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## politics

### 1nc link

#### Plan destroys Obama

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

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

### uniqueness/pc key

#### Obama’s investing all PC to block sanctions – he’s winning and has momentum

**Benen, 1/17/14** – American political writer and blogger, an MSNBC contributor, and a producer for The Rachel Maddow Show (Steve, “Support for new Iran sanctions wanes”

<http://www.msnbc.com/rachel-maddow-show/support-new-iran-sanctions-wanes>)

A week ago, it was practically a foregone conclusion that such a bill would pass the House and Senate; the question is whether President Obama’s veto could be overridden. Just of the last few days, however, the odds of such a bill even reaching the president’s desk have dropped unexpectedly.

The Hill, for example, reported yesterday that House Republicans “are moving away from a proposal to adopt new Iran sanctions.” House Democrats who were otherwise sympathetic to the idea became “irked” by GOP political tactics “and the idea appears to have been at least temporarily shelved.”

In the Senate, meanwhile, BuzzFeed reports that Sen. Bob Corker (R-Tenn.), a co-sponsor of the legislation, has “proposed the idea of scheduling a vote on Iran sanctions six months from now, after the interim nuclear agreement has run its course, instead of voting on sanctions right now.”

In other words, lawmakers could at least wait to see if the talks bear fruit before sabotaging them in advance. Corker’s idea isn’t ideal – it would reportedly lock in the Senate for a vote on July 21, exactly six months after the current deal is implemented, regardless of the status of the diplomacy – but in the larger context it suggests even sanctions supporters are starting to see value in waiting.

Indeed, an unnamed senator who supports the sanctions bill told Greg Sargent this week that opponents have the momentum. The senator added, “At the moment, there’s no rush to put the bill on the floor. I’m not aware of any deadline in anyone’s head.”

Keep in mind, the sanctions legislation was introduced in the Senate on Dec. 19 with a bipartisan group of 26 sponsors. Over the course of just three weeks, that total more than doubled to 59 sponsors. But the last addition was eight days ago – and no other senators have signed on since.

What changed the direction of the debate? To be sure, White House pressure has made a difference, reinforced by President Obama’s direct lobbying to Democratic senators this week. I also talked to a Senate staffer yesterday who said public pressure has also increased, with more voters contacting the Hill with phone calls and emails, voicing opposition to the bill.

#### It’s a war powers fight that Obama wins – but failure greenlights Israel strikes

**Merry, 1/1/14** - Robert W. Merry, political editor of the National Interest, is the author of books on American history and foreign policy (Robert, “Obama may buck the Israel lobby on Iran” Washington Times, factiva)

Presidential press secretary Jay Carney uttered 10 words the other day that represent a major presidential challenge to the American Israel lobby and its friends on Capitol Hill. Referring to Senate legislation designed to force President Obama to expand economic sanctions on Iran under conditions the president opposes, Mr. Carney said: “If it were to pass, the president would veto it.”

For years, there has been an assumption in Washington that you can’t buck the powerful Israel lobby, particularly the American Israel Public Affairs Committee, or AIPAC, whose positions are nearly identical with the stated aims of Israeli Prime Minister Benjamin Netanyahu. Mr. Netanyahu doesn’t like Mr. Obama’s recent overture to Iran, and neither does AIPAC. The result is the Senate legislation, which is similar to a measure already passed by the House.

With the veto threat, Mr. Obama has announced that he is prepared to buck the Israel lobby — and may even welcome the opportunity. It isn’t fair to suggest that everyone who thinks Mr. Obama’s overtures to Iran are ill-conceived or counterproductive is simply following the Israeli lobby’s talking points, but Israel’s supporters in this country are a major reason for the viability of the sanctions legislation the president is threatening to veto.

It is nearly impossible to avoid the conclusion that the Senate legislation is designed to sabotage Mr. Obama’s delicate negotiations with Iran (with the involvement also of the five permanent members of the U.N. Security Council and Germany) over Iran’s nuclear program. The aim is to get Iran to forswear any acquisition of nuclear weapons in exchange for the reduction or elimination of current sanctions. Iran insists it has a right to enrich uranium at very small amounts, for peaceful purposes, and Mr. Obama seems willing to accept that Iranian position in the interest of a comprehensive agreement.

However, the Senate measure, sponsored by Sens. Robert Menendez, New Jersey Democrat; Charles E. Schumer, New York Democrat; and Mark Kirk, Illinois Republican, would impose potent new sanctions if the final agreement accords Iran the right of peaceful enrichment. That probably would destroy Mr. Obama’s ability to reach an agreement. Iranian President Hasan Rouhani already is under pressure from his country’s hard-liners to abandon his own willingness to seek a deal. The Menendez-Schumer-Kirk measure would undercut him and put the hard-liners back in control.

Further, the legislation contains language that would commit the United States to military action on behalf of Israel if Israel initiates action against Iran. This language is cleverly worded, suggesting U.S. action should be triggered only if Israel acted in its “legitimate self-defense” and acknowledging “the law of the United States and the constitutional responsibility of Congress to authorize the use of military force,” but the language is stunning in its brazenness and represents, in the view of Andrew Sullivan, the prominent blogger, “an appalling new low in the Israeli government’s grip on the U.S. Congress.”

While noting the language would seem to be nonbinding, Mr. Sullivan adds that “it’s basically endorsing the principle of handing over American foreign policy on a matter as grave as war and peace to a foreign government, acting against international law, thousands of miles away.”

That brings us back to Mr. Obama’s veto threat. The American people have made clear through polls and abundant expression (especially during Mr. Obama’s flirtation earlier this year with military action against Bashar Assad’s Syrian regime) that they are sick and weary of American military adventures in the Middle East. They don’t think the Iraq and Afghanistan wars have been worth the price, and they don’t want their country to engage in any other such wars.

That’s what the brewing confrontation between Mr. Obama and the Israel lobby comes down to — war and peace. Mr. Obama’s delicate negotiations with Iran, whatever their outcome, are designed to avert another U.S. war in the Middle East. The Menendez-Schumer-Kirk initiative is designed to kill that effort and cedes to Israel America’s war-making decision in matters involving Iran, which further increases the prospects for war. It’s not even an argument about whether the United States should come to Israel’s aid if our ally is under attack, but whether the decision to do so and when that might be necessary should be made in Jerusalem or Washington.

2014 will mark the 100th anniversary of beginning of World War I, a conflict triggered by entangling alliances that essentially gave the rulers of the Hapsburg Empire power that forced nation after nation into a war they didn’t want and cost the world as many as 20 million lives. Historians have warned since of the danger of nations delegating the power to take their people into war to other nations with very different interests.

AIPAC’s political power is substantial, but this is Washington power, the product of substantial campaign contributions and threats posed to re-election prospects. According to the Center for Responsive Politics’ Open Secrets website, Sens. Kirk, Menendez and Schumer each receives hundreds of thousands of dollars a year in pro-Israel PAC money and each of their states includes concentrations of pro-Israel voters who help elect and re-elect them.

Elsewhere in the country, AIPAC’s Washington power will collide with the country’s clear and powerful political sentiment against further U.S. adventurism in the Middle East, particularly one as fraught with as much danger and unintended consequence as a war with Iran. If the issue gets joined, as it appears that it will, Mr. Obama will see that it gets joined as a matter of war and peace. If the Menendez-Schumer-Kirk legislation clears Congress and faces a presidential veto, the war-and-peace issue could galvanize the American people as seldom before.

If that happens, the strongly held opinions of a democratic public are liable to overwhelm the mechanisms of Washington power, and the vaunted influence of the Israel lobby may be seen as being not quite what it has been cracked up to be.

#### That means veto override

**Kampeas, 1/24/14** – Washington, D.C. bureau chief of the Jewish Telegraphic Agency (Ron, Heritage Florida Jewish News, “Iran sanctions have majority backing in Senate, but not enough to override veto”

<http://www.heritagefl.com/story/2014/01/24/news/iran-sanctions-have-majority-backing-in-senate-but-not-enough-to-override-veto/2115.html>

WASHINGTON (JTA)—More than half the United States Senate has signed on to a bill that would intensify sanctions against Iran. But in a sign of the so-far successful effort by the White House to keep the bill from reaching a veto-busting 67 supporters, only 16 Democrats are on board.

The number of senators cosponsoring the bill, introduced by Sens. Mark Kirk (R-Ill.) and Robert Menendez (D-N.J.), reached 58 this week, up from just 33 before the Christmas holiday break.

Notably only one of the 25 who signed up in recent days—Sen. Michael Bennet (D-Colo.)—is a Democrat, a sign of intense White House lobbying among Democrats to oppose the bill.

Backers of the bill say it would strengthen the U.S. hand at the negotiations. But President Obama has said he would veto the bill because it could upend talks now underway between the major powers and Iran aimed at keeping the Islamic Republic from obtaining a nuclear bomb. A similar bill passed this summer by the U.S. House of Representatives had a veto-proof majority.

On Thursday, the White House said backers of the bill should be upfront about the fact that it puts the United States on the path to war.

“If certain members of Congress want the United States to take military action, they should be up front with the American public and say so,” Bernadette Meehan, the National Security Council spokeswoman, said in a statement posted by The Huffington Post. “Otherwise, it’s not clear why any member of Congress would support a bill that possibly closes the door on diplomacy and makes it more likely that the United States will have to choose between military options or allowing Iran’s nuclear program to proceed.”

A number of pro-Israel groups, led by the American Israel Public Affairs Committee, are leading a full-court press for the bill’s passage, with prominent Jewish leaders in a number of states making calls and writing letters to holdouts. Dovish Jewish groups such as J Street and Americans for Peace Now oppose the bill.

#### Obama’s direct lobbying is preventing override

**Dyer, 1/14/14** – Washington Bureau for the Financial Times (Geoff, “Barack Obama steps up lobby against new Iran sanctions bill” Financial Times, <http://www.ft.com/intl/cms/s/0/9a9a045c-7d44-11e3-a579-00144feabdc0.html#axzz2qfrkluW5>)

President Barack Obama has summoned Senate Democrats to the White House for a rare meeting on Wednesday as he seeks to head off a congressional rebellion that he fears could undermine his efforts at diplomacy with Iran.

Just as US diplomats begin final-stage talks with Iran over its nuclear programme, Mr Obama is stepping up his intense lobbying within his own party to prevent Congress from passing new Iran sanctions legislation.

At present, 16 Democrats are among the 59 senators who have sponsored a bill that would impose swingeing new restrictions on Iranian oil exports if Tehran violates the interim nuclear agreement that was finalised at the weekend. Iran has threatened to pull out of the talks if the bill is passed.

Coming during one of the most difficult periods of his presidency, Mr Obama’s efforts to pressure Senate Democrats could become a defining moment in his often troubled relationship with Congress. Although Mr Obama has threatened to veto the legislation, 67 votes in the Senate would overcome a veto. Support in the House of Representatives is also expected to be vetoproof.

At the same time, the sanctions bill is putting many Democrats in a delicate position at the start of an election year. The legislation is being pushed strongly by pro-Israel lobby groups, such as the American Israel Public Affairs Committee, which are influential among some party donors. Yet opinion polls show that Mr Obama’s diplomacy towards Iran is very popular among voters, especially Democrats.

#### Their PC ev doesn’t assume a major decrease on a foreign policy issue

**Krasuhaar, 13** (Josh, National Journal, “The Iran Deal Puts Pro-Israel Democrats in a Bind” <http://www.nationaljournal.com/magazine/the-iran-deal-puts-pro-israel-democrats-in-a-bind-20131121>)

All of this puts Democrats, who routinely win overwhelming support from Jewish Americans on Election Day, in an awkward position. Do they stand with the president on politically sensitive foreign policy issues, or stake their own course? That difficult dynamic is currently playing out in Congress, where the Obama administration is resisting a Senate push to maintain tough sanctions against Iran. This week, Obama met with leading senators on the Banking and Foreign Relations committees to dissuade them from their efforts while diplomacy is underway. "There's a fundamental disagreement between the vast majority of Congress and the president when it comes to increasing Iran sanctions right now," said one Democratic operative involved in the advocacy efforts. "Pro-Israel groups, like AIPAC, try to do things in a bipartisan way; they don't like open confrontation. But in this instance, it's hard." That awkwardness has been evident in the lukewarm reaction from many of Obama's Senate Democratic allies to the administration's outreach to Iran. Senate Foreign Relations Committee Chairman Robert Menendez of New Jersey said last week he was concerned that the administration seems "to want the deal almost more than the Iranians." Normally outspoken Sen. Chuck Schumer of New York, a reliable ally of Israel, has been conspicuously quiet about his views on the negotiations. In a CNN interview this month, Democratic Rep. Debbie Wasserman Schultz of Florida, whose job as chairwoman of the Democratic National Committee is to defend the president, notably declined to endorse the administration's approach, focusing instead on Obama's past support of sanctions. This, despite the full-court press from Secretary of State John Kerry, a former congressional colleague. On Tuesday, after meeting with Obama, Menendez and Schumer signed a bipartisan letter to Kerry warning the administration about accepting a deal that would allow Iran to continue its nuclear program. The letter was also signed by Sens. John McCain, R-Ariz., Lindsey Graham, R-S.C., Susan Collins, R-Maine, and Robert Casey, D-Pa. Democrats, of course, realize that the president plays an outsized role in the policy direction of his party. Just as George W. Bush moved the Republican Party in a more hawkish direction during his war-riven presidency, Obama is nudging Democrats away from their traditionally instinctive support for the Jewish state. "I can't remember the last time the differences [between the U.S. and Israel] were this stark," said one former Democratic White House official with ties to the Jewish community. "There's now a little more freedom [for progressive Democrats] to say what they want to say, without fear of getting their tuchus kicked by the organized Jewish community." A Gallup survey conducted this year showed 55 percent of Democrats sympathizing with the Israelis over the Palestinians, compared with 78 percent of Republicans and 63 percent of independents who do so. A landmark Pew poll of American Jews, released in October, showed that 35 percent of Jewish Democrats said they had little or no attachment to Israel, more than double the 15 percent of Jewish Republicans who answered similarly. At the 2012 Democratic National Convention, many delegates booed a platform proposal supporting the move of the U.S. Embassy in Israel from Tel Aviv to Jerusalem. In 2011, Democrats lost Anthony Weiner's heavily Jewish, solidly Democratic Brooklyn House seat because enough Jewish voters wanted to rebuke the president's perceived hostility toward Israel. Pro-Israel advocacy groups rely on the mantra that support for Israel carries overwhelming bipartisan support, a maxim that has held true for decades in Congress. But most also reluctantly acknowledge the growing influence of a faction within the Democratic Party that is more critical of the two countries' close relationship. Within the Jewish community, that faction is represented by J Street, which positions itself as the home for "pro-Israel, pro-peace Americans" and supports the Iran negotiations. "Organizations that claim to represent the American Jewish community are undermining [Obama's] approach by pushing for new and harsher penalties against Iran," the group wrote in an action alert to its members. Some supporters of Israel view J Street with concern. "There's a small cadre of people that comes from the progressive side of the party that are in the business of blaming Israel first. There's a chorus of these guys," said a former Clinton administration foreign policy official. "But that doesn't make them the dominant folks in the policy space of the party, or the Hill." Pro-Israel activists worry that one of the ironies of Obama's situation is that as his poll numbers sink, his interest in striking a deal with Iran will grow because he'll be looking for any bit of positive news that can draw attention away from the health care law's problems. Thus far, Obama's diminished political fortunes aren't deterring Democrats from protecting the administration's prerogatives. Congressional sources expect the Senate Banking Committee, chaired by South Dakota Democrat Tim Johnson, to hold off on any sanctions legislation until there's a resolution to the Iranian negotiations. But if Obama's standing continues to drop, and negotiations produce a deal that Israel doesn't like, don't be surprised to see Democrats become less hesitant about going their own way.

#### Spills over – external controversy was what created Dem support for sanctions in the first place

**Rohde, 1/15/14 -** columnist for Reuters, two-time winner of the Pulitzer Prize and a former reporter for The New York Times**.**(David, “Newest victim of congressional wrecking ball: Iran policy” Reuters, http://blogs.reuters.com/david-rohde/2014/01/15/newest-victim-of-the-congressional-wrecking-ball-iran-policy/)

In this way, Obama is the victim of an increasingly craven Washington — where members of his own party are abandoning him out of political expedience. At the same time, the White House is also a victim of its sometimes erratic responses to events in the Middle East.

For the last six years, the president has repeatedly declared that he does not want the United States entangled in another conflict in the Middle East. As a result, allies and enemies at home and abroad, from members of Congress to Israeli and Iranian hawks, question his commitment to use force against Iran if negotiations fail.

Experts warn that the stakes are enormous. Political opportunism, maximalist positions and mixed messages could take on a life of their own, scuttle the talks and inadvertently spark military action.

George Perkovich, director of the Nuclear Policy Program at the Carnegie Endowment for International Peace, lambasted the bill’s congressional sponsors in Foreign Affairs. He accused Senators Robert Menendez (D-N.J.), Charles Schumer (D-N.Y.) and Mark Kirk (R-Ill.) of reckless grandstanding.

“The Menendez-Kirk-Schumer bill may be politically expedient,” Perkovich wrote, “but it is also entirely unnecessary and dangerous.”

Much of the Democrats’ maneuvering is old-fashioned political posturing. All the Democratic officeholders now supporting the sanctions bill, David Weigel noted in Slate Tuesday, face tough re-election battles. Rejecting calls from the American Israel Public Affairs Committee to support the new sanctions bill could make them vulnerable to attacks of capitulating to Iran. So far, Democrats from “safer, bluer” turf — including Senators Tim Kaine (D-Va.) and Chris Murphy (D-Conn.) — are not supporting the bill.

Ambition also plays a role here. Schumer, who is safe in New York, is looking to succeed Senator Harry Reid (D-Nev.) as majority leader. His chief rival for this job, Senator Dick Durban (D-Ill.), who was the senior senator from Illinois when Obama was the junior senator, is backing the administration.

Democrats who support the new sanctions bill claim that their goal is to give Obama greater leverage in talks with Tehran. But Perkovich and other experts warn that the proposed sanctions threaten to spark a tit-for-tat cycle of escalation.

As American hard-liners saber rattle, Iranian hard-liners are saber rattling back. If Congress does pass the new sanctions bill, a senior member of the Iranian parliament has threatened, his nation would respond by beginning to enrich uranium to 60 percent — a level close to that needed for a nuclear bomb.

The major unresolved issue — and the biggest threat to a comprehensive deal — is whether Iran should be allowed any enrichment capability.

The White House has signaled that it would accept a tightly monitored program in Iran — one that enriches uranium only to the level used for energy and research.

Israeli Prime Minister Benjamin Netanyahu and hawkish members of Congress argue that increased sanctions will force the regime to give up enrichment or collapse.

Reza Marashi, research director of the National Iranian American Council, an advocacy group that supports the nuclear talks, said it is political suicide for any Iranian official to accept no enrichment. Tehran’s hard-liners would accuse them of capitulation to the United States and Israel.

“I don’t know any Iran analyst — except for those on the far, far right,” Marashi told me in a telephone interview Tuesday, “who think that zero enrichment is possible.”

Obama has also made foreign policy missteps. As I wrote last week the administration’s shifting positions on Syria — from demanding President Bashar al-Assad “must go” to declaring “red lines” on chemical weapons use and then backing away from military action — has hurt his credibility in the region.

Perkovich said domestic missteps have played a role as well. The interim agreement with Iran was announced just as the Obamacare website began its botched rollout. Congressional Democrats facing tough re-election battles decided they simply could not trust the White House.

“The timing was disastrous [to Congress],” Perkovich told me in a telephone interview Tuesday. “They thought ‘these guys are totally incompetent.’”

