## \*\*\*1NC

### 1NC – NonViolence K

#### Insisting on law to constrain executive violence ignores the role it plays in constructing exceptionalism; this depolitisization of war powers can only be resisted by rejecting the politics of security

Neocleous 8 (Mark Professor of the Critique of Political Economy at Brunel University (“Critique of Security”, McGill-Queen’s University, pp. 72-75, Published 2008))

But there is a wider argument to be made, one with political implications. The idea that the permanent emergency involves a suspension of the law encourages the idea that resistance must involve a 'return to legality', a return to the 'normal' mode of governing through the rule of law. This involves a serious misjudgement in which it is simply assumed that legal procedures - both international and domestic are designed to protect human rights from state violence. 'Law' are comes to appear largely unproblematic and the rule of law 'an unqualified human good'." What this amounts to is what I have elsewhere called a form of legal fetishism, in which Law becomes a mystical answer to the problems posed by power. In the process, the problems inherent in Law are ignored. Law is treated as an 'indepen- dent' or 'autonomous' reality, explained according to its own dynamics, a Subject in itself whose very existence requires that individuals and institutions 'objectify' themselves before it. This produces the illusion that Law has a life of its own, abstracting the rule of law from its origins in class domination, ignoring the ways in which the rule of law is deployed as a political strategy, and obscuring the ideological mystification of these processes in the liberal trumpeting of the rule of law. To demand the return to the 'rule of law' is to seriously misread the history of the relation between the rule of law and emergency powers and, consequently, to get sucked into a less-than-radical politics in dealing with state violence. Part of what I am suggesting is that emergency measures are part of the everyday exercise of powers, working alongside rather than against the rule of law as part of a unified political strategy in the fabrication of social order. The question to ask, then, is less 'how can we bring law to bear on violence?' and much more 'what is it that the law permits emergency measures to accomplish?"' This question - the question that Schmitt, with his fetish for the decision cannot understand/'° which is also why contemporary Left Schmittianism is such a dead loss - disposes of any supposed juxtaposition between legality and emergency and allows us to recognise instead the extent to which the concept of emergency is deeply inscribed within the law and the legal condition of the modem state, and a central part of liberalism's authoritarian moment: the iron fist in the velvet glove of liberal constitutionalism. Far from suspending law or bracketing off the juridical, emergency powers lie firmly within the legal domain. How could they not, since they are so obviously central to state power and the political technology of government - part of the deployment of law, rather than its abandonment? Once this is recognised, the supposed problematic of violence disappears completely, for it can then be seen that emergency powers are deployed for the exercise of a violence necessary for the permanent refashioning of order - the violence of law, not violence contra law. Liberalism struggles with this, and thus presents it as an exceptional moment; fascism recognises it for what it is, and aestheticises the moment. As David Dyzenhaus points out, while the stripping of liberties in the name of emergency the denial of rights on the grounds of necessity and the suspension of freedoms through the exercise of prerogative might appear quite minor compared to what happens in fascist regimes, the fact that the stripping, denial and suspension does happen under the guise of emergency and in full view of the courts brings the legal order of liberal democracies far closer to the legal order of fascism than liberals would care to admit. But in a wonderful ideological loop, the rule of law is also its own ideological obfuscation of that fact The political implications of this are enormous. For if emergency powers are part and parcel of the exercise of law and violence (that is, law as violence), and if historically they have been aimed at the oppressed - in advanced capitalist states against the proletariat and its various struggles, in reactionary regimes against genuine politicisation of the people, in colonial systems against popular mobilisation - then they need to be fought not by demanding a return to the 'normal' rule of law, but in what Benjamin calls a real state of emergency, on the grounds that only this will improve our position in the struggle against the fascism of our time. And this is a task which requires violence, not the rule of law. As Benjamin saw, the law's claim to a monopoly of violence is explained not by the intention of preserving some mythical 'legal end' such as security or normality but, rather, for 'the intention of preserving the law itself'. But violence not in the hands of the law threatens it by its mere existence outside the law. A violence exercised not by the state, but used for very different political ends. For 'if the existence of violence outside the law, as pure immediate violence, is assured, [then] this furnishes proof that revolutionary violence ... is possible'."' That this possibility of and necessity for revolutionary violence is so often omitted when emergency powers are discussed is indicative of the extent to which much of the Left has given up any talk of political violence for the far more comfortable world of the rule of law, regardless of how little the latter has achieved in just the last few years. But if the history of emergency powers tells us anything it is that the least effective response to state violence is to simply insist on the rule of law. Rather than aiming to counter state violence with a demand for legality, then, what is needed is a counter-politics: against the permanent emergency by all means, but also against the 'normality' of everyday class power and the bourgeois world of the rule of law. And since the logic of emergency is so deeply embedded in the rhetorical structure of liberalism's concept of security this means being against the politics of security. For the very posing of political questions through the trope of emergency is always already on the side of security. To grasp why, we need to now refocus our attention more specifically on security as a political technology.

#### The 1AC’s securitization and obsession with American military dominance create a form of social relations that make extinction inevitable. Their knowledge production has been bankrupted by this system; and their epistemological underpinnings should be evaluated prior to the advantages.

Willson 13 (Brain, is a Ph.D New College San Fransisco, Humanities, JD, American University, “Developing Nonviolent Bioregional Revolutionary Strategies,” http://www.brianwillson.com/developing-nonviolent-bioregional-revolutionary-strategies/)

Industrial civilization is on a collision course with life itself. Facilitating its collapse is a deserved and welcomed correction, long overdue. Collapse is inevitable whether we seek to facilitate it or not. Nonetheless, whatever we do, industrial civilization, based as it is on mining and burning finite and polluting fossil fuels, cannot last because it is destroying the ecosystem and the basis of local, cooperative life itself. It knows no limits in a physically finite world and thus is unsustainable. And the numbers of our human species on earth, which have proliferated from 1.6 billion in 1900 to 7 billion today, is the consequence of mindlessly eating oil – tractors, fertilizers, pesticides, herbicides – while destroying human culture in the process. Our food system itself is not sustainable. Dramatic die-off is part of the inevitable correction in the very near future, whether we like it or not. Human and political culture has become totally subservient to a near religion of economics and market forces. Technologies are never neutral, with some being seriously detrimental. Technologies come with an intrinsic character representing the purposes and values of the prevailing political economy that births it. The Industrialism process itself is traumatic. It is likely that only when we experience an apprenticeship in nature can we be trusted with machines, especially when they capital intensive & complicated. The nation-state, intertwined more than ever with corporate industrialism, will always come to its aid and rescue. Withdrawal of popular support enables new imagination and energy for re-creating local human food sufficient communities conforming with bioregional limits. II. The United States of America is irredeemable and unreformable, a Pretend Society. The USA as a nation state, as a recent culture, is irredeemable, unreformable, an anti-democratic, vertical, over-sized imperial unmanageable monster, sustained by the obedience and cooperation, even if reluctant, of the vast majority of its non-autonomous population. Virtually all of us are complicit in this imperial plunder even as many of us are increasingly repulsed by it and speak out against it. Lofty rhetoric has conditioned us to believe in our national exceptionalism, despite it being dramatically at odds with the empirically revealed pattern of our plundering cultural behavior totally dependent upon outsourcing the pain and suffering elsewhere. We cling to living a life based on the social myth of US America being committed to justice for all, even as we increasingly know this has always served as a cover for the social secret that the US is committed to prosperity for a minority thru expansion at ANY cost. Our Eurocentric origins have been built on an extraordinary and forceful but rationalized dispossession of hundreds of Indigenous nations (a genocide) assuring acquisition of free land, murdering millions with total impunity. This still unaddressed crime against humanity assured that our eyes themselves are the wool. Our addiction to the comfort and convenience brought to us by centuries of forceful theft of land, labor, and resources is very difficult to break, as with any addiction. However, our survival, and healing, requires a commitment to recovery of our humanity, ceasing our obedience to the national state. This is the (r)evolution begging us. Original wool is in our eyes: Eurocentric values were established with the invasion by Columbus: Cruelty never before seen, nor heard of, nor read of – Bartolome de las Casas describing the behavior of the Spaniards inflicted on the Indigenous of the West Indies in the 1500s. In fact the Indigenous had no vocabulary words to describe the behavior inflicted on them (A Short Account of the Destruction of the Indies, 1552). Eurocentric racism (hatred driven by fear) and arrogant religious ethnocentrism (self-righteous superiority) have never been honestly addressed or overcome. Thus, our foundational values and behaviors, if not radically transformed from arrogance to caring, will prove fatal to our modern species. Wool has remained uncleansed from our eyes: I personally discovered the continued vigorous U.S. application of the “Columbus Enterprise” in Viet Nam, discovering that Viet Nam was no aberration after learning of more than 500 previous US military interventions beginning in the late 1790s. Our business is killing, and business is good was a slogan painted on the front of a 9th Infantry Division helicopter in Viet Nam’s Mekong Delta in 1969. We, not the Indigenous, were and remain the savages. The US has been built on three genocides: violent and arrogant dispossession of hundreds of Indigenous nations in North America (Genocide #1), and in Africa (Genocide #2), stealing land and labor, respectively, with total impunity, murdering and maiming millions, amounting to genocide. It is morally unsustainable, now ecologically, politically, economically, and socially unsustainable as well. Further, in the 20th Century, the Republic of the US intervened several hundred times in well over a hundred nations stealing resources and labor, while imposing US-friendly markets, killing millions, impoverishing perhaps billions (Genocide #3). Since 1798, the US military forces have militarily intervened over 560 times in dozens of nations, nearly 400 of which have occurred since World War II. And since WWII, the US has bombed 28 countries, while covertly intervening thousands of times in the majority of nations on the earth. It is not helpful to continue believing in the social myth that the USA is a society committed to justice for all , in fact a convenient mask (since our origins) of our social secret being a society committed to prosperity for a few through expansion at ANY cost. (See William Appleman Williams). Always possessing oligarchic tendencies, it is now an outright corrupt corporatocracy owned lock stock and barrel by big money made obscenely rich from war making with our consent, even if reluctant. The Cold War and its nuclear and conventional arms race with the exaggerated “red menace”, was an insidious cover for a war preserving the Haves from the Have-Nots, in effect, ironically preserving a western, consumptive way of life that itself is killing us. Pretty amazing! Our way of life has produced so much carbon in the water, soil, and atmosphere, that it may in the end be equivalent to having caused nuclear winter. The war OF wholesale terror on retail terror has replaced the “red menace” as the rhetorical justification for the continued imperial plunder of the earth and the riches it brings to the military-industrial-intelligence-congressional-executive-information complex. Our cooperation with and addiction to the American Way Of Life provides the political energy that guarantees continuation of U.S. polices of imperial plunder. III. The American Way Of Life (AWOL), and the Western Way of Life in general, is the most dangerous force that exists on the earth. Our insatiable consumption patterns on a finite earth, enabled by but a one-century blip in burning energy efficient liquid fossil fuels, have made virtually all of us addicted to our way of life as we have been conditioned to be in denial about the egregious consequences outsourced outside our view or feeling fields. Of course, this trend began 2 centuries earlier with the advent of the industrial revolution. With 4.6% of the world’s population, we consume anywhere from 25% to nearly half the world’s resources. This kind of theft can only occur by force or its threat, justifying it with noble sounding rhetoric, over and over and over. Our insatiable individual and collective human demands for energy inputs originating from outside our bioregions, furnish the political-economic profit motives for the energy extractors, which in turn own the political process obsessed with preserving “national (in)security”, e.g., maintaining a very class-based life of affluence and comfort for a minority of the world’s people. This, in turn, requires a huge military to assure control of resources for our use, protecting corporate plunder, and to eliminate perceived threats from competing political agendas. The U.S. War department’s policy of “full spectrum dominance” is intended to control the world’s seas, airspaces, land bases, outer spaces, our “inner” mental spaces, and cyberspaces. Resources everywhere are constantly needed to supply our delusional modern life demands on a finite planet as the system seeks to dumb us down ever more. Thus, we are terribly complicit in the current severe dilemmas coming to a head due to (1) climate instability largely caused by mindless human activities; (2) from our dependence upon national currencies; and (3) dependence upon rapidly depleting finite resources. We have become addicts in a classical sense. Recovery requires a deep psychological, spiritual, and physical commitment to break our addiction to materialism, as we embark on a radical healing journey, individually and collectively, where less and local becomes a mantra, as does sharing and caring, I call it the Neolithic or Indigenous model. Sharing and caring replace individualism and competition. Therefore, A Radical Prescription Understanding these facts requires a radical paradigmatic shift in our thinking and behavior, equivalent to an evolutionary shift in our epistemology where our knowledge/thinking framework shifts: arrogant separateness from and domination over nature (ending a post-Ice Age 10,000 year cycle of thought structure among moderns) morphs to integration with nature, i.e., an eco-consciousness felt deeply in the viscera, more powerful than a cognitive idea. Thus, we re-discover ancient, archetypal Indigenous thought patterns. It requires creative disobedience to and strategic noncooperation with the prevailing political economy, while re-constructing locally reliant communities patterned on instructive models of historic Indigenous and Neolithic villages.

#### Nonviolence is the only political act—the aff is worse than the conservative status quo they critique because they actively empower it—try or die for an ethics of equality

May 7 (Todd May is Professor of Philosophy at Clemson University. He is the author of seven books of philosophy, most recently Gilles Deleuze: An Introduction (Cambridge, 2005) and The Philosophy of Foucault (Acumen, 2006), “Jacques Rancière and the Ethics of Equality,” Project Muse)

In political action, the tapestry of this weaving together of cognitive and affective elements around the presupposition of equality has a name, although that name is rarely reflected upon. It is solidarity. Political solidarity is nothing other than the operation of the presupposition of equality internal to the collective subject of political action. It arises in the ethical character of that collective subject, a subject that itself arises only on the basis of its action. When one joins a picket line, or speaks publicly about the oppression of the Palestinians or the Tibetans or the Chechnyans, or attends a meeting whose goal is to organize around issues of fair housing, or brings one's bicycle to a ride with Critical Mass, one is not—if one is engaged in what Rancière calls politics—doing so from a position above or outside those alongside whom one struggles. Rather, one joins the creation of a political subject (which does not mean sacrificing one's own being to it). One acts, in concert with others, on the presupposition of the equality of any and every speaking being. And here is where the justificatory character of the ethics of political action lies. It cannot lie, as we have seen, in an ethical framework that possesses an ultimate foundation. It lies instead in a principle—the presupposition of equality—that can ground and justify political action only to the extent to which it is accepted by those alongside whom and [End Page 33] against whom one struggles. It is, in that sense, an optional ethical principle. But, as we have also seen, this does not mean that it is an arbitrary one. In our world, the presupposition of equality is embedded deep within the ethical framework of most societies. Even when it is honored in the breach, it remains honored. Political action consists in narrowing the breach. There remain two questions to ask about this ethics. The first one is interpretive and can be answered quickly: What is the relationship of this ethics to a vision of contemporary anarchism? The second is normative, and can only be responded to, at least at this moment, with a theoretical gesture: What, if any, implications for the specifics of political action does this ethical framework have? The interpretive question concerns the relation of the ethics of Rancière's politics to anarchism. I hope that the bond between the two will be obvious to those who have either studied or acted within the framework of anarchism. Anarchism's rejection of an avant-garde politics, its concern with the process of political action, its sensitivity to various forms of domination both in society at large and in political communities themselves, and its orientation toward radical equality, are all accounted for in the ethics and politics of the presupposition of equality. What Rancière's work does politically and implies ethically is of a piece with the deepest concerns of much of contemporary anarchism. Moreover, he offers a coherent way to frame those concerns and to bring them forward theoretically. Unlike traditional Marxism, anarchism, in its concern for equality, has often been reluctant to engage in theoretical reflection. If what has been said here is correct, that reluctance is unwarranted. There is much to be understood in politics, and many who can contribute to that understanding. Among what is to be understood is the second question alluded to above: what, if anything, do the ethics of political action imply for the character of political action itself? I would suggest that the pre-supposition of equality among those who act cannot remain limited to those alongside whom one acts. It must also apply to one's adversaries. If those who have no part are to see themselves as equal to those who have a part, then they must also see those who have a part as equal to them. This has implications for political action. I would suggest that such a presupposition of equality among all parties must orient political action toward non-violent means. One must, insofar as possible, refrain from treating those against whom one struggles as beneath consideration, as open game, or as what Kant would call solely a means to one's own ends. This requires political action to be more than just a struggle for [End Page 34] suppression of the adversary, even where the adversary engages in cynical domination. It must be creative in its expression of the presupposition of equality. Nonviolence in politics is often confused with passivity. This is not the place to explain the nature and possibilities of nonviolent action,7 however it must be understood that nonviolence often lies at the opposite pole from political passivity, further away from it than violent resistance. Violent resistance remains in many cases the norm. One is dominated, so one dominates; one is oppressed, so one oppresses. In that sense, violence is always the easy political option. It reverses the power in a relationship. What nonviolence can achieve is something else: not a reversal of power, but an effacing of the terms in which a context of power has been conceived. In the framework of a political orientation whose task is to declassify, nonviolent action carries with it more radical possibilities for declassification than the simple inversion that is the standard consequence of violent resistance. If this line of thinking is right, or even if it is wrong in a fruitful way, then the perspective that Rancière has opened for us is not so much a framework within which we can fit our political thinking as it is a door through which we must walk in order better to reflect upon that thinking. The presupposition of equality opens political thought to new vistas—vistas that, given the history of the last century, should appear more attractive to us now than they might once have done. In this sense, anarchism lies before us rather than behind us, as a political task to be thought and engaged rather than as a historical footnote to be buried alongside other challenges to the pervasive and multifarious dominations of our world.

