not to like America, not to like the** ¶ **West, and to want to kill folks all over the world** who don’t – **who stand in the way of** ¶ **their radical Islamic goals**. **They don’t need Guantanamo Bay as a rationale for that** ¶ **terrorism or for that behavior**.¶ It’s a good storyline that the Left likes to tell about how Guantanamo causes these ¶ things. But more than it being factually inaccurate, I think it’s deeply immoral to make ¶ that statement. It gives – there’s this idea of this equivalence that says, boy, if you catch a ¶ terrorist and you detain them, consistent with the rules of law and international law in ¶ war, that someone has a right to come out and kill civilians. That would be the argument ¶ that’s being made, that it somehow justifies terrorism. It’s both ridiculous and silly and ¶ perhaps most importantly dangerous.¶ MR. THIESSEN: The – Guantanamo was initially going to this issue of creating ¶ versus stopping terrorism. **Guantanamo was initially established not** as a – **just as a** ¶ **detention facility, but** as a strategic interrogation center. And Mark Bowden in his book, ¶ “The Finish,” actually documents the fact that **two detainees in Guantanamo actually** ¶ **gave us the first leads on the courier network that led us to Osama bin Laden**. So what is ¶ the state of Guantanamo as an interrogation center? Are they still doing interrogations ¶ there and how has it helped our national security? What did they tell you there?¶ REP. POMPEO: Well, I don’t want to go into details about all of that, but here’s ¶ what I can say. The interrogations that a lot of folks were concerned with that were taking ¶ place previously are no longer taking place at the facility. Second, there is still, although ¶ admittedly attenuated, **there is still important information that is derived from the** ¶ **detainees there**. They still have families back in places from which they came. They have ¶ contact. They’re able to make telephone calls and have communications with folks back ¶ in their home countries. And **it is absolutely case that there is still information that is** ¶ **coming from these detainees that is relevant to the continued war on terror.**

#### Perception of weakness increases terrorism – history votes neg

D'Souza 7 (Dinesh, fellow at the Hoover Institution at Stanford University, “How the left led us into 9/11,” LA Times, 1/18, lexis)

Clinton's policies also helped to provoke 9/11. After the Cold War, leading Islamic radicals returned to their home countries. Bin Laden left Afghanistan and went back to Saudi Arabia; Ayman Zawahiri returned to Egypt. They focused on fighting their own rulers -- what they termed the "near enemy" -- in order to establish states under Islamic law. But in the mid- to late 1990s, these radicals shifted strategy. They decided to stop fighting the near enemy and to attack the "far enemy," the U.S.¶ The world's sole superpower would seem to be much more formidable than local Muslim rulers such as Hosni Mubarak in Egypt or the Saudi royal family. Bin Laden argued, however, that the far enemy was actually weaker and more vulnerable. He was confident that when kicked in their vital organs, Americans would pack up and run. Just like in Vietnam. Just like in Mogadishu.¶ **Bin Laden saw his theory of American weakness vindicated during the Clinton era** . In 1993, Islamic radicals bombed the World Trade Center. The Clinton administration did little. In 1996, Muslim terrorists attacked the Khobar Towers facility on a U.S. base in Saudi Arabia. No response. In 1998, Al Qaeda bombed two U.S. embassies in Africa. Clinton responded with a few perfunctory strikes in Sudan and Afghanistan. These did no real harm to Al Qaeda and only strengthened the perception of American ineptitude. In 2000, Islamic radicals bombed the U.S. destroyer Cole. Again, the Clinton team failed to act. By his own admission, **Bin Laden concluded that his suspicion of American pusillanimity and weakness was correct. He became emboldened to plot the 9/11 attacks** .¶ Still, the 2001 attacks might have been averted had the Clinton administration launched an effective strike against Bin Laden in the years leading up to them. Clinton has said he made every effort to get Bin Laden during his second term. Yet former CIA agent Michael Scheuer estimates that there were about 10 chances to capture or kill Bin Laden during this period and that the Clinton people failed to capitalize on any of them.¶ Between 1996 and mid-2000, Bin Laden was not in deep hiding. He gave sermons in Kandahar's largest mosque. He talked openly on his satellite phone. He also granted a number of media interviews: in 1996, with author Robert Fisk; in 1997, with Peter Arnett of CNN; in 1998, with John Miller of ABC News; in 1999, with a journalist affiliated with Time magazine. Isn't it strange that all these people could find Bin Laden but the Clinton administration couldn't?¶ Two lessons can be drawn from these sorry episodes. The first one, derived from Carter's actions, is: In getting rid of the bad regime, make sure that you don't get a worse one. This happened in Iran and could happen again, in Iraq, if leading Democrats in Congress have their way. The second lesson, derived from Clinton's inaction, is that **the perception of weakness emboldens our enemies.** If the Muslim insurgents and terrorists believe that the U.S. is divided and squeamish about winning the war on terror**,** they are likely to escalate their attacks **on Americans** abroad and at home. In that case, 9/11 will be only the beginning.

#### Err on the side of terrorist failure- 90% risk

Michael Levi, 4/17/2007, is David M. Rubenstein Senior Fellow for Energy and the Environment and Director of the Program on Energy Security and Climate Change, CFR, “ <http://www.cfr.org/weapons-of-mass-destruction/likely-nuclear-terrorist-attack-united-states/p13097>

We should not, however, underestimate the odds of terrorist failure. There isn’t enough space here to make that point comprehensively, but I’ll try to convince you that simple arguments for why failure is highly unlikely may be weaker than they seem. The case for the ease of building a gun-type weapon provides a good example of how we often overestimate how easy a terrorist task may be. I certainly won’t debate the fact that Manhattan Project scientists “were so confident about this design that they persuaded military authorities to drop the bomb, untested, on Hiroshima.” But we should parse the word “untested” carefully. During the Manhattan Project, scientists and engineers spent years testing the gun itself; testing their casting and machining of the uranium metal to avoid fires and criticality accidents during production, and impurities in the product; testing the initiator that would trigger the chain reaction; and testing how different configurations of materials would behave, a project that led to the death of one physicist. No one conducted a full-scale test explosion, but that hardly means that building the weapon was trivial. A terrorist group would have to do many of the same things (though technological progress would make some steps easier) all while attempting to hide from law enforcement and intelligence. This doesn’t mean that terrorists couldn’t build a gun-type bomb, but it suggests that their chances of failure aren’t negligible. This takes on special importance in the context of a broader defense. Imagine a terrorist group faces only a twenty percent chance of failure while building a bomb. But imagine it also faces a similarly small chance of failure while attempting to purchase nuclear materials, while attempting to recruit scientists and engineers, while raising money for its plot, while smuggling materials into the United States, while purchasing non-nuclear components for its weapon, while assembling the bomb in a safehouse, and in other elements of its plot. If we combine, for example, ten such hurdles, we get a ninety percent chance of failure. We can debate the numbers, but this suggests that we shouldn’t be too quick to ignore small chances of terrorist failure.

#### Oil dependence makes terrorism inevitable

Sandalow 8 David, Energy & Environment Scholar and Senior Fellow – Brookings Institution, Senior Director for Environmental Affairs – National Security Council, Degrees from Michigan Law School and Yale University, Freedom From Oil, p. 21-22

First, **oil dependence** strengthens Al Qaeda and other Islamic terrorists. The United States is in a long war. Islamic fundamentalists struck our shores and are determined to do so again. Like the Cold War, this struggle has many causes and will last for generations. Unlike the Cold War, oil dependence plays a central role in the struggle. For more than 50 years, the need to protect oil flows has shaped U.S. policy and relationships in the Persian Gulf. During the Cold War, we supported the Shah of Iran and other unpopular leaders in part to keep oil flowing from the region. In 1980, with the Soviets in Afghanistan, President Carter declared that attempts by outside forces to gain control of the Persian Gulf would be considered "an assault on the vital interests of the United States" and be "repelled by any means necessary, including military force."' In 1991, with Saddam Hussein in Kuwait, President George H.W. Bush told Congress that war was necessary because "[v]ital economic interests are at risk ... Iraq itself controls some 10% of the world's proven oil reserves. Iraq plus Kuwait controls twice that."' Later, National Security Adviser Brent Scowcroft explained that "...what gave enormous urgency to [Saddam's invasion of Kuwait] was the issue of oil.", After removing Saddam from Kuwait in 1991, U.S. troops remained in Saudi Arabia where their presence bred great resentment. These steps to secure oil flows have come at a cost. By making us central players in a region torn by ancient rivalries, oil dependence has exposed us to resentment, vulnerability and attack. Osama bin Laden's first fatwa, in 1996, was titled "Declaration of War against the Americans Occupying the Land of the Two Holy Places." Today, deep resentment of the U.S. role in the Persian Gulf remains a powerful recruitment tool for jihadists. That resentment grows not just from the war in Iraq, but from the U.S. relationship with the House of Saud, the presence of U.S. forces throughout the region and a long legacy of perceived betrayals. Yet the United States faces severe constraints in responding to this resentment. With half the world's proven oil reserves, the world's cheapest oil and the world's only spare production capacity, the Persian Gulf will remain an indispensable region for the global economy so long as modern vehicles run only on oil. To protect oil flows**,** the U.S. policymakers will feel compelled to maintain relationships and exert power in the region in ways likely to fuel the jihadist movement. Our other objectives in the region, such as protecting the territorial integrity of Israel, do not require the extensive presence in the Persian Gulf needed to secure reliable production and transit of oil. Compounding these problems, the huge money flows into the Persian Gulf from oil purchases help finance terrorist networks. Al Qaeda raises funds from an extensive global network, with Islamic charities and NGOs playing an important role.' Saudi money provides critical support for madrassas with virulent anti-American views. Fighting this flow of funds requires cooperation from many nations, yet leading oil exporters know we are poorly positioned to insist on it. Diplomatic efforts to gain Saudi assistance in choking off such funding, or investigating terrorist attacks, are hampered by the high priority we attach to preserving Saudi cooperation in managing world oil markets. As a result, millions of dollars of oil revenues each year work their way through an informal system of Islamic charities into terrorist coffers.

#### Internal instability and lack of growth are the main causes of terorrism

Meierrieks and Gries 13 (Dr. Daniel Meierrieks is a Research Fellow (Akademischer Rat), Department of Economics, Faculty of Economics and Behavioral Sciences, University of Freiburg, Ph.D. Economics (Dr. rer. pol.), University of Paderborn, 2012, M.Sc. International Economics, University of Paderborn, 2008, B.A., International Business Studies, University of Paderborn, 2005. Dr. Thomas Gries is a faculty member of economics at the University of Paderborn. “Causality between terrorism and economic growth,” Journal of Peace Research, vol. 50 no. 1, 01/2013, MT)

A country’s level of stability may also matter. For one, we expect the causal effect of terrorism on growth to be more pronounced with increased instability. Countries that suffer from severe political instability (i.e. civil wars) tend to be relatively poor, with comparatively low levels of institutional capacity, government effectiveness, and economic efficiency, meaning a low socio-economic and politico-institutional robustness to terrorism. High levels of political instability may also mean that the level of terrorist activity is higher because terrorist mobilization is facilitated, potentially also explaining why the effect of terrorism on growth may increase with instability. For another, we similarly expect the effect of growth on terrorism to become more pronounced with instability. The empirical literature on the roots of civil wars consistently suggests that it is rooted in poor socio-economic conditions (e.g.,[Fielding & Shortland, 2010](http://jpr.sagepub.com.mutex.gmu.edu/content/50/1/91.full#ref-13)). Terrorism is often used as a strategy within a larger insurgency by insurgent groups (e.g., [Sambanis, 2008](http://jpr.sagepub.com.mutex.gmu.edu/content/50/1/91.full#ref-33)).[9](http://jpr.sagepub.com.mutex.gmu.edu/content/50/1/91.full#fn-15) In these cases, we can expect terrorism and civil war to have similar roots.[10](http://jpr.sagepub.com.mutex.gmu.edu/content/50/1/91.full#fn-16)

#### Intel sharing is sustainable

NYT 13, 1/30, “Drone Strike Prompts Suit, Raising Fears for U.S. Allies”

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, 3/8, 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/](http://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.