#### Loss of cred is the only override scenario

**The Economist, 1/14/14** (“Mr Obama’s Iran problem” <http://www.economist.com/news/united-states/21594295-congress-not-helping-president-deal-islamic-republic-mr-obamas-iran-problem>)

Now Iran is again causing angst in Washington. Barack Obama faces acute, bipartisan scepticism in Congress, after his envoys joined other world powers in brokering an interim nuclear agreement with the Islamic Republic. This is due to take effect on January 20th, easing international sanctions in exchange for slowing Iran’s nuclear work, and buying time for a more comprehensive deal. At the time of writing 59 of 100 senators say they back a proposal to hold extra sanctions over Iran’s head, despite warnings from Mr Obama that if Congress votes for new sanctions Iran may abandon the talks. That means Senate sceptics are not far from the two-thirds majority they need to override Mr Obama’s threat of a veto. (The Republican-controlled House of Representatives strongly backs tougher sanctions, either because members think the Iranians are bluffing about walking out, or because their favoured Iran strategy involves regime change.) Team Obama has let rip, asserting that passing new sanctions—even ones whose bite is suspended—will wreck talks, shatter international unity over Iran and trigger a “march toward war”. A National Security Council staffer said that if some members of Congress want military action against Iran, “they should be upfront with the American public and say so.”

Some of the forces at work have changed little since 2007. Friends such as Israel and allies such as Saudi Arabia still believe that Iran is a rogue power that will always break nuclear promises. Many members of Congress sincerely loathe Iran’s regime, partly because it sponsors terrorism and tortures dissidents, but also, perhaps, because of a sense that Iran bested America in the battle for influence in post-Saddam Iraq. If the Iranian government of President Hassan Rohani presents a smiling face to the world, many American lawmakers see that as a trick or as a sign that existing tough sanctions have worked, making it imperative to keep a boot on the regime’s neck, while reminding Iran that fresh cheating will be punished.

Another constant is domestic politics, especially in a mid-term election year. An influential pro-Israel group, the American Israel Public Affairs Committee (AIPAC), has been lobbying members of Congress to keep the pressure on Iran. So have members of the People’s Mujahedeen of Iran (often known by the Persian acronym MEK), a group with a violent past whose opposition to the Iranian regime has nonetheless earned it allies in Congress. Lastly, cynicism remains a lodestar. Democratic leaders in the Senate are not rushing to put plans for extra sanctions to a vote, and insiders say that suits some senators very well. For such opportunists, co-sponsoring a sanctions bill that goes nowhere is an ideal outcome: it avoids hard foreign-policy trade-offs, while warding off attack ads that call them soft on Iran.

Yet at least one big thing is new: a widespread belief, certainly among Republicans, that Mr Obama is in exactly the opposite position to Mr Bush. Plenty of people in the world doubt his willingness to use force, even to prevent Iran from building a nuclear bomb on his watch. If Congress is willing to risk scuppering talks with Iran at this early stage, a big part of the explanation is that Mr Obama is suffering a crisis of presidential credibility. That crisis dates back, most acutely, to his failure to secure congressional approval for promised strikes on Syria for using chemical weapons. Put bluntly, Washington critics think Mr Obama talks endlessly and wields only sticks small enough to be delivered by drone.

#### Prefer our evidence:

#### 1. They overlook Obama’s new team

**Wall Street Journal, 1/3/14** (“Obama's 2014 Priorities Face Early Tests in Congress” <http://online.wsj.com/news/articles/SB10001424052702303640604579298813059939366>)

While much of the Obama agenda remains the same as last year, the White House's outreach to Capitol Hill will look different in 2014. Moving to shore up what many lawmakers had said was an underpowered effort to work with lawmakers, the White House has named Katie Beirne Fallon, a former longtime aide to Sen. Chuck Schumer (D., N.Y.), as its legislative-affairs director.

Phil Schiliro, who held that post earlier in the Obama administration, is returning to the White House, and John Podesta, a White House chief of staff under Bill Clinton, will be a senior adviser. All three have personal relationships with key members of Congress.

Rep. Steve Israel (D., N.Y.) said he already has seen the White House's stepped-up efforts to work with Capitol Hill. "They understand that the next 10 months will define the final two years of the Obama administration, and that is going to require teamwork and hard work," he said. "I've seen enhanced communication. I had a conference call [Thursday] night as the blizzard struck" while Mr. Israel was home on Long Island. He said the call was about the health-care law.

#### 2. Specific to veto

**Slezak, 7 -** University of California, Los Angeles(Nicole, “The Presidential Veto: A Strategic Asset,” <http://www.thepresidency.org/storage/documents/Vater/Slezak.pdf>)

Spitzer states that the veto is the “key presidential weapon,”13 and I suggest that it offers him a strategy to take both the defensive and the offensive against an often divided and combative Congress. The president takes the defensive by waiting for legislation to be sent to him from Congress and then vetoing legislation that is unacceptable and offensive to his administration’s goals. The veto is a way for the president to “go public” and to show his dislike for the legislation through his veto message. In addition, he can prove to Congress that unless they amend the legislation in accordance with his suggestions, he will not pass the bills that they send him. Gattuso speaks on this matter by stating, “The veto, moreover, is a very effective device for grabbing the public’s attention and focusing it on the President’s struggle to pursue policies on behalf of all the people and against special interests. A veto message may be a President’s most effective bully pulpit.”14

However, the veto is more than a tool to block, and the president may also take the offensive by using the veto threat. Aside from the conventional use of the veto (blocking legislation from passing), it can also be used in this more subtle and less potentially damaging way. The veto threat is a special tool that allows the president to warn Congress of a veto before the legislation is even presented to him. The veto threat stems from the power that the veto has built over the centuries and which relies heavily on a president’s possession of political capital. If the president is in the fourth year of his term, when Congress is most likely to be confrontational, the president should not use the veto threat as often as he did in the first year of his term. This is due to the fact that when a president enters office he is riding on the mandate of his election and has a large amount of political capital to spend. This is why Spitzer warns that, “like a veto itself, a threat applied too often loses its potency, and a threat not considered credible is not a threat at all.”15

Once the president makes the decision to make a veto threat and does so, there are four outcomes that are possible. Congress can decide to shape the legislation in a manner that is acceptable to the president so that he will sign it into public law, Congress can construct a compromise with the president and pass an altered bill, the president can give in and sign the bill if Congress sends it unchanged, or neither side can compromise and will lead to Congress passing the bill unchanged and the president vetoing it.16

In order to take advantage of the strategic uses of the veto, both in its defensive and offensive applications, it must be determined what factors lead a president to veto or pass legislation. To do this, I will assess what factors scholars believe influence a president’s decision to veto legislation. To determine if these widely supported factors are important in the president’s decision to veto, they will be tested to determine whether they are statistically significant. Once it is known what factors truly cause the president to veto legislation, and which actually matter, it will help the president create a reliable veto strategy. The veto strategy is a model to help the president assess when the use of the veto will maximize effectiveness. This allows the president to calculate when it is an opportune time to risk political capital and a potential override in order to veto legislation, or when he should avoid losing capital and attempt to bargain with Congress or simply pass legislation.

#### Twenty one Dems are in the air so personal leverage matters

**Kampeas, 1/22/14 -** JTA's Washington bureau chief, responsible for coordinating coverage in the U.S. capital and analyzing political developments that affect the Jewish world(Ron, Jewish Telegraph Agency, “Doing the math on Dems and the Iran sanctions bill”

<http://www.jta.org/2014/01/22/news-opinion/politics/doing-the-math-on-dems-and-the-iran-sanctions-bill>

I count 19 members of the Senate Democratic caucus opposed to a vote, versus 15 who might be assumed to support one, with 21 not accounted for.

Here’s how I got there.

There are 16 Democrats out of the 59 Senators co-sponsoring the bill, including lead sponsor Sen. Robert Menendez (D-N.J.). (On Dec. 19, when the bill was launched, 15 Democrats signed on; Sen. Michael Bennet of Colorado is the sole Democrat to have signed onto the bill since Congress returned to work this month.) Subtract from those 16 Sen. Richard Blumenthal (D-Conn.), who now opposes advancing the bill while talks are underway between Iran and the major powers. The White House and sympathetic Democrats say the bill could scuttle the talks; backers of the bill say new sanctions would enhance the U.S. hand in the talks.

So that’s 15 one might assume still back advancing the bill.

As Sargent notes, there are 10 committee chairs who signed a letter opposing the bill. In addition to those, there are another nine senators who in recent weeks have told interlocutors they oppose advancing the bill for now: There are Murray and Warren, plus Blumenthal. There are another four listed in this Huffington Post roundup. Sen. Bernard Sanders, the Vermont independent who caucuses with Democrats, is listed here. And I’ve heard from Rhode Island Jewish officials that Sen. Jack Reed (D-R.I.) is opposed to advancing the bill now.

The White House is competing hard with backers of the bill, including leading pro-Israel groups, for the remaining 21 members of the Democratic caucus. Among them are key players in states with substantial Jewish communities, like Sen. Harry Reid (D-Nev.), the majority leader; Sen. Dick Durbin (D-Ill.), the assistant majority leader; and Sen. Sherrod Brown (D-Ohio.).

#### Current lobbying means no vote – but it’s reversible – and opponents seize upon signs of weakness like the plan

**Sargent, 1/22/14** – editor of The Plum Line blog for the Washington Post (Greg, “Another blow to the Iran sanctions bill” <http://www.washingtonpost.com/blogs/plum-line/wp/2014/01/22/another-blow-to-the-iran-sanctions-bill/?tid=pm_pop>

If current conditions remain, a vote is starting to look less and less likely. Right now, the bill has 58 co-sponsors. On the other side, 10 Dem Senate committee chairs have signed a letter opposing a vote. Around half a dozen Dem Senators subsequently came out against it. With Murray and Warren, the number of Dems against a vote has comfortably surpassed the number who want one.

Meanwhile, announcements like the one earlier this month indicating that the deal with Iran is moving forward make a vote still less likely. With Murray now opposed, that means virtually the whole Dem leadership is a No. On the other hand, those who adamantly want a vote — insisting it would only help the White House and make success more likely, despite what the White House itself wants – will be looking for any hook they can find to reactivate pressure.

And it’s worth stressing that if this ever did come to a vote, it’s quite possible that many of the Dems still remaining silent could still vote Yes. Those Democrats would be putting themselves in a ridiculous, untenable position if they did that, but since many appear convinced that the alternative is politically worse, it remains a very real possibility.

#### Reid is able to fend off a vote because Obama is pressuring Democrats – if those dynamics change, Reid would be forced to cave

**Kaper, 1/17/14** – Stacy, National Journal, “U.S. Senate's Iran Hawks Flounder Against Reid-Obama Coalition” <http://www.nti.org/gsn/article/us-senates-iran-hawks-flounder-against-reid-obama-coalition/>)

The U.S. Senate's Iran hawks have lots of votes to back their sanctions legislation. What they lack is a plan to get the bill to the floor. Fifty-nine senators -- including 16 Democrats -- have signed onto sanctions legislation from Democratic Senator Robert Menendez (N.J.) and Republican Senator Mark Kirk (Ill.). The measure would punish Iran with sanctions if it reneges on an interim nuclear agreement, or if that agreement does not ultimately abolish any nuclear-weapons capabilities for Iran. The count has climbed rapidly since the bipartisan pair introduced their legislation in late December. But now it's unclear whether that support will be enough to clear the bill's next major hurdle: Senate Majority Leader Harry Reid. The Nevada Democrat is siding with the White House, which has put intense pressure on lawmakers not to act on sanctions, arguing it could result in both a nuclear-armed and hostile Iranian state. And without Reid's backing, supporters of the Menendez-Kirk bill are unsure how to move the measure to the floor. "I assume that if the Democrat senators put enough pressure on **Senator** Reid he might bring it to the floor," said Missouri Republican Senator Roy Blunt. "But, you know, we are at a moment in the Senate where nothing happens that Senator Reid doesn't want to happen; and this is something at this moment that Senator Reid doesn't want to happen." And for now, sanctions supporters are still mulling their strategy. "We are talking amongst ourselves. There is a very active debate and discussion ongoing about how best to move forward," said Democratic Senator Richard Blumenthal of Connecticut, a cosponsor of the bill. "There are a number of alternative strategies, but we're deliberating them." While Reid has, at least for now, foiled their policy plans, sanctions supporters are still scoring the desired political points on the issue. They can report their efforts to their constituents while blaming Reid for the inaction. But whatever pressure Reid is getting from his colleagues, he's also getting support from the commander in chief. In a White House meeting Wednesday night, President Obama made a hard sell to Democrats on the issue, pleading with them to back off sanctions while his team worked on a nuclear pact. "The president did speak passionately about how [we] must seize this opportunity, that we need to seize this six months … and that if Iran isn't willing to in the end make the decisions necessary to make it work, he'll be ready to sign a bill to tighten those sanctions -- but we gotta give this six months," said Senator Jeff Merkley of Oregon, after returning from the White House. In the meantime, many bill supporters reason that Reid will eventually feel the heat. "We'll just have to ratchet up the pressure, that's all," said Republican Senator John McCain (Ariz.). "The president is pushing back, obviously, and he's appealing to the loyalty of Democrats, but there are a lot of other forces out there that are pushing in the other direction, so we'll see how they react." Earlier this week Senator Lindsey Graham (R-S.C.) said he was hoping to find more Democratic cosponsors over the recess and was talking to House Majority Leader Eric Cantor (Va.) about whether the Republican-controlled House might take up the Senate sanctions bill as a way to spur the Senate to act. But neither of Graham's approaches represents a broad, coordinated campaign. Democrats, who have more power to drive the train in the Senate, seem to be in little hurry. "I don't think there is any time schedule related to it at this point," said Democratic cosponsor Ben Cardin of Maryland. "We are all trying to figure out how we can be most helpful and make sure Iran does not become a nuclear-weapon state." Menendez, who chairs the Senate Foreign Relations Committee and is the lead Democratic sponsor, said he is focused on hearing more from the administration about the reported unofficial secret "side deal" with Tehran. About the plans to proceed, Menendez said noncommittally, "We'll see." Kirk, the Republican who is the other lead sponsor, said he was counting on elections pressure to spark action. "My hope is that, as we get towards midterm elections, members are going to want to be on record being against giving up billions of dollars to Iran," Kirk said. Other members are hoping lobbying groups can carry the weight on this one. McCain said he hoped pro-Israel groups could convince Democrats to spring into action or that supporters could make it uncomfortable for Reid to continue blocking the bill.

### courts link

#### Courts link

Mirengoff 10 [Paul E. Mirengoff, JD Stanford, Attorney in DC, http://webcache.googleusercontent.com/search?q=cache:aNOGdaFrKhYJ:www.fed-soc.org/debates/dbtid.41/default.asp+obama+minimalism+blame+court+confirmation&cd=1&hl=en&ct=clnk&gl=us&client=firefox-a, 6-23-10]

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

#### Liberal Court decisions create elections pressure against Democrats

**Tucker, 95** – associate professor of political science at the University of Melbourne (D.F.B. The Rehnquist Court and Civil Rights, p. 221-222)

Conceding that other forces were at work contributing to the difficulties that Democratic candidates have faced in presidential contests, we see from this brief review of recent history how the Supreme Court’s role cannot be regarded as insignificant. Although most voters to not follow developments on the Court and dsiplay little knowledge of legal matters or of actual cases, we must suppose that the liberal landmark cases that were brought down under Warren and Burger had an important impact, encouraging the Democrats too far to the left to be competitive and tempting the Republicans to pander to the worst instincts at work in United States culture. By projecting issues like quotas, abortion and capital punishment into the political arena at a time when progressive politicians had no capacity to defend the policies endorsed by the Supreme Court, the liberal justices ensured that there would be a backlash that would shift the agenda far to the right of the political spectrum.

#### That’s the motivating factor behind potential Democratic defections on Iran – they need political strength to resist AIPAC pressure – that’s our 1nc Lobe evidence and diminishing Obama’s standing further changes the calculus

**Krasuhaar, 11/21/13** (Josh, National Journal, “The Iran Deal Puts Pro-Israel Democrats in a Bind” <http://www.nationaljournal.com/magazine/the-iran-deal-puts-pro-israel-democrats-in-a-bind-20131121>)

All of this puts Democrats, who routinely win overwhelming support from Jewish Americans on Election Day, in an awkward position. Do they stand with the president on politically sensitive foreign policy issues, or stake their own course? That difficult dynamic is currently playing out in Congress, where the Obama administration is resisting a Senate push to maintain tough sanctions against Iran. This week, Obama met with leading senators on the Banking and Foreign Relations committees to dissuade them from their efforts while diplomacy is underway.

"There's a fundamental disagreement between the vast majority of Congress and the president when it comes to increasing Iran sanctions right now," said one Democratic operative involved in the advocacy efforts. "Pro-Israel groups, like AIPAC, try to do things in a bipartisan way; they don't like open confrontation. But in this instance, it's hard."

That awkwardness has been evident in the lukewarm reaction from many of Obama's Senate Democratic allies to the administration's outreach to Iran. Senate Foreign Relations Committee Chairman Robert Menendez of New Jersey said last week he was concerned that the administration seems "to want the deal almost more than the Iranians." Normally outspoken Sen. Chuck Schumer of New York, a reliable ally of Israel, has been conspicuously quiet about his views on the negotiations. In a CNN interview this month, Democratic Rep. Debbie Wasserman Schultz of Florida, whose job as chairwoman of the Democratic National Committee is to defend the president, notably declined to endorse the administration's approach, focusing instead on Obama's past support of sanctions. This, despite the full-court press from Secretary of State John Kerry, a former congressional colleague.

On Tuesday, after meeting with Obama, Menendez and Schumer signed a bipartisan letter to Kerry warning the administration about accepting a deal that would allow Iran to continue its nuclear program. The letter was also signed by Sens. John McCain, R-Ariz., Lindsey Graham, R-S.C., Susan Collins, R-Maine, and Robert Casey, D-Pa.

Democrats, of course, realize that the president plays an outsized role in the policy direction of his party. Just as George W. Bush moved the Republican Party in a more hawkish direction during his war-riven presidency, Obama is nudging Democrats away from their traditionally instinctive support for the Jewish state. "I can't remember the last time the differences [between the U.S. and Israel] were this stark," said one former Democratic White House official with ties to the Jewish community. "There's now a little more freedom [for progressive Democrats] to say what they want to say, without fear of getting their tuchus kicked by the organized Jewish community."

A Gallup survey conducted this year showed 55 percent of Democrats sympathizing with the Israelis over the Palestinians, compared with 78 percent of Republicans and 63 percent of independents who do so. A landmark Pew poll of American Jews, released in October, showed that 35 percent of Jewish Democrats said they had little or no attachment to Israel, more than double the 15 percent of Jewish Republicans who answered similarly. At the 2012 Democratic National Convention, many delegates booed a platform proposal supporting the move of the U.S. Embassy in Israel from Tel Aviv to Jerusalem. In 2011, Democrats lost Anthony Weiner's heavily Jewish, solidly Democratic Brooklyn House seat because enough Jewish voters wanted to rebuke the president's perceived hostility toward Israel.

Pro-Israel advocacy groups rely on the mantra that support for Israel carries overwhelming bipartisan support, a maxim that has held true for decades in Congress. But most also reluctantly acknowledge the growing influence of a faction within the Democratic Party that is more critical of the two countries' close relationship. Within the Jewish community, that faction is represented by J Street, which positions itself as the home for "pro-Israel, pro-peace Americans" and supports the Iran negotiations. "Organizations that claim to represent the American Jewish community are undermining [Obama's] approach by pushing for new and harsher penalties against Iran," the group wrote in an action alert to its members.

Some supporters of Israel view J Street with concern. "There's a small cadre of people that comes from the progressive side of the party that are in the business of blaming Israel first. There's a chorus of these guys," said a former Clinton administration foreign policy official. "But that doesn't make them the dominant folks in the policy space of the party, or the Hill."