### 1NC Court Politics

#### Court will uphold treaty power in Bond now but it’s close.

Greve 2013

Michael S., professor at George Mason University School of Law, Straight Up, With Multiple Twists: Bond v. United States, January 21 2013, http://www.libertylawsite.org/2013/01/21/straight-up-with-multiple-twists-bond-v-united-states/

In truth, you don’t have to read Missouri so broadly. The treaty at issue dealt with things that cross international and national borders. There was no daylight between the treaty and the implementing legislation. And the state’s federalism argument was, as Holmes noted, a “thin reed.” There, in a nutshell, you have “proper” bounds of the treaty power. (For more on this, see the exchange between Rick Pildes, Nick Rosenkranz and Ilya Somin on the volokhconspiracy.) Having articulated those bounds, you could then say—as the Bond cert petition argues—that at the very least, courts should read treaties and implementing statutes to avoid constitutional doubts. The exemption for “peaceful” uses indicates that Congress intended to combat the spread of chemical weapons and materials for war-like purposes, as opposed to arming criminal prosecutors with yet another all-purpose club. The argument is more difficult than one might think. The government’s ready reply is that you can’t use a constitutional avoidance canon to create doubt where none exists. Holland isn’t really an issue here because Congress didn’t do anything that it could not also do under the Commerce Clause. Congress in its infinite wisdom decided that it needed a closed and complete regulatory system, just as it does for purposes of, say, the Controlled Substances Act. Under that statute, the plants on your window sill are fair game for the feds, see Raich. Well then: so is the stuff under your kitchen sink. No point in speculating about the outcome. This much, one can say with a tolerable degree of confidence: The justices know this case. Four justices on one side or the other voted to grant because they want to get to the grand themes of Missouri, and they would not have done so if they weren’t reasonably sure of a fifth vote on the merits. The difficulty of obtaining at least an implicit “fifth” precommitment is to my mind the readiest explanation for the multiple relists. (If someone has a better guess, let’s hear it.) If that’s right, the briefing and argument task is to shake or hold that vote, however it cuts. One more point of near-certainty: whichever way the case goes, what the justices say along the way will shape the contours of treaty law and its constitutional boundaries for many, many years to come.

#### Aff is a massive change – kills court capital and will be ignored by the President.

Devins 2010

Neal, Professor of Law at William and Mary, Talk Loudly and Carry a Small Stick: The Supreme Court and Enemy Combatants, http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1024&context=facpubs

Without question, there are very real differences between the factual contexts of Kiyemba and Bush-era cases. These differences, however, do not account for the striking gap between accounts of Kiyemba as likely inconsequential and Bush-era cases as "the most important decisions" on presidential power "ever., 20 In the pages that follow, I will argue that Kiyemba is cut from the same cloth as Bush-era enemy combatant decision making. Just as Kiyemba will be of limited reach (at most signaling the Court's willingness to impose further limits on the government without forcing the government to meaningfully adjust its policymaking), Bush-era enemy combatant cases were modest incremental rulings. Notwithstanding claims by academics, opinion leaders, and the media, Supreme Court enemy combatant decision making did not impose significant rule of law limits on the President and Congress. Bush-era cases were certainly consequential, but they never occupied the blockbuster status that so many (on both the left and the right) attributed to them. Throughout the course of the enemy combatant dispute, the Court has never risked its institutional capital either by issuing a decision that the political branches would ignore, or by compelling the executive branch to pursue policies that created meaningful risks to national security. The Court, instead, took limited risks to protect its turf and assert its power to "say what the law is." That was the Court's practice during the Bush years, and it is the Court's practice today.

#### Capital key is to uphold the Missouri precedent.

Spiro 2008

Peter J., Professor of Law, Temple University, Resurrecting Missouri v. Holland, Missouri Law Review http://law.missouri.edu/lawreview/files/2012/11/Spiro.pdf

At the same time that the international price of non-participation rises, a subtle socialization may be working to lower the domestic cost of exercising Holland-like powers. Globalization is massaging international law into the sinews of American political culture. The United States may not have ratified the Convention on the Rights of the Child, for example, but it has acceded to Hague Conventions on abduction33 and adoption,34 as well as optional protocols to the Children’s Rights Convention itself,35 and has enthusiastically pursued an agreement on the transboundary recovery of child support.36 As international law becomes familiar as a tool of family law, the Children’s Convention will inevitably look less threatening even against America’s robust sentiments regarding federalism. Regimes in other areas should be to similar effect and will span the political divide. It is highly significant, for instance, that conservative Americans have become vocal advocates of international regimes against religious persecution, a key factor in the aggressive U.S. stance on Darfur.37 To the extent that conservatives see utility in one regime they will lose traction with respect to principled category arguments against others. Which is not at all to say that Holland will be activated with consensus support. A clear assertion of the Treaty Power against state prerogatives would surely provoke stiff opposition in the Senate and among anti-internationalist conservatives, setting the scene for a constitutional showdown.38 The adoption of a treaty regime invading protected state powers would require the expenditure of substantial political capital. Any president taking the Treaty Power plunge would be well advised to choose a battle to minimize policy controversy on top of the constitutional one. A substantively controversial regime depending on Holland’s authority (say, relating to the death penalty) would increase the risk of senatorial rebuke. Perhaps the best strategy would be to plant the seeds of constitutional precedent in the context of substantively obscure treaties, ones unlikely to attract sovereigntist flak. If a higher profile treaty implicating Holland were then put on the table, earlier deployments would undermine opposition framed in constitutional terms. Such was the case with the innovation of congressional-executive agreements, which, before their use in adopting major institutional regimes in the wake of World War II, had been used with respect to minor agreements in the interwar years.39 In contrast to the story of congressional-executive agreements, advocates of an expansive Treaty Power will have the advantage of Holland itself, that is, a Supreme Court decision on point and not superseded by a subsequent ruling. That would lend constitutional credibility to the proposed adoption of any agreement requiring the Treaty Power by way of constitutional support. But it wouldn’t settle the question in the face of the consistent practice described above. Holland is an old, orphaned decision, creating ample space for contemporary rejection. An anti-Holland posture, the decision’s status as good law notwithstanding, would also be bolstered by the highly credentialed revisionist critique.40 That of course begs the question of what the Supreme Court would do with the question were it presented. The Court could reaffirm Holland, in which case its resurrection would be official and the constitutional question settled, this time (one suspects) for good. That result would comfortably fit within the tradition of the foreign affairs differential (in which Holland itself is featured).41 One can imagine the riffs on Holmes, playing heavily to the imperatives of foreign relations and the increasing need to manage global challenges effectively. The opinion might not write itself, but it would require minimal creativity. Recent decisions, Garamendi notably among them,42 would supply an updated doctrinal pedigree. And since the question would come to the Court only after a treaty had garnered the requisite two-thirds’ support in the Senate, the decision would not likely require much in the way of political fortitude on the Court’s part. It would also likely draw favorable international attention, reaffirming the justices’ membership in the global community of courts.43 IV. CONCLUSION:CONSTITUTIONAL LIFE WITHOUT MISSOURI V. HOLLAND Holland’s judicial validation would hardly be a foregone conclusion. The Supreme Court has grown bolder in the realm of foreign relations. Much of this boldness has been applied to advance the application of international norms to U.S. lawmaking, the post-9/11 terror cases most notably among them.44 The VCCR decisions, on the other hand, have demonstrated the Court’s continued resistance to the application of treaty obligations on the states. In Medellín, where the Court found the President powerless to enforce the ICJ’s Avena decision on state courts, that resistance exhibited itself over executive branch objections. The Court rebuffed the President with the result of retarding the imposition of international law on the states and at the risk of offending powerful international actors.

#### Key to the chemical industry – patchwork regulation.

ACC 2013

American Chemistry Council, leading chemical manufacturing industry trade group, BRIEF FOR AMICUS CURIAE THE AMERICAN CHEMISTRY COUNCIL IN SUPPORT OF RESPONDENT http://sblog.s3.amazonaws.com/wp-content/uploads/2013/08/08\_16\_13-American-Chemistry-Council-Amicus-Brief\_115164106\_1.pdf

Like the federal statute considered by this Court in Gonzales v. Raich, 545 U.S. 1 (2005), Section 229 is a component of a “comprehensive framework” for prohibiting the “production, distribution, and possession,” id. at 24, of chemical weapons. That the statute may reach the intrastate production, transfer, possession, or use of such weapons in order to extinguish the interstate market for them is of no constitutional significance. Congress could reasonably have concluded that eradicating the interstate and foreign markets in chemical weapons required prohibiting intrastate activity. As this Court has determined, “[t]he notion that … a discrete activity … [may be] hermetically sealed off from the larger interstate … market is a dubious proposition, and, more importantly, one that Congress could have rationally rejected.” Id. at 30. That is decidedly the case here: Like the possession or consumption of homegrown marijuana, the intrastate manufacture, possession, or use of chemicals for illicit purposes could easily affect interstate or foreign markets. To be sure, many chemicals within the ambit of the CWC and Section 229 are “dual-use”: they have the potential to be used as chemical weapons or as precursors to chemical weapons, but they also have extensive beneficial uses in manufacturing, agriculture, industry, education, and the arts. That fact, however, does nothing to alter that Section 229 is a pillar in a comprehensive scheme to eradicate the national and international market in chemicals for illicit purposes. Under this Court’s Commerce Clause precedents, it does not matter that Congress is attempting to suppress a market for the manufacture, transfer, and possession of certain chemicals only for particular purposes and not commerce in such chemicals altogether. Section 229, moreover, is not merely part of a larger regulatory framework aimed at eradicating a commercial market; it is also squarely aimed at fostering the lawful national and international trade in chemicals for their beneficial uses. Petitioner’s narrow focus on the disarmament objectives of the CWC ignores this vital commerce-enhancing objective. See Wickard v. Filburn, 317 U.S. 111, 128 (1942) (“The stimulation of commerce is a use of the regulatory function quite as definitely as prohibitions or restrictions thereon.”); NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1, 36- 37 (1937). Indeed, the text and history of the CWC and its implementing legislation make clear that one of its principal goals was the promotion of “free trade in chemicals.” Conv. pmbl. ¶¶ 9, 10 (Pet. App. 147). Encouraging that commerce, the signatories (“States Parties”) agreed, required a comprehensive prohibition on the use, production, or acquisition of chemicals for illicit purposes, not only by signatory nations but also by corporations and individuals. Otherwise, the everyday commerce in chemicals would be in constant jeopardy of piecemeal trade-restricting measures aimed at securing what only uniform controls could accomplish. Such was the importance of the prohibition’s scope that “[v]arious chemical industry spokespersons consider[ed] the CWC a trade enabling regime that could counteract trends in the future, in which U.S. chemical trade and investment could be constricted under even tighter export controls.” Convention on Chemical Weapons: Hearing Before the S. Comm. on Foreign Relations, 104th Cong. 25 (1996) (statement of Sen. Lugar) (emphasis added). Petitioner is thus wrong to insist that her conduct is far afield from the goals of the CWC and its implementing legislation. Even one misuse of a toxic chemical for malicious purposes—and certainly such misuses when viewed in the aggregate—could prompt a patchwork of severe domestic or international restrictions on the lawful trade in chemicals. Only by imposing comprehensive criminal controls on the diversion of chemicals into illicit channels and on the subsequent misuse of such chemicals could the CWC fully achieve its objectives. Just as Congress may regulate local wheat production to help stabilize the interstate market in wheat (per Wickard), Congress may regulate local misuses of chemicals that could lead to the impairment of lawful interstate or international trade in chemicals for their beneficial uses

#### The chemical industry solves extinction

Baum 1999 (Rudy, C&EN Washington, MILLENNIUM SPECIAL REPORT, Volume 77, Number 49 CENEAR 77 49 pp.46-47, <http://pubs.acs.org/cen/hotarticles/cenear/991206/7749spintro2.html>)