### J1

#### Court no longer modeled worldwide

Liptak, Sept 17, 2008

(Adam, New York Times, U.S. Court Is Now Guiding Fewer Nations, <http://www.nytimes.com/2008/09/18/us/18legal.html?pagewanted=all&_r=0>)

WASHINGTON — Judges around the world have long looked to the decisions of the United States Supreme Court for guidance, citing and often following them in hundreds of their own rulings since the Second World War. But now American legal influence is waning. Even as a debate continues in the court over whether its decisions should ever cite foreign law, a diminishing number of foreign courts seem to pay attention to the writings of American justices.¶ “One of our great exports used to be constitutional law,” said Anne-Marie Slaughter, the dean of the Woodrow Wilson School of Public and International Affairs at Princeton. “We are losing one of the greatest bully pulpits we have ever had.”From 1990 through 2002, for instance, the Canadian Supreme Court cited decisions of the United States Supreme Court about a dozen times a year, an analysis by The New York Times found. In the six years since, the annual citation rate has fallen by half, to about six.¶ Australian state supreme courts cited American decisions 208 times in 1995, according to a recent study by Russell Smyth, an Australian economist. By 2005, the number had fallen to 72.¶ The story is similar around the globe, legal experts say, particularly in cases involving human rights. These days, foreign courts in developed democracies often cite the rulings of the European Court of Human Rights in cases concerning equality, liberty and prohibitions against cruel treatment, said Harold Hongju Koh, the dean of the Yale Law School. In those areas, Dean Koh said, “they tend not to look to the rulings of the U.S. Supreme Court.”¶ The rise of new and sophisticated constitutional courts elsewhere is one reason for the Supreme Court’s fading influence, legal experts said. The new courts are, moreover, generally more liberal than the Rehnquist and Roberts courts and for that reason more inclined to cite one another.¶ Another reason is the diminished reputation of the United States in some parts of the world, which experts here and abroad said is in part a consequence of the Bush administration’s unpopularity around the world. Foreign courts are less apt to justify their decisions with citations to cases from a nation unpopular with their domestic audience.“ It’s not surprising, given our foreign policy in the last decade or so, that American influence should be declining,” said Thomas Ginsburg, who teaches comparative and international law at the University of Chicago.

#### No willingness to check the executive

HUQ 12 - Assistant Professor of Law, University of Chicago Law School (Aziz Z. Huq, Binding The Executive (By Law Or By Politics), Chicago Public Law and Legal Theory Working Paper No. 400)

Consider first the case PV make against law and legal institutions as bulwarks against the executive. Their central argument rests on a logic of comparative institutional competence. Congress and judges alike, they argue, lack incentives or ability to gather and process information necessary to act quickly or to engage in oversight. Courts suffer from a “legitimacy deficit,” which dampens judicial willingness to intervene (pp 30–31, 57–58). And the Separation Of Powers system **can be gamed** by an executive using a strategy of “divide and conquer” against the two other branches (pp 19–31).38 The net result is that Congress fails to anticipate crises and then is forced to delegate broad new powers after the fact (pp 43–52), while courts lag far behind executive initiatives.

#### Courts fail at executive restrictions- empirics

Druck 12 [Judah A. Druck, law associate at Sullivan & Cromwell LLP, Cornell Law School graduate, magna cum laude graduate from Brandeis University, “Droning On: The War Powers Resolution and the Numbing Effect of Technology-Driven Warfare,” <http://www.lawschool.cornell.edu/research/cornell-law-review/upload/Druck-final.pdf>]

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

#### Drones

Noonan 13 (Raymond, “Law School prof addresses drone legality”, 2/22, <http://yaledailynews.com/blog/2013/02/22/law-school-prof-addresses-drone-legality/>)

Hathaway, who directs the Center for Global Legal Challenges at Yale Law School, said drone strikes are difficult to defend legally, though she added that some uses of drones by the American military could be justified under international law. She said the drone strikes in Pakistan could be one such example because Pakistan has probably consented to the strikes, although the country has denied such allegations. Hathaway also warned that the United States’ drone strike policy compromises the government’s separation of powers. “[Drone strikes] make it easier for the president to exercise war-making power without any checks,” she said. “[Drone strikes] threaten to very much upset traditional powers over use of military force.”

#### The broader US legal system has tanked

Jonathan Turley 10, the Shapiro Professor of Public Interest Law at George Washington University, member of USA TODAY's Board of Contributors, 6/14/10, “Do laws even matter today?,” http://usatoday30.usatoday.com/news/opinion/forum/2010-06-15-column15\_ST\_N.htm

Though I am a critic of the Arizona law, I do not view its supporters in such one-dimensional terms. Indeed, I do not view the public response in purely immigration terms. Whether it is illegal immigration or the mortgage crisis or corporate bailouts, there seems to be a growing sense among many citizens that they are expected to play by the rules while others are exempt.¶ With polls showing about 60% of people supporting the Arizona law and almost half supporting similar laws in their states, it is implausible to suggest that all these people are racists or extremists — let alone fascists. Notably, a majority of Americans also opposed the bank bailouts and mortgage forgiveness. In each of these controversies, there is a sense that the government was stepping in to protect people from the consequences of their actions.¶ In the mortgage crisis, tens of thousands of people accepted high-risk, low-interest loans while other citizens either declined to buy homes or agreed to higher monthly payments to avoid such deals. When Congress intervened with mortgage relief, some of those who had acted responsibly wondered whether they acted stupidly by rejecting low rates and later federal support.¶ Bailouts and immigration¶ Then there were the corporate bailouts. For citizens to secure a loan, they have to meet exacting terms and disclosures. Yet, when banks and firms concealed risks or engaged in financial wrongdoing, Congress bailed them out and allowed their executives to reap fat bonuses. The laws on fraud and deceptive practices simply did not seem to apply to them. Just as several companies were declared "too big to fail," many of their executives appeared too big to lose money — unlike the millions of citizens burned by their business practices.¶ Those prior controversies coalesced with the immigration debate. The last time Congress granted amnesty to illegal immigrants was 1986 — and it was criticized at the time for rewarding those who had evaded deportation. Complaints over the lack of federal enforcement had been percolating for years but exploded along Arizona's long desert border. When a law mandated state enforcement of federal laws, the Obama administration moved to block it.¶ Indeed, high-ranking Obama officials such as John Morton, head of the Immigration and Customs Enforcement, have suggested that they might refuse to deport those arrested under the Arizona law. While we continue to tell millions around the world that they must wait for years to immigrate legally, Congress and the White House are considering a new amnesty proposal to benefit an additional 11 million illegal immigrants.¶ In each of these areas, the perception is that the law says one thing but actually means different things for different people.

It is a dangerous perception, and it is not entirely unfounded. Such double-standards have become common as Congress and presidents seek to avoid unpopular legal problems.¶ •Torture: While acknowledging that waterboarding is torture and that torture violates domestic and international law, President Obama and members of Congress have barred any investigation or prosecution of those crimes.¶ •Pollution: While citizens are subject to pay for the full damage they cause to their neighbors and are routinely fined for their environmental damage for everything from dumping in rivers to leaf burning, Congress capped the liability for massive corporations such as BP and Exxon at a ridiculous $75 million. Though BP is likely to spend much more in litigation (particularly if prosecuted criminally), the current law requires citizens to pay the full cost of their environmental damage while capping the costs for companies producing massive destruction.¶ •Privacy: When the telecommunications companies found themselves on the losing end of citizen suits over the violation of privacy laws, Congress (including then-Sen. Obama) and President Bush simply changed the law to legislatively kill the citizen suits and protect the companies.¶ An arbitrary system¶ The message across these areas is troubling. To paraphrase Animal Farm, all people are equal, but some people are more equal than others.¶ A legal system cannot demand the faith and fealty of the governed when rules are seen as arbitrary and deceptive. Our leaders have led us not to an economic crisis or an immigration crisis or an environmental crisis or a civil liberties crisis. They have led us to a crisis of faith where citizens no longer believe that laws have any determinant meaning. It is politics, not the law, that appears to drive outcomes — a self-destructive trend for a nation supposedly defined by the rule of law.

#### No reverse causal—countries won’t magically clean up their act

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

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

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

#### long time frame for model

#### Modeling fails – different cultures and resources

Jeremy Rabkin 13, Professor of Law at the George Mason School of Law. Model, Resource, or Outlier? What Effect Has the U.S. Constitution Had on the Recently Adopted Constitutions of Other Nations?, 29 May 2013, www.heritage.org/research/lecture/2013/05/model-resource-or-outlier-what-effect-has-the-us-constitution-had-on-the-recently-adopted-constitutions-of-other-nations

Even when people are not ambivalent in their desire to embrace American practices, they may not have the wherewithal to do so, given their own resources. That is true even for constitutional arrangements. You might think it is enviable to have an old, well-established constitution, but that doesn’t mean you can just grab it off the shelf and enjoy it in your new democracy. You might think it is enviable to have a broad respect for free debate and tolerance of difference, but that doesn’t mean you can wave a wand and supply it to your own population. We can’t think of most constitutional practices as techniques or technologies which can be imported into different cultures as easily as cell phones or Internet connections.

#### Authoritarian states don’t follow norms — their “US justifies others” arg is naive

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

The second benefit to foreigners of distinctive U.S. legal norms is information. The costs and benefits of our norms will be visible for all to see. n268 Particularly in an era of increased empirical social science testing, over time we will be able to analyze and identify the effects of differences in norms between the United States and other nations. n269 Such diversity benefits foreigners as foreign nations can decide to adopt our good norms and avoid our bad ones.

The only noteworthy counterargument is the claim that U.S. norms will have more harmful effects than those of raw international law, yet other nations will still copy them. But both parts of this proposition seem doubtful. First, U.S. law emerges from a democratic process that creates a likelihood that it will cause less harm than rules that emerge from the nondemocratic processes [\*1235] that create international law. Second, other democratic nations can use their own political processes to screen out American norms that might cause harm if copied.

Of course, many nations remain authoritarian. n270 But our norms are not likely to have much influence on their choice of norms. Authoritarian states are likely to select norms that serve the interests of those in power, regardless of the norms we adopt. It is true that sometimes they might cite our norms as cover for their decisions. But the crucial word here is "cover." They would have adopted the same rules, anyway. The cover may bamboozle some and thus be counted a cost. But this would seem marginal compared to the harm of allowing raw international law to trump domestic law.

We’ll screw up implementation and enforcement

**Mariam 13** – PhD, JD, teaches political science at California State University, San Bernardino (Alemayehu, April 29, 2013, “Watching American Diplocrisy in Ethiopia,” http://open.salon.com/blog/almariam/2013/04/27/watching\_american\_diplocrisy\_in\_ethiopia)JCP

Diplomacy by hypocrisy is “diplocrisy”.

Edmund Burke, the British statesman and philosopher, said “Hypocrisy can afford to be magnificent in its promises, for never intending to go beyond promise, it costs nothing.” We’ve heard many promises on human rights in Africa from President Obama and his Administration over the past four years. “We will work diligently with Ethiopia to ensure that strengthened democratic institutions and open political dialogue become a reality for the Ethiopian people… We will work for the release of jailed scholars, activists, and opposition party leaders… We align ourselves with men and women around the world who struggle for the right to speak their minds, to choose their leaders, and to be treated with dignity and respect…. Africa’s future belongs to its young people… We’re going to keep helping empower African youth… Africa doesn’t need strongmen, it needs strong institutions. We support strong and sustainable democratic governments…. America will be more responsible in extending our hand. Aid is not an end in itself… [Dictatorship] is not democracy, [it] is tyranny, and now is the time for it to end… America is watching…” All empty promises and cheap talk.

Last week, the U.S. State Department released its annual Human Rights Report for 2013. In his remarks launching that report, Secretary of State John Kerry announced

…[These] reports show brave citizens around the world and those who would abuse them that America is watching…

So anywhere that human rights are under threat, the United States will proudly stand up, unabashedly, and continue to promote greater freedom, greater openness, and greater opportunity for all people. And that means speaking up when those rights are imperiled. It means providing support and training to those who are risking their lives every day so that their children can enjoy more freedom. It means engaging governments at the highest levels and pushing them to live up to their obligations to do right by their people...

Is America really “watching” and “standing up”?

I am always curious when someone is watching. Big Brother is watching! Aargh!!