Pro-Israel activists worry that one of the ironies of Obama's situation is that as his poll numbers sink, his interest in striking a deal with Iran will grow because he'll be looking for any bit of positive news that can draw attention away from the health care law's problems. Thus far, Obama's diminished political fortunes aren't deterring Democrats from protecting the administration's prerogatives. Congressional sources expect the Senate Banking Committee, chaired by South Dakota Democrat Tim Johnson, to hold off on any sanctions legislation until there's a resolution to the Iranian negotiations.

But if Obama's standing continues to drop, and negotiations produce a deal that Israel doesn't like, don't be surprised to see Democrats become less hesitant about going their own way.

#### Obama’s appointments give him a judicial legacy

Reuters 8/5/10 ("Senate approves Obama nominee Kagan to top court," http://webcache.googleusercontent.com/search?q=cache:8oM3T-dMCDYJ:www.reuters.com/article/idUSTRE6744YW20100805+obama+kagan+supreme+court+2+appointees&cd=3&hl=en&ct=clnk&gl=us)

(Reuters)—President Barack Obama's nomination of Elena Kagan to the Supreme Court won Senate approval on Thursday, his second appointment to the court that decides abortion, death penalty and other contentious cases. The Democratic-led Senate voted largely along party lines, 63-37, to confirm the former Harvard Law School dean as the fourth female justice in U.S. history and the 112th high court member. Kagan was Obama's solicitor general, arguing government cases before the Supreme Court, when he named her in May as his choice to replace the retiring liberal Justice John Paul Stevens. The 50-year-old Kagan, who will be the third woman on the current court, is not expected to change the ideological balance of power on the closely divided panel, which for years has been dominated by a 5-4 conservative majority. All Democratic senators but one voted for her, two independent senators voted for her and five Republicans voted for her. All other Republican senators opposed her nomination. OBAMA'S JUDICIAL LEGACY Kagan becomes Obama's second lifetime appointee on the nine-member Supreme Court, allowing him to reshape the court and leave a judicial legacy that could last long after he leaves office. U.S. appeals court Judge Sonia Sotomayor was confirmed last year by a 68-31 vote as the first Hispanic Supreme Court justice. The two appointments underscore an effort by Obama to move the court to the left after Republican President George W. Bush nominated a pair of conservative judges to the bench.

#### Supreme Court rulings get blamed on Obama

Harrison 5—Professor of Law—University of Miami, FL [Lindsay, “Does the Court Act as "Political Cover" for the Other Branches?,” http://legaldebate.blogspot.com/]

While the Supreme Court may have historically been able to act as political cover for the President and/or Congress, that is not true in a world post-Bush v. Gore. The Court is seen today as a politicized body, and especially now that we are in the era of the Roberts Court, with a Chief Justice hand picked by the President and approved by the Congress, it is highly unlikely that Court action will not, at least to some extent, be blamed on and/or credited to the President and Congress. The Court can still get away with a lot more than the elected branches since people don't understand the technicalities of legal doctrine like they understand the actions of the elected branches; this is, in part, because the media does such a poor job of covering legal news. Nevertheless, it is preposterous to argue that the Court is entirely insulated from politics, and equally preposterous to argue that Bush and the Congress would not receive at least a large portion of the blame for a Court ruling that, for whatever reason, received the attention of the public.

#### Forgot how I tagged this in the 2NR

**Calabresi, 2008**

[Massimo, TIME, 6-26, “Obama's Supreme Move to the Center Washington” Thursday, http://www.time.com/time/politics/article/0,8599,1818334,00.html]

When the Supreme Court issues rulings on hot-button issues like gun control and the death penalty in the middle of a presidential campaign, Republicans could be excused for thinking they'll have the perfect opportunity to paint their Democratic opponent as an out-of-touch social liberal. But while Barack Obama may be ranked as one of the Senate's most liberal members, his reactions to this week's controversial court decisions showed yet again how he is carefully moving to the center ahead of the fall campaign. On Wednesday, after the Supreme Court ruled that the death penalty was unconstitutional in cases of child rape, Obama surprised some observers by siding with the hardline minority of Justices Scalia, Thomas, Roberts and Alito. At a press conference after the decision, Obama said, "I think that the rape of a small child, six or eight years old, is a heinous crime and if a state makes a decision that under narrow, limited, well-defined circumstances the death penalty is at least potentially applicable, that that does not violate our Constitution." Then Thursday, after Justice Scalia released his majority opinion knocking down the city of Washington's ban on handguns, Obama said in a statement, "I have always believed that the Second Amendment protects the right of individuals to bear arms, but I also identify with the need for crime-ravaged communities to save their children from the violence that plagues our streets through common-sense, effective safety measures. The Supreme Court has now endorsed that view." John McCain's camp wasted no time in attacking, with one surrogate, conservative Senator Sam Brownback of Kansas, calling Obama's gun control statement "incredible flip-flopping." McCain advisor Randy Scheunemann was even tougher in a conference call Thursday. "What's becoming clear in this campaign," Scheunemann said, is "that for Senator Obama the most important issue in the election is the political fortunes of Senator Obama. He has demonstrated that there really is no position he holds that isn't negotiable or isn't subject to change depending on how he calculates it will affect his political fortunes." Politicians are always happy to get a chance to accuse opponents of flip-flopping, but McCain's team may be more afraid of Obama's shift to the center than their words betray. Obama has some centrist positions to highlight in the general election campaign on foreign policy and national security, social issues and economics. His position on the child rape death penalty case, for example, is in line with his record in Illinois of supporting the death penalty. He is on less solid ground on the gun ban as his campaign said during the primary that he believed the D.C. law was constitutional. A top legal adviser to Obama says both cases are consistent with his previous positions. "I don't see him as moving in his statements on the death penalty or the gun case," says Cass Sunstein, a former colleague of Obama's at the University of Chicago. Sunstein says Obama is "not easily characterized" on social issues, and says the Senator's support for allowing government use of the Ten Commandments in public, in some cases, is another example of his unpredictability on such issues. On the issue of gun control, he says Obama has always expressed a belief that the Second Amendment guarantees a private right to bear arms, as the court found Thursday. But Obama's sudden social centrism would sound more convincing in a different context. Since he wrapped up the primary earlier this month and began to concentrate on the independent and moderate swing voters so key in a general election, Obama has consistently moved to the middle. He hired centrist economist Jason Furman, known for defending the benefits of globalization and private Social Security accounts, to the displeasure of liberal economists. On Father's Day, Obama gave a speech about the problem of absentee fathers and the negative effects it has on society, in particular scolding some fathers for failing to "realize that what makes you a man is not the ability to have a child — it's the courage to raise one." Last week, after the House passed a compromise bill on domestic spying that enraged liberals and civil libertarians, Obama announced that though he was against other eavesdropping compromises in the past, this time he was going to vote for it. Whether Obama's new centrist sheen is the result of flip-flopping or reemphasizing moderate positions, the Supreme Court decisions have focused attention again on the role of the court in the campaign season. McCain himself is vulnerable to charges of using the Supreme Court for political purposes. Earlier this month, when the court granted habeas corpus rights to accused terrorist prisoners at Guantanamo Bay, McCain attacked the opinion in particularly harsh language, though advisers say closing the prison there is high on his list of actions to rehabilitate America's image around the world. Liberals are hoping that despite Obama's moderate response to the Supreme Court decisions, the issues alone will rally supporters to him. "What both of these decisions say to me is that the Supreme Court really is an election-year issue," says Kathryn Kolbert, president of People For the American Way. "We're still only one justice away from a range of really negative decisions that would take away rights that most Americans take for granted," she says. And Obama's run to the center surely won't stop conservatives from using the specter of a Democratic-appointed Supreme Court to try to rally support. "Its pretty clear that if he's elected and Justice Scalia or Kennedy retires that he's going to appoint someone who's very likely to reverse [the gun control decision]," says Eugene Volokh, a professor at the UCLA School of Law. Given how Obama has been responding to the recent Supreme Court decisions, however, you're not likely to hear him talking about appointing liberal justices much between now and November.

### strikes impact

#### Tanks Geneva and causes Israel strikes

**Leubsdorf, 1/22/14 –** former Washington Bureau chief of The Dallas Morning News (Carl, Dallas Morning News, “Hard-liners’ mischief-making threatens Iran nuke talks” <http://www.dallasnews.com/opinion/columnists/carl-p-leubsdorf/20140122-carl-leubsdorf-hard-liners-mischief-making-threatens-iran-nuke-talks.ece>)

The measure’s most dangerous provision, according to various published reports, reads as follows:

“If the government of Israel is compelled to take military action in legitimate self-defense against Iran’s nuclear weapon program, the United States should stand with Israel and provide in accordance with the law of the United States and the constitutional responsibility of Congress to authorize the use of military force, diplomatic and economic support to the Government of Israel in the defense of its territory, people and existence.”

While not requiring U.S. action, critics note the language suggests the mere existence of an Iranian “nuclear weapon program” would be sufficient to compel Israel to attack “in legitimate self-defense.” And it says the U.S. “should” provide such an Israeli attack with “military, diplomatic and economic support” according to U.S. laws and congressional constitutional responsibility.

In effect, that could enable the hard-liners who control the Israeli government to kill the talks or try to drag the United States into a war against Iran if they decide that Iranian compliance with the current agreement is insufficient to protect Israel.

The measure would also enable Congress to kill any agreement the West reaches with Iran by overriding Obama’s decision to waive existing sanctions.

#### Global war

**Reuveny, 10** – professor in the School of Public and Environmental Affairs at Indiana University (Rafael, “Unilateral strike could trigger World War III, global depression” Gazette Xtra, 8/7, - See more at: <http://gazettextra.com/news/2010/aug/07/con-unilateral-strike-could-trigger-world-war-iii-/#sthash.ec4zqu8o.dpuf>)

A unilateral Israeli strike on Iran’s nuclear facilities would likely have dire consequences, including a regional war, global economic collapse and a major power clash.

For an Israeli campaign to succeed, it must be quick and decisive. This requires an attack that would be so overwhelming that Iran would not dare to respond in full force.

Such an outcome is extremely unlikely since the locations of some of Iran’s nuclear facilities are not fully known and known facilities are buried deep underground.

All of these widely spread facilities are shielded by elaborate air defense systems constructed not only by the Iranians but also the Chinese and, likely, the Russians as well.

By now, Iran has also built redundant command and control systems and nuclear facilities, developed early warning systems, acquired ballistic and cruise missiles and upgraded and enlarged its armed forces.

Because Iran is well-prepared, a single, conventional Israeli strike—or even numerous strikes—could not destroy all of its capabilities, giving Iran time to respond.

Unlike Iraq, whose nuclear program Israel destroyed in 1981, Iran has a second-strike capability comprised of a coalition of Iranian, Syrian, Lebanese, Hezbollah, Hamas, and, perhaps, Turkish forces. Internal pressure might compel Jordan, Egypt and the Palestinian Authority to join the assault, turning a bad situation into a regional war.

During the 1973 Arab-Israeli War, at the apex of its power, Israel was saved from defeat by President Nixon’s shipment of weapons and planes. Today, Israel’s numerical inferiority is greater, and it faces more determined and better-equipped opponents. After years of futilely fighting Palestinian irregular armies, Israel has lost some of its perceived superiority—bolstering its enemies’ resolve.

Despite Israel’s touted defense systems, Iranian coalition missiles, armed forces, and terrorist attacks would likely wreak havoc on its enemy, leading to a prolonged tit-for-tat.

In the absence of massive U.S. assistance, Israel’s military resources may quickly dwindle, forcing it to use its alleged nuclear weapons, as it had reportedly almost done in 1973.

An Israeli nuclear attack would likely destroy most of Iran’s capabilities, but a crippled Iran and its coalition could still attack neighboring oil facilities, unleash global terrorism, plant mines in the Persian Gulf and impair maritime trade in the Mediterranean, Red Sea and Indian Ocean.

Middle Eastern oil shipments would likely slow to a trickle as production declines due to the war and insurance companies decide to drop their risky Middle Eastern clients. Iran and Venezuela would likely stop selling oil to the United States and Europe.

From there, things could deteriorate as they did in the 1930s. The world economy would head into a tailspin; international acrimony would rise; and Iraqi and Afghani citizens might fully turn on the United States, immediately requiring the deployment of more American troops.

Russia, China, Venezuela, and maybe Brazil and Turkey—all of which essentially support Iran—could be tempted to form an alliance and openly challenge the U.S. hegemony.

Russia and China might rearm their injured Iranian protege overnight, just as Nixon rearmed Israel, and threaten to intervene, just as the U.S.S.R. threatened to join Egypt and Syria in 1973. President Obama’s response would likely put U.S. forces on nuclear alert, replaying Nixon’s nightmarish scenario.

Iran may well feel duty-bound to respond to a unilateral attack by its Israeli archenemy, but it knows that it could not take on the United States head-to-head. In contrast, if the United States leads the attack, Iran’s response would likely be muted.

If Iran chooses to absorb an American-led strike, its allies would likely protest and send weapons but would probably not risk using force.

While no one has a crystal ball, leaders should be risk-averse when choosing war as a foreign policy tool. If attacking Iran is deemed necessary, Israel must wait for an American green light. A unilateral Israeli strike could ultimately spark World War III.

#### Turns case – sets a precedent to delegate authority – draws us into war

**Richman, 12/29/13** (Sheldon, Counterpunch, “AIPAC's Stranglehold Congress Must Not Cede Its War Power to Israel”, <http://www.counterpunch.org/2013/12/27/congress-must-not-cede-its-war-power-to-israel/>)

The American people should know that pending right now in Congress is a bipartisan bill that would virtually commit the United States to go to war against Iran if Israel attacks the Islamic Republic. “The bill outsources any decision about resort to military action to the government of Israel,” Columbia University Iran expert Gary Sick wrote to Sen. Chuck Schumer (D-NY) in protest, one of the bill’s principal sponsors.

The mind boggles at the thought that Congress would let a foreign government decide when America goes to war, so here is the language (PDF):

If the government of Israel is compelled to take military action in legitimate self-defense against Iran’s nuclear weapon program, the United States Government should stand with Israel and provide, in accordance with the law of the United States and the constitutional responsibility of Congress to authorize the use of military force, diplomatic, military and economic support to the Government of Israel in its defense of its territory, people and existence.

This section is legally nonbinding, but given the clout of the bill’s chief supporter outside of Congress — the American-Israel Public Affairs Committee (AIPAC [PDF]), leader of the pro-Israel lobby — that is a mere formality.

Since AIPAC wants this bill passed, it follows that so does the government of Israeli Prime Minister Benjamin Netanyahu, who opposes American negotiations with Iran and has repeatedly threatened to attack the Islamic Republic. Against all evidence, Netanyahu insists the purpose of Iran’s nuclear program is to build a weapon with which to attack Israel. Iran says its facilities, which are routinely inspected, are for peaceful civilian purposes: the generation of electricity and the production of medical isotopes.

The bill, whose other principal sponsors are Sen. Robert Menendez (D-NJ) and Sen. Mark Kirk (R-IL), has a total of 26 Senate cosponsors. If it passes when the Senate reconvenes in January, it could provoke a historic conflict between Congress and President Obama, whose administration is engaged in negotiations with Iran at this time. Aside from declaring that the U.S. government should assist Israel if it attacks Iran, the bill would also impose new economic sanctions on the Iranian people. Obama has asked the Senate not to impose additional sanctions while his administration and five other governments are negotiating with Iran on a permanent settlement of the nuclear issue.

A six-month interim agreement is now in force, one provision of which prohibits new sanctions on Iran. “The [Menendez-Schumer-Kirk] bill allows Obama to waive the new sanctions during the current talks by certifying every 30 days that Iran is complying with the Geneva deal and negotiating in good faith on a final agreement,” Ali Gharib writes at Foreign Policy magazine. That would effectively give Congress the power to undermine negotiations. As Iran’s foreign minister, Javad Zarif, told Time magazine, if Congress imposes new sanctions, even if they are delayed for six months, “The entire deal is dead. We do not like to negotiate under duress.”

Clearly, the bill is designed to destroy the talks with Iran, which is bending over backward to demonstrate that its nuclear program has no military aims.

#### Deal failure itself causes global war

**PressTV, 11/13/13** (“Global nuclear conflict between US, Russia, China likely if Iran talks fail,” <http://www.presstv.ir/detail/2013/11/13/334544/global-nuclear-war-likely-if-iran-talks-fail/>)

A global conflict between the US, Russia, and China is likely in the coming months should the world powers fail to reach a nuclear deal with Iran, an American analyst says.

“If the talks fail, if the agreements being pursued are not successfully carried forward and implemented, then there would be enormous international pressure to drive towards a conflict with Iran before [US President Barack] Obama leaves office and that’s a very great danger that no one can underestimate the importance of,” senior editor at the Executive Intelligence Review Jeff Steinberg told Press TV on Wednesday.

“The United States could find itself on one side and Russia and China on the other and those are the kinds of conditions that can lead to miscalculation and general roar,” Steinberg said.

“So the danger in this situation is that if these talks don’t go forward, we could be facing a global conflict in the coming months and years and that’s got to be avoided at all costs when you’ve got countries like the United States, Russia, and China with” their arsenals of “nuclear weapons,” he warned.

The warning came one day after the White House told Congress not to impose new sanctions against Tehran because failure in talks with Iran could lead to war.