Here is the fundamental challenge we face: The world's growing and aging population must be fed and clothed and housed and transported in ways that do not perpetuate the environmental devastation wrought by the first waves of industrialization of the 19th and 20th centuries. As we increase our output of goods and services, as we increase our consumption of energy, as we meet the imperative of raising the standard of living for the poorest among us, we must learn to carry out our economic activities sustainably. There are optimists out there, C&EN readers among them, who believe that the history of civilization is a long string of technological triumphs of humans over the limits of nature. In this view, the idea of a "carrying capacity" for Earth—a limit to the number of humans Earth's resources can support—is a fiction because technological advances will continuously obviate previously perceived limits. This view has historical merit. Dire predictions made in the 1960s about the exhaustion of resources ranging from petroleum to chromium to fresh water by the end of the 1980s or 1990s have proven utterly wrong. While I do not count myself as one of the technological pessimists who see technology as a mixed blessing at best and an unmitigated evil at worst, I do not count myself among the technological optimists either. There are environmental challenges of transcendent complexity that I fear may overcome us and our Earth before technological progress can come to our rescue. Global climate change, the accelerating destruction of terrestrial and oceanic habitats, the catastrophic loss of species across the plant and animal kingdoms—these are problems that are not obviously amenable to straightforward technological solutions. But I know this, too: Science and technology have brought us to where we are, and only science and technology, coupled with innovative social and economic thinking, can take us to where we need to be in the coming millennium. Chemists, chemistry, and the chemical industry—what we at C&EN call the chemical enterprise—will play central roles in addressing these challenges. The first section of this Special Report is a series called "Millennial Musings" in which a wide variety of representatives from the chemical enterprise share their thoughts about the future of our science and industry. The five essays that follow explore the contributions the chemical enterprise is making right now to ensure that we will successfully meet the challenges of the 21st century. The essays do not attempt to predict the future. Taken as a whole, they do not pretend to be a comprehensive examination of the efforts of our science and our industry to tackle the challenges I've outlined above. Rather, they paint, in broad brush strokes, a portrait of scientists, engineers, and business managers struggling to make a vital contribution to humanity's future. The first essay, by Senior Editor Marc S. Reisch, is a case study of the chemical industry's ongoing transformation to sustainable production. Although it is not well known to the general public, the chemical industry is at the forefront of corporate efforts to reduce waste from production streams to zero. Industry giants DuPont and Dow Chemical are taking major strides worldwide to manufacture chemicals while minimizing the environmental "footprint" of their facilities. This is an ethic that starts at the top of corporate structure. Indeed, Reisch quotes Dow President and Chief Executive Officer William S. Stavropolous: "We must integrate elements that historically have been seen as at odds with one another: the triple bottom line of sustainability—economic and social and environmental needs." DuPont Chairman and CEO Charles (Chad) O. Holliday envisions a future in which "biological processes use renewable resources as feedstocks, use solar energy to drive growth, absorb carbon dioxide from the atmosphere, use low-temperature and low-pressure processes, and produce waste that is less toxic." But sustainability is more than just a philosophy at these two chemical companies. Reisch describes ongoing Dow and DuPont initiatives that are making sustainability a reality at Dow facilities in Michigan and Germany and at DuPont's massive plant site near Richmond, Va. Another manifestation of the chemical industry's evolution is its embrace of life sciences. Genetic engineering is a revolutionary technology. In the 1970s, research advances fundamentally shifted our perception of DNA. While it had always been clear that deoxyribonucleic acid was a chemical, it was not a chemical that could be manipulated like other chemicals—clipped precisely, altered, stitched back together again into a functioning molecule. Recombinant DNA techniques began the transformation of DNA into just such a chemical, and the reverberations of that change are likely to be felt well into the next century. Genetic engineering has entered the fabric of modern science and technology. It is one of the basic tools chemists and biologists use to understand life at the molecular level. It provides new avenues to pharmaceuticals and new approaches to treat disease. It expands enormously agronomists' ability to introduce traits into crops, a capability seized on by numerous chemical companies. There is no doubt that this powerful new tool will play a major role in feeding the world's population in the coming century, but its adoption has hit some bumps in the road. In the second essay, Editor-at-Large Michael Heylin examines how the promise of agricultural biotechnology has gotten tangled up in real public fear of genetic manipulation and corporate control over food. The third essay, by Senior Editor Mairin B. Brennan, looks at chemists embarking on what is perhaps the greatest intellectual quest in the history of science—humans' attempt to understand the detailed chemistry of the human brain, and with it, human consciousness. While this quest is, at one level, basic research at its most pure, it also has enormous practical significance. Brennan focuses on one such practical aspect: the effort to understand neurodegenerative diseases like Alzheimer's disease and Parkinson's disease that predominantly plague older humans and are likely to become increasingly difficult public health problems among an aging population. Science and technology are always two-edged swords. They bestow the power to create and the power to destroy. In addition to its enormous potential for health and agriculture, genetic engineering conceivably could be used to create horrific biological warfare agents. In the fourth essay of this Millennium Special Report, Senior Correspondent Lois R. Ember examines the challenge of developing methods to counter the threat of such biological weapons. "Science and technology will eventually produce sensors able to detect the presence or release of biological agents, or devices that aid in forecasting, remediating, and ameliorating bioattacks," Ember writes. Finally, Contributing Editor Wil Lepkowski discusses the most mundane, the most marvelous, and the most essential molecule on Earth, H2O. Providing clean water to Earth's population is already difficult—and tragically, not always accomplished. Lepkowski looks in depth at the situation in Bangladesh—where a well-meaning UN program to deliver clean water from wells has poisoned millions with arsenic. Chemists are working to develop better ways to detect arsenic in drinking water at meaningful concentrations and ways to remove it that will work in a poor, developing country. And he explores the evolving water management philosophy, and the science that underpins it, that will be needed to provide adequate water for all its vital uses. In the past two centuries, our science has transformed the world. Chemistry is a wondrous tool that has allowed us to understand the structure of matter and gives us the ability to manipulate that structure to suit our own purposes. It allows us to dissect the molecules of life to see what makes them, and us, tick. It is providing a glimpse into workings of what may be the most complex structure in the universe, the human brain, and with it hints about what constitutes consciousness. In the coming decades, we will use chemistry to delve ever deeper into these mysteries and provide for humanity's basic and not-so-basic needs.

### 1NC Warfighting

**The plan opens the US up to lawfare---creates a chilling effect on operations**

**Cheng, Heritage Chinese political and security affairs research fellow, 2012**

(Dean, “Winning Without Fighting: Chinese Legal Warfare”, 5-21, lexis, ldg)

On the other hand, the proper conduct of armies and nations, especially in the context of the Laws of Armed Conflict (LOAC), is seen as integral to legal warfare. A brief, non-exhaustive review of American writings suggests that U.S. analysts of legal warfare focus on how charges of violations of the LOAC might be used to frustrate or hinder American military operations, especially in the context of counterinsurgency (COIN) operations. In his landmark 2001 essay on legal warfare, then-Colonel Charles Dunlap observed that a particular form of legal warfare was gaining broader acceptance: "a cynical manipulation of the rule of law and the humanitarian values it represents."[13] Dunlap raised the concern that lawfare was pursued not so much to ensure that nations followed the LOAC, but to "destroy the will to fight by undermining the public support that is indispensable" for successful war-fighting, especially in democracies such as the United States. [14] Dunlap himself has since somewhat modified this view, emphasizing that the concept of legal warfare is neutral rather than pernicious. He has recently described legal warfare as "the strategy of using-or misusing-law as a substitute for traditional military means to achieve an operational objective," eliminating the presumption that it is misuse of the law (while noting that such misuse may nonetheless occur).[15] Even where it is not seen as a deliberate misuse of the law, there are concerns that legal warfare will hamper Western, and especially American, military operations. As a summary of a 2003 Council on Foreign Relations conference observes, "Lawfare can be used to undercut American objectives."[16] Furthermore, the 2005 National Defense Strategy of the United States (NDS) placed lawfare (the use of "judicial processes") alongside terrorism and international fora in its list of American vulnerabilities.[17] In the 2008 NDS, the Department of Defense noted that there is a significant concern with violent extremist movements "hiding behind international norms and national laws when it suits them, and attempting to subvert them when it does not."[18] The 2008 NDS goes on to state that there is a need to address "growing legal and regulatory restrictions that impede, and threaten to undermine, our military readiness."[19] The U.S. remains concerned that Western military commanders will operate under excessive restraint, choosing to err on the side of caution for fear of violating international law-especially the LOAC. Exacerbating this undue caution would be concerns about undercutting public support, both at home and abroad, if military operations were seen as contravening legal standards.

#### That makes fighting terrorists, rouge states and proliferation impossible

Yoo 12 (John, professor of law at the University of California, Berkeley, “War Powers Belong to the President,” http://www.abajournal.com/magazine/article/war\_powers\_belong\_to\_the\_president)

A radical change in the system for making war might appease critics of presidential power. But it could also seriously threaten American national security. In order to forestall another 9/11 attack, or to take advantage of a window of opportunity to strike terrorists or rogue nations, the executive branch needs flexibility. It is not hard to think of situations where congressional consent cannot be obtained in time to act. Time for congressional deliberation, which leads only to passivity and isolation and not smarter decisions, will come at the price of speed and secrecy. The Constitution creates a presidency that can respond forcefully to prevent serious threats to our national security. Presidents can take the initiative and Congress can use its funding power to check them. Instead of demanding a legalistic process to begin war, the framers left war to politics. As we confront the new challenges of terrorism, rogue nations and WMD proliferation, now is not the time to introduce sweeping, untested changes in the way we make war.

#### Rogue states multiply and cause extinction

**Johnson, Forbes contributor and Presidential Medal of Freedom winner, 2013**

(Paul, “A Lesson For Rogue States”, 5-8, <http://www.forbes.com/sites/currentevents/2013/05/08/a-lesson-for-rogue-states/>, ldg)

Although we live in a violent world, where an internal conflict such as the Syrian civil war can cost 70,000 lives over a two-year period, there hasn’t been a major war between the great powers in 68 years. Today’s three superpowers–the U.S., Russia and China–have no conflicts of interest that can’t be resolved through compromise. All have hair-trigger nuclear alert systems, but the sheer scale of their armories has forced them to take nuclear conflict seriously. Thus, in a real sense, nuclear weapons have succeeded in abolishing the concept of a winnable war. The same cannot be said, however, for certain paranoid rogue states, namely North Korea and Iran. If these two nations appear to be prospering–that is, if their nuclear threats are winning them attention and respect, financial bribes in the form of aid and all the other goodies by which petty dictators count success–other prospective rogues will join them. One such state is Venezuela. Currently its oil wealth is largely wasted, but it is great enough to buy entree to a junior nuclear club. Another possibility is Pakistan, which already has a small nuclear capability and is teetering on the brink of chaos. Other potential rogues are one or two of the components that made up the former Soviet Union. All the more reason to ensure that North Korea and Iran are dramatically punished for traveling the nuclear path. But how? It’s of little use imposing further sanctions, as they chiefly fall on the long-suffering populations. Recent disclosures about life in North Korea reveal how effectively the ruling elite is protected from the physical consequences of its nuclear quest, enjoying high standards of living while the masses starve. Things aren’t much better in Iran. Both regimes are beyond the reach of civilized reasoning, one locked into a totalitarian vise of such comprehensiveness as to rule out revolt, the other victim of a religious despotism from which there currently seems no escape. Either country might take a fatal step of its own volition. Were North Korea to attack the South, it would draw down a retribution in conventional firepower from the heavily armed South and a possible nuclear response from the U.S., which would effectively terminate the regime. Iran has frequently threatened to destroy Israel and exterminate its people. Were it to attempt to carry out such a plan, the Israeli response would be so devastating that it would put an end to the theocracy forthwith. The balance of probabilities is that neither nation will embark on a deliberate war but instead will carry on blustering. This, however, doesn’t rule out war by accident–a small-scale nuclear conflict precipitated by the blunders of a totalitarian elite. Preventing Disaster The most effective, yet cold-blooded, way to teach these states the consequences of continuing their nuclear efforts would be to make an example of one by destroying its ruling class. The obvious candidate would be North Korea. Were we able to contrive circumstances in which this occurred, it’s probable that Iran, as well as any other prospective rogues, would abandon its nuclear aims. But how to do this? At the least there would need to be general agreement on such a course among Russia, China and the U.S. But China would view the replacement of its communist ally with a neutral, unified Korea as a serious loss. Compensation would be required. Still, it’s worth exploring. What we must avoid is a jittery world in which proliferating rogue states perpetually seek to become nuclear ones. The risk of an accidental conflict breaking out that would then drag in the major powers is too great. This is precisely how the 1914 Sarajevo assassination broadened into World War I. It is fortunate the major powers appear to have understood the dangers of nuclear conflict without having had to experience them. Now they must turn their minds, responsibly, to solving the menace of rogue states. At present all we have are the bellicose bellowing of the rogues and the well-meaning drift of the Great Powers–a formula for an eventual and monumental disaster that could be the end of us all.

### 1NC Executive Order

#### Text:

#### The Executive Branch should end President’s targeting killing policy involving drones strikes noting in a memo the reason is because it violates international law.

#### Executive orders avoid politics, have the force of law, and are rarely overturned

Cooper-prof public administration Portland State- 2 [Phillip, By Order of the President: The Use and Abuse of Executive Direct Action” p.59

Executive orders are often used because they are quick, convenient, and relatively easy mechanisms for moving significant policy initiatives. Though itis certainly true that executive orders are employed for symbolic purposes, enough has been said by now to demonstrate that they are also used for serious policymaking or to lay the basis for important actions to be taken by executive branch agencies under the authority of the orders. Unfortunately, as is true of legislation, it is not always possible to know from the title of orders which are significant and which are not, particularly since presidents will often use an existing order as a base for action and then change it in ways that make it far more significant than its predecessors.¶ The relative ease of the use of an order does not merely arise from the fact that presidents may employ one to avoid the cumbersome and time consuming legislative process. They may also use this device to avoid some times equally time-consuming administrative procedures, particularly the rulemaking processes required by the Administrative Procedure Act.84 Because those procedural requirements do not apply to the president, it is tempting for executive branch agencies to seek assistance from the White House to enact by executive order that which might be difficult for the agency itself to move through the process. Moreover, there is the added plus from the agency's perspective that it can be considerably more difficult for potential adversaries to obtain standing to launch a legal challenge to the president's order than it is to move an agency rule to judicial review. There is nothing new about the practice of generating executive orders outside the White House. President Kennedy's executive order on that process specifically pro­vides for orders generated elsewhere

### 1NC Drones Arms Race Advantage

#### Deterrence STILL checks – diplomatic costs

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

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

#### No great power war – tech failure

Lewis 11 (Michael W. Lewis teaches international law and the law of war at Ohio Northern University School of Law. He is a former Navy fighter pilot and is the coauthor of "The War on Terror and the Laws of War: A Military Perspective." “Unfounded drone fears,” http://articles.latimes.com/2011/oct/17/opinion/la-oe--lewis-drones-20111017)

Almost since the United States began using the unmanned aerial vehicles known as drones, their use has drawn criticism. The latest criticism, which has received considerable attention in the wake of the drone strike on Anwar Awlaki, is that America's use of drones has sparked a new international arms race. While it is true that some other nations have begun developing their own unmanned aerial vehicles, the extent of the alarm is unjustified. Much of it rests on myths that are easily dispelled. Myth 1: Drones will be a threat to the United States in the hands of other nations. Drones are surveillance and counter-terrorism tools; they are not effective weapons of conventional warfare. The unmanned aerial vehicles are slow and extremely vulnerable to even basic air defense systems, illustrated by the fact that a U.S. surveillance drone was shot down by a 1970s-era MIG-25 Soviet fighter over Iraq in 2002. Moreover, drones are dependent on constant telemetry signals from their ground controllers to remain in flight. Such signals can be easily jammed or disrupted, causing the drone to fall from the sky. It's even possible that a party sending stronger signals could take control of the drone. The drones, therefore, have limited usefulness. And certainly any drone flying over the U.S. while being controlled by a foreign nation could be easily detected and either destroyed or captured.

#### Lack of technology means no drone war

Boyle 12 (Ashley, is an Adjunct Junior Fellow at the American Security Project, “The US and its UAVs: Addressing Legality and Overblown Scenarios,” http://americansecurityproject.org/blog/2012/the-us-and-its-uavs-addressing-legality-and-overblown-scenarios/)

While there is no question that the US has used drones, it is hardly alone in wielding the technology. Approximately fifty nations possess and use drones. However, Wikipedia informs us that of these nations, only twelve have lethal drones of which only three nations – China, Iran, and Russia – may be of concern. Possessing the technology is only one part of the picture. Nations must also have the capabilities to maintain and operate these aircraft, as well as an intelligence network that informs their surveillance or strike activities. The supporting systems required to operate drones is greatly underestimated, and it is difficult to see China, Iran, or Russia having the resources or desire to launch expansive drone programs in the short- to mid-term. While the long-term picture always requires discussion, alarmist messages about impending drone wars are just that: alarming and unfounded.

#### Norms fail – international manipulation

Lerner 13 (Ben, is Vice President for Government Relations at the Center for Security Policy in Washington, D.C. “Judging ‘Drones’ From Afar,” http://spectator.org/archives/2013/03/25/judging-drones-from-afar/1

Whatever the potential motivations for trying to codify international rules for using UAVs, such a move would be ill advised. While in theory, every nation that signs onto a treaty governing UAVs will be bound by its requirements, it is unlikely to play out this way in practice. It strains credulity to assume that China, Russia, Iran, and other non-democratic actors will not selectively apply (at best) such rules to themselves while using them as a cudgel with which to bash their rivals and score political points. The United States and its democratic allies, meanwhile, are more likely to adhere to the commitments for which they signed up. The net result: we are boxed in as far as our own self-defense, while other nations with less regard for the rule of law go use their UAVs to take out whomever, whenever, contorting said “rules” as they see fit. One need only look at China’s manipulation of <<LOST>>the Law of the Sea Treaty to justify its vast territorial claims at the expense of its neighbors to see how this often plays out. And who would enforce the treaty’s rules — a third party tribunal? Would it be an apparatus of the United Nations, the same U.N. that assures us that it is not coming after the United States or its allies specifically, even as its investigation takes on as its “immediate focus” UAV operations recently conducted by those countries? The United States already conducts warfare under the norms of centuries of practice of customary international law in areas such as military necessity and proportionality, as well as the norms to which we committed ourselves when we became party to the 1949 Geneva Conventions and the United Nations Charter. These same rules can adequately cover the use of UAVs in the international context. But if the United States were to create or agree to a separate international regime for UAVs, we would subject ourselves to new, politicized “rules” that would needlessly hold back countries that already use UAVs responsibly, while empowering those that do not.