When Kerry tells “brave citizens” in Ethiopia like Eskinder Nega, Reeyot Alemu, Wobshet Taye, Sertkalem Fasil, Bekele Gerba, Olbana Lelisa, Abubekar Ahmed, Ahmedin Jebel, Ahmed Mustafa and so many others “America is watching”, what does he mean? **Does he mean America is watching them rot** in Meles **Zenawi Prison #1** in Kality and/**or #2** in Zewai**? Does he mean America is watching** Ethiopia **like birdwatchers watch birds?** Or like amateur astronomers watching the starry night sky? Perhaps like daydreaming tourists at the beach watching the waves crash and the summer clouds slowly drifting inland?

Is “watching” a good or a bad thing? If we believe Albert Einstein, watching is no good. “**The world will not be destroyed by those who do evil, but by those who watch them without doing anything.”** (Silent watchers, watch out!) Like Nero Claudius Caesar who watched Rome burn from the hilltops singing and playing his lyre. Or, (I hate to say it but it would be hypocritical of me not to) like **Susan Rice who watched Rwanda burn. Her only question was, “If we use the word 'genocide' and are seen as doing nothing, what will be the effect on the November [Congressional] election?”**

I like it when Human Rights Watch (HRW) watches because when they watch they witness. They saw the genocide and crimes against humanity in the Ogaden and Gambella and they have witnesses. They watched independent journalists jacked up in kangaroo court and railroaded to Meles Prison #1 or #2. (Sounds like the equivalent of a hotel chain? Well, they do put chain and ball on innocent people at the Meles Zenawi Hilton.)

I like watching watchdogs watch crooks, criminals and outlaws. I mean “watchdog journalists” like Eskinder, Reeyot, Serkalem, Woubshet and many others. These journalists used to watch power abusers and alert citizens of the crimes they were watching. Now the criminals are watching them in solitary at the Meles Zenawi Hilton.

I also like the way the watchdogs’ watchdog watch those who dog the watchdogs. I am referring to the Committee to Protect Journalists (CPJ). The CPJ guys are like McGruff, the crime watchdog, always tracking to “take bites out of crimes” committed against journalists. Not long ago, they watched and sounded the alarm that Reeyot Alemu was heading to solitary confinement just because she complained about inhumane and inhuman treatment in Meles Zenawi Prison. Last week, the CPJ watched Woubshet Taye being hauled from the Meles Zenawi Prison #1 to Meles Zenawi Prison #2. (They think he will be forgotten by the world lost in the armpits of Meles Zenawi Prison #2.)

I pity those who just watch. Like the “foolish and senseless people, who have eyes but do not see, who have ears but do not hear” or those who may “indeed see but not perceive, and may indeed hear but not understand.” I have no idea what the Obama Administration is watching, perceiving or seeing in Ethiopia? I would like to believe they are watching human rights abuses and abusers and the criminals against humanity. But how is it possible to watch with arms folded, ears plugged and wearing welding goggles? I wonder: Could they be watching the tragicomedy, “The Trials and Tribulations of the Apostles of Meles”? Perhaps they are watching kangaroo courts stomping all over justice and decency? I am certain they are not watching the political prisoners. Perhaps they are watching the horror movie, “Dystopia in Ethiopia”? Sure, it’s a scary movie but it really isn’t real. But if it is real, what’s the big deal? The same horror film has been playing all over Africa since before independence. Get over it!

From where I am watching, the Obama Administration seems to be watching Ethiopia peekaboo style; you know, cover your face with the palms of your hand and “watch” between the fingers. “I seee yooou!” That is, stealing elections, sucking the national treasury dry, handing over the best land in the country to bloodsucking multinationals, jailing journalists and ripping off the people.

Doesn’t “America is watching,” sound like Orwellian doublespeak. You know, “War is peace. Freedom is slavery. Ignorance is strength.” Dictatorship is democracy. Watching is turning a blind eye.

When America is watching, those being watched in Ethiopia are watching America watching them. They watch America waffling and shuffling, double-talking, flip-flopping and dithering, equivocating, pretending, hemming and hawing and hedging and dodging. But those chaps in Ethiopia watch like George Orwell’s Big Brother (Nineteen Eighty-Four) who watched everybody and everything in Oceania. Well, Big Brother Meles is gone from Ethiopiana but the "Little Brothers of the Party of Meles" keep on watching and yodeling:

…The Party seeks power entirely for its own sake. We are not interested in the good of others; we are interested solely in power, pure power. What pure power means you will understand presently. We are different from the oligarchies of the past in that we know what we are doing. All the others, even those who resembled ourselves, were cowards and hypocrites. The German Nazis and the Russian Communists came very close to us in their methods, but they never had the courage to recognize their own motives. They pretended, perhaps they even believed, that they had seized power unwillingly and for a limited time, and that just around the corner there lay a paradise where human beings would be free and equal. We are not like that. We know what no one ever seizes power with the intention of relinquishing it. Power is not a means; it is an end. One does not establish a dictatorship in order to safeguard a revolution; one makes the revolution in order to establish the dictatorship. The object of persecution is persecution. The object of torture is torture. The object of power is power. Now you begin to understand me.

Oceania Ethiopiana!

I have been watching America watching Ethiopia for a very long time. I have been watching the Obama Administration watching and coddling the criminals against humanity in Ethiopia, Rwanda and Uganda. I must confess that I enjoy watching and re-watching President Obama’s speeches in Accra, Cairo, Istanbul and elsewhere. “History is on the side of brave Africans...” (whatever that means).

I liked watching former Secretary of State Hilary Clinton declare moral victory on the Chinese and capture the commanding moral heights. “We don’t want to see a new colonialism in Africa… It is easy to come in, take out natural resources, pay off leaders and leave… and not leave much behind for the people who are there.” Right on! Power to the people of Africa! Down with colonialism! (I think that may be a bit passé.)

Sometimes I feel bad watching. When I watch hard earned American tax dollars bankrolling ruthless African dictators who laugh straight to the bank to deposit their American tax dollars, I really get bummed out. I am peeved when I watch the American people being flimflammed into believing their tax dollars are supporting democracy, human rights and American values in Africa. But when I watch those miserable panhandlers “enfolded in the purple of Emperors” bashing and trashing America on their way back from depositing their foreign aid welfare checks, I just plain get pissed off!!

“America is watching,” but is America watching where its tax dollars are going? It is NOT. According to an audit report by the Office of the Inspector General of US AID in March 2010 (p. 1), there is no way to determine the fraud, waste and abuse of American tax dollars in Ethiopia:

The audit was unable to determine whether the results reported in USAID/Ethiopia’s Performance Plan and Report were valid because agricultural program staff could neither explain how the results were derived nor provide support for those results. Indeed, when the audit team attempted to validate the reported results by tracing from the summary amounts to the supporting detail, it was unable to do so at either the mission or its implementing partners… In the absence of a complete and current performance management plan, USAID/Ethiopia is lacking an important tool for monitoring and managing the implementation of its agricultural program.

Watching diplocrisy in Technicolor

There is nothing more mind-bending and funny than watching hypocrisy in Technicolor. Earlier this month, in an act of shameless diplocrisy, Secretary Kerry expressed grave reservations about the legitimacy of the election of Nicolás Maduro as president of Venezuela. Maduro won the election by a razor thin margin of 50.66 percent of the votes. Opposition leader Henrique Capriles rejected the results alleging irregularities and demanding a recount of all votes.

Kerry supported Capriles’ demand for a recount. “We think there ought to be a recount… Obviously, if there are huge irregularities, we are going to have serious questions about the viability of that [Maduro] government.” White House spokesman Jay Carney also issued a statement calling for a recount of all the votes.

… Given the tightness of the result -- around 1 percent of the votes cast separate the candidates -- the opposition candidate and at least one member of the electoral council have called for a 100 percent audit of the results. And this appears an important, prudent and necessary step to ensure that all Venezuelans have confidence in these results. In our view, rushing to a decision in these circumstances would be inconsistent with the expectations of Venezuelans for a clear and democratic outcome.

In May 2010 when the late Meles Zenawi claimed 99.6 percent victory in the parliamentary elections and leaders from Medrek, the largest opposition coalition, and the smaller All Ethiopia Unity Party alleged glaring election fraud, vote rigging and denial of American food aid to poor farmers unless they voted for the ruling party, the U.S. response was “see no evil, hear no evil and speak no evil.” White House National Security Spokesman Mike Hammer could only express polite “concern” and muted “disappointment”:

We acknowledge the conclusion of Ethiopia’s parliamentary elections on May 23, 2010...

We are concerned that international observers found that the elections fell short of international commitments. We are disappointed that U.S. Embassy officials were denied accreditation and the opportunity to travel outside of the capital on Election Day to observe the voting. The limitation of independent observation and the harassment of independent media representatives are deeply troubling.

An environment conducive to free and fair elections was not in place even before Election Day. In recent years, the Ethiopian government has taken steps to restrict political space for the opposition through intimidation and harassment, tighten its control over civil society, and curtail the activities of independent media. We are concerned that these actions have restricted freedom of expression and association and are inconsistent with the Ethiopian government’s human rights obligations.

…We urge the Ethiopian government to ensure that its citizens are able to enjoy their fundamental rights. We will work diligently with Ethiopia to ensure that strengthened democratic institutions and open political dialogue become a reality for the Ethiopian people.

Victory by 50.66 percent is irrefutable evidence of election fraud in Venezuela but "all Ethiopians should have confidence" in the 99.6 percent election victory of Meles Zenawi? Sounds like election certification in Oceania. Rigged elections are free and fair elections!

Watching “fools, idiots” and sanctimonious diplocrites

If Susan Rice is to be believed, critics of Meles Zenawi and his regime (and by implication critics of U.S. policy that supports the regime) are “fools and idiots”. I guess if one must choose between being a “fool/idiot” and a hypocrite/diplocrite, one is well-advised to choose the former. A fool does or does not do the right thing because s/he lacks intelligence and understanding. S/he has the potential to learn and make right choices. But the cunning diplocrite does the wrong thing with full knowledge and understanding of the wrongfulness of his/her acts. S/he is unteachable and incorrigible. No one knows more about the difference between right and wrong than diplocrites, yet they do wrong because they don’t give a \_ \_ \_ \_!

The U.S. has been practicing diplocrisy in Ethiopia for the past two decades. It has propped up the regime of Meles Zenawi with billions of dollars of “development” and “humanitarian” aid while filling the stomachs of starving Ethiopians with empty words and emptier promises. Since 1991, the West in general has provided Meles’ regime nearly $30 billion in aid. In 2008 alone, $3 billion in international aid was delivered on a silver platter to Meles, more than any other nation in sub-Saharan Africa. In March 2011, Howard Taylor, head of the British aid program declared Ethiopia will receive $2 billion in British development assistance. In 2010, the EU delivered £152m to Meles Zenawi.

In December 2010, Human Rights Watch called on the Development Assistance Group (DAG), a coordinating body of 26 foreign donor institutions for Ethiopia to “independently investigate allegations that the Ethiopian government is using development aid for state repression.” In July 2010, a DAG-commissioned study issued a whitewash denying all allegations of improper use of aid. In August 2011, the Bureau of Investigative Journalism and the BBC reported the “Ethiopian government is using millions of pounds of international aid to punish their political opponents.” The report presented compelling evidence of how “aid is being used as a weapon of oppression propping up the government of Meles Zenawi.” Despite numerous documented reports of aid abuse and misuse, Western leaders and governments continue to hide behind a policy of plausible deniability and the massaged and embellished reports of swarms faceless international poverty-mongers creeping invisibly in Ethiopia.

The Center for Global Development in its comprehensive 2012 report cautioned, “The United States could be making a dangerous long-term bet with its assistance dollars by placing so little emphasis on governance in Ethiopia”, and US policymakers should temper their expectations for future development prospects in Ethiopia under the current regime. Sorry, no one is listening at the U.S. State Department, only watching.

Watching truth on the scaffold and wrong on the throne

“America is watching.” But is anybody watching America? The people of Ethiopia are watching America asking, “Is America watching? Watching what?”

The powerful don’t believe the powerless are watching them because they equate powerlessness with blindness. The powerless do watch because that is all they can do. They watch boots pressing down on their necks. They watch crimes committed against them as they sit helplessly with empty stomachs and hearts filled with terror. When Kerry says, “America is watching”, he should be mindful that Ethiopia’s poor and powerless are watching America with outrage on their faces, sorrow in their hearts and resentment in their minds.