#### An Iran deal is vital to America’s global standing

**Leverett, 11/10/13 -** senior fellow at the New America Foundation in Washington, D.C. and a professor at the Pennsylvania State University School of International Affairs(Flynt, “Nuclear Negotiations and America’s Moment of Truth About Iran” <http://www.campaigniran.org/casmii/?q=node/13358>)

America’s Iran policy is at a crossroads. Washington can abandon its counterproductive insistence on Middle Eastern hegemony, negotiate a nuclear deal grounded in the Nuclear Non-Proliferation Treaty (NPT), and get serious about working with Tehran to broker a settlement to the Syrian conflict. In the process, the United States would greatly improve its ability to shape important outcomes there. Alternatively, America can continue on its present path, leading ultimately to strategic irrelevance in one of the world’s most vital regions—with negative implications for its standing in Asia as well. U.S. policy is at this juncture because the costs of Washington’s post-Cold War drive to dominate the Middle East have risen perilously high. President Obama’s self-inflicted debacle over his plan to attack Syria after chemical weapons were used there in August showed that America can no longer credibly threaten the effective use of force to impose its preferences in the region. While Obama still insists “all options are on the table” for Iran, the reality is that, if Washington is to deal efficaciously with the nuclear issue, it will be through diplomacy. In this context, last month’s Geneva meeting between Iran and the P5+1 brought America’s political class to a strategic and political moment of truth. Can American elites turn away from a self-damaging quest for Middle Eastern hegemony by coming to terms with an independent regional power? Or are they so enthralled with an increasingly surreal notion of America as hegemon that, to preserve U.S. “leadership,” they will pursue a course further eviscerating its strategic position? The proposal for resolving the nuclear issue that Iran’s foreign minister, Javad Zarif, presented in Geneva seeks answers to these questions. It operationalizes the approach advocated by Hassan Rohani and other Iranian leaders for over a decade: greater transparency on Iran’s nuclear activities in return for recognizing its rights as a sovereign NPT signatory—especially to enrich uranium under international safeguards—and removal of sanctions. For years, the Bush and Obama administrations rejected this approach. Now Obama must at least consider it. The Iranian package provides greater transparency on Tehran’s nuclear activities in two crucial respects. First, it gives greater visibility on the conduct of Iran’s nuclear program. Iran has reportedly offered to comply voluntarily for some months with the Additional Protocol (AP) to the NPT—which it has signed but not yet ratified and which authorizes more proactive and intrusive inspections—to encourage diplomatic progress. Tehran would ratify the AP—thereby committing to its permanent implementation—as part of a final deal. Second, the package aims to validate Iran’s declarations that its enrichment infrastructure is not meant to produce weapons-grade fissile material. Iran would stop enriching at the near-20 percent level of fissile-isotope purity needed to fuel the Tehran Research Reactor and cap enrichment at levels suitable for fueling power reactors. Similarly, Iran is open to capping the number of centrifuges it would install—at least for some years—at its enrichment sites in Natanz and Fordo. Based on conversations with Iranian officials and political figures in New York in September (during Rohani and Zarif’s visit to the UN General Assembly) and in Tehran last month, it is also possible to identify items that the Iranian proposal almost certainly does not include. Supreme Leader Ayatollah Seyed Ali Khamenei has reportedly given President Rohani and his diplomats flexibility in negotiating a settlement—but he has also directed that they not compromise Iran’s sovereignty. Thus, the Islamic Republic will not acquiesce to American (and Israeli) demands to suspend enrichment, shut its enrichment site at Fordo, stop a heavy-water reactor under construction at Arak, and ship its current enriched uranium stockpile abroad. On one level, the Iranian package is crafted to resolve the nuclear issue based on the NPT, within a year. Iran’s nuclear rights would be respected; transparency measures would reduce the proliferation risks of its enrichment activities below what Washington tolerates elsewhere. On another level, though, the package means to test America’s willingness and capability to resolve the issue on this basis. It tests this not just for Tehran’s edification, but also for that of other P5+1 states, especially China and Russia, and of rising powers like India and South Korea. America can fail the Iranian test in two ways. First, the Obama administration—reflecting America’s political class more broadly—may prove unwilling to acknowledge Iran’s nuclear rights in a straightforward way, insisting on terms for a deal that effectively suborn these rights and violate Iranian sovereignty. There are powerful constituencies—e.g., the Israel lobby, neoconservative Republicans, their Democratic “fellow travelers,” and U.S.-based Iran “experts”—that oppose any deal recognizing Iran’s nuclear rights. They understand that acknowledging these rights would also mean accepting the Islamic Republic as an enduring entity representing legitimate national interests; to do so, America would have to abandon its post-Cold War pretensions to Middle Eastern hegemony. Those pretensions have proven dangerously corrosive of America’s ability to accomplish important objectives in the Middle East, and of its global standing. Just witness the profoundly self-damaging consequences of America’s invasion and occupation of Iraq, and how badly the “global war on terror” has eviscerated the perceived legitimacy of American purposes in the Muslim world. But, as the drama over Obama’s call for military action against Syria indicates, America’s political class remains deeply attached to imperial pretense—even as the American public turns away from it. If Washington could accept the Islamic Republic as a legitimate regional power, it could work with Tehran and others on a political solution to the Syrian conflict. Instead, Washington reiterates hubristic demands that President Bashar al-Assad step down before a political process starts, and relies on a Saudi-funded “Syrian opposition” increasingly dominated by al-Qa’ida-like extremists. If Obama does not conclude a deal recognizing Iran’s nuclear rights, it will confirm suspicions already held by many Iranian elites—including Ayatollah Khamenei—and in Beijing and Moscow about America’s real agenda vis-à-vis the Islamic Republic. It will become undeniably clear that U.S. opposition to indigenous Iranian enrichment is not motivated by proliferation concerns, but by determination to preserve American hegemony—and Israeli military dominance—in the Middle East. If this is so, why should China, Russia, or rising Asian powers continue trying to help Washington—e.g., by accommodating U.S. demands to limit their own commercial interactions with Iran—obtain an outcome it does not actually want?

#### Israeli motive exists, Menedez lowers the threshold and green lights attack

Lennard 13 (Natasha, assistant news editor , “Senate resolution would greenlight Israeli attack,” Salon, 3-1, <http://www.salon.com/2013/03/01/senate_resolution_would_greenlight_israeli_attack_on_iran/>)

Senate resolution would greenlight Israeli attack

On Thursday, Ali Gharib at the Daily Beast drew attention to a resolution set to be introduced in the Senate, which declares U.S. support for an Israeli military strike against Iran’s nuclear program. The resolution, to be introduced by Sens. Lindsey Graham, R-S.C., and Robert Menendez, D-N.J., has bipartisan support and the backing of AIPAC. Via Gharib:

With prominent liberal Democrats already signing on, AIPAC’s lobbying heft will likely propel a bill that, in Congressional sentiment at least, commits the U.S. to active support of a potential Israeli attack that experts think could have consequences as grave as further destabilization in the region, adverse global economic consequences, and even a hardening of Iranian resolve to get a weapon.

Although the bill’s supporters have stressed that it is does not advocate war or use of force, the non-binding resolution’s language is strong. Gharib cites a passage that reads, “if the Government of Israel is compelled to take military action in self-defense, the United States Government should stand with Israel and provide diplomatic, military, and economic support to the Government of Israel in its defense of its territory, people, and existence.”

A CIA official dismissed the resolution’s geopolitical importance. He told Gharib that “the discussions between the Obama administration and the Israelis about potential military action on Iran have nothing to do with these kinds of resolutions.” However, Gharib, who has reported U.S. foreign policy and the Middle East for many years sees these non-binding resolutions, although not policy decisions, as among the many incremental pushes that create the conditions for conflict. He explained:

While non-binding Congressional resolutions don’t directly make policy, the language therein often manifests itself both in later, binding legislative efforts and, more frequently, in the public discourse. In this case, the resolution builds steam for a hawkish push against Iran at a time when the Islamic Republic and world powers are amid a negotiating process over the former’s nuclear program, which is widely believed to be aimed at producing weapons.

Indeed, with strong AIPAC support, these resolutions have in the past had profound impact on the public discourse on Israel and Iran, in turn impacting policy frameworks. Gharib highlights as exemplar the shift in the U.S. “red line” on Iran moving from Tehran acquiring a weapon to having the “capability” to do so:

Like a previous Graham effort, the new resolution misstates U.S. policy as “to prevent Iran from acquiring a nuclear weapon capability” (my emphasis)—phrasing the Senate overwhelmingly approved in another AIPAC-backed measure last September. The “capability” language sets a lower threshold for war than Barack Obama’s stated policy to “prevent Iran from obtaining a nuclear weapon,” fullstop—a distinction at the heart of Obama’s flaplast autumn with Israeli Prime Minister Benjamin Netanyahu.

#### Sanctions collapse the deal, cause Israeli strikes

**Keller, 12/11**/13 - Former New York Times Executive Editor and currently an Op-Ed columnist (Bill, “Iran’s Hardliners, and Ours” New York Times, http://keller.blogs.nytimes.com/2013/12/11/irans-hardliners-and-ours/?\_r=0)

America’s hawks, in turn, would suffer a serious blow to their bellicose notion of America’s role if the evilest spoke in the Axis of Evil turned out to be amenable to diplomacy.

And so a failure of negotiations would delight both of them – American hawks because Israel could get on with the business of bombing, Iranian hawks because there’s nothing like an attack by the infidels to unify a fractious public behind an authoritarian regime.

For the moment, our hard-liners pose a greater problem than Iran’s. The moves on Capitol Hill to impose new sanctions before the interim deal even takes effect may pass for tough-mindedness, but they are effectively sabotage. They would undermine President Rouhani’s precarious position at home. Paradoxically, they could also endanger the cooperation Obama has painstakingly earned from the other nuclear powers, and lead to the collapse of the global sanctions. We would lose a united front (which includes China and Russia) against the nuclearization of Iran, and demonstrate that Iranian hardliners are right about what really motivates Washington.

#### Both the US and Israel will strike if talks collapse

**Kearn, 1/19/14** - Assistant Professor, St. John’s University (David, Huffington Post, “The Folly of New Iran Sanctions,” <http://www.huffingtonpost.com/david-w-kearn/the-folly-of-new-iran-san_b_4619522.html>)

Nonetheless, this debate has effectively been made moot by official U.S. and Israeli policies. The clear commitment of the Obama administration to thwart Tehran from acquiring a nuclear weapon has been in place for some time. Containment is not an option, and military force will ostensibly be used to prevent an Iranian nuclear weapon from becoming operational. Despite this commitment, the Israeli government has consistently expressed its willingness to act alone to stop an Iranian bomb even without U.S. support. While hardliners in Tel Aviv and Washington may not agree, these are both credible threats that the regime in Tehran must take seriously. Thus, the situation confronting Iran and the world is either the peaceful negotiated solution to the nuclear question, or the high likelihood of another destructive, costly war in a region already torn apart by conflict.

The current sanctions bill in the Senate is not about providing President Obama and Secretary Kerry with greater leverage in the negotiations. The Iranian delegation has made clear that it views any such sanctions as an indication of bad faith that will wreck the process and undo any progress made to this point. With the interim agreement set to go into effect next week, this is clearly not the time for the Senate to usurp the authority of the commander-in-chief and his chief diplomat. Taking their respective rationales at face value, the Democratic members of the Senate supporting the sanctions legislation may have good intentions to provide a stronger "bad cop" to Secretary Kerry's "good cop" in Geneva. This is short-sighted. New sanctions will not only play into the narrative of hard-liners in Iran who don't want agreement, it will also isolate the United States from its negotiating partners and likely cripple the cohesive united front that has seemingly emerged throughout the talks. In doing so, it is most likely to fulfill the wishes of hardliners in Israel and the United States that simply don't want an agreement and refuse to take any "yes" for an answer. However, with a failure of negotiations, military conflict is much more likely.

#### No defense—Israeli anxiety is extreme and even defensive measures escalate

Ehud Eiran 13 is an Assistant Professor at the University of Haifa and an Affiliate of the Middle East Negotiation Initiative at the Program on Negotiation, Harvard Law School. Eiran is also a former Assistant to the Foreign Policy Advisor to Israel’s Prime Minister. The Sum of all Fears: Israel’s Perception of a Nuclear-Armed Iran, <http://live.belfercenter.org/files/thesumofallfears.pdf>, The Washington Quarterly • 36:3 pp. 7789

First, Israel not only has a particular view of the threat posed by the military dimension of the Iranian nuclear program, it also has an independent means of taking action to alleviate its fears. Although Israel is less capable than the United States, if Israel were to launch strikes on Iran to set back the nuclear program, the effects would ripple across the region and beyond. Meir Dagan, former head of Israel’s external intelligence agency, the Mossad, warned a number of times that an Israeli attack on Iran would ‘‘ignite a regional war.’’1

Second, Israel’s anxieties over Iran could produce a series of defensive moves and escalating responses which spiral out of control in a manner that neither side intends. As the history of war and conflict in the Middle East from the June 1967 Six-Day War to the November 2012 round of violence between Israel and the Gaza-based Hamas reminds us, the Middle East is a tinderbox where a few sparks could all too easily ignite a major conflagration.

Finally, as President Obama’s March 2013 visit to Israel demonstrated, Israel’s fears of Iran have become an inescapable and urgent concern for U.S. policy in the Middle East. Given the U.S.—Israeli friendship, President Obama will need to pay close attention to these sensitivities toward Iran. A clear understanding of Israeli perceptions of Iran will remain essential to U.S. policy toward Tehran.

#### They overlook Israeli calculations—they THINK they’ll succeed

Sadot 12-30-13 (Uri, research associate at the Council on Foreign Relations and holds a master’s degree in international affairs from Princeton University, A Raid on Iran?, Weekly Standard, VOL. 19, NO. 16, <http://www.weeklystandard.com/articles/raid-iran_771518.html?page=1>)

American analysts are divided on Israel’s ability to take effective military action. However, history shows that Israel’s military capabilities are typically underestimated. The Israel Defense Forces keep finding creative ways to deceive and ~~cripple~~ their targets by leveraging their qualitative advantages in manners that confound not only skeptical observers but also, and more important, Israel’s enemies. Military triumphs like the Six-Day War of June 1967 and the 1976 raid on Entebbe that freed 101 hostages are popular Israeli lore for good reason—these “miraculous” victories were the result of assiduously planned, rehearsed, and well-executed military operations based on the elements of surprise, deception, and innovation, core tenets of Israeli military thinking. Inscribed on one of the walls of the IDF’s officer training academy is the verse from Proverbs 24:6: “For by clever deception thou shalt wage war.” And this has been the principle driving almost all of Israel’s most successful campaigns, like the 1981 bombing of Iraq’s nuclear reactor, the 1982 Beka’a Valley air battle, and the 2007 raid on Syria’s plutonium reactor, all of which were thought improbable, if not impossible, until Israel made them reality. And yet in spite of Israel’s record, some American experts remain skeptical about Israel’s ability to do anything about Iran’s nuclear weapons facilities. Even the most optimistic assessments argue that Israel can only delay the inevitable. As a September 2012 report from the Center for Strategic and International Studies contends: “Israel does not have the capability to carry out preventive strikes that could do more than delay Iran’s efforts for a year or two.” An attack, it continued, “would be complex and high risk in the operational level and would lack any assurances of a high mission success rate.” Equally cautious is the chairman of the Joint Chiefs of Staff, General Martin Dempsey, who argued that while “Israel has the capability to strike Iran and to delay the production or the capability of Iran to achieve a nuclear weapons status,” such a strike would only delay the program “for a couple of years.” The most pessimistic American assessments contend that Israel is all but neutered. Former director of the CIA Michael Hayden, for instance, said that airstrikes capable of seriously setting back Iran’s nuclear program are beyond Israel’s capacity. Part of the reason that Israeli and American assessments diverge is the difference in the two countries’ recent military histories and political cultures. While the American debate often touches on the limits of military power and its ability to secure U.S. interests around the globe, the Israeli debate is narrower, befitting the role of a regional actor rather than a superpower, and focuses solely on Israel’s ability to provide for the security of its citizens at home. That is to say, even if Israel and the United States saw Iran and its nuclear arms program in exactly the same light, there would still be a cultural gap. Accordingly, an accurate understanding of how Israelis see their own recent military history provides an important insight into how Israel’s elected leaders and military officials view the IDF’s abilities regarding Iran. Any account of surprise and deception as key elements in Israeli military history has to start with the aerial attack that earned Israel total air supremacy over its adversaries in the June 1967 war. Facing the combined Arab armies, most prominently those of Egypt, Syria, and Jordan, Israel’s Air Force was outnumbered by a ratio of 3 planes to 1. Nonetheless, at the very outset of the war, the IAF dispatched its jets at a time when Egyptian pilots were known to be having breakfast. Israeli pilots targeted the enemy’s warplanes on their runways, and in two subsequent waves of sorties, destroyed the remainder of the Egyptian Air Force, as well as Jordan’s and most of Syria’s. Within six hours, over 400 Arab planes, virtually all of the enemy’s aircraft, were in flames, with Israel losing only 19 planes. Israel’s sweeping military victory over the next six days was due to its intimate familiarity with its enemy’s operational routines—and to deception. For instance, just before the actual attack was launched, a squad of four Israeli training jets took off, with their radio signature mimicking the activity of multiple squadrons on a training run. Because all of Israel’s 190 planes were committed to the operation, those four planes were used to make the Egyptians believe that the IAF was simply training as usual. The IAF’s stunning success was the result not only of intelligence and piloting but also of initiative and creativity, ingredients that are nearly impossible to factor into standard predictive models. The 1981 raid on Iraq’s nuclear reactor at Osirak is another example of Israel’s ability to pull off operations that others think it can’t. The success caught experts by surprise because every assessment calculated that the target was out of the flight range of Israel’s newly arrived F-16s. The former deputy chief of mission at the U.S. embassy in Israel Bill Brown recounted that on the day after the attack, “I went in with our defense attaché, Air Force Colonel Pete Hoag, to get a briefing from the chief of Israeli military intelligence. He laid out how they had accomplished this mission. .  .  . Hoag kept zeroing in on whether they had refueled the strike aircraft en route, because headquarters of the U.S. Air Force in Washington wanted to know, among other things, how in the world the Israelis had refueled these F-16s. The chief of Israeli military intelligence kept saying: ‘We didn’t refuel.’ For several weeks headquarters USAF refused to believe that the Israelis could accomplish this mission without refueling.” Washington later learned that Israel’s success came from simple and creative field improvisations. First, the pilots topped off their fuel tanks on the tarmac, with burners running, only moments before takeoff. Then, en route, they jettisoned their nondetachable fuel drop tanks to reduce air friction and optimize gas usage. Both these innovations involved some degree of risk, as they contravened safety protocols. However, they gave the Israeli jets the extra mileage needed to safely reach Baghdad and return, and also to gain the element of surprise by extending their reach beyond what the tables and charts that guided thinking in Washington and elsewhere had assumed possible. Surprise won Israel a similar advantage one year later in the opening maneuvers of the 1982 invasion of Lebanon. For students of aerial warfare, the Beka’a Valley air battle is perhaps Israel’s greatest military maneuver, even surpassing the June 1967 campaign. On June 9, Israel destroyed the entire Soviet-built Syrian aerial array in a matter of hours. Ninety Syrian MiGs were downed and 17 of 19 surface-to-air missile batteries were put out of commission, while the Israeli Air Force suffered no losses. The brutal—and for Israel, still controversial—nature of the Lebanon war of which this operation was part dimmed its shine in popular history, but the operation is still studied around the world. At the time it left analysts dumbfounded. The 1982 air battle was the culmination of several years’ worth of tension on Israel’s northern border. Israel was concerned that Syria’s deployment of advanced aerial defense systems in Lebanon’s Beka’a Valley would limit its freedom to operate against PLO attacks from Lebanon. When Syria refused to pull back its defenses and U.S. mediation efforts failed, Israel planned for action. Although Israel was widely understood to enjoy a qualitative advantage, no one could have imagined the knockout blow it was about to deliver. Israel launched its aerial campaign on the fourth day of the offensive, commencing with a wave of unmanned proto-drones that served as decoys to trigger the Syrian radars. Rising to the bait, the aerial defense units launched rockets and thus exposed their locations to Israel’s artillery batteries and air-to-ground missiles. In parallel, Israel used advanced electronic jammers to further incapacitate Syrian radars, which cleared the path for the IAF’s fighter-bombers to attack the remaining missile launchers. When Syrian pilots scrambled for their planes, their communications had already been severed and their radars blinded. Israeli pilots later noted the “admirable bravery” of their Syrian counterparts, whom they downed at a ratio of 90 to 0. A RAND report later concluded that Israel’s success was due not to its technological advantage. “The Syrians were simply outflown and outfought by vastly superior Israeli opponents. .  .  . The outcome would most likely have been heavily weighted in Israel’s favor even had the equipment available to each side been reversed. At bottom, the Syrians were .  .  . [defeated] by the IDF’s constant retention of the operational initiative and its clear advantages in leadership, organization, tactical adroitness, and adaptability.” In other words, Israel won because of its creative and skillful orchestration of a well-organized fighting force. And then there is Israel’s most recent high-profile conflict with Syria. When Israeli intelligence discovered that Bashar al-Assad’s regime was building a plutonium reactor in the northeast Syrian Desert, Israeli and American leaders disagreed on the best course of action. Israel’s then-prime minister Ehud Olmert argued for a military solution, while the Bush administration feared the risks, demurred, and Secretary of State Condoleezza Rice pushed to take the matter to the U.N. The Israelis, however, confident in their cyberwarfare capabilities, knew they could disable Syria’s air defenses. Moreover, as careful students of Syrian decision-making, they believed they could destroy the reactor without triggering a costly reaction from Assad. And on September 6, 2007, Israel once again overturned the expert predictions and assessments of others and successfully destroyed the Syrian reactor at Al Kibar. With Iran, American and Israeli leaders once again disagree on what might be gained by a military strike. While the American debate is riddled with doubts about the efficacy of force, Israeli experts harbor far fewer doubts. As former chief of military intelligence Amos Yadlin asserts unequivocally: “It can be done.” There are some Israeli strategists less optimistic, but the nature of their dissent is fundamentally different from that of American skeptics. U.S. policymakers and analysts question Israel’s ability to strike, or how far even the most successful strike might set back Iran’s nuclear program, but Israelis largely believe they can take effective military action. The question for Israeli strategists is at what cost? A 2012 IAF impact evaluation report predicted 300 civilian casualties in the event of an Iranian retaliatory missile attack. Former defense minister Ehud Barak offered a higher number, contending that open conflict with Iran would claim less than 500 Israeli casualties. Responding to Barak’s relatively optimistic assessment, onetime Mossad director Meir Dagan argued instead that an attack on Iran would take a heavy toll in terms of loss of life and would paralyze life in Israel. Regardless of the number of potential casualties, the frank discussion of what an attack on Iran might cost Israel in human lives is an essential part of preparing the country, and steeling it, for the possibility of war. Israel has also devoted material resources to the eventuality of a military campaign against the regime in Tehran. According to Ehud Olmert, Israel has spent over $10 billion on preparations for a potential showdown with Iran. “We’ve worked long and hard to prepare ourselves,” former IDF chief of staff Gabi Ashkenazi said recently. Israel, he added, “will be able to deal with the consequences of a military attack on Iran.” The question of how exactly Israel might act to stop the Iranian nuclear program is an open one. In part, that’s because it’s hard to know how Israeli strategists see the problem or might reconfigure the working paradigm. The basic operational assumption is that Israel would attack from the air, but who knows? If the goal is to slow down Iran’s nuclear program, there are other ways to do it, perhaps by targeting Iran’s economy, its powergrid, its oil fields, or the regime itself. Or military action might not take the form of an aerial attack at all, but rather a commando heist of Iran’s uranium. Recall the raid on Entebbe: With commandos operating 2,000 miles from Israel’s borders disguised as a convoy carrying the Ugandan leader Idi Amin, that 1976 operation, like many of Israel’s air triumphs, combined strategic surprise with tactical deception. What is certain, however—what many historical precedents make clear—is that it would be an error of the first order to dismiss Israel’s ability to take meaningful military action against Iran. Israel has left its enemies, as well as American policymakers and military experts, surprised in the past, and it may very well do so again.