### 1NC I-Law Advantage

#### CIL can’t solve their impacts – vague and unpredictable.

Bradley and Gulati 2010

Curtis and Mitu, both professors of Law at Duke University, CUSTOMARY INTERNATIONAL LAW AND WITHDRAWAL RIGHTS IN AN AGE OF TREATIES DUKE JOURNAL OF COMPARATIVE & INTERNATIONAL LAW [Vol 21:30] http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2930&context=faculty\_scholarship

It is more difficult to ascertain the state of CIL in practice, but there are a variety of reasons to believe that it is less than ideal. As Paul Stephan discusses, although international law commentators frequently write as if there were a single body of CIL, this does not describe actual practice.16 There is instead an ever growing cacophony of claims about the content of CIL, with no identifiable hierarchy among these voices. The “CIL” invoked by international institutions differs as between these institutions, and it also differs from the “CIL” invoked by NGOs, domestic courts, executive spokespersons, and other actors. There is consequently a danger that CIL is simply becoming, to use Sam Estreicher’s term, a form of “law-speak.”17 The nature of the claims about CIL also appear to have fundamentally changed in recent years. When actors make claims about CIL, they often fail to tie the claims to empirical assessments of state practice. Instead, these actors cite treaties, the resolutions of international bodies, claims by scholars, or normative arguments. When state practice is cited, the citations are often selective and partial. Moreover, when state practice contradicts a purported CIL norm (as it frequently does for issues relating to human rights and the use of force, for example), the contrary practice is dismissed as mere violations of the norm. In some instances, the label “CIL” is simply used to avoid international or domestic restrictions that are associated with treaties. CIL is also sufficiently vague, and the mechanisms of its enforcement are sufficiently limited, that nations almost certainly “exit” from it regularly without saying so. Instead of invoking a formal withdrawal right, nations dissemble about the content of CIL or attempt to conceal their violations.18 The end result is uncertainty and unpredictability in the content of CIL, and a diminishment of its legitimacy.19 Moreover, as we discussed in Withdrawing, these de facto exit rights vary substantially depending on a nation’s power and resources, thereby exacerbating normative concerns that already exist about the structure of CIL.20 These concerns include, among other things, the possibility that the Mandatory View of CIL was developed as part of an effort to maintain colonial domination.21 Some commentators have suggested that all would be well if the system limited itself to “old” rather than “new” CIL.22 Old CIL is developed inductively from widespread and longstanding patterns of state behavior. New CIL, by contrast, is more deductive and is characterized by reliance on international resolutions, treaties, scholarly opinion, and similar materials to establish the content of CIL, and by the influence of non-state actors such as NGOs.23 This nostalgia for the old CIL highlights the fact that the current CIL system has not succeeded in generating consensus. In any event, the nostalgia is unrealistic because international and domestic adjudicators routinely rely on (and create) new CIL materials, and there is no reason to believe that this practice will change.24 Moreover, the new CIL has significant support in both the NGO community and the legal academy because (among other things), it gives those constituencies a greater voice in CIL creation.25 The nostalgia for the old CIL is also inattentive to history. As discussed in Withdrawing, CIL was historically dictated by a handful of Western powers, and restrictions on exit from the old CIL were likely adopted as a way for the Western powers to impose their rules on the new entrants to the system.26 The old CIL is also now less relevant in light of the rise of treaties, and it is structurally ill suited for addressing many contemporary problems. Indeed, as nations have sought to address the leading international problems of the twenty-first century, such as terrorism, the proliferation of nuclear weapons, global warning, and international financial regulation, they have looked to treaties and written soft law instruments rather than trying to create old-style CIL. By contrast, the new CIL gives greater voice to a wider set of interests,27 and it has the potential to address a larger set of problems than the old CIL.28 Our objection in Withdrawing was not to the new CIL, but rather to the failure to adapt exit rights to the new system.

#### Violations of international law don’t spillover – changing variables.

Brewster 2009

Rachel, Assistant Professor of Law, Harvard Law School, Unpacking the State’s Reputation, Harvard International Law Journal VOLUME 50, NUMBER 2, SUMMER 2009 http://dash.harvard.edu/bitstream/handle/1/3353696/unpackingstatesrep.pdf?...

The second question addresses the informational content of specific violations of international law for predicting future violations. Say that the U.S. administration violates an arms control agreement. The reputational costs to the United States will depend on the inferences the international audience draws from that violation about whether the United States will comply with other international obligations. This turns out to be difficult to predict. For one thing, the arms control violation may not provide very much information about how the United States will behave with respect to international obligations in other areas, such as human rights, trade, or environment, where the domestic political considerations may be very different. It may not even provide much information about future compliance with other arms control agreements, because, again, the domestic political considerations in a future period may be different. Much depends on how the state’s reputation is bundled, both topically and temporally. For another, legal compliance with an agreement may not be particularly predictive of how cooperative the state will be in future interactions. States can be poor treaty partners while maintaining strict legal compliance with an agreement by attaching reservations or withdrawing from their commitments, as the United States did with the Anti-Ballistic Missile Treaty (“ABM Treaty”). Other variables, such as the alignment of interests in domestic or international politics, are likely to be better predictors. For instance, the likelihood that the United States will comply with future arms control agreements depends far more on the strategic situation of the moment (for example, the present threat from international terrorist groups) than whether it complied with the ABM Treaty in very different political contexts in the past (for example, during the Cold War). Recognizing that reputational costs are limited to the political conditions of the time, governments are probably not overly concerned about the reputational costs of discrete violations of international rules. For better or worse, bad actions that are not predictive of future behavior, because the regime has changed or because the strategic situation is different, do not lead to reputational costs.

#### Just because we violate ilaw in one instance doesn’t mean it can’t solve their generic impact.

Ku 2009

Julian G., Professor of Law and Associate Dean for Faculty Development at Hofstra University School of Law, The Prospects for the Peaceful Co-Existence of Constitutional and International Law, the yale law journal online 119:15, http://www.yalelawjournal.org/the-yale-law-journal-pocket-part/international-law/the-prospects-for-the-peaceful-co%11existence-of-constitutional-and-international-law/

Supporting a dominant role for political branches in the interpretation of international law does not imply support for international law as merely a species of policymaking. Indeed, the political branches are the primary reason that international law is more than just an illusion. For better or for worse, the political branches of the U.S. government depend and rely on international law as “law” to pursue various important policies on behalf of the United States. Such policies encompass a very broad range of topics, including the harmonization of private contracts for sale of goods;11 the enforcement of private and public arbitration awards;12 the terms of international trade in goods and services;13 the extradition of criminal suspects;14 the adoption of children;15 the protection of diplomats and consular officials;16 the use and limitation of chemical, nuclear, and biological weapons;17 the protection of human rights;18 and climate change and environmental protection.19 The list of topics is nearly endless. Not only does the U.S. government wield international law as a tool of policy, but private parties often rely on international law as law to shape and organize their activities. Private parties contracting for the sale of goods or enforcing their arbitral judgments are not likely to be amused when told that they are acting pursuant to merely illusory norms. In other words, the political branches, the President and Congress, often need and want international law to be more like law than politics. For this reason, the President and Congress often take actions to legalize U.S. legal obligations under international law. The President can, for instance, declare U.S. adherence to particular norms of international law and he can direct lower executive branch officials to adhere to such norms.20 Congress can enact statutes incorporating international law norms into U.S. law. To be sure, the President can revoke or alter his interpretations of international law, and Congress can repeal prior statutes or treaties. This is a necessary power that, as Paulsen rightly points out, flows from the premise of constitutional supremacy over international law. But the fact that the President or Congress can, pursuant to particular constitutional processes, repeal or alter international law obligations does not mean those obligations are not “law.” Any kind of federal regulation or legislation is just as vulnerable to repeal or alteration pursuant to the same constitutional processes. But that does not mean we should declare those legal norms illusory. To put it another way, if international law is illusory within the U.S. system, so is every other kind of law that is not constitutional law.

Status quo solves warming---epa regs

Baltimore Sun 12 (“EPA's climatic victory” http://www.baltimoresun.com/news/opinion/editorial/bs-ed-epa-climate-20120627,0,7041174.story)

Tuesday's victory by the U.S. Environmental Protection Agency in federal appeals court in the District of Columbia has once again demonstrated that the science of climate change, while famously "inconvenient," is virtually impossible for fair and reasonable people to deny. In upholding the agency's right to regulate the emission of greenhouse gases, including carbon dioxide, under a handful of cases, the three-judge panel recognized climate change as the legitimate threat to public health and safety that it is, and that the Clean Air Act gives the agency appropriate authority to regulate it. This shouldn't have come as much surprise to opponents, as the decision is in line with the Supreme Court's 2007 decision affirming the EPA had that power. It would be nice, of course, if we lived in a world where coal and other fossil fuels could be burned without regard to the pollution they emit, but that's not real life. Unfortunately, the longer the U.S. and other developed countries wait to address climate change, the less chance they can do much about it. We would be sympathetic to polluters' complaints that climate change should be addressed by Congress and not by a regulatory agency if those same opponents had not worked so hard to thwart that very effort two years ago. They now must reap what they sowed: a less political and more science-driven regulatory process. The court's decision means the EPA can move forward with clean car standards that are, incidentally, already supported by industry and labor, and the issuance of restrictive permits to power plants and other major industrial polluters. There are, of course, winners and losers in this transition. Coal-producing states like West Virginia will be hurt economically as they gradually lose a market for their product. But until power plants and other major users of coal develop a reliable and economical method to capture carbon emissions (or at least offset them), this is unavoidable. Yet that setback for coal is a potential boon for alternative sources of energy. Much of the attention now will be on generating power from natural gas, which is less harmful to the environment (though hardly carbon-free), and on improving biofuels, solar and wind technologies. Conservatives can grouse all they want that the transition will inevitably cause consumer prices to rise. Coal was relatively cheap compared to the alternatives — if the harmful effects of greenhouse gas emissions are not factored into its price. Mitt Romney is already running ads in critical states like Ohio attacking the EPA, always a favorite Republican whipping boy, and promising to strip the agency of its authority to regulate carbon. But Mr. Romney may also find himself politically vulnerable on this issue. He has admitted in the past that the earth's climate is changing, that humans are contributing to the problem and that he favored reducing greenhouse gas emissions. Yet his refusal to endorse the EPA's regulatory role would seem to put him in a political no-man's land of recognizing that global warming is real and distressing but declining to do anything worthwhile about it. Even with the mountain of evidence supporting the reality of climate change and now a growing number of court opinions endorsing it, it's hard to believe a politically gridlocked Congress is capable of taking appropriate action on its own. Thus, the EPA represents the best hope for responsible behavior — and for the U.S. to set an example for countries that have been similarly reluctant to embrace reforms. This week's ruling may yet be appealed to the Supreme Court, but experts say there's little chance of reversal there, particularly given the high court's related 2007 decision and the slam-dunk nature of the appeals court's unanimous findings. Opponents would be better served putting their energy where it should have been in the first place — in developing methods to reduce greenhouse gas emissions. From Western fires and Southern flooding to severe weather, threatened animal and plant species and melting ice caps, the impact of global warming is real and distressing. A recent study from the U.S. Geological Survey suggests the East Coast is a "hot spot," as sea levels are rising more rapidly than previously thought. All of which strongly suggests it's time Washington stopped bickering over global warming and started supporting the EPA's efforts.

#### no extinction

Green 11 (Roedy, PHD from British Colombia, “Extinction of Man”, http://mindprod.com/environment/extinction.html//umich-mp)

Mankind is embarking on a strange ecological experiment. Over a couple of centuries, man is burning the carbon accumulated over millions of years by plants. The CO₂ levels are now at the level of the Permian extinction. There have been two mass extinctions in earth history, the Permian, 230 million years ago, was the worst. 70% of all species were lost. It was caused by natural global warming when volcanoes released greenhouse gases. (The other extinction event more familiar to most people was the more recent KT Cretaceous-Tertiary Mass Extinction event, 65 million years ago. It was caused when an asteroid plunged into the earth at Chicxulub Mexico wiping out the dinosaurs and half of earth’s species.) We are re-experiencing the same global warming conditions that triggered the more devastating Permian extinction, only this time it is man made. When it gets too hot, plants die. When it gets too hot and dry, massive fires ravage huge areas. When plants die, insects and herbivores die. When insects die, even heat-resistant plant’s don’t get pollinated and die. Birds die without insects to eat. Carnivores die without herbivores to eat, all triggered by what seems so innocuous — heat. Similarly, in the oceans, when they get just a few degrees too warm, corals expel their symbiotic algae and die soon thereafter. When coral reefs die, the fish that live on them die, triggering extinction chains. Satellites can chart the loss of vegetation over the planet. We are losing 4 species per hour, a rate on the same scale as the Permian and KT extinction events. Man has no ability to live without the support of other species. We are committing suicide and killing the family of life on earth along with us. The question is, will we wipe ourselves out along with the rest of the planet’s ecology? Man (sic) is very adaptable. He (sic) will destroy his food supply on land and in the oceans as a result, but some people will survive. That is not complete extinction.

#### Technology solves water shortages

Selby 5 (Jan, professor at the University of Sussex and sits on the Department of International Relations and Politics. March 1st, 2005. Third World Quarterly. “The Geopolitics of Water in the Middle East: fantasies and realties” <http://dx.doi.org/10.1080/0143659042000339146>)

In most popular political and also environmental discourse the Middle East’s water problems are usually represented in thoroughly naturalistic terms. So conceived, water scarcities and associated ecological stresses are essentially a function of imbalances in the relationship between natural resource and population levels. Across the Middle East, so the standard narrative goes, water resources are finite and limited. Populations, meanwhile, are high and growing—in the Arab states, for instance, at an average annual rate of 2.7% between 1975 and 2000.14 And it follows from this that many Middle Eastern states are facing situations of ‘water stress’,15 overstepping the ‘thresholds’ and ‘carrying capacities’ of their delicate natural resource bases, to potentially disastrous ecological, economic and political effect. As Malin Falkenmark writes, typifying this way of thinking, ‘unfortunately, water resources are finite; future increases in population therefore imply increased water competition’.16 Only by reducing population growth are water crises and conflicts likely to be averted. But such a remedial step is, for understandable reasons, exceedingly remote; and thus the Malthusian spectre of over-population, disease, famine and conflict looms on the horizon. This, even if not always quite so bluntly stated, is the underlying premise of those doom-laden prophecies on the coming ‘water wars’. The problem with such naturalistic neo-Malthusianism is that it is simply wrong about the causes of water crisis. Naturalistic discourse presents us with a world comprising just humans and nature, where nature is static and unyielding, where the human relationship with nature is limited to its consumption, and where there are in consequence insurmountable limits to these consumptive—indeed exploitative—relations. But nature and natural resources do not just sit around waiting to be consumed. Resources, to the contrary, are material social constructs and products, brought into being through economic and technological development, through the fact that humans are producers and not just consumers of ‘nature’ (a ‘nature’, we might add, that no longer really exists).17 Water resources such as deep-lying aquifers that would not even have been thought of as ‘resources’ a century ago are today commonly characterised as ‘natural water resources’. New technologies and changing economies bring new resources into being, and even change our conceptions of what counts as ‘nature’. As for population growth, here neo-Malthusianism is equally misguided. Populations are not just environmental burdens, they are also what Julian Simon called the ‘ultimate resource’. Population growth has been a key positive factor in the development and expansion of capitalism and in stimulating economic growth. Thus to understand when and why population growth can become a problem, one needs to look elsewhere, at the failure of particular states and societies to make productive use of their expanding population, and the particular reasons for this. In both these regards the Middle East’s water problems cannot be adequately explained in naturalistic terms. For, as David Harvey observes, to ‘declare a state of ecoscarcity is in effect to say that we have not the will, wit or capacity to change our state of knowledge, our social goals, cultural modes, and technological mixes, or our form of economy, and that we are powerless to modify either our material practices or ‘‘nature’’ according to human requirements’

#### Obsolescence of the Constitution means SCOTUS won’t be modeled.

Law and Versteeg 2012

David S., University of Washington St. Louis Professor of Law and PoliSci, and Mila, UVA Law Professor, The Declining Influence of the United States Constitution New York University Law Review, Vol. 87, 2012 http://whatthegovernmentcantdoforyou.com/wp-content/uploads/2012/02/ssrn-id1923556.pdf

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.