#### Judicial independence is unsustainable and destroys checks and balances

FRANK B. CROSS, 2003,

Thoughts on Goldilocks and Judicial Independence, Ohio State Law Review, http://moritzlaw.osu.edu/students/groups/oslj/files/2012/03/64.1.cross\_.pdf

Judicial independence is often treated as if it were an unallo¶ yed good, to be furthered insofar as practically possible. In the¶ traditional telling, an independent judiciary is regarded as if it ¶ were the font of justice, the rule of law and individual rig¶ hts, if¶ not the font of all good things. Such worship of judicial inde¶ pendence is not sustainable, theoretically or empirically. Indeed¶ ,¶ the concept of judicial independence potentially flies in the ¶ face of our fundamental constit¶ utional concept of checks and¶ balances. While there is no doubt that a me¶ asure of judicial independence is a good thing, such independence must be kept in¶ balance with judicial accountability. Increased ¶ judicial independence is not always better.¶ [

#### Independent Judiciary destroys rule of law, democracy

FRANK B. CROSS, 2003,

Thoughts on Goldilocks and Judicial Independence, Ohio State Law Review, http://moritzlaw.osu.edu/students/groups/oslj/files/2012/03/64.1.cross\_.pdf

One potential problem with judicial independence is that judges may have their own self-interests and ideological fervor.¶ An independent, unchecked judiciary may simply decide cases¶ according to its own whims and predilections, rather than¶ according to the rule of law.¶ [10]¶ For example, because of the great independence¶ of the federal life-tenured judiciary, many¶ political scientists believe that they are more ideologica¶ l in their decisions than elect¶ ed legislators or executives.¶ [11]¶ Judges may¶ allow corruption and bribery ¶ to influence their decisions.¶ [12]¶ They may even be lazy and decide poorly, given the lack of¶ oversight. In these circumstances, the means (independent judi¶ ciary) does not advance the end ¶ (rule of law). We cannot rely¶ entirely upon judicial self-discipline an¶ d restraint to avoid these circumstances.¶ There is nothing intrinsic in judges that causes them to favo¶ r, say, rule-of-law impartiality and the freedoms recognized in¶ the Bill of Rights. Saintliness is not a historic precondition to¶ becoming a judge, nor does th¶ e process of doffing judicial ro¶ bes¶ magically make one saintly. There are surely temptations not to ¶ apply the neutral rule of law. Given the absence of any threat¶ of removal, “we should expect to see the ¶ decisions of judges heavily influenced by¶ the intellectual orientation and political¶ inclinations that they brought with them to the bench in the first place.”¶ [13]¶ In addition to internal po¶ litical desires, there may¶ even be external pressures to this effect¶ . Paul Carrington observed that those calling¶ for judicial self-restraint “would have¶ Justices eschew fame, the adoration of th¶ e media and the academy, and even ‘greatness¶ ’ to settle for the modest facelessness of¶ drones.”¶ [14]¶ There is little reason to expect that a wholly independent, unaccountable judiciary would appropriately restrain¶ itself and sincerely seek to apply neutral ¶ legal principles to the cases they decide.¶ If independent judges have more freedom to exercise their ow¶ n preferences, plus an incentive to do so, we must recognize¶ that those preferences may not involve the protection of individu¶ al rights or the rule of law, which is our desired end. The¶ judicial preferences may be arb¶ itrary and antidemocratic. We must¶ worry about checking the judici¶ ary, just as it checks the¶ other branches. These checks, rather than absolute inde¶ pendence, are more likely to¶ enhance the rule of law.¶ [15]¶ Because the¶ federal judiciary need not run for reel¶ ection, we must particularly worry about the extent of its independence

#### Lots of alt-causes to African judicial independence

Brian Odhiambo, 1-31-2012, “On Judicial Independence in Africa,” Yale Undergraduate Law Review, http://yulr.org/on-judicial-independence-in-africa/

Given the disparity between the theoretical and practical aspects of the African judicial process, there is a dire need for a reconstruction of the judicial institution. Corruption of the judiciary is a function of several problems: a) Poor payment of judicial officers thus making them gullible to corruption. b) Lack of information by the populace of their rights within the judicial system c) Poor investigative work by state law enforcement agencies resulting in half-baked prosecutions often resolved by paying the judge for a verdict. d) Lack of a sufficient number of judges prompting individuals to pay in order to get a hearing Before Africa can boast an independent judiciary, these and other problems not directly related to the judiciary will have to be addressed. The independence of the judiciary is not only an end in itself, but also a tool to be used to discover the truth and do justice and promote political, social and economic progress.

#### Africa models England for judicial independence not the US

Brian Odhiambo, 1-31-2012, “On Judicial Independence in Africa,” Yale Undergraduate Law Review, http://yulr.org/on-judicial-independence-in-africa/

In Africa, the question of judicial independence is often reflective of medieval England, from whose common law most of the African Commonwealth countries have derived their national legal systems. Justice, in England, was a royal prerogative, which the ruler carried out via appointed officials. Not only was separation of powers was non-existent, but also those who judged were puppets of the rulers. For a long time, post-colonial Africa has elicited similar traits where the heads of state have crippled the judiciary by placing their cronies in any critical judicial office in order to secure their position in office.

#### No Africa war or they can’t solve

Straus 12—professor of politics at the University of Wisconsin (Scott, WARS DO END! CHANGING PATTERNS OF POLITICAL VIOLENCE IN SUB-SAHARAN AFRICA, afraf.oxfordjournals.org/content/early/2012/03/01/afraf.ads015.full)

The principal finding is that in the twenty-first century both the volume and the character of civil wars have changed in significant ways.5 Civil wars are and have been the dominant form of warfare in Africa, but they have declined steeply in recent years, so that today there are half as many as in the 1990s. This change tracks global patterns of decline in warfare.6 While some students of African armed conflicts, such as Paul Williams, note the recent trend,7 it is fair to say that the change in the prevalence of civil wars is not recognized by most Africanists and generalists. Equally important but even less noted is that the character of warfare in Africa has changed. Today's wars are typically fought on the peripheries of states, and insurgents tend to be militarily weak and factionalized. The large wars that pitted major fighting forces against each other, in which insurgents threatened to capture a capital or to have enough power to secede, and in which insurgents held significant territory – from the Biafra secessionists in Nigeria, to UNITA in Angola, RENAMO in Mozambique, the TPLF in Ethiopia, the EPLF in Eritrea, the SPLM in Sudan, the NRM in Uganda and the RPF in Rwanda – are few and far between in contemporary sub-Saharan Africa. Somalia's Al-Shabab holds territory and represents a significant threat to the Somali federal transitional government, but given the 20-year void at the centre of Somalia the case is not representative. In April 2011, rebel forces in Côte d'Ivoire captured Abidjan, but they did so with external help and after incumbent Laurent Gbagbo, facing a phalanx of domestic, regional, and international opposition, tried to steal an election.8 More characteristic of the late 2000s and the early 2010s are the low-level insurgencies in Casamance (Senegal), the Ogaden (Ethiopia), the Caprivi strip (Namibia), northern Uganda (the Lord's Resistance Army), Cabinda (Angola), Nigeria (Boko Haram), Chad and the Central African Republic (various armed groups in the east), Sudan (Darfur), and South Sudan, as well as the insurgent-bandits in eastern Congo (a variety of armed actors, including Rwandan insurgents) and northern Mali (al-Qaeda in the Maghreb). Although these armed groups are in some cases capable of sowing terror and disruption, they tend to be small in size, internally divided, poorly structured and trained, and without access to heavy weapons.9 Several of today's rebel groups have strong transnational characteristics, that is, insurgents move fluidly between states. Few are at present a significant military threat to the governments they face or in a position to seize and hold large swaths of territory.

#### Environment is resilient

Easterbrook 95 Gregg, Distinguished Fellow – Fullbright Foundation, A Moment on Earth, p. 25

In the aftermath of events such as Love Canal or the Exxon Valdez oil spill, every reference to the environment is prefaced with the adjective "fragile." "Fragile environment" has become a welded phrase of the modern lexicon, like "aging hippie" or "fugitive financier." But the notion of a fragile environment is profoundly wrong. Individual animals, plants, and people are distressingly fragile. **The environment** that contains them **is** close to **indestructible**. The living environment of Earth has survived ice ages; bombardments of cosmic radiation more deadly than atomic fallout; solar radiation more powerful than the worst-case projection for ozone depletion; thousand-year periods of intense volcanism releasing global air pollution far worse than that made by any factory; reversals of the planet's magnetic poles; the rearrangement of continents; transformation of plains into mountain ranges and of seas into plains; fluctuations of ocean currents and the jet stream; 300-foot vacillations in sea levels; shortening and lengthening of the seasons caused by shifts in the planetary axis; collisions of asteroids and comets bearing far more force than man's nuclear arsenals; and the years without summer that followed these impacts. Yet hearts beat on, and petals unfold still. Were the environment fragile it would have expired many eons before the advent of the industrial affronts of the dreaming ape. **Human assaults** on the environment, though mischievous, **are** **pinpricks** compared to forces of the magnitude nature is **accustomed to resisting**.

#### Environment doesn't cause extinction

Science Daily 13 Science Daily, Citing research by Barry Brook, Professor at the University of Adelaide, leading environmental scientist, holding the Sir Hubert Wilkins Chair of Climate Change at the School of Earth and Environmental Sciences, and is also Director of Climate Science at the University of Adelaide’s Environment Institute, author of 3 books and over 250 scholarly articles, February 28, 2013, "Global Tipping Point Not Backed by Science, Experts Argue", http://www.sciencedaily.com/releases/2013/02/130228093412.htm

A group of international ecological scientists led by the University of Adelaide have rejected a doomsday-like scenario of sudden, irreversible change to Earth's ecology. In a paper published Feb. 28 in the journal Trends in Ecology and Evolution, the scientists from Australia, the United States and the United Kingdom argue that global-scale ecological tipping points are unlikely and that ecological change over large areas seem to follow a more gradual, smooth pattern. This opposes recent efforts to define 'planetary tipping points' ‒ critical levels of biodiversity loss or land-use change that would have global effect ‒ with important implications for science and policy-makers. "This is good news because it says that we might avoid the doom-and-gloom scenario of abrupt, irreversible change," says Professor Barry Brook, lead author of the paper and Director of Climate Science at the University of Adelaide. "A focus on planetary tipping points may both distract from the vast ecological transformations that have already occurred, and lead to unjustified fatalism about the catastrophic effects of tipping points. "An emphasis on a point of no return is not particularly helpful for bringing about the conservation action we need. We must continue to seek to reduce our impacts on the global ecology without undue attention on trying to avoid arbitrary thresholds." A tipping point occurs when an ecosystem attribute such as species abundance or carbon sequestration responds rapidly and possibly irreversibly to a human pressure like land-use change or climate change. Many local and regional-level ecosystems, such as lakes and grasslands, are known to behave this way. A planetary tipping point, the authors suggest, could theoretically occur if ecosystems across Earth respond in similar ways to the same human pressures, or if there are strong connections between continents that allow for rapid diffusion of impacts across the planet. "These criteria, however, are very unlikely to be met in the real world," says Professor Brook. "First, ecosystems on different continents are not strongly connected. Second, the responses of ecosystems to human pressures like climate change or land-use change depend on local circumstances and will therefore differ between localities." The scientists examined four principal drivers of terrestrial ecosystem change ‒ climate change, land-use change, habitat fragmentation and biodiversity loss ‒ and found they were unlikely to induce global tipping points.

#### Humans will adapt

Gladwell 95 Malcolm, The New Republic, July 17, Excerpted in Epidemics: Opposing Viewpoints, p. 29

In Plagues and Peoples, which appeared in 1977. William MeNeill pointed out that…while man’s efforts to “remodel” his environment are sometimes a source of new disease. They are seldom a source of serious epidemic disease. Quite the opposite. As humans and new microorganisms interact, they begin to accommodate each other. Human populations slowly build up resistance to circulating infections. What were once virulent infections, such as syphilis become attenuated. Over time, diseases of adults, such as measles and chicken pox, become limited to children, whose immune systems are still naïve

#### Weapons have no other purpose than deterrence

Waltz 7 (Ken Waltz is a Professor of political science at the University of California at Berkley, ”A Nuclear Iran”, Journal of International Affairs, Spring/Summer 2007, Vol. 60 Issue 2, Accessed via GMU Libraries, Last Accessed 7/18/13) ELJ

Richard Betts: Ken, would Iranian nuclear weapons have any potential function other than as a pure deterrent? Could they function for coercive purposes in the region, especially given that other countries in the region do not yet have nuclear weapons? Do you think that the solution is to spread nuclear weapons to other regimes in the region, or to involve the United States in extended deterrence to deal with that prospect? And, if so, is that in the interests of the United States? Kenneth Waltz: No one has discovered how to use nuclear weapons other than for deterrence. Let me amend that. There is a form of blackmail that might work, and that is blackmail for money North Korea might have had that in mind. But when most people say "nuclear blackmail," they think of one country saying, "We have nuclear weapons, and unless you do this--whatever this is--we'll drop one on you." That's simply not plausible. Nobody has tried it, and, if anyone does, it won't work. There are many countries with nuclear weapons, the United States among them, and we haven't figured out how to do anything with these things, except to use them for deterrence. How is a relatively backward, dinky nuclear country going to manage to use its nuclear weapons for purposes other than deterrence? I don't see any possibility of that. It may be, as Scott says, that possessing nuclear weapons gives a country a little more freedom of action. But it certainly does not gain much ability to act in a conventional way because it has nuclear weapons. Again, nuclear weapons have one purpose and only one purpose, and that's deterrence.