### at: fettweis

#### Fettweis wrong

Beede, 11 [BENJAMIN R. BEEDE Rutgers, The State University of New JerseyFettweis, Christopher J. 2008. Losing Hurts Twice as Bad: The Four States to Moving Beyond Iraq. New York, NY: W.W. Norton & Company. 270 pages. ISBN-13: 978-0393067613, $25.95 hardcover, p. internet]

Fettweis’ book might easily be dismissed as an intriguing analysis, but one that has been superseded by the advent of the Obama Administration, and the changes in direction that the Obama team has advocated and that it may implement. Fettweis made a number of assumptions that have now been invalidated, moreover, including a continuation of prosperity. Despite its flaws, however, the book is a provocative contribution to the literature that criticizes the forcefulness of the U.S. foreign and military policy. Fettweis states that his objective is to analyze the “likely consequences of disaster in Iraq” (16), but he really has two purposes. One is to explain to people in the United States how they can adjust to the loss of the Iraq war. The second is to persuade readers that the United States can safely reduce its activity in international affairs. Although the author’s discussion of Iraq must be addressed, this review emphasizes Fettweis’ contention that the United States can safely be less assertive in world affairs because the world is not as dangerous a place as often claimed, and his closely related point that the public needs to develop a more discriminating approach to assessing threats from abroad, thereby enabling it to hold its government to higher levels of competency and accountability. Fettweis’ book title comes from a remark by sports figure Sparky Anderson that “losing hurts twice as bad as winning feels good” (13). He believes that this observation is valid, and he comes back to those words repeatedly. To support his contention concerning the significance of Anderson’s statement, Fettweis borrows from the literature of psychology to explain how people experience losses, ranging from having relatives or friends taken from them by death to having their favorite sports teams lose games. In competitive situations, the harmful psychological effects of losing are said to be intensified significantly when one adversary or opponent was “supposed” to win because of its strength. The number of instances where large countries have lost to guerrilla movements demonstrates that perceptions of the military advantages that the seemingly stronger side enjoys may well be outweighed by other factors, however (see Arreguin-Toft 2005; Record 2007). Fettweis recommends a rapid withdrawal of the U.S. forces from Iraq. He believes that the Iraq war has “been the worst kind of defeat for the United States: an unnecessary one, in a war that should never have been fought” (16, emphasis in the original). Not only was the war a huge error, Iraq is in such bad OCTOBER BOOK REVIEWS | 865 shape that the United States cannot do much to assist its reconstruction. A long-term occupation might eliminate many problems in Iraq, but he doubts the United States will stay long enough to affect major changes in that country. Little harm will come from the withdrawal, despite predictions by many that there would be civil war in Iraq and a security breakdown in the entire region. Fettweis is not a specialist in Middle Eastern affairs, and his interest is in the effects the Iraq war is having and will have on the United States, not so much in the Iraq situation. Thus, his book is not comparable to studies like that by O’Leary (2009). There are at least two schools of thought about the Iraq war, but Fettweis ignores this division of opinion. One school, which includes Fettweis, criticizes the Bush Administration for having rashly invaded Iraq and for having failed to plan and execute the operation properly. Fettweis writes that “[w]e were led into the Iraq morass not by evil people lying on behalf of oil companies but by poor strategists with a shallow, naive understanding of international politics” (29). Another school of interpretation views the Iraq (and Afghanistan) commitments simply as steps in a campaign undertaken to give the United States a lasting hegemony in the world. From the Bush Administration’s perspective, Iraq might even be considered a success. The executive branch demonstrated once again that it can wage war with few checks on its actions, and gave the United States a greater presence in the Middle East. The Obama Administration has altered Bush’s course to some extent, but so far, there has not been a radical shift. Indeed, there has been and remains the possibility of a greater commitment in the region, especially into Pakistan. Iraq and the United States have agreed to the removal of coalition forces by 2011, but the continued violence in Iraq and the construction of substantial military bases suggest that a U.S. military presence might continue past 2011. In February 2009, Secretary of Defense Gates reiterated the Obama Administration’s commitment to 2011, but in late May 2009, the army chief of staff, George Casey, declared that his service branch, at least, is planning for U.S. forces to remain in Iraq for another decade. In any event, there is little prospect for a full disengagement from southwest Asia any time soon. Given one of the purposes of his book, it is hardly surprising that Fettweis focuses almost entirely on Iraq. He ignores Afghanistan, except for repeatedly citing the Soviet persistence in trying to hold that country as an example of a great power making the error of invading a small country in the face of deep nationalism in the latter. He might have been well advised to view the entire area of southwestern Asia. Ahmed Rashid (2008) has described the U.S. involvement in the region that has extended well beyond Iraq and Afghanistan, and that suffers from the same kinds of misjudgments made in Iraq and Afghanistan, especially an overreliance on military measures and a reluctance to commit substantial resources to economic development. Fettweis uses Iraq to argue for a strategy of restraint based on his sanguine view that “we [the United States and, indeed, the entire world] are living in a golden age” (31, emphasis in the original), and that “[g]reat power conflict today is all but unthinkable; therefore, calculations surrounding the dangers posed by a united Eurasia should change, since the threats it once posed no longer exist” (208). With the end of the Cold War, the ability of the enemies of the United States to harm this country is quite limited. Hostile acts can be perpetrated, but such attacks cannot overthrow the United States (31). This strategy is hardly new. Years ago, it was summarized in these words, “Instead of preserving obsolete Cold War alliances and embarking on an expensive and dangerous campaign for global stability, the United States should view the collapse of Soviet power as an opportunity to adopt a less interventionist policy” (Carpenter 1992, 167). Despite the optimistic picture painted by some national security theorists, the world does contain some dangerous elements. David E. Sanger (2009), for example, presents a chilling picture of nuclear weapons in very possibly unsteady hands. Much is said in the book concerning national “credibility,” that is, the ability of a country to maintain its prestige and its reputation for decisive action based on its past performance. Fettweis argues that many governmental leaders, academic commentators, and journalists have been obsessed with this element of national power and have wanted the United States to deal with virtually any political crisis that occurs (161-75). Fettweis states that “[f]or some reason, U.S. policymakers seem to be especially prone to overestimate the threats they face” (116). There is no explanation of why this should be the case,

nor is there any comparison with the propensity of leaders in other countries to make similar inaccurate projections. Numerous instances can be cited where governmental leaders and commentators have argued heatedly for “action” on the ground that “inaction” will damage the reputation of the United States. Early in the Carter Administration, for example, National Security Advisor Zbigniew Brzezinski dedicated himself for some time to instigating the dispatch of navy task force to the Horn of Africa during a period of tension between Ethiopia and Somalia. After failing to persuade the secretaries of state and defense that such action was necessary, Brzezinski waged a covert effort through the media to bring a decision in favor of his policy (Gardner 2008, 40-2). Two case histories cited in the book as examples of a disastrous insistence on maintaining credibility are the Spanish and British efforts to hold the Netherlands and the British colonies that became the United States, respectively. More recent instances that could have been cited are the controversies in the United States concerning the “loss” of China in the late 1940s and the establishment of a communist regime in Cuba in the late 1950s. Sensitivity concerning Cuba led in part to the intervention in the Dominican Republic in 1965, and other episodes where the United States committed itself to fighting insurgencies in Latin America. OCTOBER BOOK REVIEWS | 867 Concerns about the political impact of the “loss” of Vietnam played a significant role in decisions to support the Republic of Vietnam. These episodes are largely omitted, though. Fear is a potent political weapon, and foreign threats, whether real or imaginary, are highly useful within the domestic political arena. Claims of a “missile gap” helped John F. Kennedy win the presidency, for example. The armed services and the various intelligence agencies are rewarded because of fears of foreign threats. Although the armed forces may be cautious about entering a given conflict or making other violent moves, they are unlikely to stress the peaceful nature of the world if they want to retain their budgets and their prestige. Another element in strategy formulation in the United States has been its experience with long-term threats. White (1997) asserts that the long conflict with the Soviet Union fundamentally structured the discussion and resolution of public policy issues in the United States, and greatly strengthened the presidency at the expense of Congress and the political parties. Although his book was written before 9/11, his observation that political activists and the public have become accustomed to protracted battles with foreign enemies makes it easy to understand why they could readily accept a “long war” against terrorism. Somewhat along the same line, Sherry (1995) maintains that this country has been under emergency conditions from the Great Depression onward, perhaps even before, permeating the United States with “militarism” in its broadest sense. Going back even further, some writers have argued that United States’ assertiveness may be traced to the late nineteenth and especially the early twentieth century. Lears (2009) points critically to Theodore Roosevelt as a key player in this development, and Ninkovich (1999) offers a more favorable view of the “crisis internationalism” of Woodrow Wilson. Fettweis touches on this history, but he underestimates the extent to which the United States has been conditioned to react vigorously to a range of foreign policy issues, and overestimates the differences in foreign and military policy brought about by changes from one administration to another. Given this conditioning, changing the mind-sets of both elites and the public may be an extremely difficult task. To a degree, Fettweis’ arguments resemble those of the “American empire” theorists, such as Bacevich (2008), Johnson (2006), and Gardner and Young (2005). Critics of the “American empire” believe that the United States produces much of the unrest and the tension in the world through its unilateral actions and its emphasis on military power. Fettweis does not go that far, but his advocacy of “strategic restraint” is certainly compatible with such views. He agrees that the United States’ involvements—especially military commitments—abroad may unsettle conditions in countries as much as they may stabilize them, but his purpose is primarily to reassure the people of the United States that less assertive activity by their country will not result in world chaos. Thus he does not have much to say about the motivations of elite figures 868 | POLITICS & POLICY / October 2011 who advocate an active foreign policy. His argument seems to be that the United States is vastly overextended in its commitments as a result of a number of individual mistakes stemming from an overconcern with credibility rather than a flawed strategy. Despite his disclaimers, Fettweis’ words sometimes resemble the arguments of pre-World War II isolationists. Indeed, throughout the book, the word “internationalists,” which properly describes those concerned with international cooperation, is used to refer to those who should be termed “interventionists,” whether their motivations are power political, economic, or humanitarian, or a mixture of the three. Fettweis believes that there was little that the United States could have done to prevent the outbreak of World War II in Europe, moreover. On the contrary, firmer U.S. support of France and Great Britain might have encouraged those countries to force Germany to evacuate the newly reoccupied Rhineland and to render it much more cautious in its later actions. After he successfully implemented his plan to put troops into the Rhineland in 1936, Hitler told his confidants that a French demand for a withdrawal would have been successful owing to Germany’s military weakness. Fettweis even praises the United States because it “had the wisdom to remain neutral for more than two years” and thus “escaped the worst of the suffering” (206). This is surely wrong. An earlier involvement in the war would doubtless have reduced U.S. casualties and other costs because invasions of Europe would have been unnecessary if the French and British had held at least part of the continent, and because Germany might not have developed a cushion of occupied territories to protect it from land attacks and from air assaults for a time. Whether a public educated by books like this one would be able to make suitable threat assessments, and thereby be better able to exercise control over governmental actions abroad is another question. Fettweis’ work may be quite persuasive because he expresses his views clearly and avoids highly charged language. However, if elites agree about dangers from abroad, then popular opinion may have little effect on policy making and policy implementation. Fettweis’ thinking is significantly flawed by his assumption that “politics is, and always will be, the enemy of strategy,” and reiterates his point (26, 157). Fettweis adds that “it would be naive to suggest that it is possible to keep politics completely separate from strategy, nor would it be fully desirable to do so in a democracy” (26-7), but “for the sake of this book, we will attempt to clarify the national interest by keeping the two realms separate, to the extent possible” (27). Determining national strategy is necessarily a highly political act, and it cannot be established without considering the demands of major internal stakeholders. What he terms “politics” may often be differing opinions based on different data or interpretations of the same data. Political survival is critical for a political leader, and such leaders can understandably be hesitant in exercising restraint if they believe their opponents will attack them, perhaps decisively, for being “soft” on the enemies of the day. Fettweis is fond of the term “realist” to OCTOBER BOOK REVIEWS | 869 refer to some defense and foreign policy analysts, but describing someone as a “realist” may simply mean that the person agrees with the views of the individual applying that description. In certain instances, “realism” can mean being restrained, and, in other instances, being highly assertive. Appropriate policy decisions are likely to be made on the basis of accurate intelligence and careful assessments rather than adherence to a general outlook.

## case

### norms ev from other adv

#### No one cites the US for anything---there are too many other countries to look to---\*but the SQ solves their impacts because other countries reject excessive Presidentialism now

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

Unsurprisingly, attempting to gauge one constitution’s “influence” on another involves various conceptual and methodological challenges. To illustrate, a highly generic constitution may be generic because others have followed its lead, because it has modeled others, or simply by coincidence. That said, if two constitutions are becoming increasingly dissimilar, by definition, one cannot be following the other. That is, neither is exerting influence on the other (at least not in a positive way).

This is the phenomenon we observed in comparing the U.S. Constitution to the rest of the world; based on the rights index, the U.S. has become less similar to the world since 1946 and, with a current index of 0.30, is less similar now than at any point during the studied period. This phenomenon has occurred even among current American allies; among countries in regions with close cultural and historic ties to the U.S. (namely, Latin America and Western Europe); and among democracies. Only among common law countries is constitutional similarity higher than it was after World War II, but even that similarity has decreased since the 1960s.

Rights provisions are not the only constitutional elements that have lost favor with the rest of the world; structural provisions pioneered by American constitutionalism—such as federalism, presidentialism, and judicial review—have also been losing their global appeal.

For instance, in the early 20th century, 22 percent of constitutions provided for federalistic systems, while today, just 12 percent do.

A similar trend has occurred for presidentialism, another American innovation. Since the end of World War II, the percentage of countries employing purely presidential systems has declined, mainly in favor of mixed systems, which were a favorite of former Soviet bloc countries.

Finally, though judicial review is not mentioned in the U.S. Constitution, it has proved the most popular American structural innovation. But though the popularity of judicial review in general has exploded over the past six decades, most countries have opted for the European style of review (which designates a single, constitutional court which alone has the power to nullify laws inconsistent with the constitution) over the American model (in which all courts are empowered to strike unconstitutional laws). In 1946, over 80 percent of countries exercised American-style constitutional review; today, fewer than half do.

Reasons for the Decline

It appears that several factors are driving the U.S. Constitution’s increasing atypicality. First, while in 2006 the average national constitutions contained 34 rights (of the 60 we identify), the U.S. Constitution contains relatively few—just 21—and the rights it does contain are often themselves atypical.

Just one-third of constitutions provide for church and state separation, as does the U.S. Establishment Clause, and only 2 percent of constitutions (including, e.g., Mexico and Guatemala) contain a “right to bear arms.” Conversely, the U.S. Constitution omits some of the most globally popular rights, such as women’s rights, the right to social security, the right to food, and the right to health care.

These peculiarities, together with the fact that the U.S. Constitution is both old and particularly hard to amend, have led some to characterize the Constitution as simply antiquated or obsolete.

#### Modeling fails – constitutions must be endogenous

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

As I describe above, our article conceptualizes a “generic constitution”—that is, one that contains the 25 most popular global constitution rights elements—but we do not suggest that a “generic” constitution is an “ideal” constitution or that it otherwise should serve as a model for the United States or other countries. To the contrary, I tend to resist the notion that constitutional design based on a standardized template is generally desirable. Rather, I adhere to the view that constitutions should be written with popular input and tailored to the needs, traditions, values, and interests of the society they govern. There is no “one-size-fits-all” constitution.

Indeed, history and the literature have documented the adverse effects of foreign values being inserted into a citizenry that is unprepared to accept them. As an example, most former British colonies in Africa and the Caribbean received the exact same bill of rights upon independence, rights which were taken from the European Convention on Human Rights. In most cases, these bills of rights, oblivious to the deep ethnic tensions and persistent poverty, became a grand failure.

### terrorism d

#### No retaliation—definitely no escalation

**Mueller 5** (John, Professor of Political Science – Ohio State University, Reactions and Overreactions to Terrorism, http://polisci.osu.edu/faculty/jmueller/NB.PDF)

However, history clearly demonstrates that overreaction is not necessarily inevitable. Sometimes, in fact, leaders have been able to restrain their instinct to overreact. Even more important, **restrained reaction--or even capitulation to terrorist acts--has often proved to be entirely acceptable politically**. That is, there are many instances where leaders did nothing after a terrorist attack (or at least refrained from overreacting) and did not suffer politically or otherwise. Similarly, after an unacceptable loss of American lives in Somalia in 1993, Bill Clinton responded by withdrawing the troops without noticeable negative impact on his 1996 re-election bid. Although Clinton responded with (apparently counterproductive) military retaliations after the two U.S. embassies were bombed in Africa in 1998 as discussed earlier, his administration did not have a notable response to terrorist attacks on American targets in Saudi Arabia (Khobar Towers) in 1996 or to the bombing of the U.S.S. Cole in 2000, and these non-responses never caused it political pain. George W. Bush's response to the anthrax attacks of 2001 did include, as noted above, a costly and wasteful stocking-up of anthrax vaccine and enormous extra spending by the U.S. Post Office. However, beyond that, it was the same as Clinton's had been to the terrorist attacks against the World Trade Center in 1993 and in Oklahoma City in 1995 and the same as the one applied in Spain when terrorist bombed trains there in 2004 or in Britain after attacks in 2005: the dedicated application of police work to try to apprehend the perpetrators. This approach was politically acceptable even though the culprit in the anthrax case (unlike the other ones) has yet to be found. The demands for retaliation may be somewhat more problematic in the case of suicide terrorists since the direct perpetrators of the terrorist act are already dead, thus sometimes impelling a vengeful need to seek out other targets. Nonetheless, the attacks in Lebanon, Saudi Arabia, Great Britain, and against the Cole were all suicidal, yet no direct retaliatory action was taken. **Thus, despite short-term demands that some sort of action must be taken**, experience suggests politicians can often successfully ride out this demand after the obligatory (and inexpensive) expressions of outrage are prominently issued.