#### No one models the US system anymore.

Liptak 2012

Adam, New York Times, ‘We the People’ Loses Appeal With People Around the World

Sure, it is the nation’s founding document and sacred text. And it is the oldest written national constitution still in force anywhere in the world. But its influence is waning. In 1987, on the Constitution’s bicentennial, Time magazine calculated that “of the 170 countries that exist today, more than 160 have written charters modeled directly or indirectly on the U.S. version.” A quarter-century later, the picture looks very different. “The U.S. Constitution appears to be losing its appeal as a model for constitutional drafters elsewhere,” according to a new study by David S. Law of Washington University in St. Louis and Mila Versteeg of the University of Virginia. The study, to be published in June in The New York University Law Review, bristles with data. Its authors coded and analyzed the provisions of 729 constitutions adopted by 188 countries from 1946 to 2006, and they considered 237 variables regarding various rights and ways to enforce them. “Among the world’s democracies,” Professors Law and Versteeg concluded, “constitutional similarity to the United States has clearly gone into free fall. Over the 1960s and 1970s, democratic constitutions as a whole became more similar to the U.S. Constitution, only to reverse course in the 1980s and 1990s.” “The turn of the twenty-first century, however, saw the beginning of a steep plunge that continues through the most recent years for which we have data, to the point that the constitutions of the world’s democracies are, on average, less similar to the U.S. Constitution now than they were at the end of World War II.” There are lots of possible reasons. The United States Constitution is terse and old, and it guarantees relatively few rights. The commitment of some members of the Supreme Court to interpreting the Constitution according to its original meaning in the 18th century may send the signal that it is of little current use to, say, a new African nation. And the Constitution’s waning influence may be part of a general decline in American power and prestige. In an interview, Professor Law identified a central reason for the trend: the availability of newer, sexier and more powerful operating systems in the constitutional marketplace. “Nobody wants to copy Windows 3.1,” he said. In a television interview during a visit to Egypt last week, Justice Ruth Bader Ginsburg of the Supreme Court seemed to agree. “I would not look to the United States Constitution if I were drafting a constitution in the year 2012,” she said. She recommended, instead, the South African Constitution, the Canadian Charter of Rights and Freedoms or the European Convention on Human Rights. The rights guaranteed by the American Constitution are parsimonious by international standards, and they are frozen in amber. As Sanford Levinson wrote in 2006 in “Our Undemocratic Constitution,” “the U.S. Constitution is the most difficult to amend of any constitution currently existing in the world today.” (Yugoslavia used to hold that title, but Yugoslavia did not work out.) Other nations routinely trade in their constitutions wholesale, replacing them on average every 19 years. By odd coincidence, Thomas Jefferson, in a 1789 letter to James Madison, once said that every constitution “naturally expires at the end of 19 years” because “the earth belongs always to the living generation.” These days, the overlap between the rights guaranteed by the Constitution and those most popular around the world is spotty. Americans recognize rights not widely protected, including ones to a speedy and public trial, and are outliers in prohibiting government establishment of religion. But the Constitution is out of step with the rest of the world in failing to protect, at least in so many words, a right to travel, the presumption of innocence and entitlement to food, education and health care. It has its idiosyncrasies. Only 2 percent of the world’s constitutions protect, as the Second Amendment does, a right to bear arms. (Its brothers in arms are Guatemala and Mexico.) The Constitution’s waning global stature is consistent with the diminished influence of the Supreme Court, which “is losing the central role it once had among courts in modern democracies,” Aharon Barak, then the president of the Supreme Court of Israel, wrote in The Harvard Law Review in 2002. Many foreign judges say they have become less likely to cite decisions of the United States Supreme Court, in part because of what they consider its parochialism. “America is in danger, I think, of becoming something of a legal backwater,” Justice Michael Kirby of the High Court of Australia said in a 2001 interview. He said that he looked instead to India, South Africa and New Zealand. Mr. Barak, for his part, identified a new constitutional superpower: “Canadian law,” he wrote, “serves as a source of inspiration for many countries around the world.” The new study also suggests that the Canadian Charter of Rights and Freedoms, adopted in 1982, may now be more influential than its American counterpart.

#### Turn – backlash causes a chilling effect. Scalia proves.

Parrish 2007

Austen, STORM IN A TEACUP: THE U.S. SUPREME COURT’S USE OF FOREIGN LAW Associate Professor of Law, Southwestern Law School. J.D. 1997, Columbia University; UNIVERSITY OF ILLINOIS LAW REVIEW http://illinoislawreview.org/wp-content/ilr-content/articles/2007/2/Parrish.pdf

Yet it is consistent. Stripped of its rhetoric, the hostility towards citing foreign decisions in any context seems misplaced. Those who oppose the use of foreign law confuse the question of validity with the question of what weight to afford that law. The critics also ignore a history of practice in which foreign legal materials have been used in constitutional analysis.17 Indeed, the practice is one our state courts have long embraced when interpreting their own, unique state constitutions, a point that until now has been downplayed. Lurking under the surface of arguments made by those who oppose the use of foreign sources appears to be the hubris of American exceptionalism. More fundamentally, the arguments often reflect particular modes of constitutional interpretation— textualism and originalism—that, despite recent attempts to resuscitate, the legal mainstream long ago rejected or discounted, at least in their extreme forms.18 A need therefore remains to explain not only why the use of foreign law is not offensive, but why its use is consistent with American constitutionalism and the proper role of the judiciary. This article attempts to do exactly that. This is not an academic exercise: explaining why the U.S. Supreme Court’s use of foreign law is legitimate, while debunking arguments that categorically reject its use, is important. The spirited backlash against the judiciary for citing to foreign materials as persuasive authority threatens to have a chilling effect.19 [FOOTNOTE BEGINS] The last time Justice Scalia vigorously attacked a citation practice—the use of legislative history in statutory interpretation—he had a significant impact in reducing the practice. See Michael H. Koby, The Supreme Court’s Declining Reliance on Legislative History: The Impact of Justice Scalia’s Critique, 36 HARV. J. ON LEGIS. 369 (1999) (concluding that Justice Scalia’s acerbic criticism of the reliance on legislative history led to an overall decline in the use of that interpretive tool). For an explanation of why the Court might start using foreign materials silently, even when the use is legitimate, see Deborah Hellman, The Importance of Appearing Principled, 37 ARIZ. L. REV. 1107, 1125–27 (1995) (arguing that an “appearance factor” influences decision making). [FOOTNOTE ENDS] Instead of exploring how to utilize foreign materials in a refined way, the debate has been debased to an all-or-nothing proposition, with extreme and fringe positions obtaining a degree of superficial credibility. The result is problematic, and its impact real. Lessons that could be learned from other countries are missed. Moreover, the Court’s failure to engage more meaningfully with foreign law divorces the Court from an ongoing transnational dialogue that is developing and shaping international norms—norms that, one day, may exert some control domestically. This article proceeds in three parts. Part I describes the current debate and how it has unfolded in the last few years. Part II explores the validity of arguments championed by those who oppose citation to foreign law sources and explains why those arguments are misplaced. Contrary to the positions staked in the flood of critical articles published in 2005, the use of foreign law is hardly an offensive practice. Part III explains why citation to foreign law is consistent with American constitutionalism and explores some pragmatic reasons for why the U.S. Supreme Court’s use of foreign law is sensible. The article concludes by suggesting that the U.S. Supreme Court should continue cautiously to use foreign law as persuasive authority. Engaging in transnational constitutional dialogue is a commendable goal, not an illegitimate one.

## \*\*\*2NC

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### 2NC Future Presidents Rollback

#### ---Fiat Solves---A minimal interpretation of structural fiat would preserve the existence of the executive order, just like legislation or court decisions would survive elections or appointments. At best this is a question of implementation and enforcement.

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

Branum-Associate Fulbright and Jaworski- 2

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

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

#### ---Future administrations rarely overturn previous executive orders

Washington Times 8/23/99

“Clinton’s Executive Orders are Still Packing a Punch: Other Presidents Issued More, but His are Still Sweeping” Frank Murray [http://www.questia.com/library/1G1-55543736/clinton-s-executive-orders-still- are-packing-a-punch](http://www.questia.com/library/1G1-55543736/clinton-s-executive-orders-still-%20are-packing-a-punch)

Clearly, Mr. Clinton knew what some detractors do not: Presidential successors of the opposite party do not lightly wipe the slate clean of every order, or even most of them. Still on the books 54 years after his death are 80 executive orders issued by Franklin D. Roosevelt. No less than 187 of Mr. Truman's orders remain, including one to end military racial segregation, which former Joint Chiefs of Staff Chairman Colin Powell praised for starting the "Second Reconstruction." "President Truman gave us the order to march with Executive Order 9981," Mr. Powell said at a July 26, 1998 ceremony marking its 50th anniversary. Mr. Truman's final order, issued one day before he left office in 1953, created a national security medal of honor for the nation's top spies, which is still highly coveted and often revealed only in the obituary of its recipient.

### International Law

#### Executive order incorporation of international law has massive symbolic and legal importance for future policy and court action-solves better than the plan

Nachbar-prof law Virginia-11

<http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1967217>

Executive Order 13567: Executive Branch Policy Meets International Law in the Evolution of the Domestic Law of Detention

Conclusion Neither the Order nor the accompanying Fact Sheet will have a major impact on U.S. detention operations. The Order applies only to a small group of detainees, all of whom have been subjected to similar procedures in the recent past. The Fact Sheet’s signaling of compliance with Article 75 is not technically applicable to the current conflict, and ratification of AP II is still beyond the horizon. Moreover, the procedures contained in the Order (which do not differ dramatically from the procedures they replace) arguably conform with Article 75 and APII, neither of which contain robust procedures with regard to detention, except perhaps with regard to the use of classified information (an area in which states are likely to receive considerable leeway given the vague requirements of Article 75) and the continued detention of detainees identified for release but for whom the U.S. is unable to locate an acceptable non-U.S. destination. The procedures and substantive standards contained in the Order do not dramatically change the landscape of U.S. detention policy and practice, but that does not mean that the Order and the Fact Sheet are of no moment. The U.S. has previously been careful to maintain a strong approach to the lex specialis conception of LOAC, but Article 75 and AP II represent an approach to LOAC that more closely tracks human rights protections than earlier instruments, like the GCs themselves. It is often the executive branch that argues most strongly for the U.S.- exceptionalist view of international law; if the Fact Sheet signals a shift by the executive branch, it is likely to be followed by a shift by courts as well. In many times, the content of the international law of armed conflict has been mostly a matter of academic interest in the U.S., but today, many cases applying domestic law turn directly on the content of the law of armed conflict, which means that the content of international human rights law as implicated by a shifting approach to LOAC may soon find itself in domestic law, binding by U.S. federal courts on the conduct of the current armed conflict. Even those changes are, for the moment, hypothetical. The policy announced by the Fact Sheet – the administration’s willingness to embrace aspects of the law of armed conflict closely tied with international human rights law – has the potential for substantially altering the evolution of U.S. detention law and policy by providing even more space to incorporate international legal norms into U.S. domestic law. Of course, the most important implication of the Fact Sheet’s embrace of Article 75 and AP II is one for diplomats, not lawyers—at least not yet. By finally saying in a public forum that the U.S. will apply Article 75 in IAC out of a sense of legal obligation and that the administration will pursue ratification of AP II, the Obama administration is signaling future engagement with the international community on matters relating to armed conflict. Doing so likely changes the diplomatic landscape more than it does the legal landscape in the near term, although the impact over the long term may be more profound than the recognition of any particular rule or the ratification of any particular treaty. I leave it to the diplomats to debate whether that change should be welcomed.198

#### Executive Orders can effectively encourage judicial incorporation of international law

Nachbar-prof law Virginia-11

<http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1967217>

Executive Order 13567: Executive Branch Policy Meets International Law in the Evolution of the Domestic Law of Detention

In the short term, neither the Order nor the President’s statement of adherence to Article 75 (which amounts to opinio juris under international law) are likely to affect most detention operations conducted by the U.S. Armed Forces. The Order applies to a very small number of detainees—only those held at Guantanamo Bay—all of whom have already undergone similar reviews pursuant to Executive Order 13492. Moreover, many of the procedures outlined in the Order have direct antecedents in previous executive branch detention determination procedures, such as Combatant Status Review Tribunals (CSRTs) and Administrative Review Boards (ARBs). However, the Order is of a piece with the Obama administration’s longstanding policies on detainee procedures, and the Fact Sheet suggests an increased role for international law in the current conflict. The first-order effects of recognizing Article 75 as having legal force (and even ratifying AP II) are likely to be mild for a variety of reasons, but both Article 75 and AP II are closely tied to international human rights law, especially the International Covenant on Civil and Political Rights. At the same time, the international law applicable to armed conflict has become a major point of litigation in U.S. civilian courts. Adopting substantive positions that implicate the ICCPR and international human rights law generally is likely to provide greater opportunity for courts to read human rights restrictions into the U.S. domestic law of armed conflict. Moreover, the Obama administration’s willingness to embrace international law will likely be reflected in the litigation position it takes in cases related to the law of armed conflict in U.S. courts. Conversely, the increased embrace of international law may increase the legitimacy of certain legal positions the U.S. has taken with regard to international law, both in litigation in U.S. courts and in international legal circles.