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### Impact

#### Global economic crisis causes global nuclear conflict due to US withdrawl---turns the aff because nations would seek new security arrangements which fuel nuclear ambitions---protectionism and resource scarsity causes interstate conflict

#### This is faster than the aff---debt ceiling limit is coming in 7 days---prefer short-term scenario because you can only die once.

#### Growth solves civil conflicts

Hupreys 3 Macartan Huphreys is a Associate Professor, Department of Political Science, Columbia University And Director, Center for the Study of Development Strategies Feb 2003 “Economics and Violent Conflict” http://www.unglobalcompact.org/docs/issues\_doc/Peace\_and\_Business/Economics\_and\_Violent\_Conflict.pdf

One might expect rich nations to be more violent than poor ones because the rich ones have more to fight over. 10 The econometric evidence however suggests the opposite. Most research shows that wealth reduces the likelihood of civil war, 11 and that economic growth also reduces risks while recessions worsen them. Figures derived from World Bank econometric models (Figure 1) show a striking relationship between the wealth of a nation and its chances of having a civil war. 12 The figure suggests that differences in wealth are most relevant among poorer countries. A country with GDP per person of just $250 has a predicted probability of war onset (at some point over the next five years) of 15%, even if it is otherwise considered an “average” country. This probability of war reduces by half for a country with GDP of just $600 per person and is reduced by half again to below 4% for a country with income of $1250. Countries with income per person over $5000 have a less than 1% chance of experiencing civil conflicts, all else being equal. There are various explanations for why this is so. But so far little work has been undertaken to distinguish between them. The most common is that wealthier societies are better able to protect assets, thus making violence less attractive for would-be rebels. 13 Another explanation, given by political scientist Thomas Homer Dixon argues that poverty causes violence, and points to cases where scarcity leads to migrations that result in conflicts between identity groups over resources. Alternatively, the relationship could be spurious in the sense that there are other features of a country, such as a democratic culture, that make it at once more prosperous and less violent. And causality may in fact run in the opposite direction: rich countries may be rich in part because they have had little civil conflict in their recent past. 14 Whatever the reason, the figures suggest that growth oriented initiatives and conflict prevention initiatives are mutually reinforcing. And the figures provide a rationale for those who say that it is in the interest of wealthy nations to promote economic growth in poor countries in order to avoid the spillover effects of likely conflicts there. In terms of policy implications, the analysis suggests that the greatest gains in conflict prevention are to be made by focusing development efforts on the very poor rather than on countries of intermediate wealth.

#### Growth allows for effective measures to prevent disease

Fidler 8 David P., Professor of Law, Indiana University, University Center on American and Global Security, “After the Revolution: Global Health Politics in a Time of Economic Crisis and Threatening Future Trends,” Global Health Governance, Fall 2008/Spring 2009, Volume 2, Number 2

Further, the global economic crisis is absorbing ever larger amounts of capital to keep governments, financial institutions, and corporations afloat, which drastically reduces the availability of resources for addressing the growing costs of providing adequate public health and health care for populations around the world. Even before the global economic crisis hit, experts argued that the unprecedented increases in national spending and development assistance for health were inadequate and, even worse, that many developed donor countries had not fulfilled existing aid pledges. 56 Thus, maintaining existing levels of domestic spending and development assistance on health would not be sufficient, but increased expenditures seem unlikely for years while the global economy recovers. The more likely scenario is reductions in health spending within national budgets and in foreign aid programs. Such reductions, even if shortlived, will have a severe impact on global health activities already desperately in need of more financial resources. Perhaps the cruelest irony of the global economic crisis is its emergence in the year WHO and global health stakeholders renewed the push for achieving primary health care for all. The report of the Commission on Social Determinants of Health advocated for primary health care in 2008.57 The World Health Report 2008 focused on primary health care, 58 and the WHO Director-General connected the new emphasis on primary health care to the Declaration of AlmaAta, which first launched the “health for all” strategy based on universal primary health care in 1978.59 However, 30 years ago, the Alma-Ata strategy was derailed by developments in the energy and economic sectors that sound ominously familiar, as the WHO Director-General recognized in September 2008: Nor could the visionary thinkers in 1978 have foreseen world events: an oil crisis [that began in 1979], a global recession [in the early 1980s], and the introduction [in the 1980s], by development banks, of structural adjustment programmes that shifted national budgets away from the social services, including health. As resources for health diminished, selective approaches using packages of interventions gained favour over the intended aim of fundamentally reshaping health care. The emergence of HIV/AIDS, the associated resurgence of tuberculosis, and an increase in malaria cases moved the focus of international public health away from broad-based programmes and towards the urgent management of highmortality emergencies.60 The effort to rejuvenate the primary health care movement in a year in which global food, energy, and economic crises emerged proved ill-timed, and the worsening nightmare of the global economic crisis threatens even more damage to the political, economic, and social conditions needed to achieve progress on universal primary health care. Put another way, political, economic, and intellectual capital for advancing the primary health care agenda will, for the foreseeable future, be in short supply. Instead, as with the energy and food crises, global health finds itself scrambling to address an emergency with potentially devastating consequences for the health of individuals and populations, health services and systems, and the social determinants of health.

#### Growth solves terrorism

Bremmer 9 Ian, president of Eurasia Group, a political-risk consultancy, “Call: Global Recession = More Terrorism,” Foreign Affairs, 3/4/09, http://eurasia.foreignpolicy.com/posts/2009/03/04/the\_global\_recession\_heightens\_terrorist\_risks

Across Pakistan, suicide bombers killed two people in 2005, six in 2006, 56 in 2007, and 61 in 2008. Suicide attackers killed more people in Pakistan last year than in either Iraq or Afghanistan.There are two important reasons why the threat of global terrorism is growing. The first is long-term and structural. The second is more directly tied to the global financial crisis. Both have everything to do with what's happening in Pakistan. First, a report released in December from the U.S. Commission on the Prevention of Weapons of Mass Destruction, Proliferation, and Terrorism hints at both sets of problems. The report notes an increasing supply of nuclear technology and material around the world and warns that "without greater urgency and decisive action by the world community, it is more likely than not that a weapon of mass destruction will be used in a terrorist attack somewhere in the world by the end of 2013."Destructive (and potentially destructive) technologies are now more accessible than at any time in history for small groups and even individuals. This will dramatically increase the baseline threat of disruptive violence from non-state actors over time. It's not just biological and nuclear material. GPS tracking devices help pirates operating off Somalia's coast venture further from shore and undertake increasingly ambitious attacks on private and commercial vessels.Second, it's unlikely that we'll see the "greater urgency and decisive action by the world community" called for in the report. For the moment, political leaders around the world are too busy wrestling with the effects of the global financial crisis on their domestic economies (and their political standing) to coordinate action against such a diffuse threat. But there's another reason why the financial crisis heightens the risk of global terrorism. Militants thrive in places where no one is fully in charge. The global recession threatens to create more such places. No matter how cohesive and determined a terrorist organization, it needs a supportive environment in which to flourish. That means a location that provides a steady stream of funds and recruits and the support (or at least acceptance) of the local population. Much of the counter-terrorist success we've seen in Iraq's al Anbar province over the past two years is a direct result of an increased willingness of local Iraqis to help the Iraqi army and US troops oust the militants operating there. In part, that's because the area's tribal leaders have their own incentives (including payment in cash and weaponry) for cooperating with occupation forces. But it's also because foreign militants have alienated the locals.The security deterioration of the past year in Pakistan and Afghanistan reflects exactly the opposite phenomenon. In the region along both sides of their shared border, local tribal leaders have yet to express much interest in helping Pakistani and NATO soldiers target local or foreign militants. For those with the power to either protect or betray the senior al-Qaeda leaders believed to be hiding in the region, NATO and Pakistani authorities have yet to find either sweet enough carrots or sharp enough sticks to shift allegiances. The slowdown threatens to slow the progress of a number of developing countries. Most states don't provide ground as fertile for militancy as places like Afghanistan, Somalia, and Yemen. But as more people lose their jobs, their homes, and opportunities for prosperity -- in emerging market countries or even within minority communities inside developed states -- it becomes easier for local militants to find volunteers. This is why the growing risk of attack from suicide bombers and well-trained gunmen in Pakistan creates risks that extend beyond South Asia. This is a country that is home to lawless regions where local and international militants thrive, nuclear weapons and material, a history of nuclear smuggling, a cash-starved government, and a deteriorating economy. Pakistan is far from the only country in which terrorism threatens to spill across borders

#### Economic decline causes proliferation

Burrows and Windram 94 William & Robert, Critical Mass, p. 491-492

Economics is in many respects proliferation’s catalyst. As we have noted, economic desperation drives Russia and some of the former Warsaw Pact nations to peddle weapons and technology. The possibility of considerable profits or at least balanced international payments also prompts Third World countries like China, Brazil, and Israel to do the same. Economics, as well as such related issues as overpopulation, drive proliferation just as surely as do purely political motives. Unfortunately, that subject is beyond the scope of this book. Suffice it to say that, all things being equal, well-of, relatively secure societies like today’s Japan are less likely to buy or sell superweapon technology than those that are insecure, needy, or desperate. Ultimately, solving economic problems, especially as they are driven by population pressure, is the surest way to defuse proliferation and enhance true national security.

#### They also don’t have an offense in the 2AC---means do or die to prevent economy collapse.

### Will Pass

#### Group the uniqueness debate---

#### Obama’s PC ensures passage---it’s forcing the GOP to back away from hardline stance and seek compromise---AND---Momentum exists now---even if there’s not a specific bill, bipartisan consensus guarantees eventual compromise---Prefer 1nc Calmes evidence because it cites the most recent negotiation between Republican leaders and Obama.

#### Both of your evidence refers to the rejected deal yesterday---THAT’S our uniqueness argument---future compromise includes the clean increase and no provision on shutdown---PC eventually solves.