#### No risk of nuclear terrorism---too many obstacles

John J. Mearsheimer 14, R. Wendell Harrison Distinguished Service Professor of Political Science at the University of Chicago, “America Unhinged”, January 2, nationalinterest.org/article/america-unhinged-9639?page=show

Am I overlooking the obvious threat that strikes fear into the hearts of so many Americans, which is terrorism? Not at all. Sure, the United States has a terrorism problem. But it is a minor threat. There is no question we fell victim to a spectacular attack on September 11, but it did not cripple the United States in any meaningful way and another attack of that magnitude is highly unlikely in the foreseeable future. Indeed, there has not been a single instance over the past twelve years of a terrorist organization exploding a primitive bomb on American soil, much less striking a major blow. Terrorism—most of it arising from domestic groups—was a much bigger problem in the United States during the 1970s than it has been since the Twin Towers were toppled.¶ What about the possibility that a terrorist group might obtain a nuclear weapon? Such an occurrence would be a game changer, but the chances of that happening are virtually nil. No nuclear-armed state is going to supply terrorists with a nuclear weapon because it would have no control over how the recipients might use that weapon. Political turmoil in a nuclear-armed state could in theory allow terrorists to grab a loose nuclear weapon, but the United States already has detailed plans to deal with that highly unlikely contingency.¶ Terrorists might also try to acquire fissile material and build their own bomb. But that scenario is extremely unlikely as well: there are significant obstacles to getting enough material and even bigger obstacles to building a bomb and then delivering it. More generally, virtually every country has a profound interest in making sure no terrorist group acquires a nuclear weapon, because they cannot be sure they will not be the target of a nuclear attack, either by the terrorists or another country the terrorists strike. Nuclear terrorism, in short, is not a serious threat. And to the extent that we should worry about it, the main remedy is to encourage and help other states to place nuclear materials in highly secure custody.

#### Russia will be cautious because they know we don’t plan on randomly nuking them

**Karas 1** (Thomas H., Advanced Concepts Group for Sandia National Laboratories, prepared for the DOE, "De-alerting and De-activating Strategic Nuclear Weapons")

Nevertheless, interpretation of warning information will take place in the context of information about the general state of relations between the potential adversaries. If there is no reason to think that a state of conflict exists, decision-makers are more likely to question false alarms and delay a response until the situation can be sorted out. On January 25, 1995, a scientific rocket probe launched from Norway appeared on Russian radar screens. Within minutes, President Yeltsin was alerted that this might be a U.S. submarine-launched missile (no one having been told that the Norwegians had notified Russian authorities of the launch plan weeks earlier). A few minutes later the Russian military determined that the rocket posed no threat. We do not know how close the Russians came to erroneously concluding that the rocket was a missile, or whether President Yeltsin would have ordered a counterattack based solely on the warning that a single missile was coming. Nevertheless, **given the extreme improbability of a “bolt-from-the-blue” U.S. attack, a rapid nuclear response seems unlikely**.

#### Retaliation won’t cause global war

**Schuyler 2007** (Dave, “Restating the U.S. Policy of Nuclear Deterrence,” Last Mod Nov 13)

A recent post on nuclear deterrence on American Future drew several comments on another blog. The blogger at American Future, Marc Schulman, outlines the responses in this post. In summary the responses were that a nuclear response to a nuclear terrorist attack was itself terrorism, a nuclear retaliation would inevitably draw other state actors to escalate the exchange, a nuclear retaliation would be collective punishment, and attacking Muslim holy sites would be counterproductive. I agree with this last point but I want to deal with each of the other points in some detail. \* A nuclear response to a nuclear terrorist attack is terrorism.There’s no generally accepted definition of terrorism so before tackling this point I’ll propose one. Ignoring the issue of state actors vs. non-state actors I think that a terrorist attack is an attack on civilians or civilian assets whose purpose is to provoke terror. It has no other tactical or strategic significance. Any nuclear response by the United States would be against military or governmental facilities, sites involved in military production, or command and control. The objective would be to eliminate the possibility of future attacks or the support for those who would engage in future attacks. That such a response would inevitably result in massive civilian casualties is sad. But such a response would not, by definition, be terrorism \* A nuclear retaliation Iran in response to a terrorist nuclear attack would inevitably draw France, Russia, and China to enter the conflict.To believe this you must believe that France, Russia, and China will act irrationally. There is absolutely no reason to believe that this is the case. All three nations know that their intervention against the U. S. would result in total annihilation. There are other issues as well and let’s examine the two distinct cases: Russia on the one hand and France and China on the other. As a major non-Gulf producer of oil Russia would be in a position to benefit enormously in case of a disruption of Gulf oil production or shipment. That being the case they would publicly deplore a retaliation against Iran but privately rejoice. Both France and China are in an extremely delicate position. A nuclear response by either would result in total annihilation and, equally importantly, wouldn’t keep the oil flowing. Lack of a blue water navy means that both nations are completely at the mercy of the United States’s (or more specifically the U. S. Navy’s) willingness to keep shipments of oil moving out of the Gulf. China is particularly vulnerable since it has only about two weeks’ worth of strategic oil reserves. Neither France nor China has any real ability to project military force other than nuclear force beyond their borders. They’d be upset. But they’re in no position to do anything about it.

### china d

#### Interdependence checks

**Perry and Scowcroft 9** William (Michael and Barbara Berberian professor at Stanford University.) and Brent (resident trustee of the Forum for International Policy.) “US Nuclear Weapons Policy.” 2009. Council on Foreign Relations. Online.

Economic interdependence provides an incentive to avoid military conflict and nuclear confrontation. Although the United States has expressed concern about the growing trade deficit with China, the economies of the two countries have become increasingly intertwined and interdependent. U.S. consumers have bought massive quantities of cheap Chinese goods, and Beijing has lent huge amounts of money to the United States. Similarly, Taiwan and the mainland are increasingly bound in a reciprocal economic relationship. These economic relation- ships should reduce the probability of a confrontation between China and Taiwan, and keep the United States and China from approaching the nuclear brink, were such a confrontation to occur. On other nuclear issues, China and the United States have generally supported each other, as they did in the six-party talks to dismantle North Korea’s nuclear weapons programs. Here, the supportive Beijing-Washington relationship points toward potentially promising dialogues on larger strategic issues.

#### No China war

Robert J. **Art**, Fall **2010** Christian A. Herter Professor of International Relations at Brandeis University and Director of MIT's Seminar XXI Program The United States and the rise of China: implications for the long haul Political Science Quarterly 125.3 (Fall 2010): p359(33)

The workings of these three factors should make us cautiously optimistic about keeping Sino-American relations on the peaceful rather than the warlike track. The peaceful track does not, by any means, imply the absence of political and economic conflicts in Sino-American relations, nor does it foreclose coercive diplomatic gambits by each against the other. What it does mean is that the conditions are in place for war to be a low-probability event, if policymakers are smart in both states (see below), and that an **all-out war is** nearly **impossible** to imagine. By the historical standards of recent dominant-rising state dyads, this is no mean feat. In sum, there will be some security dilemma dynamics at work in the U.S.-China relationship, both over Taiwan and over maritime supremacy in East Asia, should China decide eventually to contest America's maritime hegemony, and there will certainly be political and military conflicts, but nuclear weapons should work to mute their severity because the security of **each state's homeland will never be in doubt** as long as each maintains a second-strike capability vis-a-vis the other. If two states cannot conquer one another, then the character of their relation and their competition **changes dramatically**. These three benchmarks--China's ambitions will grow as its power grows; the United States cannot successfully wage economic warfare against a China that pursues a smart reassurance (peaceful rise) strategy; and Sino-American relations are not doomed to follow recent past rising-dominant power dyads--are the starting points from which to analyze America's interests in East Asia. I now turn to these interests.

#### Won’t go nuclear

**Moore 6** (Scott; Research Assistant – East Asia Nonproliferation Program – James Martin Center for Nonproliferation Studies – Monterey Institute of International Studies, “Nuclear Conflict in the 21st Century: Reviewing the Chinese Nuclear Threat,” 10/18, http://www.nti.org/e\_research/e3\_80.html)

Despite the tumult, there is broad consensus among experts that the concerns generated in this discussion are exaggerated. The size of the Chinese nuclear arsenal is small, estimated at around 200 warheads;[3] Jeffrey Lewis, a prominent arms control expert, claims that 80 is a realistic number of deployed warheads.[4] In contrast, the United States has upwards of 10,000 warheads, some 5,700 of which are operationally deployed.[5]

Even with projected improvements and the introduction of a new long-range Intercontinental Ballistic Missile, the DF-31A China's nuclear posture is likely to remain one of "minimum deterrence."[6] Similarly, despite concern to the contrary, there is every indication that China is extremely unlikely to abandon its No First Use (NFU) pledge.[7] The Chinese government has continued to deny any change to the NFU policy, a claim substantiated by many Chinese academic observers.[8] In sum, then, fears over China's current nuclear posture seem somewhat exaggerated.

This document, therefore, does not attempt to discuss whether China's nuclear posture poses a probable, general threat to the United States; most signs indicate that even in the longer term, it does not. Rather, it seeks to analyze the most likely scenarios for nuclear conflict. Two such possible scenarios are identified in particular: a declaration of independence by Taiwan that is supported by the United States, and the acquisition by Japan of a nuclear weapons capability.

Use of nuclear weapons by China would require a dramatic policy reversal within the policymaking apparatus, and it is with an analysis of this potential that this brief begins. Such a reversal would also likely require crises as catalysts, and it is to such scenarios, involving Taiwan and Japan, that this brief progresses. It closes with a discussion of the future of Sino-American nuclear relations.

### nsa alt cause

#### Alt cause—NSA

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

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

### europe cooperates

**They need us more than we need them**

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

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

# by speech

## 1nc off case

### 1nc topicality

#### Restriction on authority must limit presidential discretion

**Lobel, 8** - Professor of Law, University of Pittsburgh Law School (Jules, “Conflicts Between the Commander in Chief and Congress: Concurrent Power over the Conduct of War” 392 OHIO STATE LAW JOURNAL [Vol. 69:391, <http://moritzlaw.osu.edu/students/groups/oslj/files/2012/04/69.3.lobel_.pdf>)

So  too, the congressional power to declare or authorize war has been long held to permit Congress to authorize and wage a limited war—“limited in place, in objects, and in time.” 63 When Congress places such restrictions on the President’s authority to wage war, it limits the President’s discretion to conduct battlefield operations. For example, Congress authorized President George H. W. Bush to attack Iraq in response to Iraq’s 1990 invasion of Kuwait, but it confined the President’s authority to the use of U.S. armed forces pursuant to U.N. Security Council resolutions directed to force Iraqi troops to leave Kuwait. That restriction would not have permitted the President to march into Baghdad after the Iraqi army had been decisively ejected from Kuwait, a limitation recognized by President Bush himself.64

#### They don’t – president still gets to decide, the plan’s an after-the-fact correction based on the private right of action

#### Voting issue –

#### 1) Ground – all DAs and CPs like ESR, flexibility, and politics compete based off restrictions on the presidential decision-making process – skews the topic in favor of the aff.

#### 2) Limits – the plan amounts to deterrence of prez powers, not statutory limitations – that’s opens a floodgate of affs that just dissuade presidential expansion of power

### 1NC Iran DA

#### Obama’s investing all PC to block sanctions – he’s winning and has momentum

**Benen, 1/17/14** – American political writer and blogger, an MSNBC contributor, and a producer for The Rachel Maddow Show (Steve, “Support for new Iran sanctions wanes”

<http://www.msnbc.com/rachel-maddow-show/support-new-iran-sanctions-wanes>)

A week ago, it was practically a foregone conclusion that such a bill would pass the House and Senate; the question is whether President Obama’s veto could be overridden. Just of the last few days, however, the odds of such a bill even reaching the president’s desk have dropped unexpectedly.

The Hill, for example, reported yesterday that House Republicans “are moving away from a proposal to adopt new Iran sanctions.” House Democrats who were otherwise sympathetic to the idea became “irked” by GOP political tactics “and the idea appears to have been at least temporarily shelved.”

In the Senate, meanwhile, BuzzFeed reports that Sen. Bob Corker (R-Tenn.), a co-sponsor of the legislation, has “proposed the idea of scheduling a vote on Iran sanctions six months from now, after the interim nuclear agreement has run its course, instead of voting on sanctions right now.”

In other words, lawmakers could at least wait to see if the talks bear fruit before sabotaging them in advance. Corker’s idea isn’t ideal – it would reportedly lock in the Senate for a vote on July 21, exactly six months after the current deal is implemented, regardless of the status of the diplomacy – but in the larger context it suggests even sanctions supporters are starting to see value in waiting.

Indeed, an unnamed senator who supports the sanctions bill told Greg Sargent this week that opponents have the momentum. The senator added, “At the moment, there’s no rush to put the bill on the floor. I’m not aware of any deadline in anyone’s head.”

Keep in mind, the sanctions legislation was introduced in the Senate on Dec. 19 with a bipartisan group of 26 sponsors. Over the course of just three weeks, that total more than doubled to 59 sponsors. But the last addition was eight days ago – and no other senators have signed on since.

What changed the direction of the debate? To be sure, White House pressure has made a difference, reinforced by President Obama’s direct lobbying to Democratic senators this week. I also talked to a Senate staffer yesterday who said public pressure has also increased, with more voters contacting the Hill with phone calls and emails, voicing opposition to the bill.

#### It’s a war powers fight that Obama wins – but failure greenlights Israel strikes

**Merry, 1/1/14** - Robert W. Merry, political editor of the National Interest, is the author of books on American history and foreign policy (Robert, “Obama may buck the Israel lobby on Iran” Washington Times, factiva)

Presidential press secretary Jay Carney uttered 10 words the other day that represent a major presidential challenge to the American Israel lobby and its friends on Capitol Hill. Referring to Senate legislation designed to force President Obama to expand economic sanctions on Iran under conditions the president opposes, Mr. Carney said: “If it were to pass, the president would veto it.”

For years, there has been an assumption in Washington that you can’t buck the powerful Israel lobby, particularly the American Israel Public Affairs Committee, or AIPAC, whose positions are nearly identical with the stated aims of Israeli Prime Minister Benjamin Netanyahu. Mr. Netanyahu doesn’t like Mr. Obama’s recent overture to Iran, and neither does AIPAC. The result is the Senate legislation, which is similar to a measure already passed by the House.

With the veto threat, Mr. Obama has announced that he is prepared to buck the Israel lobby — and may even welcome the opportunity. It isn’t fair to suggest that everyone who thinks Mr. Obama’s overtures to Iran are ill-conceived or counterproductive is simply following the Israeli lobby’s talking points, but Israel’s supporters in this country are a major reason for the viability of the sanctions legislation the president is threatening to veto.

It is nearly impossible to avoid the conclusion that the Senate legislation is designed to sabotage Mr. Obama’s delicate negotiations with Iran (with the involvement also of the five permanent members of the U.N. Security Council and Germany) over Iran’s nuclear program. The aim is to get Iran to forswear any acquisition of nuclear weapons in exchange for the reduction or elimination of current sanctions. Iran insists it has a right to enrich uranium at very small amounts, for peaceful purposes, and Mr. Obama seems willing to accept that Iranian position in the interest of a comprehensive agreement.

However, the Senate measure, sponsored by Sens. Robert Menendez, New Jersey Democrat; Charles E. Schumer, New York Democrat; and Mark Kirk, Illinois Republican, would impose potent new sanctions if the final agreement accords Iran the right of peaceful enrichment. That probably would destroy Mr. Obama’s ability to reach an agreement. Iranian President Hasan Rouhani already is under pressure from his country’s hard-liners to abandon his own willingness to seek a deal. The Menendez-Schumer-Kirk measure would undercut him and put the hard-liners back in control.

Further, the legislation contains language that would commit the United States to military action on behalf of Israel if Israel initiates action against Iran. This language is cleverly worded, suggesting U.S. action should be triggered only if Israel acted in its “legitimate self-defense” and acknowledging “the law of the United States and the constitutional responsibility of Congress to authorize the use of military force,” but the language is stunning in its brazenness and represents, in the view of Andrew Sullivan, the prominent blogger, “an appalling new low in the Israeli government’s grip on the U.S. Congress.”

While noting the language would seem to be nonbinding, Mr. Sullivan adds that “it’s basically endorsing the principle of handing over American foreign policy on a matter as grave as war and peace to a foreign government, acting against international law, thousands of miles away.”

That brings us back to Mr. Obama’s veto threat. The American people have made clear through polls and abundant expression (especially during Mr. Obama’s flirtation earlier this year with military action against Bashar Assad’s Syrian regime) that they are sick and weary of American military adventures in the Middle East. They don’t think the Iraq and Afghanistan wars have been worth the price, and they don’t want their country to engage in any other such wars.

That’s what the brewing confrontation between Mr. Obama and the Israel lobby comes down to — war and peace. Mr. Obama’s delicate negotiations with Iran, whatever their outcome, are designed to avert another U.S. war in the Middle East. The Menendez-Schumer-Kirk initiative is designed to kill that effort and cedes to Israel America’s war-making decision in matters involving Iran, which further increases the prospects for war. It’s not even an argument about whether the United States should come to Israel’s aid if our ally is under attack, but whether the decision to do so and when that might be necessary should be made in Jerusalem or Washington.

2014 will mark the 100th anniversary of beginning of World War I, a conflict triggered by entangling alliances that essentially gave the rulers of the Hapsburg Empire power that forced nation after nation into a war they didn’t want and cost the world as many as 20 million lives. Historians have warned since of the danger of nations delegating the power to take their people into war to other nations with very different interests.

AIPAC’s political power is substantial, but this is Washington power, the product of substantial campaign contributions and threats posed to re-election prospects. According to the Center for Responsive Politics’ Open Secrets website, Sens. Kirk, Menendez and Schumer each receives hundreds of thousands of dollars a year in pro-Israel PAC money and each of their states includes concentrations of pro-Israel voters who help elect and re-elect them.

Elsewhere in the country, AIPAC’s Washington power will collide with the country’s clear and powerful political sentiment against further U.S. adventurism in the Middle East, particularly one as fraught with as much danger and unintended consequence as a war with Iran. If the issue gets joined, as it appears that it will, Mr. Obama will see that it gets joined as a matter of war and peace. If the Menendez-Schumer-Kirk legislation clears Congress and faces a presidential veto, the war-and-peace issue could galvanize the American people as seldom before.

If that happens, the strongly held opinions of a democratic public are liable to overwhelm the mechanisms of Washington power, and the vaunted influence of the Israel lobby may be seen as being not quite what it has been cracked up to be.

#### Plan destroys Obama

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

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

#### Courts link

Mirengoff 10 [Paul E. Mirengoff, JD Stanford, Attorney in DC, http://webcache.googleusercontent.com/search?q=cache:aNOGdaFrKhYJ:www.fed-soc.org/debates/dbtid.41/default.asp+obama+minimalism+blame+court+confirmation&cd=1&hl=en&ct=clnk&gl=us&client=firefox-a, 6-23-10]

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

#### That means veto override

**Kampeas, 1/24/14** – Washington, D.C. bureau chief of the Jewish Telegraphic Agency (Ron, Heritage Florida Jewish News, “Iran sanctions have majority backing in Senate, but not enough to override veto”

<http://www.heritagefl.com/story/2014/01/24/news/iran-sanctions-have-majority-backing-in-senate-but-not-enough-to-override-veto/2115.html>

WASHINGTON (JTA)—More than half the United States Senate has signed on to a bill that would intensify sanctions against Iran. But in a sign of the so-far successful effort by the White House to keep the bill from reaching a veto-busting 67 supporters, only 16 Democrats are on board.

The number of senators cosponsoring the bill, introduced by Sens. Mark Kirk (R-Ill.) and Robert Menendez (D-N.J.), reached 58 this week, up from just 33 before the Christmas holiday break.

Notably only one of the 25 who signed up in recent days—Sen. Michael Bennet (D-Colo.)—is a Democrat, a sign of intense White House lobbying among Democrats to oppose the bill.

Backers of the bill say it would strengthen the U.S. hand at the negotiations. But President Obama has said he would veto the bill because it could upend talks now underway between the major powers and Iran aimed at keeping the Islamic Republic from obtaining a nuclear bomb. A similar bill passed this summer by the U.S. House of Representatives had a veto-proof majority.