### 2NC Perception-Public

#### The president is the focal point of American politics – everyone perceives executive action

Fitts-prof law, Penn-96 [Michael, Professor of Law @ UPenn Law School, “The Paradox Of Power In The Modern State”, University of Pennsylvania Law Review, 144 U. Pa. L. Rev. 827, Lexis]

I. The Presidency A. The Modern Presidency What is the nature of the presidency in the modern state? Numerous political scientists and legal academics claim that our recent chief executives have inherited a "modern presidency," [33](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n33" \t "_self) which began to develop with Franklin Roosevelt and is structurally distinct from earlier regimes. [34](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n34" \t "_self) Of course, the balance of power among the president, Congress, and the agencies is exceedingly complex, since the amount of bureaucratic activity and legislative oversight has increased greatly over the years. Nevertheless, "the resources of modern presidents [are thought by many to] dwarf those of their predecessors." [35](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n35" \t "_self) Commentators point to three related changes that centralize greater formal power in the institution and increase the informal political assets at the president's command. The first change, which is to some extent considered the most important and defining quality of the modern presidency, is the increased visibility of the president as an individual within the electoral process. Prior to the Roosevelt Administration, the president was viewed more as a member of both a party and a complicated and elite system of government. He was also relatively distant from the population. The modern presidents, in contrast, are elected increasingly as individuals in the primary and general elections on the basis of direct public exposure in the media. This [\*842] evolution, which has occurred over a number of years, is a result of social forces, such as the decline of political parties [36](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n36" \t "_self) and the rise of the media, as well as legal changes, such as the ascendancy of primaries. [37](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n37" \t "_self) Second, once in power, modern presidents have increasingly attempted to take greater formal and informal control of the executive branch, through policy expansion of the OMB and the Executive Office of the President and increased oversight of agencies under Executive Order 12,291 [38](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n38" \t "_self) and its successor orders. Indeed, every president since Roosevelt has attempted to centralize power in the White House to oversee the operations of the executive branch and to make its resources more responsive to his policy and political needs. [39](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n39" \t "_self) [\*843] Finally, and relatedly, the modern presidency has become more centralized and personalized through its public media role - that is, its "rhetorical functions." [40](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n40" \t "_self) Given changes in the press and the White House office, the president has become far more effective in setting the agenda for public debate, sometimes even dominating the public dialogue when he chooses. [41](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n41" \t "_self) Economists would probably attribute the president's ability to "transmit information" to the centralized organization of the presidency - an "economy of scale" in public debate. [42](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n42" \t "_self) At the same time, the president can establish [\*844] a "focal point" around preferred public policies. [43](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n43" \t "_self) This proposition can also be stated somewhat differently. As an institution embodied in a single individual, the president has a unique ability to "tell" a simple story that is quite personal and understandable to the public. As a number of legal academics have shown, stories can be a powerful mode for capturing the essence of a person's situated perspective, improving public comprehension of particular facts, and synthesizing complex events into accessible language. [44](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n44" \t "_self) Complex institutions, such as Congress, have difficulty [\*845] assembling and transmitting information as part of a coherent whole; they represent a diversity - some would say a babble - of voices and perspectives. In contrast, presidents have the capacity to project a coherent and empathetic message, especially if it is tied to their own life stories. In this sense, the skill of the president in telling a story about policy, while sometimes a source of pointed criticism for its necessary simplicity, [45](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n45" \t "_self) may greatly facilitate public understanding and acceptance of policy. [46](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n46" \t "_self) B. The Theory of the Unitary Presidency This picture of the modern presidency is quite consistent with those parts of the legal and political science literatures exploring the advantages of presidential (as opposed to legislative) power and advocating a more unitary or centralized presidency. According to this view, [47](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n47" \t "_self) power and accountability in government and in the executive branch should be moved more toward the top, giving the [\*846] president and his staff greater ability to make decisions themselves or to leave them, subject to oversight, in the hands of expert agency officials. In the legal literature, this position is usually associated with support for strengthening the president's directorial powers over the agencies, unfettered presidential removal authority, and Chevron deference to agency regulations [48](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n48" \t "_self) reviewed by the White House. Similarly, political scientists emphasize the plebiscitarian president's growing informal influence with the agencies and the public, as well as the association between a strong president and the "national" interest. [49](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n49" \t "_self) To be sure, legal proponents of a strong unitary presidency usually do not outline a comprehensive policy defense of the legal position but rely more on doctrinal justifications and related policy arguments. [50](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n50" \t "_self) By synthesizing and integrating the interrelated legal and policy rationales in the legal and political science literatures, however, one can sketch the outlines of a common theory. This analysis suggests that the structure of a more unitary, centralized presidency should enhance the power, legitimacy, and effectiveness of the office, especially as compared to Congress, in three different but related ways. [\*847] First, with respect to the administration of the executive branch, centralized power, or at least the opportunity for the exercise of centralized power, is thought to facilitate better development and coordination of national programs and policies. Because federal government programs interrelate in countless ways, a centralized figure or institution such as the president is seemingly in a good position to recognize and respond to the demands of the overall situation. [51](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n51" \t "_self) For similar reasons, as social and political change accelerates, the president may be well-situated to foresee and implement adaptive synoptic changes - that is, to engage in strategic planning. One of the rationales for the existence of the federal government is the national effect of its policies, which under this view can be reconciled most easily at the top. [52](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n52" \t "_self) To the extent that the president is successful in putting together such programs, he should receive political credit, which would redound to his political strength. [53](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n53" \t "_self) Second, centralized power facilitates greater political accountability by placing in one single individual the public's focus of government performance. If the public had to evaluate electorally the activities of hundreds of different officials in the executive branch, its information about the positions, actions, and effects of government behavior would be extraordinarily limited. [54](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n54" \t "_self) Only those most [\*848] interested in a particular function would be likely to have information about its behavior or attempt to influence that behavior through election, lobbying, or litigation. This is the standard concern with New Deal agencies captured by the so-called iron triangle of Washington politics. [55](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n55" \t "_self) By contrast, placing overall political responsibility in one individual is thought to facilitate broader political accountability. While this oversight can have mixed effects depending on presidential performance, it has the potential for strengthening the president's political support and influence. [56](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n56" \t "_self) Because he is more likely to approximate the views of the median voter, [57](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n57" \t "_self) a unitary president is thought to enjoy a clear majoritarian mandate, as the only elected representative of all "The People." This democratic legitimacy should be, in turn, a major source of his political strength. [58](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n58" \t "_self) As one commentator has [\*849] argued: "Every deviation from the principle of executive unitariness will necessarily undermine the national majority electoral coalition." [59](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n59" \t "_self) Finally, on an elite political level, the existence of a single powerful political actor serves a political coordination function. [60](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n60" \t "_self) A dispersed government with a decentralized political structure has a great deal of difficulty in reaching cooperative solutions on policy outcomes. Even if it does reach cooperative solutions, it has great difficulty in reaching optimal results. Today, there are simply too many groups in Washington and within the political elite to reach the necessary and optimal agreement easily. [61](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n61" \t "_self) A central and visible figure such as the president, who can take clear positions, can serve as a unique focal point for coordinating action. [62](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n62" \t "_self) With the ability to focus public attention and minimize information costs, [63](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n63" \t "_self) [\*850] a president can also be highly effective in overcoming narrow but powerful sources of opposition and in facilitating communication (that is, coordination and cooperation) between groups and branches. [64](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n64" \t "_self) In technical terms, he might be viewed as the "least cost avoider." [65](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n65" \t "_self) The budget confrontation between Clinton and Congress is only the most recent example of the president's strategic abilities. [66](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n66" \t "_self) In this regard, it is not surprising that most studies have found that the president's popularity is an important factor in his ability to effectively negotiate with Congress. [67](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n67" \t "_self)

### 2NC Perception-International

#### Presidential action is perceived globally

Sunstein-prof law, Chicago- 95 [Cass, Karl N. Llewellyn Professor of Jurisprudence, University of Chicago Law School and Department of Political Science, “An Eighteenth Century Presidency in a Twenty-First Century World” Arkansas Law Review, 48 Ark. L. Rev. 1, Lexis]

With the emergence of the United States as a world power, the President's foreign affairs authority has become far more capacious than was originally anticipated. For the most part this is because the powers originally conferred on the President have turned out - in light of the unanticipated position of the United States in the world - to mean much more than anyone would have thought. The constitutionally granted authorities have led to a great deal of unilateral authority, simply because the United States is so central an actor on the world scene. The posture of the President means a great deal even if the President acts clearly within the scope of his constitutionally-granted power. Indeed, mere words from the President, at a press conference or during an interview, can have enormous consequences for the international community.

### \*\*\*DA

### 2NC Link

And, it’s the worst kind of lawfare, every attack will be contested with legality, creates a chilling effect

Rivkin 7 (David B. Rivkin Jr. is a Washington lawyer who served in the Justice Department in the Reagan and George H.W. Bush administrations, “Lawfare,” http://online.wsj.com/article/SB117220137149816987.html)

There was a quixotic attempt to save Saddam Hussein's life by asking a federal court in Washington, D.C. to "stay" his execution by the Baghdad government. Several suits seek to hold the U.S. liable for the alleged misconduct of other governments. Of these, the lawsuit by Canadian Maher Arar, ostensibly tortured after being "rendered" to Syria, is the best known. The most significant common thread among all these actions is the clear desire to portray U.S. government actions as illegal and unprecedented. In fact, it is the claims for extensive due process rights for captured enemy combatants that are unprecedented. Combatants, whether the regular soldiers of sovereign states, irregular guerillas or terrorists, have never enjoyed the right to contest the legality of their detention in the civilian courts, or to a criminal trial. The Supreme Court reaffirmed these traditional rules in Hamdi v. Rumsfeld (2004), where a clear majority held that captured al Qaeda operatives could constitutionally be held as enemy combatants for the duration of hostilities without the due process required for individuals accused of criminal violations. The only process the court considered necessary was an opportunity to contest, before military authorities, the factual basis of their classification as enemy combatants with a limited opportunity for judicial review. Nevertheless, lawyers for the detainees continue to demand a full-fledged criminal process in the civilian courts for their clients. Former Clinton Attorney General Janet Reno has argued in a friend of the court brief that one detainee (Ali Saleh Kahlah al-Marri) should be entirely removed from the military justice system, even though he already has received far more extensive judicial process than that required by the Hamdi decision. Similarly, in a grim echo of domestic prisoners-rights cases, lawyers for another detainee, Saifullah Paracha, have demanded that he be transferred from Guantanamo Bay to a civilian U.S. hospital for a common medical procedure -- a cardiac catheterization. Perhaps the most pernicious ongoing lawfare example is the effort to hold U.S. officials financially liable for their wartime conduct based on the theories developed in Bivens v. Six Unknown Named Agents (1971). In that case, the Supreme Court permitted a civil damage suit against individual federal drug enforcement agents for allegedly violating the plaintiff's constitutional rights, in particular the Fourth Amendment guarantee against unreasonable searches and seizures. Several Bivens actions have been filed on behalf of foreign combatants captured, detained and later released by U.S. forces. None have been particularly successful -- so far -- but the determined effort to use legal principles developed in the context of civilian law-enforcement operations on U.S. soil against officials directing an ongoing armed conflict overseas reveals an unsettling policy agenda.

#### That causes a chilling effect on operations

**Cheng, Heritage Chinese political and security affairs research fellow, 2012**

(Dean, “Winning Without Fighting: Chinese Legal Warfare”, 5-21, lexis, ldg)

On the other hand, the proper conduct of armies and nations, especially in the context of the Laws of Armed Conflict (LOAC), is seen as integral to legal warfare. A brief, non-exhaustive review of American writings suggests that U.S. analysts of legal warfare focus on how charges of violations of the LOAC might be used to frustrate or hinder American military operations, especially in the context of counterinsurgency (COIN) operations. In his landmark 2001 essay on legal warfare, then-Colonel Charles Dunlap observed that a particular form of legal warfare was gaining broader acceptance: "a cynical manipulation of the rule of law and the humanitarian values it represents."[13] Dunlap raised the concern that lawfare was pursued not so much to ensure that nations followed the LOAC, but to "destroy the will to fight by undermining the public support that is indispensable" for successful war-fighting, especially in democracies such as the United States. [14] Dunlap himself has since somewhat modified this view, emphasizing that the concept of legal warfare is neutral rather than pernicious. He has recently described legal warfare as "the strategy of using-or misusing-law as a substitute for traditional military means to achieve an operational objective," eliminating the presumption that it is misuse of the law (while noting that such misuse may nonetheless occur).[15] Even where it is not seen as a deliberate misuse of the law, there are concerns that legal warfare will hamper Western, and especially American, military operations. As a summary of a 2003 Council on Foreign Relations conference observes, "Lawfare can be used to undercut American objectives."[16] Furthermore, the 2005 National Defense Strategy of the United States (NDS) placed lawfare (the use of "judicial processes") alongside terrorism and international fora in its list of American vulnerabilities.[17] In the 2008 NDS, the Department of Defense noted that there is a significant concern with violent extremist movements "hiding behind international norms and national laws when it suits them, and attempting to subvert them when it does not."[18] The 2008 NDS goes on to state that there is a need to address "growing legal and regulatory restrictions that impede, and threaten to undermine, our military readiness."[19] The U.S. remains concerned that Western military commanders will operate under excessive restraint, choosing to err on the side of caution for fear of violating international law-especially the LOAC. Exacerbating this undue caution would be concerns about undercutting public support, both at home and abroad, if military operations were seen as contravening legal standards.

#### Lawfare flips the whole case---collapses public and international support for the war, makes it impossible to exercise force

Rivkin 7 (David B. Rivkin Jr. is a Washington lawyer who served in the Justice Department in the Reagan and George H.W. Bush administrations, “Lawfare,” http://online.wsj.com/article/SB117220137149816987.html)

The effect of this lawfare effort, were it successful, would be to make it exceptionally difficult -- if not impossible -- for a law-abiding state to wage war in anything like the traditional manner, bringing the full weight of the national armed forces to bear against an enemy, without prompting charges of war crimes and efforts to intimidate individual officials with prosecutions on ersatz "war crimes" theories. In fact, the criminalization of traditional warfare seems to be the goal. Unfortunately, the progressive humanitarians (as they would certainly describe themselves) have embarked on this campaign to criminalize warfare (a kind of judicially enforced Kellog-Briand Pact), without giving much thought to alternatives for ensuring the welfare and security of the civilian populations that the armed forces of states, and of the U.S. in particular, are raised and maintained to protect. To the extent that terrorist combatants are given the rights of criminal defendants, their ability to sustain long-term hostilities, and to reach their civilian targets, is increased. Lawfare designed to delegitimize the use of American military force, and the American way of war, certainly has the potential to undermine public support for the war effort, both at home and abroad. Recognizing the stakes involved, the U.S. should be as committed to winning the lawfare battle as the ground combat in Afghanistan and Iraq.

### \*\*\*Case-

### Drone Prolif

#### Lack of GPS means no one uses them for waging war

Noreika 10 (J., Matt, Assistant @ Science Department – American Geophysical Union, “TOWARD UNMANNED POWER How a Revolution in Military Affairs i s Transforming the Way We Understand Warfare in the Twenty-First Century” <http://aladinrc.wrlc.org/bitstream/handle/1961/9388/Noreika%2c%20J%20Matt%20-%20Spring%20%2710.pdf?sequence=1>)

Meanwhile, the United States had recently perfected the technological capacity to control UAS from greater distances than ever before using its Global Positioning System (GPS). This network of orbiting satellites allows American mili tary units to relay positional information at near-instantaneous speeds from anywhere on the plan et with pinpoint accuracy. Thus, by the late 1990s UAS could be flown from locations safe within the United States while observing territory half a world away. The United States continues to m aintain a monopoly on its GPS although competing navigation systems including China’s Beidou , Europe’s Galilleo , and Russia’s GLONASS are scheduled to be online within the next few yea rs. Until then, the United States will continue to be the only nation in the world with a military infrastructure truly capable of wielding global unmanned power.