#### Debt ceiling will be raised, but it’s going to be close---continual focus is key

Burlij & Polantz 10/10 Terence Burlij and Ketelyn Polantz are Staff Reporters @ PBS Newshour, “GOP leaders open door to new strategy,” 10-10-13, <http://www.pbs.org/newshour/rundown/2013/10/gop-leaders-open-door-to-new-strategy.html>, DOA: 10-10-13, y2k

After making several runs at defunding or delaying President Barack Obama's health care law, it appears some Republican leaders on Capitol Hill are ready to relent on that demand in an attempt to reopen the federal government and avert a potential default on the country's debt. The willingness of GOP lawmakers to embrace a different strategy comes as polls show the party has absorbed much of the blame for the shutdown. A Gallup survey released Wednesday found that the Republican Party's favorability has declined to a record low, with 28 percent of the public viewing the GOP favorably. That was down from 38 percent last month. The president is scheduled to meet Thursday afternoon with a group of 18 House Republicans to discuss how the two sides might resolve the pair of fiscal disputes. The entire House GOP conference had been invited to the White House for the gathering, but an aide to House Speaker John Boehner suggested a smaller negotiating team would be more likely to find a solution. White House press secretary Jay Carney said in a statement that the president is "disappointed" the speaker is "preventing" his members from attending the session. Still, two of the Republicans who will be in attendance Thursday are partly responsible for signalling a shift in the party's strategy. House Majority Leader Eric Cantor and House Budget Committee Chairman Paul Ryan each penned editorials Wednesday urging the president to enter into negotiations with Republicans, but neither issued ultimatums when it came to changing the health care law. (Cantor's appeared in the Washington Post, while Ryan wrote for the Wall Street Journal.) Ryan, the GOP's 2012 vice presidential nominee, called on Mr. Obama to support "common-sense reforms of the country's entitlement programs and tax code." He wrote: This isn't a grand bargain. For that, we need a complete rethinking of government's approach to helping the most vulnerable, and a complete rethinking of government's approach to health care. But right now, we need to find common ground. We need to open the federal government. We need to pay our bills today--and make sure we can pay our bills tomorrow. So let's negotiate an agreement to make modest reforms to entitlement programs and the tax code. Following a meeting with House Democrats on Wednesday, Carney released a statement saying the president remained willing to enter into broader talks about the budget, but only after Congress votes to get the government back up and running and lift the country's borrowing limit. "The President discussed his desire, once the threat of default is removed and the government is reopened, to engage with both sides on a discussion of how we achieve a broader budget agreement that puts job creation, economic growth, and a strong middle class front and center," Carney said. In addition to his meeting with House Republicans, the president will also sit down Thursday with Senate Democrats. A meeting with Senate Republicans is also expected to occur, but a date has yet to be announced. In the meantime, Politico's Burgess Everett and Manu Raju report that Senate Minority Leader Mitch McConnell has quietly been gauging the support of his members for receiving other concessions as part of a deal to end the shutdown and raise the debt ceiling: Among the ideas under serious consideration are a repeal of medical device tax in the health care law, a plan to verify that those seeking subsidies under Obamacare prove their income level and a proposal to grant additional flexibility to federal agencies to implement sequestration cuts. The under-the-radar effort is the latest sign that Republicans in the Senate are actively looking for a new way out of a fiscal crisis that polls show is causing their party more harm in the eyes of voters. Since Republicans refuse to accept Democratic demands for a straight extension of the debt ceiling and a stop-gap spending measure, Republican senators are trying to more clearly spell out what it wants out of the fight -- after the party was badly divided on whether to make the fight about gutting Obamacare. Those proposals could be paired with a two-month increase of the national debt ceiling and a six-month continuing resolution to reopen the government at a $986-billion funding level that both parties have agreed to, under one package discussed among McConnell and GOP senators on Wednesday, sources said. McConnell is not endorsing the proposal, aides stressed, but is simply taking the temperature of his caucus. The president said Tuesday that he would accept a short-term agreement to open the government and raise the debt ceiling to provide time for negotiations to take place. But that would leave lawmakers a fairly narrow window to reach an agreement on significant issues such as entitlement programs and reforming the tax code. And given the current political climate in Washington, that will be no easy task.

#### Bipartisan consensus now for passage---just a question of whether clean debt ceiling increase can pass or not

Davis & Jackson 10/10 Susan Davis and David Jackson are USA Today Staff, “GOP offers short-term debt deal; White House a 'maybe'” <http://www.usatoday.com/story/news/politics/2013/10/10/house-gop-debt-limit-six-weeks/2957931/> DOA: 10-10-13, y2k

House Republican leaders are proposing a six-week increase in the nation's $16.7 trillion debt ceiling as a way of avoiding a first-ever U.S. default on debts. The White House has indicated that it might be something President Obama could accept, depending on the details of the bill. If there is enough support within the party, the House is expected to vote on the bill Friday. Speaker John Boehner, R-Ohio, proposed the plan to the full Republican conference Thursday morning. The plan would extend the debt ceiling to Nov. 22. The decision to seek approval for a short-term increase is in part because Obama and congressional Democrats have declined to engage with Republicans in budget talks. The Treasury says the nation will hit its debt ceiling Oct. 17 and would begin defaulting on debts shortly thereafter. Democrats have said they will only negotiate after Republicans vote to increase the debt ceiling and end the government shutdown, now in its 10th day. Boehner's plan does not address the ongoing shutdown. "That's the conversation we're going to have with the president today," Boehner said, when asked what it would take to reopen the government. Boehner said the Republicans' decision to move a clean increase was their way of meeting Obama halfway. "it's time for leadership. It's time for these negotiations and this conversation to begin," he said. White House spokesman Jay Carney said Thursday Obama would likely sign even a short-term debt ceiling hike as long as there were no conditions attached, but it's unclear if House Republicans would do that. "If a clean debt bill is passed, he would likely sign it," Carney said, but he added that Obama would have to examine the specific legislation. Carney added that it would "far better" to raise the debt ceiling for "an extended period of time" that is longer than six weeks. But he said it's "at least an encouraging sign" that House Republicans are considering a debt ceiling increase. "We'll see what they can pass, and consider it then," Carney said. Jason Furman, chairman of the White House Council of Economic Advisers, would not say if the White House would agree to go along with a short-term deal, but said the White House believes "longer is better." "The Senate has a plan to do it for a year," Furman told reporters at an event hosted by the liberal Center for American Progress on Tuesday morning. "That's better for certainty. That is better for everything." Boehner will lead a team of 18 GOP lawmakers to the White House Thursday afternoon to meet privately with Obama. "We're coming there with the idea of working together. We're coming there with the idea of common ground," said Majority Whip Kevin McCarthy, R-Calif. Senate Democrats met with Obama Thursday and emerged with a cautious response to the House proposal. Senate Democratic Leader Harry Reid, D-Nev., said the specifics of the House plan had changed several time over the course of the day, "Let's wait and see what the House does," Reid said. He added that the House "has a unique form of legislating: It's hour by hour." Reid also said he would not negotiate a broader budget deal with Republicans until after they vote to reopen the government. Republican senators have been invited to the White House for similar talks Friday morning. The budget impasse began ten days ago when Republicans initially said they would support a stopgap funding measure without an agreement to delay or defund Obama's signature health care law. Republicans have moved on from that demand and are now seeking broader fiscal reforms on taxes and entitlement programs. Obama and congressional Democrats have said they would not negotiate over the health care law or other budget issues only after the government is reopened and the debt ceiling is raised.

#### Bipartisan cooperation on budget now

Jim Acosta 10/11 is CNN Staff Reporter, “Obama positive on GOP debt limit proposal, continues to demand government reopen,” <http://politicalticker.blogs.cnn.com/2013/10/11/obama-positive-on-gop-debt-limit-proposal-continues-to-demand-government-reopen/> DOA: 10-11-13, y2k

President Barack Obama acknowledged that the Republican proposal on a six week debt ceiling increase was a good thing in an hour-and-a-half meeting with House Republican leadership Thursday night, according to a Democratic source familiar with the gathering. The meeting overall was an amicable one, featuring some of the first real dialogue between the two sides in recent weeks. The point of contention remains on Obama’s demand to reopen the government, for which Republicans still want concessions on spending, the source said. The President continued to question the rationale for keeping the government closed. And he continued to call for the government to be funded and the debt ceiling raised in one swoop, the source said. The GOP leaders present told the President they had a list of demands in exchange for reopening the government, which Obama said he would look at but reminded them he would not give concessions in order to end the shutdown. House Speaker John Boehner did not outline what the specific items were, the source said. Boehner said staff was working on that. Little appeared changed on the issue of raising the debt ceiling, with Obama signaling he was open to a six-week extension. The question remains whether Boehner would be able to get such an extension through the Republican caucus. One of the main positives to be taken from the meeting, the source said, is the lack of enmity in readouts to the press on the meeting from both sides. Nor did Boehner seek out the cameras in front of the White House to vent afterwards, a common occurrence after other meetings. As for what comes next, the dialogue now ongoing is happening mostly at the staff level, with White House officials hoping to determine from those discussions exactly what it is House Republicans want. How the White House will react to Republican demands remains to be seen, with Obama firm on giving no concessions to undo the shutdown.

#### Vote counts for passage

Wolf 10/8 By the numbers: Shutdown and debt ceiling, Z. Byron Wolf, CNN, October 8, 2013, http://www.cnn.com/2013/10/08/politics/btn-shutdown-debt-ceiling/index.html

The number of members of Congress -- 200 Democrats and 18 Republicans -- CNN has identified who have said (and still say) they would vote for a "clean" government funding bill. That's one more vote than would be needed to pass the funding bill. Of course, if Boehner brought a "clean CR" to the floor, there's a good chance more Republicans would join in.

### XO

#### Extend 1nc Kurzelben---ceiling collapse kills economy---XO obviously doesn’t solve the perception of failing Congress and the treasury---causes spike in interest rate and kills consumer confidence.

#### Unilateral action tanks the economy

Liptak, New York Times Staff Writer, 10-3, 2013,

(Adam, "Experts See Potential Ways Out for Obama in Debt Ceiling Maze", New York Times, PAS) [www.nytimes.com/2013/10/04/us/politics/experts-see-potential-ways-out-for-obama-in-debt-ceiling-maze.html](http://www.nytimes.com/2013/10/04/us/politics/experts-see-potential-ways-out-for-obama-in-debt-ceiling-maze.html) 10-4-13

However one interprets the Constitution, there remains the practical question of whether the nation’s creditors would continue to lend to the United States if the president did take unilateral action.¶ “I don’t think anyone in their right minds would buy those bonds,” Michael W. McConnell, a law professor at Stanford, said of debt issued without Congressional authorization.¶ Were Mr. Obama to act, court challenges would inevitably follow. But most legal experts said they expected judges to stay out of the fray, either by ruling that the particular challengers had not suffered the sort of direct injury that gave them standing to sue or by ducking the issue by calling it a “political question” not fit for judicial resolution.¶ In any event, Professor Dorf said, courts could not move quickly enough. “Even when courts move very fast, they don’t move as fast as markets,” he said.

#### Obama won’t do it

Montanaro 9/28 Domenico Montanaro is Deputy Political Editor @ NBC News, “Obama not reconsidering ways to sidestep Congress on debt ceiling,” <http://firstread.nbcnews.com/_news/2013/09/28/20734039-obama-not-reconsidering-ways-to-sidestep-congress-on-debt-ceiling?lite>, DOA: 10-6-13, y2k

The White House says despite watching Congress careen toward a government shutdown, it isn't making President Barack Obama reconsider ways to sidestep Congress on the debt ceiling. "Only Congress can raise the debt limit. Period," a White House official told First Read. "We have said coin and 14th Amendment aren't workable." The last time the country was up against its debt limit earlier this year, far-flung alternatives to having Congress raise the debt ceiling were floated by liberal Democrats, like minting a $1 trillion coin and invoking the 14th Amendment to bypass Congress. Section 4 of the 14th Amendment states: "The validity of the public debt of the United States, authorized by law, including debts incurred for payments of pensions and bounties for services in suppressing insurrection or rebellion shall not be questioned." Former President Bill Clinton said in July he would invoke it if it came down to it "without hesitation and force the courts to stop me." President Obama, however, said he spoke with White House lawyers, and, "They are not persuaded that that is a winning argument." The Treasury Department says the U.S. will hit its debt limit Oct. 17. It could default on its debt soon afterward. President Obama has said he will "not negotiate when it comes to the full faith and credit of the United States."

#### No alternatives – need to raise debt ceiling or economic collapse occurs

Sullivan, Washington Post Staff Writer, 10-6, 2013,

(Sean, "Jack Lew: Congress ‘playing with fire’ on debt ceiling", Washington Post, PAS) [www.washingtonpost.com/blogs/post-politics/wp/2013/10/06/jack-lew-congress-playing-with-fire-on-debt-ceiling/?wprss=rss\_politics&clsrd](http://www.washingtonpost.com/blogs/post-politics/wp/2013/10/06/jack-lew-congress-playing-with-fire-on-debt-ceiling/?wprss=rss_politics&clsrd) 10-6-13

Treasury Secretary Jack Lew warned Sunday of dire consequences if lawmakers don't raise the debt ceiling later this month.¶ "If the United States government, for the first time in its history, chooses not to pay its bills on time, we will be in default," Lew said on CNN's "State of the Union." "There is no option that prevents us from being in default if we don't have enough cash to pay our bills."¶ The government will reach its borrowing authority limit on Oct. 17, according to the Treasury. President Obama has called for lawmakers to increase the limit with no strings attached, but Republicans have called for Obama to debate the matter with them.¶ "I'm telling you that on the 17th, we run out of our ability to borrow, and Congress is playing with fire," Lew said.¶ Some Republicans have said that the risks of hitting the debt ceiling are overstated. Calling it "reckless" and "dangerous" for the United States to be encroaching on an unprecedented point (the country has never defaulted before) Lew pushed back against critics who have said the administration is over-hyping the consequences.¶ "Anyone who thinks that the United States government not paying its bills is anything less than default hasn't thought about it very clearly," he said.¶ Also appearing on "State of The Union," Sen. Ted Cruz (R-Tex.), one of the most conservative members of Congress, said Republicans should look for three things in a debt ceiling deal, including a way to go after Obama's health-care law.¶ "We should look for some significant structural plan to reduce government spending. Number two, we should avoid new taxes. And number three we should look for ways to mitigate the harms from Obamacare," Cruz said.¶ Lew is appearing on five Sunday news shows. On NBC's "Meet The Press," Lew echoed Obama's call for Congress to end the current government shutdown by passing a clean short-term stopgap spending bill.¶ "There is a majority in Congress right now that would vote to re-open the government," said Lew.¶ He said there are "no winners" in the government shutdown standoff.