On Thursday, the White House said backers of the bill should be upfront about the fact that it puts the United States on the path to war.

“If certain members of Congress want the United States to take military action, they should be up front with the American public and say so,” Bernadette Meehan, the National Security Council spokeswoman, said in a statement posted by The Huffington Post. “Otherwise, it’s not clear why any member of Congress would support a bill that possibly closes the door on diplomacy and makes it more likely that the United States will have to choose between military options or allowing Iran’s nuclear program to proceed.”

A number of pro-Israel groups, led by the American Israel Public Affairs Committee, are leading a full-court press for the bill’s passage, with prominent Jewish leaders in a number of states making calls and writing letters to holdouts. Dovish Jewish groups such as J Street and Americans for Peace Now oppose the bill.

#### Tanks Geneva and causes Israel strikes

**Leubsdorf, 1/22/14 –** former Washington Bureau chief of The Dallas Morning News (Carl, Dallas Morning News, “Hard-liners’ mischief-making threatens Iran nuke talks” <http://www.dallasnews.com/opinion/columnists/carl-p-leubsdorf/20140122-carl-leubsdorf-hard-liners-mischief-making-threatens-iran-nuke-talks.ece>)

The measure’s most dangerous provision, according to various published reports, reads as follows:

“If the government of Israel is compelled to take military action in legitimate self-defense against Iran’s nuclear weapon program, the United States should stand with Israel and provide in accordance with the law of the United States and the constitutional responsibility of Congress to authorize the use of military force, diplomatic and economic support to the Government of Israel in the defense of its territory, people and existence.”

While not requiring U.S. action, critics note the language suggests the mere existence of an Iranian “nuclear weapon program” would be sufficient to compel Israel to attack “in legitimate self-defense.” And it says the U.S. “should” provide such an Israeli attack with “military, diplomatic and economic support” according to U.S. laws and congressional constitutional responsibility.

In effect, that could enable the hard-liners who control the Israeli government to kill the talks or try to drag the United States into a war against Iran if they decide that Iranian compliance with the current agreement is insufficient to protect Israel.

The measure would also enable Congress to kill any agreement the West reaches with Iran by overriding Obama’s decision to waive existing sanctions.

#### Global war

**Reuveny, 10** – professor in the School of Public and Environmental Affairs at Indiana University (Rafael, “Unilateral strike could trigger World War III, global depression” Gazette Xtra, 8/7, - See more at: <http://gazettextra.com/news/2010/aug/07/con-unilateral-strike-could-trigger-world-war-iii-/#sthash.ec4zqu8o.dpuf>)

A unilateral Israeli strike on Iran’s nuclear facilities would likely have dire consequences, including a regional war, global economic collapse and a major power clash.

For an Israeli campaign to succeed, it must be quick and decisive. This requires an attack that would be so overwhelming that Iran would not dare to respond in full force.

Such an outcome is extremely unlikely since the locations of some of Iran’s nuclear facilities are not fully known and known facilities are buried deep underground.

All of these widely spread facilities are shielded by elaborate air defense systems constructed not only by the Iranians but also the Chinese and, likely, the Russians as well.

By now, Iran has also built redundant command and control systems and nuclear facilities, developed early warning systems, acquired ballistic and cruise missiles and upgraded and enlarged its armed forces.

Because Iran is well-prepared, a single, conventional Israeli strike—or even numerous strikes—could not destroy all of its capabilities, giving Iran time to respond.

Unlike Iraq, whose nuclear program Israel destroyed in 1981, Iran has a second-strike capability comprised of a coalition of Iranian, Syrian, Lebanese, Hezbollah, Hamas, and, perhaps, Turkish forces. Internal pressure might compel Jordan, Egypt and the Palestinian Authority to join the assault, turning a bad situation into a regional war.

During the 1973 Arab-Israeli War, at the apex of its power, Israel was saved from defeat by President Nixon’s shipment of weapons and planes. Today, Israel’s numerical inferiority is greater, and it faces more determined and better-equipped opponents. After years of futilely fighting Palestinian irregular armies, Israel has lost some of its perceived superiority—bolstering its enemies’ resolve.

Despite Israel’s touted defense systems, Iranian coalition missiles, armed forces, and terrorist attacks would likely wreak havoc on its enemy, leading to a prolonged tit-for-tat.

In the absence of massive U.S. assistance, Israel’s military resources may quickly dwindle, forcing it to use its alleged nuclear weapons, as it had reportedly almost done in 1973.

An Israeli nuclear attack would likely destroy most of Iran’s capabilities, but a crippled Iran and its coalition could still attack neighboring oil facilities, unleash global terrorism, plant mines in the Persian Gulf and impair maritime trade in the Mediterranean, Red Sea and Indian Ocean.

Middle Eastern oil shipments would likely slow to a trickle as production declines due to the war and insurance companies decide to drop their risky Middle Eastern clients. Iran and Venezuela would likely stop selling oil to the United States and Europe.

From there, things could deteriorate as they did in the 1930s. The world economy would head into a tailspin; international acrimony would rise; and Iraqi and Afghani citizens might fully turn on the United States, immediately requiring the deployment of more American troops.

Russia, China, Venezuela, and maybe Brazil and Turkey—all of which essentially support Iran—could be tempted to form an alliance and openly challenge the U.S. hegemony.

Russia and China might rearm their injured Iranian protege overnight, just as Nixon rearmed Israel, and threaten to intervene, just as the U.S.S.R. threatened to join Egypt and Syria in 1973. President Obama’s response would likely put U.S. forces on nuclear alert, replaying Nixon’s nightmarish scenario.

Iran may well feel duty-bound to respond to a unilateral attack by its Israeli archenemy, but it knows that it could not take on the United States head-to-head. In contrast, if the United States leads the attack, Iran’s response would likely be muted.

If Iran chooses to absorb an American-led strike, its allies would likely protest and send weapons but would probably not risk using force.

While no one has a crystal ball, leaders should be risk-averse when choosing war as a foreign policy tool. If attacking Iran is deemed necessary, Israel must wait for an American green light. A unilateral Israeli strike could ultimately spark World War III.

### 1NC PQD

#### Judicial deference is high – there’s strict adherence to the political question doctrine

Bradley, 13 (9-2, Curtis A., William Van Alstyne Professor of Law – Duke Law School, “War Powers, Syria, and Non-Judicial Precedent,” Lawfare Blog, 2013, http://www.lawfareblog.com/2013/09/war-powers-syria-and-non-judicial-precedent/)

As an initial matter, we need to bracket the issue of whether Obama’s action will weaken his own power as a political matter. This is a complicated issue: on the one hand, it may signal weakness both to Congress and to other nations; on the other hand, if he obtains congressional authorization, he may be in an ultimately stronger political position, as Jack Goldsmith has pointed out. As I understand it, the claim being made by Spiro, Rothkopf, and others is that the power of the presidency more generally is being weakened. How might this happen? Not through an influence on judicial doctrine: Although courts sometimes take account of historic governmental practices when assessing the scope of presidential authority, they have consistently invoked limitations on standing and ripeness, as well as the political question doctrine, to avoid addressing constitutional issues relating to war powers. In the absence of judicial review, what is the causal mechanism by which the “precedent” of Obama seeking congressional authorization for the action in Syria could constrain future presidential action? When judicial review is unavailable, the most obvious way in which the President is constrained is through the political process—pressure from Congress, the public, his party, etc. In an extreme case, this pressure could take the form of impeachment proceedings, but it does not take such an extreme case for the pressure to have a significant effect on presidential decisionmaking. Indeed, it is easy to think of political considerations that might have motivated Obama to go to Congress with respect to Syria.

#### Treaty enforcement is a political question

Wu 5 (Timmy, Visiting Professor, University of Chicago, Associate Professor of Law, University of

Virginia, “Treaties’ Domains,” <http://www.law.virginia.edu/pdf/workshops/0405/wu.pdf>)

Unfortunately Treaty cases compounds the complications surrounding a regular Chevron case. Chevron deference is premised on the superior expertise and greater political accountability of an expert agency. 81 That’s reasoning that can apply in a Treaty interpretation case too: for if the Executive has implemented a treaty, it may have done so based on subject matter expertise, and if people don’t like the President’s approach to treaties they can vote against him. But in a treaty interpretation case there is at least one additional basis for deference to the Executive that draws not upon expertise but upon political authority.82 This is the President’s independent not only to enforce treaties, but also to set the foreign policy of the United States. And as Louis Henkin has explained, this second kind of deference, often called political question deference, is best understood to reflect a power reserved to the President, and resulting in a rule binding for a court.83

#### Especially true for detention

Lederman 11 (Martin, Professor of Law – Georgetown University Law Center, “War, Terror, and the Federal Courts, Ten Years After 9/11: Conference\*: Association of American Law Schools' Section on Federal Courts Program at the 2012 AALS Annual Meeting in Washington, D.C.,” American University Law Review, June, 61 Am. U.L. Rev. 1253, Lexis)

Number two: Numerous very important, contested, hotly debated topics have arisen in the last ten years, many of them in the Bush Administration, **involving** for example interrogation techniques, **the scope of detention authority**, habeas review, military commissions, targeted killings, and the use of force more broadly. On some of these questions, the federal courts - and the Supreme Court in particular - have had quite a lot to say; and on others, not so much, at least in part because of several different federal courts doctrines that prevent the courts from speaking too much about those. You're all familiar with standing limits, **political questions**, state secrets, etc. We're going to focus particularly on a couple of them, which are immunity doctrines and the weakening of the Bivens n2 and state court sorts of causes of action.

We will also discuss the fact that there are many people who think the federal courts have become too involved at supervising and resolving substantive questions involving the political branches, including some of Judge Kavanaugh's colleagues, who have been particularly vocal about that, engaging in what appears to be a form of resistance to the Supreme Court's Boumediene n3 decision. By contrast, many other people think the courts have not been nearly involved enough at resolving some of the unresolved questions about the scope of interrogation and detention and military commissions and the like, that might be lingering from the last administration, or occurring now in the new administration, such as with respect to use of force. So that's the second broad topic - whether the federal courts have been too timid or too aggressive in this area.

#### Makes war powers justiciable

Miller 10 (Mathew Edwin, JD – University of Michigan Law School, Associate – Latham & Watkins LLP, “The Right Issue, the Wrong Branch: Arguments against Adjudicating Climate Change Nuisance Claims,” Michigan Law Review, November, 109 Mich. L. Rev. 257, Lexis)

However, to say that cases like American Electric Power are justiciable just because plaintiffs allege a public nuisance begs the question: Why should such claims **automatically be justiciable?** It contravenes the **purpose and articulation of the political question doctrine** to suggest that nuisances are categorically justiciable because political questions have historically excluded torts between private parties and have focused instead on governmental issues like gerrymandering, foreign policy, and federal employment. n70 Again, Baker demanded "discriminating" case-by-case inquiries, rejecting "resolution by any semantic cataloguing." n71 Similarly, the fact that other public nuisance claims have not presented political questions in the past should not preclude such a finding in the climate context. n72 Indeed, the argument for nonjusticiability rests on the notion that climate suits are unique and therefore defy classification among tort precedent. n73

[\*271] Extending the political question doctrine to a public nuisance allegation would surpass precedent in terms of claim-category application. Yet with respect to the theory behind the doctrine, **such an extension is proper** because cases like American Electric Power would push existing nuisance law to embrace a complex, qualitatively unique phenomenon **that cannot be prudentially adjudicated**. n74 The Supreme Court has never held that torts cannot present political questions, so prudential constitutional principles should similarly apply to them. This Note simply argues that the facts, claims, parties, and relief demanded in this particular mode of litigation should fall under the nonjusticiability umbrella, wherever its limits may lie. n75 The following analysis of Baker invokes the American Electric Power situation specifically for the sake of convenience, but the arguments therein should be read to apply to injunctive climate nuisance claims generally.

[Continues to Footnore]

n75. This Note does not purport to suggest exactly where the line ought to be drawn in applying the political question doctrine to tort claims. A consideration of the potential doctrinal "slippery slope" - where courts might improperly refuse to adjudicate claims solely on the basis of complexity - is beyond the scope of the present discussion.

#### Nuclear war

**Knowles 9** – Acting Assistant Professor, New York University School of Law (Robert, Spring, “American Hegemony and the Foreign Affairs Constitution”, 41 Ariz. St. L.J. 87, Lexis Law)

Nonetheless, foreign relations remain special, and courts must treat them differently in one important respect. In the twenty-first century, speed matters, and the executive branch alone possesses the ability to articulate and implement foreign policy quickly. Even non-realists will acknowledge that the international realm is much more susceptible to crisis and emergency than the domestic realm. But speed remains more important even to non-crisis foreign affairs cases. n391 It is true that **the stable nature of American hegemony will prevent truly destabilizing events** from happening without great changes in the geopolitical situation - the sort that occur over decades. The United States will not, for some time, face the same sorts of existential threats as in the past. n392 Nonetheless, in foreign affairs matters, it is only the executive branch that has the capacity successfully to conduct [\*150] treaty negotiations, for example, which depend on adjusting positions quickly. The need for speed is particularly acute in crises. Threats from transnational terrorist groups and loose **nuclear weapons are among the most serious problems** facing the United States today. The United States maintains a "quasi-monopoly on the international use of force," n393 but the rapid pace of change and improvements in weapons technology mean that the executive branch must respond to emergencies long before the courts have an opportunity to weigh in. Even if a court was able to respond quickly enough, it is not clear that we would want courts to adjudicate foreign affairs crises without the deliberation and opportunities for review that are essential aspects of their institutional competence. Therefore, courts should grant a higher level of deference to executive branch determinations in deciding whether to grant a temporary restraining order or a preliminary injunction in foreign affairs matters. Under the super-strong Curtiss-Wright deference scheme, the court should accept the executive branch interpretation unless Congress has specifically addressed the matter and the issue does not fall within the President's textually-specified Article I powers.

#### Violating PQD on war powers causes litigation that shutters DOD contracting

Isenberg 10 (David, Research Fellow – Independent Institute, “Contractor Legal Immunity and the ‘Political Questions’ Doctrine,” CATO Institute, 1-19, <http://www.cato.org/publications/commentary/contractor-legal-immunity-political-questions-doctrine>)

One can easily see why most defense contractors, including private military and security firms working under U.S. government contract, would like to prevent such suits from proceeding. The sheer number of injuries alone gives them reason to want to avoid possible suits. According to ProPublica as of last September 30 the number of private contractors injured in Iraq and Afghanistan totaled 37,652. Of course, not all those injuries are the result of something done wrong. But even a small fraction of them would **entail considerable legal costs for a contractor** so it is easy to understand why they would want to preventing such suits from being filed in the first place.

As I am not a lawyer the following is derived from Maj. Carter’s article.

Traditionally, the reason given for this is that such cases may involve “political questions” that the Judicial Branch is ill-equipped to decide. Thus defense contractor advocates claim these actions must be dismissed, else there be grim consequences for Government contingency contracting.

But according to Maj. Carter, “the recent developments in political question doctrine case law are significant to the future of Government contingency contracting. However, they are not catastrophic — although portrayed as such by some defense contractor advocates. There will not be an explosion of contracting costs passed on to the Government. There will not be a mass refusal of defense contractors to accept contingency contracts. There will not be chaos on the battlefield. Such predictions are nothing more than “bellowing bungle.”

Carter wrote:

What is the political question doctrine? According to Chief Justice John Marshall, “[q]uestions, in their nature political, or which are, by the constitution and laws, submitted to the executive, can never be made in [the U.S. Supreme Court].” In 2004, the Court held “[s]ometimes .. . the law is that the judicial department has no business entertaining [a] claim of unlawfulness — because the question is entrusted to one of the political branches or involves no judicially enforceable rights. Such questions are said to be ‘nonjusticiable,’ or ‘political questions.’”

What this means is that traditionally courts have deferred to the political branches in matters of foreign policy and military affairs. Policy decisions regarding **the employment of U.S. military forces** in combat belong to the political branches, not the courts. The Supreme Court has held that, due to their “complex, subtle, and professional” nature, decisions as to the “composition, training, equipping, and control of a military force” are “subject always” to the control of the political branches.

Tort suits that challenge the internal operations of these areas of the military are likely to be dismissed as political questions. Yet, notwithstanding the foregoing prohibitions on judicial conduct, the Supreme Court has cautioned, “it is error to suppose that every case or controversy which touches foreign relations lies beyond judicial cognizance.” As mentioned earlier, vast precedent exists for judicial involvement in foreign and military affairs. Case law establishes that military decisions are reviewable by federal courts. An assertion of military necessity, standing alone, is not a bar to judicial action. Merely because a dispute can be tied in some way to combat activities does not prevent a court from reviewing it. Although an action arises in a contingency environment, if a case is essentially “an ordinary tort suit” it is well within the competence of the courts to entertain. Courts have underscored the point: no litmus test exists that prohibits judicial action merely because an issue involves the military in some fashion.

Where plaintiffs seek only damages and not injunctive relief, such cases are “particularly judicially manageable.” When such a damages-only lawsuit concerns only a defense contractor (as opposed to the Federal Government), courts have held that such actions do not involve “overseeing the conduct of foreign policy or the use and disposition of military power.” Thus, those actions are less likely to raise political questions than suits against the Government, suits seeking injunctive relief, or both.

Given the enormous amount of money involved in Government contingency contracting and the correspondingly large number of contractors and contractor employees performing GWOT (Global War on Terror) contingency contracts, the number of plaintiffs seeking redress for tortious conduct was certain to rise — and it did. Universally, defendant defense contractors invoked the political question doctrine in order to shield themselves from liability in their performance of GWOT contracts, some with more success than others. The first significant case centered around the tragic events at the Abu Ghraib prison in Iraq.

In Ibrahim v. Titan Corp., Iraqi plaintiffs alleged they were tortured, raped, humiliated, beaten, and starved while in U.S. custody. Apparently fearing a dismissal on sovereign immunity grounds if they sued the U.S. Government, the plaintiffs instead chose to name as defendants the contractors who provided interpreters and interrogators for the prison. The defendants filed a motion to dismiss, alleging the matter involved political questions. The court held the case should not be dismissed at such an early stage on political question grounds, especially because the United States was not a party to the case. Ibrahim is significant because it was the first GWOT case to underscore the need for full factual development of a case prior to an assessment of justiciability.

One particularly interesting point in Carter’s article is this:

Judges and scholars openly speculate about the possible consequences of defense contractor tort liability on the federal procurement process. In Boyle, the Supreme Court warned that “[t]he financial burden of judgments against [] contractors would ultimately be passed through, substantially if not totally, to the United States itself, since defense contractors will predictably raise their prices to cover, or to insure against, contingent liability … .”

Since private military contracting advocates claim that their firms are more cost effective than the government one might reasonably believe that they can be so only by preventing tort suits against them. If the cost of such suits were factored in, the presumed cost effectiveness could conceivably be significantly less, **or perhaps not exist at all**.

Carter asks “is the situation really this dire? Are contractors at a point where, because of increased litigation risks, they will be forced to charge the Government more for their services or elect to not provide services altogether?”

The answers may not be far away. In November 2008, Joshua Eller filed suit in the U.S. District Court for the Southern District of Texas, as a result of injuries he suffered at Balad Air Base, Iraq, while deployed as a contractor employee of KBR from February to November of 2006. The complaint alleges defendants KBR and Halliburton “intentionally and negligently exposed thousands of soldiers, contract employees and other persons to unsafe water, unsafe food, and contamination due to faulty waste disposal systems … .” The complaint also includes allegations of injury from toxic smoke which emanated from an open air burn pit at Balad. The complaint alleges approximately 1,000 other individuals suffered similar injuries and it seeks to combine all of those actions into a single class action lawsuit. More significantly, this action is only one of several suits currently pending that relate to similar KBR activities in Iraq.

**The political question doctrine will be a** major factor in this coming storm of litigation. With the large number of potential plaintiffs compounded by the seriousness of the conduct and injuries alleged, these suits have the potential to dwarf the damages awards previously sought in earlier GWOT cases. Undoubtedly, KBR will seek to raise the political question doctrine as an absolute bar to these and any similar suits.