### No Compliance (Binding Ilaw fails)

Joyner 8 (Daniel, is an Associate Professor, University of Alabama School of Law, “JUS AD BELLUM IN THE AGE OF WMD PROLIFERATION,” http://docs.law.gwu.edu/stdg/gwilr/PDFs/40-1/40-1-Joyner.pdf)

To argue that a deformalization of international use of force law¶ to produce a system of non-binding commitments would result in a¶ loss of influence of those standards upon state behavior, and¶ thereby devolve the world into Hobbesian anarchy from which the¶ formal rules have saved it for the past sixty years, is simply an¶ unsupportable causal statement. To make this argument in light of¶ the model proposed herein, it would have to be shown that there is¶ something specifically about the formality of the norms in this area¶ that has had, or that should be expected to have, a significant marginal effect on bringing about peace and order, i.e. the absence of¶ war, over and above what soft law norms would have been able, or¶ should be expected to be able to achieve. As with many areas of¶ international relations, it is probably impossible empirically to do¶ this because of the absence of a control case, but again, what empirical work there is in international relations literature simply¶ does not bear out this argument. This literature does however¶ bear out the argument that the existence of international norms¶ does have a marginal effect on state behavior over and above the¶ non-existence of norms. This evidence would seem to support the¶ conclusion that it is the weight of a norm as a recognized and supported international community standard, with the corresponding¶ moral, reputational, precedential, and reciprocity factors militating¶ for its observance, that in fact affects compliance and not the precise status of the norm in the relative hierarchy of legality imposed¶ by the international legal system.105 As Charles Lipson has written:¶ [H]igh costs of self-enforcement and the dangers of opportunism are important obstacles to extralegal agreements. Indeed,¶ the costs may be prohibitive if they leave unsolved such basic¶ problems as moral hazard and time inconsistency. The same¶ obstacles are inherent features of interstate bargaining and must¶ be resolved if agreements are to be concluded and carried out.¶ Resolving them depends on the parties’ preference orderings,¶ the transparency of their preferences and choices (asymmetrical¶ information), and the private institutional mechanisms set up to¶ secure their bargains. It has little to do, however, with whether¶ an international agreement is considered “legally binding” or¶ not.106¶ Similarly, Ian Hurd has recently explained:¶ “Legitimacy,” as I use the term, refers to an actor’s normative¶ belief that a rule or institution ought to be obeyed. It is a subjective quality, relational between actor and institution, and is¶ defined by the actor’s perception of the institution. . . . Such a¶ perception affects behavior, because it is internalized by the¶ actor and comes to help define how the actor sees its interests. . . . In this sense, saying that a rule is accepted as legitimate¶ by some actor says nothing about its justice in the eyes of an¶ outside observer. Further, an actor’s belief in the legitimacy of a¶ norm, and thus its following of that norm, need not correlate to¶ the actor being “law-abiding” or submissive to official regulations. Often, precisely the opposite is true: a normative conviction about legitimacy might lead to noncompliance with laws¶ when laws are seen as conflicting with the conviction.107 Thus, in issue areas where hard law forms carry more costs than¶ benefits, it is quite reasonable to assume, as argued above, that it¶ would be highly preferable to have specific, soft commitments¶ rather than to have more vague, binding commitments, as the¶ specificity of the norm is more likely to form a principled locus¶ around which efforts of domestic and international compliance¶ pressure may be focused.108

Deformalized norm creation is key—the alts hardline shift collapses cooperation; we preserve cooperation

Joyner 8 (Daniel, is an Associate Professor, University of Alabama School of Law, “JUS AD BELLUM IN THE AGE OF WMD PROLIFERATION,” http://docs.law.gwu.edu/stdg/gwilr/PDFs/40-1/40-1-Joyner.pdf)

The essential practical benefits of such a deformalization of¶ international use of force law are that it would provide norms to¶ which states would positivistically and explicitly assent and that¶ would be acknowledged to apply to this area of international relations on the one hand, but which would allow states with legitimate¶ concerns, as particularly expressed in WMD counterproliferation¶ strategies, the flexibility they need to deal with modern threats to¶ their vital national security and prosperity interests on the other.¶ With such standards in place, states seen by the international community to act in disharmony with such agreed standards could be¶ made subject to precisely the same methods of compliance pressure which now serve as sanctions for breaches of binding, hard law¶ rules. Unilateral or multilateral sanctions could be imposed on the¶ basis of these standards, and if necessary, military force could be¶ used, as coordinated by international regimes with duly delegated¶ institutional discretion. The court of world opinion regarding¶ compliance with these standards would still be in constant session.¶ And again, using such soft law sources, it is as explained above reasonable to hope that standards of conduct would be given more¶ specificity and explication than is currently the case in hard law forms, making even more effective such efforts of compliance pressuring by the international community. However, with such regulation through soft law instruments, we¶ would be spared the continuous and inevitably fruitless rhetorical¶ battles regarding formal legality of state actions regarding international uses of force, in an institutional environment in which we¶ are unlikely to ever get authoritative statements or adjudications of¶ who is right and who is wrong. Those arguments could still be usefully maintained in other issue areas in which compliance pressures, combined with formal legality, combined with increased¶ willingness to submit such disputes to international judicial resolution, are more likely to make such breaches fewer in number and¶ of less serious effect when they do occur. The deformalization¶ argument herein is essentially a proposal to preserve to those areas¶ in which it is meaningful and likely to be useful, the added weight¶ of formal bindingness of rules, and to relieve issue areas in which it¶ is likely not to be meaningful and unlikely to be useful from its¶ inefficiencies. To place it in Morgenthauian terms, to save for normative regimes in those issue areas in which meaningful sanctions¶ are likely and are likely to compel compliance, the moniker and¶ trappings of valid law.

## \*\*\*1NR

### 1NR Impact Overview – Court Politics

#### Chemical industry solves food

The Fertilizer Institute 9 [Trade Group representing the fertilizer industry, “The U.S. Fertilizer Industry and Climate Change Policy,” April 2 2009, http://www.kochfertilizer.com/pdf/TFI2009ClimateChange.pdf]

Fertilizer nutrients – nitrogen, phosphorus and potassium – are all naturally occurring elements that are “fed” to plants and crops for healthy and abundant food and fiber production. They are currently responsible for 40 to 60 percent of the world’s food supply. Harvest after harvest, fertilizers replenish our soils by replacing the nutrients removed by each season’s crop. Each year, the world’s population grows by 80 million and fertilizers – used in an environmentally sensitive way – are critical to ensuring that our nation’s farmers grow an adequate supply of nutritious food for American and international consumers.¶ As consumers around the world demand improved diets, the global demand for fertilizers is growing rapidly. Under these circumstances, U.S. farmers compete with farmers from around the world for a limited supply of nutrients. For example, over 85 percent of our potash and over 50 percent of the nitrogen used on U.S. farms is now imported from other countries.¶ The United States needs a strong domestic fertilizer industry to ensure this valuable resource is available for a stable food production system. Today, the world’s food supply, as represented by the grain stocks-to-use ratio, is near its lowest level in 35 years. In six of the last seven years, consumption of grains and oilseeds has exceeded production. Many experts believe that we are just one natural disaster or substandard world harvest away from a full-scale food crisis.

#### ---Food shortages cause global violence and collapse civilization.

Brown 2009

Lester R, founder of the Worldwatch Institute and the Earth Policy Institute “Can Food Shortages Bring Down Civilization?” Scientific American, May

The biggest threat to global stability is the potential for food crises in poor countries to cause government collapse. Those crises are brought on by ever worsening environmental degradation. One of the toughest things for people to do is to anticipate sudden change. Typically we project the future by extrapolating from trends in the past. Much of the time this approach works well. But sometimes it fails spectacularly, and people are simply blindsided by events such as today's economic crisis. For most of us, the idea that civilization itself could disintegrate probably seems preposterous. Who would not find it hard to think seriously about such a complete departure from what we expect of ordinary life? What evidence could make us heed a warning so dire--and how would we go about responding to it? We are so inured to a long list of highly unlikely catastrophes that we are virtually programmed to dismiss them all with a wave of the hand: Sure, our civilization might devolve into chaos--and Earth might collide with an asteroid, too! For many years I have studied global agricultural, population, environmental and economic trends and their interactions. The combined effects of those trends and the political tensions they generate point to the breakdown of governments and societies. Yet I, too, have resisted the idea that food shortages could bring down not only individual governments but also our global civilization. I can no longer ignore that risk. Our continuing failure to deal with the environmental declines that are undermining the world food economy--most important, falling water tables, eroding soils and rising temperatures--forces me to conclude that such a collapse is possible. The Problem of Failed States Even a cursory look at the vital signs of our current world order lends unwelcome support to my conclusion. And those of us in the environmental field are well into our third decade of charting trends of environmental decline without seeing any significant effort to reverse a single one. In six of the past nine years world grain production has fallen short of consumption, forcing a steady drawdown in stocks. When the 2008 harvest began, world carryover stocks of grain (the amount in the bin when the new harvest begins) were at 62 days of consumption, a near record low. In response, world grain prices in the spring and summer of last year climbed to the highest level ever. As demand for food rises faster than supplies are growing, the resulting food-price inflation puts severe stress on the governments of countries already teetering on the edge of chaos. Unable to buy grain or grow their own, hungry people take to the streets. Indeed, even before the steep climb in grain prices in 2008, the number of failing states was expanding [see sidebar at left]. Many of their problem's stem from a failure to slow the growth of their populations. But if the food situation continues to deteriorate, entire nations will break down at an ever increasing rate. We have entered a new era in geopolitics. In the 20th century the main threat to international security was superpower conflict; today it is failing states. It is not the concentration of power but its absence that puts us at risk. States fail when national governments can no longer provide personal security, food security and basic social services such as education and health care. They often lose control of part or all of their territory. When governments lose their monopoly on power, law and order begin to disintegrate. After a point, countries can become so dangerous that food relief workers are no longer safe and their programs are halted; in Somalia and Afghanistan, deteriorating conditions have already put such programs in jeopardy. Failing states are of international concern because they are a source of terrorists, drugs, weapons and refugees, threatening political stability everywhere. Somalia, number one on the 2008 list of failing states, has become a base for piracy. Iraq, number five, is a hotbed for terrorist training. Afghanistan, number seven, is the world's leading supplier of heroin. Following the massive genocide of 1994 in Rwanda, refugees from that troubled state, thousands of armed soldiers among them, helped to destabilize neighboring Democratic Republic of the Congo (number six). Our global civilization depends on a functioning network of politically healthy nation-states to control the spread of infectious disease, to manage the international monetary system, to control international terrorism and to reach scores of other common goals. If the system for controlling infectious diseases--such as polio, SARS or avian flu--breaks down, humanity will be in trouble. Once states fail, no one assumes responsibility for their debt to outside lenders. If enough states disintegrate, their fall will threaten the stability of global civilization itself.

#### we strengthen foreign international law

Gordon et al 2013

Robert, Professor of Law at Stanford Law School and Chancellor Kent Professor Emeritus of Law and Legal History at Yale Law School, BRIEF FOR AMICI CURIAE PROFESSORS OF INTERNATIONAL LAW AND LEGAL HISTORY IN SUPPORT OF RESPONDENT http://sblog.s3.amazonaws.com/wp-content/uploads/2013/08/12-158bsacProfsIntlLawandLegalHistory-FINAL-ok-to-print.pdf

The history of the treaty power indicates that at various points in the nation’s history, detractors have attempted to cabin the treaty power on claims of federalism and states’ rights. Those claims have consistently failed, as this Court has again and again reaffirmed the scope of the federal treaty power that the Founders put in place. Even the supporters of the failed Bricker Amendments knew that an amendment was the only proper method for revising the scope of the treaty power. This Court should not accept the invitation of Petitioner and her amici to overrule over two centuries of precedent and embark on an uncharted course of judicial activism in foreign affairs. Text, structure, original meaning, and precedent all support only one conclusion in this case: the treaty power is an independent grant of authority to the federal government that was not intended to be limited by a judicially-imposed constraint on the substantive topics treaties may address based on vague reserved police powers of the states. Nor should this Court invent an amorphous test that would call on courts to second-guess the considered judgment of the branches entrusted with the nation’s foreign policy as to what genuinely implicates matters of international concern. Instead, the Court should leave settled precedent well enough alone.

#### And ruling for Bond kills the CWC and arms control

Graham et al 2013

Thomas, served as Special Representative of the President for Arms Control, Non-Proliferation and Disarmament, senior negotiator at the CWC, writing with 9 other experts spanning academia, law, diplomacy, and the military, BRIEF OF AMICI CURIAE CHEMICAL WEAPONS CONVENTION NEGOTIATORS AND EXPERTS IN SUPPORT OF RESPONDENT http://sblog.s3.amazonaws.com/wp-content/uploads/2013/08/Amicus-Brief1.pdf

Finally, Congress recognized that national and international consistency in CWC implementing legislation had signiﬁcant law enforcement beneﬁts for the United States. S. Exec. Rep. No. 104-33, at 210–11. The Senate Report underscored that the CWC implementing legislation “contains the clearest, most comprehensive and internationally recognized deﬁnition of a chemical weapon available,” which would facilitate early detection, prosecution and prevention, help with obtaining search warrants, and raise public awareness. Id. Reliance on the priorities of individual state legislators, law enforcement ofﬁcers and prosecutors, who were not attuned to the challenges of implementing an effective regime abolishing chemical weapons, would make it impossible for the United States to take a coordinated approach to the national— and international—problem of preventing the diversion and misuse of dangerous chemicals by non-state actors. Uniform national legislation, backed up by national law enforcement, was considered essential. Although Bond suggests that local law enforcement should have sufﬁced, local police were unwilling in this case itself to devote resources to the complaints of Bond’s victim. Bond was caught only when the federal authorities became involved. U.S. Br. 5–6. Other states parties to the Convention with federal systems of government have implemented the Convention through national legislation, including Australia, Canada, Germany, Mexico, Switzerland and others.20 Requiring the United States to rely on the laws of the 50 states would have made it extremely difﬁcult for the United States to negotiate and ratify the CWC, would make it impossible as a practical matter for the United States to comply fully with the CWC, and would severely hobble the ability of the United States to exert diplomatic power and inﬂuence in order to secure uniform global implementation and compliance with the CWC. Judicially created limitations on the United States’ ability to implement the CWC could also adversely affect other arms control treaties, including those related to biological and nuclear weapons, that mandate adoption of domestic legislation to subject individual conduct to penal measures.21 For these reasons, the power to implement non-self-executing treaties nationwide is essential if the United States is to function as a single nation in negotiating important international agreements like the CWC. See Missouri v. Holland, 252 U.S. at 435. Under the U.S. Constitution and this Court’s precedents, that national implementation power squarely belongs to the U.S. Congress. See id. at 432; Medellín, 552 U.S. at 1368–69.

### 1NR A2: Uniqueness

#### SCOTUS will likely rule against Bond now but the link controls the direction of uniqueness .

Bashman 2013

Howard J., nationally known attorney and appellate commentator, Looking Ahead: October Term 2013, Cato Supreme Court Review http://howappealing.law.com/BashmanCatoEssayFinal-091713.pdf

No lawyer worth his or her salt would ever advise a client to attempt to use dangerous chemicals to poison a rival for the romantic attention of the client’s spouse. Nevertheless, having a client who engaged in that legally prohibited conduct appears to be the recipe for periodic visits to address the justices in the Supreme Court’s courtroom—at least if you’re a superstar Supreme Court advocate. In the forthcoming term, the case captioned Bond v. United States makes its return visit to the Court.27 In its previous incarnation, the Supreme Court held that the woman charged with attempting to poison her romantic rival for her husband’s affections had standing to object to Congress’s enactment of legislation alleged to violate the Tenth Amendment’s limitations on federal power.28 On remand to the U.S. Court of Appeals for the Third Circuit, Bond argued that Congress had overstepped the bounds of its authority to make criminal the purely local poisoning attempt at the heart of the criminal charges against her. Relying on dictum from the Supreme Court’s ruling in Missouri v. Holland—which suggests that Congress has the power to enact implementing legislation in furtherance of a lawfully approved treaty even if that legislation broadens Congress’s constitutional power—the Third Circuit rejected Bond’s challenge.29 Now, on its return visit to the Supreme Court, Bond is asking the justices to hold that the federal government’s approval of a treaty— here an international chemical weapons convention—does not authorize it to assume police powers to turn what otherwise would have been an offense under state law—here, assault or attempted murder—into a federal crime. Although the structural limitations on federal power are important, as the Supreme Court recognized most recently in NFIB v. Sebelius, 30 this case appears to present an especially vexing question. State and local governments are of course powerless to enter into international treaties. Because the treaty power of necessity resides exclusively with the federal government, perhaps the states can be understood to have ceded to the federal government the ability to encroach on what would otherwise ordinarily be state prerogatives where necessary to implement a lawful treaty. Or perhaps the Supreme Court will hold that federalism principles render the federal government unable to fully implement treaties that require such encroachment on state power. One thing is for sure: the case is bound to be very well argued, as former Solicitor General Paul Clement will represent Bond in this appeal, just as he did in his client’s previous victorious visit to the Court. Although the outcome of this case is far from clear, my suspicion is that a majority consisting of the ordinarily pragmatic justices are likely to prevail in holding that the Constitution’s treaty power does give Congress the ability to encroach on state prerogatives where necessary to implement a treaty. Yet even such a holding, however broad, would do little to justify the seemingly aberrant decision of federal prosecutors to treat Mrs. Bond’s bizarre offenses as federal crimes.