### Normal Means

#### Our interpretation of fiat is that plan has to be immediate implementation---their interpretation guts every neg strategy because DA uniqueness and link is time-sensitive---that’s voting issue for fairness and education---at worst, the plan would mean the court starts the process of hearing arguments which triggers controversy---that’s sufficient to kill the debt negotiations.

#### Your evidence also doesn’t say that future release avoids controversy

#### Fiating process guts politics DA that’s voting issue---key to core neg ground and real-world education on congressional agenda. Spike real world process- we could never win a link if they get to create utopian context for the plan

#### Our interp-The aff gets to fiat the outcome, not the process. This allows the aff the durable fiat, but allows the neg links about the process of the plan

### Link

#### Next court shilds argument is about public and internal deliberation process of justices---obviously doesn’t shield the PERCEPTION controversial decision on Congressional members and Obama---CONCEDED link argument proves that concern over national security means there will be universal opposition to the plan---tanks PC and agenda focus.

#### Controversial decisions spark Congress and media response

Greenwald, Former Constitutional Law and Civil Rights Litigator, 2006,

(Glenn, "Will Hamdan have any effect on the Bush Presidency?", Unclaimed Territory, 6-30, PAS) glenngreenwald.blogspot.com/2006/06/will-hamdan-have-any-effect-on-bush.html 9-16-13

Additionally, court opinions historically have a political impact as well as legal effects. Despite the concerted, destructive attacks on the credibility of the Supreme Court by the likes of Mark Levin and Rush Limbaugh, who hate and wage war on any institution (such as the media) which dares to challenge the Powers of the President, Americans still retain a respect for the Supreme Court as an important and credible institution. The Court's proclamation that the President has been acting beyond his legal and constitutional authority strengthens that argument as a political matter.¶ It is also likely to further galvanize those in Congress and the media who have been gradually taking a stand against the Administration. A Supreme Court ruling that is this decisive, on an issue this significant, is virtually never confined to the legal realm, but almost always has impact, often profound impact, in the political realm as well.

#### Court decisions are controversial and make Obama look weak – forces Obama to spend political capital in legislative gridlock

Sullivan, Washington Post National Politics Correspondent, 2013,

(Sean, "Why the Supreme Court’s Voting Rights Act decision puts Obama in a tough spot", Washington Post, 6-26, PAS) [www.washingtonpost.com/blogs/the-fix/wp/2013/06/26/why-the-supreme-courts-voting-rights-act-decision-puts-obama-in-a-tough-spot/](http://www.washingtonpost.com/blogs/the-fix/wp/2013/06/26/why-the-supreme-courts-voting-rights-act-decision-puts-obama-in-a-tough-spot/) 9-17-13

The disapproval was swift and unequivocal.¶ “I am deeply disappointed with the Supreme Court’s decision today,” President Obama said in a statement Tuesday of the court’s 5-4 ruling that a key provision in the 1965 Voting Rights Act is unconstitutional.¶ What’s less clear is how Obama will proceed. He will be expected by opponents of the decision to lead the charge to remedy it. But he can’t do anything major without the compliance of a gridlocked Congress. Together, these realities put the president in an unenviable position.¶ The court’s ruling puts the future of the Voting Rights Act squarely in the hands of Congress. Section 4 has determined which areas across the country must submit to to extra oversight before election laws can be changed there. Essentially, areas with a history of racial discrimination were required to seek pre-clearance before rewriting laws.¶ But the formula in Section 4 is outdated, the court ruled. A new one can be put in place, but that task falls to Congress.¶ Yes, the same Congress which has been seized by gridlock in recent years and has struggled to reach consensus on major issues time and again. For his part, Obama called on lawmakers to act to ensure “equal access to the polls.”¶ “While today’s decision is a setback, it doesn’t represent the end of our efforts to end voting discrimination,” the president said. “I am calling on Congress to pass legislation to ensure every American has equal access to the polls. My administration will continue to do everything in its power to ensure a fair and equal voting process.”¶ This is not the first time Obama has weighed in on voting rights. Far from it. For example, he mentioned it in his second inaugural address. The president has demonstrated that he is invested in the issue. And as the nation’s first black president, Obama has and will receive extra pressure from minority groups to speak up on issues like the Voting Rights Act.¶ There are actions Obama can take, but like most things, sweeping changes require Congress signing off.¶ While it’s too early to write off Congress’ chances of getting a deal done on a new formula, nothing in the way the body has conducted business in recent years suggests that it’s in the immediate offing. And the expected Republican resistance to Democratic proposals means the odds are even longer. That means Obama could be expected to ramp up pressure through speeches, appearances across the country and other levers his power affords him.¶ But Obama can’t be everywhere at once. He has to pick and choose the issues he will put substantial political capital behind.¶ With no other major asks of Congress, applying pressure on lawmakers would be a tall task. A CNN/ORC poll shows the public is split on the necessity of the Voting Rights Act. It’s an even taller one considering the president is also hoping to get a sweeping immigration bill done. And he hasn’t given up hopes of striking a long-term deficit reduction deal. Gun control is another issue advocates of tighter restrictions on firearms are hopeful the president will revisit.¶ In addition, Obama has been beset by a flurry of controversies over his administration’s surveillance efforts, the IRS’s singling out of conservative groups and the Justice Department’s scrutiny of journalists.¶ In short, the timing of the court’s decision could hardly be worse for the president.¶ Senate Majority Leader Harry Reid (D-Nev.) promised that the Senate will act. And Democrats have signaled that they intend to press the argument that voting rights are under siege by Republicans.¶ But we have seen this movie before. And expecting the Democratic-led Senate and the Republican-led House to come to an accord on any big issue is a pipe dream these days.¶ What it all means is that the list of things Obama wants, will be expected to speak out for but nonetheless may not get could have grown by one item Tuesday.

#### Controversial court decisions spark congressional backlash – citizens prove

Zeleny, New York Times Washington Correspondent, 2010,

(Jeff, "Political Fallout From the Supreme Court Ruling", New York Times, 1-21, PAS) thecaucus.blogs.nytimes.com/2010/01/21/political-fallout-from-the-supreme-court-ruling/ 9-25-13

Today’s ruling upends the nation’s campaign finance laws, allowing corporations and labor unions to spend freely on behalf of political candidates. With less than 11 months before the fall elections, the floodgates for political contributions will open wide, adding another element of intrigue to the fight for control of Congress.¶ At first blush, Republican candidates would seem to benefit from this change in how political campaigns are conducted in America. The political environment – an angry, frustrated electorate seeking change in Washington – was already favoring Republicans. Now corporations, labor unions and a host of other organizations can weigh in like never before.¶ But the populist showdown that was already brewing – President Obama on Thursday sought to limit the size of the nation’s banks – will surely only intensify by the Supreme Court’s ruling. The development means that both sides will have even louder megaphones to make their voices and viewpoints heard.¶ Mr. Obama issued a statement – a rare instance of a president immediately weighing in on a ruling from the high court – and said his administration would work with Congressional leaders “to develop a forceful response to this decision.”¶ “With its ruling today, the Supreme Court has given a green light to a new stampede of special interest money in our politics,” Mr. Obama said. “It is a major victory for big oil, Wall Street banks, health insurance companies and the other powerful interests that marshal their power every day in Washington to drown out the voices of everyday Americans.”¶ Republicans, of course, hailed the ruling as a victory for the First Amendment.¶ “I am pleased that the Supreme Court has acted to protect the Constitution’s First Amendment rights of free speech and association,” said Senator John Cornyn of Texas, chairman of the National Republican Senatorial Committee. “These are the bedrock principles that underpin our system of governance and strengthen our democracy.”¶ Democrats, not surprisingly, said the ruling would be bad for democracy.¶ “Giving corporate interests an outsized role in our process will only mean citizens get heard less,” said Senator Robert Menendez of New Jersey, chairman of the Democratic Senatorial Campaign Committee. “We must look at legislative ways to make sure the ledger is not tipped so far for corporate interests that citizens voices are drowned out.”

### Now

#### First of all---debt is on the top of the docket---all of their argument assume first-term push for guatanamo---WHICH DIDN’T HAPPEN because of opposition---our 1nc argument assumes your thumper

### A2: Africa Add-On

#### Their Africa impact is a joke---nations have been fighting civil and ethnic conflicts for DECADES and we haven’t seen the collapse of global economy---proves that only the US solves global econ.

#### Your evidence says that African economy is growing now---proves plan is irrelevant.

**Business Day, 13** (January 18, Ivor Ichikowitz, “Stability in Africa now key to world economy” <http://www.bdlive.co.za/world/africa/2013/01/18/stability-in-africa-now-key-to-world-economy>)

A significant change in the way the world’s leaders are starting to see Africa was revealed this week but has gone almost entirely unreported. Christine Lagarde, **the head of the** International Monetary Fund **(IMF**), was in Cote d’Ivoire’s capital, Abidjan, and **identified conflict as the "enemy number one" of Africa’s economic growth**. She said: "**Security is too fragile … if there is no peace, the people simply won’t have the confidence or courage to invest in their own future and neither will (foreign investors**)." However, **Lagarde did not stop at security being significant merely because it crippled economic development in Africa. She said it was vital for the financial stability of the entire world**. "It’s clear that **emerging countries are the motor of world economic growth**," she said, backing the IMF’s projections that sub-Saharan Africa will grow 5.25% this year, second only to Asia’s boom economies and well above the world average of 3.6%. To hear the recognition from such a leading figure in the international community that security is one of Africa’s core problems was incredibly uplifting. It echoes statements I made last year, when I said: "Capitalism is the most powerful driving force behind Africa’s economic development…. Stability is crucial because the growing middle classes (up to a third of all Africans) will spend more money if they feel confident, and they will feel more confident if they feel safe. The next stage will be to convince private investors that no sudden, unexpected or violent shift in government will happen and make their funds disappear overnight." Lagarde said: "I cannot help but be impressed by the continent’s resilience … in the face of the most serious disturbances seen by the world’s economy since the Great Depression." While the leading economies are struggling to tiptoe back into growth, **it is to Africa that the world is turning for impetus.** Lagarde’s recognition of this is a minor historical moment in **Africa**’s relations with the rest of the world — instead of Africa being seen as a drain, it **has been accepted as a vital driver of the global economy by one of its leading figures.** Global leaders have previously come close but have never been so explicit. When US President Barack Obama visited Ghana in 2009, he said: "Your prosperity can expand America’s. Your health and security can contribute to the world’s…. All of us must strive for the peace and security necessary for progress." He also said that "**development depends upon good governance**" but I would say that, beyond this, good governance depends on stable societies. I would venture that Lagarde agrees. I have had the privilege to work with many African countries to strengthen the capabilities and capacity of their defence, police and peacekeeping forces. I have seen first-hand the benefits for economic activity, inward investment, regional stability and long-term growth that stability can bring. **Africa** cannot rely solely on its booming sectors, such as oil, for its growth. It **needs to build strong and wide economic foundations. Its projected growth might be second only to Asia’s, but unlike Asia it is happening in the absence of the institutional framework necessary to absorb that growth and direct it** towards more investment in things such as infrastructure, health, education and public transport.