#### Roberts has capital now – ACA decision.

Rosen 2013

Jeff, Law Prof @ George Washington, Can the Judicial Branch be a Steward in a Polarized Democracy? https://www.amacad.org/publications/daedalus/spring2013/13\_spring\_daedalus\_Rosen.pdf

Against this background of partisan divisions, many observers expected the Roberts Court to strike down the Affordable Care Act, the centerpiece of President Obama’s domestic agenda, by a 5-4 vote. In the landmark health care decision in 2012, however, Chief Justice Roberts did precisely what he said he would do. He joined the four liberal justices in holding that the Affordable Care Act’s individual mandate is justified by Congress’s taxing power, even though he joined the four conservative justices in holding that the mandate is not justified by Congress’s power to regulate interstate commerce. For placing the bipartisan legitimacy of the Court above his own ideological agenda, Roberts deserves praise not only from liberals but from all Americans who believe that it is important for the Court to stand for something larger than politics. Seven years into his chief justiceship, the Supreme Court finally became the Roberts Court. To question the combination of legal arguments that Roberts embraced would be beside the point: Roberts’s decision was above all an act of judicial statesmanship. On both the left and the right, commentators praised his “political genius” in handing the president the victory he sought even as he laid the groundwork for restricting congressional power in the future. That is not to say that Roberts has reinvented himself as a liberal. He has strong views that he is unwilling to compromise, and with his strategic maneuvering in the health care case, he increased the political capital that will allow him to continue to move the Court in a conservative direction. Marshall achieved a similar act of judicial jujitsu in Marbury v. Madison, when he refused to confront President Jefferson over a question of executive privilege but laid the groundwork for expanding judicial power in the future. All this suggests that, as long as the composition of the Court remains balanced between five conservatives and four liberals, partisan divisions on the Roberts Court will continue. But in the most highly visible cases, in which the Court’s institutional legitimacy is at stake, the Chief Justice may occasionally break ranks with his conservative colleagues.

#### And its not about other decisions but DEFERENCE on war powers – your uniqueness arguments don’t apply

Entin 12 (Jonathan L. Entin 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,” http://law.case.edu/journals/JIL/Documents/45CaseWResJIntlL1&2.21.Article.Entin.pdf)

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, 63 which is best known for Justice Holmes’s 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.” 64 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.” 65 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 effort66 and of Eugene Debs for a speech denouncing the war.67 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, 68 but only Justice Brandeis agreed with his position.69 The majority, however, summarily rejected the First Amendment defense on the basis of Holmes’s opinions for the Court in the earlier cases.70 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.71 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.72 In addition, the Court upheld the validity of the Japanese internment program.73 Of course, the Court did limit the scope of the program by holding that it did not apply to “concededly loyal” citizens.74 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.75 Congress eventually passed legislation apologizing for the treatment of Japanese Americans and authorizing belated compensation to internees.76 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.77 The lawfulness of orders to train military personnel bound for Vietnam gave rise to Parker v. Levy, 78 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.79 The few lower courts that addressed the merits of challenges to the legality of the Vietnam War consistently rejected those challenges.80

### 1NR A2: Winners Win

#### Even if legitimacy is inevitable in the long term the link is enough to stop short term decisions.

Bazelon 2009

Emily Bazelon is a founding editor of Slate’s women’s Web site, DoubleX, and the Truman Capote law and media fellow at Yale Law School, Supreme Courtship, NYT Sunday Book Review, http://www.nytimes.com/2009/09/27/books/review/Bazelon-t.html?\_r=0

That observation captures Friedman’s thesis about the influence of public opinion on the Supreme Court. He sees the justices and the people as partners in a “marriage” that bypasses the elected legislature and the president. “It frequently is the case that when judges rely on the Constitution to invalidate the actions of the other branches of government, they are enforcing the will of the American people,” he says. The marriage between the court and the people, like many enduring ones, has gradually mellowed. At first, there were occasions when the two sides clashed mightily, but over the years they’ve learned to come into equilibrium. These days, when the court gets into trouble with the public, it’s often on an issue it’s confronting for the first time. (The eminent domain case Kelo v. City of New London, for instance, provoked a populist outcry in 2005.) “What history shows,” Friedman argues, “is assuredly not that Supreme Court decisions always are in line with popular opinion, but rather that they come into line with one another over time.” How well does this claim hold up against the historical record? Friedman’s best evidence is that the people and the court are still married. To be sure, a divorce in the form of diminished authority for the justices would be hard to bring off, given the legal obstacles. And particularly early on, a few marital spats led to serious rifts and estrangement. McCulloch v. Maryland, the 1819 decision upholding the power of Congress to charter a national bank, infuriated states’ rights advocates and brought that century’s fight over federalism to a head. A decade later, when the court ruled in favor of Cherokee sovereignty over Georgia’s assertion of authority to remove the tribe, the state refused to comply, or to appear before the court at all. In the reaction to Dred Scott, the divisive 1857 decision to deny citizenship rights to black people, Friedman sees an “evolution in the nation’s commitment to judicial review,” because the ruling was not met with defiance. But since the country cracked apart four years later in a civil war that the Dred Scott ruling hastened, the fact that the court emerged tarnished but otherwise unharmed seems a bit beside the point. Friedman’s case strengthens in the 20th century. The Warren Court expanded the rights of criminal defendants — and then stopped after the decisions provoked support for Nixon’s law and order campaign, along with disapproving poll numbers. In 1972, the court came close to abolishing the death penalty. In response, the polls registered a spike in support for capital punishment, and the justices backed down. The road to compromise on abortion has been longer and rougher. Sometimes, when its footing with the public has been shaky, the court has weathered sharp opposition by tolerating concerted resistance (school desegregation) or low-grade noncompliance (the ban on school prayer). But Friedman is certainly right that over time, the court has proved itself the Teflon branch of government. In a 1994 Gallup poll, more than 80 percent of people expressed “some” support for the court. The level was about the same six months after Bush v. Gore, the court’s biggest modern-era misstep. Current Gallup numbers show the court with a 59 percent approval rating compared with President Obama’s rating of 51 percent, and Congress way behind at 31 percent.

### 1NR A2: Capital Doesn’t Trade Off

#### This theory is incorrect -courts will react if they perceive their popularity is in jeopardy

Clark 2009

Tom, Assistant Professor of Political Science at Emory, The Separation of Powers, Court Curbing, and Judicial Legitimacy, American Journal of Political Science, Vol. 53, No. 4, October 2009 http://userwww.service.emory.edu/~tclark7/constitutional.pdf

This theoretical model and empirical analyses presented in this article provide a new interpretation of the separation of-powers model that has been the focus of much scholarship in the area of judicial-congressional relations. The evidence from interviews with Supreme Court justices and former law clerks suggests students of Court-Congress relations must account for the role of judicial legitimacy in the Court’s decision calculus. Judicial legitimacy is an important mechanism that drives judicial sensitivity to congressional preferences. Moreover, it can be a condition that gives rise to constrained judicial decision making. Indeed, scholars have long recognized the importance of institutional legitimacy for the Supreme Court (Baum 2006; Caldeira 1987; Caldeira and Gibson 1992; Lasser 1988; see also Staton 2006; Vanberg 2005); however, this study unites this literature with scholarship on congressional constraints on judicial behavior in a previously unappreciated way. By recasting the separation-of-powers model as a strategic interaction in which responses to Supreme Court decisions are not limited to congressional overrides but also include consequences for the Court’s institutional integrity, this model of judicial independence presents a fuller, more nuanced and dynamic interpretation of the judicial decision-making environment. The analysis of judicial-congressional relations as an interaction in which concerns for institutional legitimacy are integral to the Court’s decision-calculus unites two important bodies of judicial politics scholarship, and may reorient empirical scholarship that has focused largely on the relative explanatory power of the two dominant models of judicial decision making (the attitudinal model and the SOP model). As a first step in this empirical direction, the analysis of Court curbing and its relationship to the use of judicial review to invalidate federal legislation provides promising evidence. As the analysis above demonstrates, the relationship between the frequency of judicial review and congressional hostility provides strong, direct support for the theoretical model. When the Court fears it will lose public support, it will adjust its behavior in light of congressional signals about the Court’s level of public support. However, the magnitude of that effect is mediated by the political context in which those signals are sent. Instead of responding to Court curbing more strongly when it is facing its ideological opponents, the Court responds most strongly when the Court curbing comes from its ideological allies. Moreover, the constraining effect of Court curbing increases as the Court becomes more pessimistic about its public support. Notably, these interactive relationships run against the intuition following from the conventional wisdom that Court curbing’s effect on the Court is due to its threat of enactment. They are, however, predicted by the public-Congress-Court interaction analyzed here.

#### The theory isn’t true for prez powers cases – extremely visible.

Curry 2006

Todd, PoliSci Master’s Thesis, THE ADJUDICATION OF PRESIDENTIAL POWER IN THE U.S. SUPREME COURT: A PREDICTIVE MODEL OF INDIVIDUAL JUSTICE VOTING, University of Central Florida Summer 2006

If the predominant theory of Supreme Court decision-making, the attitudinal model, were applied to this subset of cases, despite the uniqueness of the political ramifications (which amount to direct judicial interaction with the executive branch), the balance of power issues that arise, and the distinct constitutional questions, it may be expected that justices would still simply vote their policy preferences because the attitudinal model assumes that all individual level decision-making by the Supreme Court justices is a function of ideology. This theory is too simplistic to account for the complexities that arise in separation of power cases, in particular in cases that involve presidential power. Therefore, while acknowledging the importance of a justice’s attitude in decision-making, this study postulates that there are multiple attitudinal and extra-attitudinal factors that may influence a justice’s individual level decision-making. Following the research of Yates (2002) and others, this study theorizes that, Supreme Court cases in which the president or presidential power is being adjudicated, the attitudinal model of judicial decision-making may not completely account for the justices’ individual decision-making process because in these highly salient cases, the presence of external and political cues may influence the justices because highly salient cases such as these may call into question the very legitimacy of the Court. Since there are numerous political and external factors that can affect the justices’ decision-making process in cases involving presidential power, there will be numerous hypotheses in order to test this theory.

### 1NR A2: No Link

#### Intervening in presidential powers during wartime decks court capital – gives a perception of siding with the enemy

Cole 2011 - Professor, Georgetown University Law Center (Winter, David, “WHERE LIBERTY LIES: CIVIL SOCIETY AND INDIVIDUAL RIGHTS AFTER 9/11,” 57 Wayne L. Rev. 1203, Lexis)

Indeed, a court concerned about conserving its own institutional power might be more likely to defer during times of crisis. One cannot be certain how the public will respond to a decision. Ruling for "the enemy" during wartime could be a risky proposition. A court primarily concerned about maintaining its institutional capital might therefore make the strategic choice to defer in times of crisis so as to avoid showdowns that could undermine its legitimacy, thereby preserving its power for ordinary [\*1252] times. n273 Accordingly, it is not obvious that the Supreme Court's own institutional interests in times of crisis push it in the direction of intervention, rather than deference or avoidance.

#### Institutional integrity is key to implementation and legitimacy overall – courts get unpopular when they have to take a side in exec/legislative disagreements

DiPaulo 2010 – assistant professor of constitutional law at Middle Tennessee State(Amanda, “Zones of Twilight, Wartime Presidential Powers and Federal Court Decision Making” Lexington Books, Google Books)

Institutional integrity is important for the courts because if the courts have the force of the federal government behind them, the courts will also have the people and "[a]pproval of the Court within the mass public leads to better implementation of its decisions, reduces chances that the other branches will limit or reverse those decisions, and deters action by the legislature and executive against the Court itself (Baum. 2006: 63). The Judiciary is concerned, therefore, with "making sure the Court remains a credible force in American politics" (Epstein and Knight. 1998; 46). While the Judiciary is looked to for settling societal disputes, both legal and political, when it comes to the war powers, the courts are careful not to jeopardize its institutional integrity that it could lose if it makes a ruling that the elected branches of government found unacceptable for the defense of the nation. Instead of having the legitimacy of the Judiciary or the Constitution called into question, the courts create a principled approach to judicial decision making that places the onus on the elected branches to justify the curtailment of liberties and at the same time creates less jeopardy of individual liberties being limited in times of peace based on decisions made during times of armed conflict. In other words, agreement by the elected branches of government during armed hostilities does not necessarily create legitimacy, but rather protects it. Legal reasoning matters because no matter what the issue and how the federal courts go about making its war-powers decisions, the effort is constant with the courts looking for agreement between Congress and the Executive and the Constitution is protected.

#### And the public will backlash to the plan and pay attention

Cillizza 2013

Chris, The American public loves drones, Washington Post, founder and editor of The Fix, a leading blog on state and national politics, http://www.washingtonpost.com/blogs/the-fix/wp/2013/02/06/the-american-public-loves-drones/

The ongoing debate between Congress and the White House over its use of drone strikes — a conversation spurred by the leak of an Administration memo detailing broad leeway for unmanned drone strikes to be used against U.S. citizens — will reach fever pitch in the nation’s capital Thursday when John Brennan’s confirmation hearings to be the next CIA Director begin. But, when it comes to drones, the fight in Washington has no parallel in the public at large. Put simply: Americans love drones. A look across the polling landscape on the Obama Administration’s increased reliance on drones suggests that support for the strikes is not only wide but also bipartisan. A February 2012 Washington Post-ABC poll showed that eight in ten Americans (83 percent) approved of the Obama Administrations use of unmanned drones against suspected terrorists overseas — with a whopping 59 percent strongly approving of the practice. Support for the drone attacks was also remarkably bipartisan. Seventy six percent of Republicans and 58 percent of Democrats approved of the policy. In that same poll, respondents were asked whether they supported using drones to target American citizens who are suspected terrorists, the question that stands at the heart of the recent flare-up in Congress over the practice. Two thirds of people in the survey said they approved of doing so. It’s not just Post-ABC polling that suggests the use of drones is widely popular with the American public. A September 2011 Pew poll showed that 69 percent of people said that the increased use of drones was a good thing while just 19 percent said it was a bad thing. The reason drone strikes are popular? Because they are perceived to be effective in reducing the threat of terrorism without endangering American lives. (Polling on the wars in Iraq and Afghanistan has, for several years now, suggested that a majority of the public believes neither was worth fighting almost certainly due to the losses of American lives.) In a September 2011 Post-ABC poll, three-quarters of the public said drone strikes against suspected terrorists in Yemen and Pakistan had been either ”very” or “somewhat” effective to reduce the threat of terrorism. Now there are all sorts of “to be sure” statements regarding the data above. To be sure, the average American isn’t paying close attention to the issue of drones and how they are being used. To be sure, the debate over what the government can and can’t do as well as how much or little it should be required to tells its citizenry its doing is a worthy one. To be sure, making policy decisions simply based on what the public wants (or thinks it wants) is a dangerous game. But, it’s also important to remember as the drone debate gains steam in Washington that there is little public appetite for an extended look at how unmanned attacks fit into our broader national security policy. Minds are made up on the matter. And, if the public has anything to do with it, drones are here to stay.

#### The link only goes one direction-Negative reactions to court decisions are more intense and last longer than positive ones.

Friedman-prof law NYU-05**,** Jacob D. Fuchsberg Professor of Law, New York University School of Law, December, 2005 (Texas Law Review, Article: The Politics of Judicial Review, 84 Tex. L. Rev. 257, p. Lexis)  
  
The critical question thus becomes how deep the Court's diffuse support among the general public is; for if theory holds, this is the leash on which the Court operates. Actually, a bungee cord might be a better analogy; for, in operation, the diffuse support hypothesis suggests that the judiciary can stray a certain distance from public opinion but that ultimately it will be snapped back into line. n393 Testing the length and flexibility of the cord is hard to do, however. It may be that there is greater tolerance for judicial deviation in some directions, such as with regard to the First Amendment. n394 Although the Court's degree of freedom of movement around public opinion may not be certain, positive scholars are fairly confident that one major determinant is information. The dynamics here are complex, but some generalities may be possible. Both negative and positive reactions to the Court influence public opinion, but negative reactions seem to be more intense and have a shorter half-life. n395 Perhaps it is for this reason that the [\*328] less people hear about the Court, the better for it. n396 As time passes, people develop a store of good feelings about the Supreme Court, reflected in the Court's relatively strong performance in public mood indicators. n397 Commentators who have studied public opinion and the Court regularly advise it to keep a low profile. n398