### Solvency

No impact – no internal link is isolated that comes prior to release date of the QDR – even if there may be, no new 1AR explanations because they did not isolate it in the 2AC which is key to block strategy

Even if there is a quick internal link, the CP solves for its escalation because there is no way they are getting to a terminal impact in the next couple of months

#### Classification solves delay

Brimley, (CNAS) Center for a New American Security Senior Fellow, 2013,

(Shawn, “Preparing for the 2014 Quadrennial Defense Review”, CSIS, March, Pg. 29, PAS) <http://csis.org/files/publication/130319_Murdock_Preparing2014QDR_Web.pdf> 8-28-13

Moreover, a classified component of the QDR could be disseminated within DOD, and could ¶ provide better and more specific guidance to the Services and the COCOMs, who will typically ¶ interpret the unclassified QDR in “creative ways” during the next budget cycle, or when ¶ developing other guidance (e.g. GEF, GDF etc.). A formal classified component of the QDR could ¶ prevent months of debating “first principles” based on what an unclassified QDR really “meant ¶ to say.”¶ Key Point: The 2014 QDR should include a classified component that is formally ¶ integrated into the QDR report to Congress, and can be leveraged inside DOD to ¶ disseminate key implementation guidance.

#### Can’t make a distinction why delaying a several months would cause their impact to occur---no timeframe distinction means no solvency deficit.

#### Courts are not key---your internal link evidence

### Perm do the cp

#### CP competes- whereas the aff implements the plan, the CP fiats the plan mandates be recommended in the Quadrennial Defense Review. We have read solvency arguments that QDR recommendations are implemented.

#### The CP does not fiat the plan or establish policy

Murdock, CSIS National Security Group Senior Adviser, and Sayler, (CNAS) Center for a New American Security Research Associate, 2013,

(Clark A. and Kelley, “Preparing for the 2014 Quadrennial Defense Review”, CSIS, March, Pg. 2, PAS) <http://csis.org/files/publication/130319_Murdock_Preparing2014QDR_Web.pdf> 8-28-13

Every four years, the Secretary of Defense is required by Title 10 of the United States Code to undertake ¶ a review of U.S. defense strategy, force structure, budget plans, and associated policies in what is known ¶ as the Quadrennial Defense Review (QDR). As this process begins for the 2014 QDR, defense planners ¶ will need to consider the prioritization of U.S. defense objectives, the security environment in which¶ decisions about U.S. defense strategy and force structure will be made, and the military capabilities and ¶ capacities (and ways of employing them) that could meet the demands of this environment.

#### Any perm severs the certainty and immediacy of the plan which are reasons to reject

#### Immediacy- disads necessitate immediate implementation- their argument justifies perms to politics disads to do the plan after a vote or do the plan after a short-term impact scenario – destroys neg ground

#### Certainty- certainty key to debates over implementation which are the core of neg ground – they justify bi-directional affs that perception and say no affs – no way to test policies that are not implemented

#### Severs should – creates a binding requirement for - the counterplan doesn’t

Summer, Oklahoma Supreme Court, 1994, (Justice) <http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn14> 11-8-09

4 The legal question to be resolved by the court is whether the word "should"13 in the May 18 order connotes futurity or may be deemed a ruling in praesenti.14 The answer to this query is not to be divined from rules of grammar;15 it must be governed by the age-old practice culture of legal professionals and its immemorial language usage. To determine if the omission (from the critical May 18 entry) of the turgid phrase, "and the same hereby is", (1) makes it an in futuro ruling - i.e., an expression of what the judge will or would do at a later stage - or (2) constitutes an in in praesenti resolution of a disputed law issue, the trial judge's intent must be garnered from the four corners of the entire record.16 ¶5 Nisi prius orders should be so construed as to give effect to every words and every part of the text, with a view to carrying out the evident intent of the judge's direction.17 The order's language ought not to be considered abstractly. The actual meaning intended by the document's signatory should be derived from the context in which the phrase to be interpreted is used.18 When applied to the May 18 memorial, these told canons impel my conclusion that the judge doubtless intended his ruling as an in praesenti resolution of Dollarsaver's quest for judgment n.o.v. Approval of all counsel plainly appears on the face of the critical May 18 entry which is [885 P.2d 1358] signed by the judge.19 True minutes20 of a court neither call for nor bear the approval of the parties' counsel nor the judge's signature. To reject out of hand the view that in this context "should" is impliedly followed by the customary, "and the same hereby is", makes the court once again revert to medieval notions of ritualistic formalism now so thoroughly condemned in national jurisprudence and long abandoned by the statutory policy of this State. IV CONCLUSION Nisi prius judgments and orders should be construed in a manner which gives effect and meaning to the complete substance of the memorial. When a judge-signed direction is capable of two interpretations, one of which would make it a valid part of the record proper and the other would render it a meaningless exercise in futility, the adoption of the former interpretation is this court's due. A rule - that on direct appeal views as fatal to the order's efficacy the mere omission from the journal entry of a long and customarily implied phrase, i.e., "and the same hereby is" - is soon likely to drift into the body of principles which govern the facial validity of judgments. This development would make judicial acts acutely vulnerable to collateral attack for the most trivial of reasons and tend to undermine the stability of titles or other adjudicated rights. It is obvious the trial judge intended his May 18 memorial to be an in praesenti order overruling Dollarsaver's motion for judgment n.o.v. It is hence that memorial, and not the later June 2 entry, which triggered appeal time in this case. Because the petition. in error was not filed within 30 days of May 18, the appeal is untimely. I would hence sustain the appellee's motion to dismiss.21 Footnotes: 1 The pertinent terms of the memorial of May 18, 1993 are: IN THE DISTRICT COURT OF BRYAN COUNTY, STATE OF OKLAHOMA COURT MINUTE 5/18/93 No. C-91-223 After having heard and considered arguments of counsel in support of and in opposition to the motions of the Defendant for judgment N.O.V. and a new trial, the Court finds that the motions should be overruled. Approved as to form: /s/ Ken Rainbolt /s/ Austin R. Deaton, Jr. /s/ Don Michael Haggerty /s/ Rocky L. Powers Judge 2 The turgid phrase - "should be and the same hereby is" - is a tautological absurdity. This is so because "should" is synonymous with ought or must and is in itself sufficient to effect an inpraesenti ruling - one that is couched in "a present indicative synonymous with ought." See infra note 15. 3 Carter v. Carter, Okl., 783 P.2d 969, 970 (1989); Horizons, Inc. v. Keo Leasing Co., Okl., 681 P.2d 757, 759 (1984); Amarex, Inc. v. Baker, Okl., 655 P.2d 1040, 1043 (1983); Knell v. Burnes, Okl., 645 P.2d 471, 473 (1982); Prock v. District Court of Pittsburgh County, Okl., 630 P.2d 772, 775 (1981); Harry v. Hertzler, 185 Okl. 151, 90 P.2d 656, 659 (1939); Ginn v. Knight, 106 Okl. 4, 232 P. 936, 937 (1925). 4 "Recordable" means that by force of 12 O.S. 1991 § 24 an instrument meeting that section's criteria must be entered on or "recorded" in the court's journal. The clerk may "enter" only that which is "on file." The pertinent terms of 12 O.S. 1991 § 24 are: "Upon the journal record required to be kept by the clerk of the district court in civil cases . . . shall be entered copies of the following instruments on file: 1. All items of process by which the court acquired jurisdiction of the person of each defendant in the case; and 2. All instruments filed in the case that bear the signature of the and judge and specify clearly the relief granted or order made." [Emphasis added.] 5 See 12 O.S. 1991 § 1116 which states in pertinent part: "Every direction of a court or judge made or entered in writing, and not included in a judgment is an order." [Emphasis added.] 6 The pertinent terms of 12 O.S. 1993 § 696.3 , effective October 1, 1993, are: "A. Judgments, decrees and appealable orders that are filed with the clerk of the court shall contain: 1. A caption setting forth the name of the court, the names and designation of the parties, the file number of the case and the title of the instrument; 2. A statement of the disposition of the action, proceeding, or motion, including a statement of the relief awarded to a party or parties and the liabilities and obligations imposed on the other party or parties; 3. The signature and title of the court; . . ." 7 The court holds that the May 18 memorial's recital that "the Court finds that the motions should be overruled" is a "finding" and not a ruling. In its pure form, a finding is generally not effective as an order or judgment. See, e.g., Tillman v. Tillman, 199 Okl. 130, 184 P.2d 784 (1947), cited in the court's opinion. 8 When ruling upon a motion for judgment n.o.v. the court must take into account all the evidence favorable to the party against whom the motion is directed and disregard all conflicting evidence favorable to the movant. If the court should conclude the motion is sustainable, it must hold, as a matter of law, that there is an entire absence of proof tending to show a right to recover. See Austin v. Wilkerson, Inc., Okl., 519 P.2d 899, 903 (1974). 9 See Bullard v. Grisham Const. Co., Okl., 660 P.2d 1045, 1047 (1983), where this court reviewed a trial judge's "findings of fact", perceived as a basis for his ruling on a motion for judgment n.o.v. (in the face of a defendant's reliance on plaintiff's contributory negligence). These judicial findings were held impermissible as an invasion of the providence of the jury and proscribed by OKLA. CONST. ART, 23, § 6 . Id. at 1048. 10 Everyday courthouse parlance does not always distinguish between a judge's "finding", which denotes nisi prius resolution of fact issues, and "ruling" or "conclusion of law". The latter resolves disputed issues of law. In practice usage members of the bench and bar often confuse what the judge "finds" with what that official "concludes", i.e., resolves as a legal matter. 11 See Fowler v. Thomsen, 68 Neb. 578, 94 N.W. 810, 811-12 (1903), where the court determined a ruling that "[1] find from the bill of particulars that there is due the plaintiff the sum of . . ." was a judgment and not a finding. In reaching its conclusion the court reasoned that "[e]ffect must be given to the entire in the docket according to the manifest intention of the justice in making them." Id., 94 N.W. at 811. 12 When the language of a judgment is susceptible of two interpretations, that which makes it correct and valid is preferred to one that would render it erroneous. Hale v. Independent Powder Co., 46 Okl. 135, 148 P. 715, 716 (1915); Sharp v. McColm, 79 Kan. 772, 101 P. 659, 662 (1909); Clay v. Hildebrand, 34 Kan. 694, 9 P. 466, 470 (1886); see also 1 A.C. FREEMAN LAW OF JUDGMENTS § 76 (5th ed. 1925). 13 "Should" not only is used as a "present indicative" synonymous with ought but also is the past tense of "shall" with various shades of meaning not always easy to analyze. See 57 C.J. Shall § 9, Judgments § 121 (1932). O. JESPERSEN, GROWTH AND STRUCTURE OF THE ENGLISH LANGUAGE (1984); St. Louis & S.F.R. Co. v. Brown, 45 Okl. 143, 144 P. 1075, 1080-81 (1914). For a more detailed explanation, see the Partridge quotation infra note 15. Certain contexts mandate a construction of the term "should" as more than merely indicating preference or desirability. Brown, supra at 1080-81 (jury instructions stating that jurors "should" reduce the amount of damages in proportion to the amount of contributory negligence of the plaintiff was held to imply an obligation and to be more than advisory); Carrigan v. California Horse Racing Board, 60 Wash. App. 79, 802 P.2d 813 (1990) (one of the Rules of Appellate Procedure requiring that a party "should devote a section of the brief to the request for the fee or expenses" was interpreted to mean that a party is under an obligation to include the requested segment); State v. Rack, 318 S.W.2d 211, 215 (Mo. 1958) ("should" would mean the same as "shall" or "must" when used in an instruction to the jury which tells the triers they "should disregard false testimony"). 14 In praesenti means literally "at the present time." BLACK'S LAW DICTIONARY 792 (6th Ed. 1990). In legal parlance the phrase denotes that which in law is presently or immediately effective, as opposed to something that will or would become effective in the future [in futurol]. See Van Wyck v. Knevals, 106 U.S. 360, 365, 1 S.Ct. 336, 337, 27 L.Ed. 201 (1882).

#### The means whole

Merriam Webster Online Dictionary, <http://www.merriam-webster.com/dictionary/the> 11-9-09

4 —used as a function word before a noun or a substantivized adjective to indicate reference to a group as a whole <the elite>

#### That means all 3 branches have to act

USA.gov, the U.S. government's official web portal, 9

(“U.S. Federal Government”, <http://www.usa.gov/Agencies/federal.shtml>, accessed 7-29-9)

U.S. Federal Government¶ Official information and services from the U.S. government¶ The three branches of U.S. government—legislative, judicial, and executive—carry out governmental power and functions. View a complete diagram (.PDF) of the U.S. government's branches.