Defense contractor advocates warn of “deleterious effects” to the mission and the contractor-military relationship if tort suits against war zone defense contractors are allowed to proceed. They argue such tort claims “frustrate” and “conflict with” the Government’s ability to control contingency operations and would result in compromised logistical support and mission jeopardy. Furthermore, many companies, especially smaller ones, could be deterred from seeking contingency contracts. For those contractors who do elect to proceed, they will seek to insulate themselves from liability by either self-insuring or obtaining insurance coverage, if it is available. The argument continues that such costs will then be passed onto the Government in the form of higher contract prices. But, most alarmingly, some defense contractor advocates claim the impact of such suits “would be far more profound than financial” and defense contractors may, out of a fear of being sued, refuse to follow the military’s instructions altogether.

#### Key to irregular warfighting

**Wallace 9** – deputy head of the Department of Law at the US Military Academy prof since 2001 and a prof at the Judge Advocate General’s School of the Army from 1996-99, B.A. from Carnegie Mellon University, a JD from Seattle University School of Law, MSBA from Boston University, military law degree, specialty in contract law (Col David A., “The future use of corporate warriors with the U.S. Armed Forces: legal, policy, and practical considerations and concerns”, http://www.thefreelibrary.com/The+future+use+of+corporate+warriors+with+the+U.S.+Armed+Forces:...-a0205637482)  
  
It is apparent that private security contractors possess a number of these important capabilities and characteristics. In terms of attributes that would make them a force multiplier for future conflicts, private security contractors can be adaptable/tailored, precise, fast, agile, and lethal. The government, for example, can expand, shrink, and refine the contractor workforce structure very quickly by means of solicitation and statement of work process. Highly skilled contractors can be retained to execute a contract on an ad hoc basis in whatever numbers the government needs to accompany the armed forces or other government entities to address a wide ranging array of security concerns. Additionally, procurement officials may use a variety of legal authorities and contract types to award such contracts quickly and efficiently, and terminate them immediately at the conflict's end, with no back-end retirement or medical costs to the government. Within the military force structure, however, it often takes years to make significant changes.   
After consideration of the nature of the future security challenges (i.e., irregular, disruptive, traditional, and catastrophic), it does not take much imagination to envision how private security contractors could augment U.S. forces in a variety of scenarios. The United States could, for example, use armed contractors with the appropriate skill sets to provide a continuum of services. For example, contractor personnel could serve as peacekeepers or peacemakers (e.g., support U.S. efforts in conflicts like Darfur); locate, tag, and track terrorists; secure critical infrastructure, lines of communication, and potential high-value targets; and assist in foreign internal defense. Moreover, private security contractors could arguably be used as a constabulary force during a military occupation or during stability and support operations. Given that a number of private security firms employ highly skilled former special operations personnel, it is readily foreseeable that contractors could add value to special operations forces as they work to meet the challenges of irregular conflicts or catastrophic challenges.   
Furthermore, in a resource-constrained environment, private security contractors have an intuitive appeal. The government can hire the armed security contractors only when needed. Their services can be terminated at the convenience of the government when the contingency ends; contractors can also be terminated for default if they fail to perform. The contractual agreements can specify the skill sets necessary to satisfy the government's requirements. In sum, security contractors offer important capabilities and attributes that potentially make them an attractive option for future strategic planners. There are, however, significant risks and concerns associated with using private security contractors to augment the future force.

#### Extinction

**Bennett 2008** (12/4, John, DefenseNews, “JFCOM Releases Study on Future Threats”, http://www.defensenews.com/story.php?i=3850158, WEA)

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

### 1NC Agent CP

#### The United States Executive Branch should make a public declaration that the United States’ indefinite detention policy violates protections of the Geneva Protocol.

#### The United States Congress should pass legislation requiring that executive war powers authority to detain individuals violates indefinite detention policies with the Geneva Convention.

#### Solves HR cred and treaty leadership

John Bellinger 10, **headed the U.S. delegation for the negotiation of the Third Additional Protocol to the Geneva Conventions**; an adjunct senior fellow in International and National Security Law at the Council on Foreign Relations. As the legal adviser for Department of State from 2005 to 2009. Obama, Bush, and the Geneva Conventions, shadow.foreignpolicy.com/posts/2010/08/11/obama\_bush\_and\_the\_geneva\_conventions

Today, 12 August, is the 61st anniversary of the signing of the Geneva Conventions of 1949, the international treaties designed to protect soldiers and civilians during armed conflicts. The treaties became the focus of international attention in 2002 when the Bush administration controversially concluded that al Qaeda and the Taliban were not entitled to their protections. President Obama has reaffirmed America's "commitment" to the Geneva Conventions but has not been specific about how the Conventions apply to al Qaeda and Taliban detainees. To re-assert U.S. leadership with respect to the laws of war, the Obama administration should announce that the United States accepts specific provisions of the Conventions and engage other countries to develop new rules where the Geneva Conventions do not apply.¶ The 1949 Geneva Conventions consist of four separate treaties originally signed by 59 countries in Geneva, Switzerland. In light of the horrific experiences of World War II, the first three agreements revised previous treaties dating from 1864, 1906, and 1929 that provided humanitarian protections for sick or wounded soldiers on land, sailors at sea, and prisoners of war. The fourth agreement, added in 1949, establishes protections for civilians in conflict zones. The best known of the agreements is the Third Geneva Convention, which provides detailed articles of protection for those who qualify as Prisoners of War (POWs).¶ The Geneva Conventions apply to conflicts between the 194 countries that are now party to them. Since 1949, three Additional Protocols have been added to the Conventions to provide further protections in light of changes in modern warfare. The United States has long objected to certain provisions in the First Protocol, although it has stated its support for others. President Reagan submitted the Second Protocol to the Senate in 1987, but the Senate has not acted on it. The Bush administration was a driving force behind (and signed and ratified) the Third Protocol, which created an alternative protective symbol (a Red Diamond) for countries (primarily Israel) that do not use the Red Cross or Red Crescent.¶ Together, the four 1949 Conventions and the three protocols form the bedrock of the international laws of war.¶ The United States applied the Geneva Conventions in the Korean, Vietnam, and first Gulf Wars. After the September 11 attacks, however, President Bush concluded that the Conventions did not apply to the United States conflict with al Qaeda because al Qaeda was not a party to the Conventions. He also determined that while Afghanistan was a party to the Conventions, the Taliban were not entitled to POW protections. The Bush administration's refusal to apply the Geneva Conventions (and certain provisions in human rights treaties) was condemned by U.S. allies and human rights groups as an effort to place al Qaeda and Taliban detainees into a "legal black hole." In its second term, the Bush administration made significant efforts to clarify the legal rules applicable to detention and engage U.S. allies in discussions on international legal issues. But the administration still resisted application of the Geneva Conventions. ¶ In 2006, the Supreme Court rejected the Bush administration's arguments and held that even if the Geneva Conventions did not apply in their entirety, at least one provision -- Common Article 3, which prohibits torture and inhuman or degrading treatment of detainees -- applies to the conflict between the United States and al Qaeda.¶ President Obama entered office pledging to "restore" U.S. respect for international law. He immediately banned coercive interrogation methods and rescinded the Bush administration's strained interpretations of Common Article 3. Last December, Obama reaffirmed the U.S. "commitment to abide by the Geneva Conventions" in his Nobel Prize remarks. These statements have helped improve America's image internationally. But the Obama administration has yet to apply the Geneva Conventions as a legal framework differently than the Bush administration. The administration continues to hold hundreds of al Qaeda and Taliban detainees as enemy combatants in Guantanamo and Afghanistan but has not determined that they are POWs under the Third Convention or civilian "protected persons" under the Fourth Convention.¶ The Obama administration has been studying for nearly twenty months whether to give additional Geneva protections to these detainees. Although al Qaeda detainees clearly are not entitled to POW status, the administration should agree to be bound by Article 75 of the First Protocol to the Conventions, which specifies minimum protections for detained persons, such as the right to be told the reasons for one's detention. The administration should also urge the Senate to approve the Second Protocol to the Conventions, which spells out rules for internal wars such as in Afghanistan today. Applying these provisions from the First and Second Protocols would demonstrate the U.S. commitment to holding detainees under an internationally recognized set of rules.¶ For more than a hundred years, the United States has been a respected leader in developing the international laws of war. The Bush administration stumbled by straining to avoid application of the Geneva Conventions as a whole and refusing to adopt even the minimum international standards set forth in Common Article 3 and Article 75. But it is true that the Conventions, and even the Additional Protocols, do not provide clear guidance for countries engaged in conflicts with terrorist groups like al Qaeda, such as who qualifies as a combatant and what legal process should be given. The Obama administration should continue to engage our allies in dialogue about which existing rules of international humanitarian and human rights law apply and where additional rules should be developed. The administration should use its considerable political capital in the international community to clarify and expand the international law applicable to modern warfare.

#### Congressional action solves credibility and domestic incorporation of international law better than the Courts

**Rooney 6** (Heather L., J.D. Candidate – Drake University Law School, “Parlaying Prisoner Protections: A Look at the International Law and Supreme Court Decisions that Should be Governing our Treatment of Guantanamo Detainees”, Drake Law Review, Spring, 54 Drake L. Rev. 679, Lexis)

Will this question of whether the status review tribunals are affording detainees adequate due process protections be resolved? Experts suggest that this issue will yet again be before the Supreme Court for clarification in the near future. [421](http://www.lexis.com/research/retrieve?_m=3156e75f94d145458479fa3a2f1c4c53&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAB&_md5=9203119b57be9c862697235976ffabcd" \l "n421" \t "_self) What is clear, however, is that the United States is in  [\*743]   [\*744]  a quandary not only about what exact protections should be afforded detainees in the status review process, but about what other protections detainees should be afforded as well. This "quandary" is not a problem the Supreme Court alone can resolve. VI. Conclusion   The United States has determined that the detainees being held at Guantanamo Bay, Cuba, do not qualify as "prisoners of war" under the Geneva Conventions. [422](http://www.lexis.com/research/retrieve?_m=3156e75f94d145458479fa3a2f1c4c53&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAB&_md5=9203119b57be9c862697235976ffabcd" \l "n422" \t "_self) Detainees who were members of the terrorist  [\*745]  organization known as al Qaeda do not qualify as POWs because the Geneva Conventions are only applicable to "armed conflicts" - a term that does not include conflicts with terrorists. [423](http://www.lexis.com/research/retrieve?_m=3156e75f94d145458479fa3a2f1c4c53&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAB&_md5=9203119b57be9c862697235976ffabcd" \l "n423" \t "_self) While the Geneva Conventions were applicable to the armed conflict with Afghanistan, Taliban detainees have not been afforded POW status because they fail to meet certain requirements set out in Article 4 of Geneva III. [424](http://www.lexis.com/research/retrieve?_m=3156e75f94d145458479fa3a2f1c4c53&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAB&_md5=9203119b57be9c862697235976ffabcd" \l "n424" \t "_self) Because they have not been conferred POW status, both al Qaeda and Taliban detainees are ineligible to receive the important protections that the Geneva Conventions provide. [425](http://www.lexis.com/research/retrieve?_m=3156e75f94d145458479fa3a2f1c4c53&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAB&_md5=9203119b57be9c862697235976ffabcd" \l "n425" \t "_self) Nevertheless, the Guantanamo detainees are not completely out of luck. Indeed, under international human rights laws - which apply to all persons at all times - the detainees must still be given certain minimum protections. [426](http://www.lexis.com/research/retrieve?_m=3156e75f94d145458479fa3a2f1c4c53&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAB&_md5=9203119b57be9c862697235976ffabcd" \l "n426" \t "_self) This means that the United States should be applying the protections provided by customary international law, the International Covenant on Civil and Political Rights, and the U.N. Convention Against Torture to the treatment of detainees being held at Guantanamo Bay. [427](http://www.lexis.com/research/retrieve?_m=3156e75f94d145458479fa3a2f1c4c53&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAB&_md5=9203119b57be9c862697235976ffabcd" \l "n427" \t "_self) After analyzing the various sources of international human rights law and the protections they provide, it is evident that the United States has not fully complied with its obligations under international law with respect to the treatment of detainees. [428](http://www.lexis.com/research/retrieve?_m=3156e75f94d145458479fa3a2f1c4c53&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAB&_md5=9203119b57be9c862697235976ffabcd" \l "n428" \t "_self) It seems that the United States is currently in compliance with the prohibition against torture; [429](http://www.lexis.com/research/retrieve?_m=3156e75f94d145458479fa3a2f1c4c53&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAB&_md5=9203119b57be9c862697235976ffabcd" \l "n429" \t "_self) however, other protections, especially those included in the ICCPR, are being extended only partially or not at all. [430](http://www.lexis.com/research/retrieve?_m=3156e75f94d145458479fa3a2f1c4c53&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAB&_md5=9203119b57be9c862697235976ffabcd" \l "n430" \t "_self) In June of 2004, the United States Supreme Court ruled that citizen-detainees who have been classified as enemy combatants have the right to contest the factual basis for their classification. [431](http://www.lexis.com/research/retrieve?_m=3156e75f94d145458479fa3a2f1c4c53&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAB&_md5=9203119b57be9c862697235976ffabcd" \l "n431" \t "_self) Further, both American citizens and alien detainees being held at Guantanamo Bay can now petition United States federal courts for habeas corpus review. [432](http://www.lexis.com/research/retrieve?_m=3156e75f94d145458479fa3a2f1c4c53&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAB&_md5=9203119b57be9c862697235976ffabcd" \l "n432" \t "_self) Although the Supreme Court did not expressly reference the need to comply with treaties or other sources of international law, the August 2004 decisions are  [\*746]  a tentative step in the right direction - they certainly bring the United States more in line with the requirements of treaties it has ratified and, perhaps more importantly, with the expectations of the international community. The Supreme Court decisions pertaining to detainees provide a very general framework of rights that the United States government must extend to prisoners being held at Guantanamo Bay; however, questions about the exact protections that must be provided cannot be effectively answered by the Court on a case-by-case basis. The judiciary's interpretive process would take too long and each holding would likely be seen as confined to the facts of the particular case. Moreover, the international community remains apprehensive as to how the United States is going to approach international law in general - an apprehension that is quickly affecting rapport, even with our allies. The international community wants to know whether the United States is going to ignore international treaties, including those governing human rights, whenever it determines that doing so is in the interest of national security. As the leading and most powerful nation in the world, the United States needs to step up - and the quickest, cleanest, and least controversial way of reaching a consensus on this issue is for Congress to act. [433](http://www.lexis.com/research/retrieve?_m=3156e75f94d145458479fa3a2f1c4c53&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAB&_md5=9203119b57be9c862697235976ffabcd#n433)  [\*747]  Legislation should be passed that adequately addresses the "complex mass of questions" posed by the (1) potentially lifelong detention (2) of foreign nationals (3) who are being detained on a military base (4) that is outside the total sovereignty of the United States (5) during an open-ended war. [434](http://www.lexis.com/research/retrieve?_m=3156e75f94d145458479fa3a2f1c4c53&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAB&_md5=9203119b57be9c862697235976ffabcd#n434)  [\*748]   [\*749]  Congressional legislation would provide the best possible blueprint of the American public's opinion on how and even whether the United States  [\*750]  should protect terrorists. [435](http://www.lexis.com/research/retrieve?_m=3156e75f94d145458479fa3a2f1c4c53&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAB&_md5=9203119b57be9c862697235976ffabcd#n435) It would also provide the international community with a long-awaited answer as to whether the United States agrees that international human rights laws are applicable to detainees. [436](http://www.lexis.com/research/retrieve?_m=3156e75f94d145458479fa3a2f1c4c53&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAB&_md5=9203119b57be9c862697235976ffabcd#n436) Congress must legislate so that the United States can emerge from its current state of "legal fog" [437](http://www.lexis.com/research/retrieve?_m=3156e75f94d145458479fa3a2f1c4c53&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAB&_md5=9203119b57be9c862697235976ffabcd#n437) with a national consensus on the appropriate treatment of detainees that will build confidence and cooperation both at home and abroad.

#### The plan and permutation create an independent judicial role in enforcing international law

**Wu 7** (Tim, Professor – Columbia Law School, “Treaties’ Domains”, Virginia Law Review, May, 93 Va. L. Rev. 571, Lexis)

Congressional breach poses more complicated problems for the judiciary. Unlike with respect to the States, the Supremacy Clause does not clearly command courts to prevent Congressional breach of treaties. Instead, the judiciary shares the job of treaty enforcement with Congress (and also with the President, as discussed below). In addition, Congress has the power, accepted since at least 1798, to terminate, or repudiate, treaty obligations altogether. When Congress acts inconsistently with a U.S. treaty obligation, the rule of deference has been clear: the judiciary refuses to enforce the treaty independently. [45](http://www.lexis.com/research/retrieve?_m=b898d9ba987397ca5db1e532b71b3753&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAB&_md5=31839cdd7cd6da51980ac59f551d814f" \l "n45" \t "_self) Arguably, in the realm of treaty enforcement, Congress is an alternative, and perhaps predominant, enforcement agency for American treaties. That is not to say that Congress enforces treaties in the usual legal sense of the term but rather that Congress enforces them through implementation. By passing implementing legislation, Congress can decide how it wants a particular treaty to be enforced in the United States. The judiciary, in turn, looks for signs that Congress has taken charge of treaty enforcement in a given area. That can be evidenced most clearly by the passage of implementing legislation, but sometimes the passage of prior legislation in a field can demonstrate that  [\*588]  Congress has exerted its control over an area of treaty enforcement. [46](http://www.lexis.com/research/retrieve?_m=b898d9ba987397ca5db1e532b71b3753&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAB&_md5=31839cdd7cd6da51980ac59f551d814f" \l "n46" \t "_self) In either case (more obviously the former), potential inconsistency with the treaty represents a Congressional choice.

#### Undermines Congressional treaty power

**Neuman 4** (Gerald, Professor of Jurisprudence – Columbia University, “The United States Constitution and International Law: The Uses of International Law in Constitutional Interpretation”, American Journal of International Law, January, 98 A.J.I.L. 82, Lexis)

Normative reasoning borrowed from international human rights sources will not necessarily prevail in the process of constitutional interpretation. Other normative considerations omitted there may be relevant, and consensual and institutional factors may also come into play. The Court may conclude that the normatively compelling interpretation of a right cannot be adopted at the constitutional level but, rather, should await political implementation. I emphasize again that the international human rights regime does not call for implementation at the constitutional level, only compliance. Thus, the Supreme Court has reason to examine international human rights norms and decisions interpreting them for the normative and functional insights that they may provide on analogous issues of constitutional right. They certainly cannot control constitutional interpretation, but they may inform it. The use of human rights treaties as an aid in construing constitutional rights might seem superficially in tension with the Supreme Court's reassurance in Reid v. Covert that the treaty power cannot be employed to violate constitutional rights. [31](http://www.lexis.com/research/retrieve?_m=f16f520b5403eb66bcb05e1ed38a5d91&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAB&_md5=93cd957f1bb60830f2ba00799f92b2ea" \l "n31" \t "_self) That appearance should dissolve on closer examination. The treaty makers cannot override constitutional norms, and they cannot order the Supreme Court to alter its interpretation of a constitutional provision. [32](http://www.lexis.com/research/retrieve?_m=f16f520b5403eb66bcb05e1ed38a5d91&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAB&_md5=93cd957f1bb60830f2ba00799f92b2ea" \l "n32" \t "_self) But treaties, like legislation, can contribute to a shift in the factual, institutional, and normative environment within which the Court carries on its task of constitutional interpretation. The resulting doctrinal evolution is unavoidable in any candid account of U.S. constitutional history. Nothing in Reid v. Covert and its progeny precludes this indirect influence of treaty making on constitutional law. Treaties and the case law arising under them thus become data available for the Court's consideration in elaborating the contemporary meaning of constitutional norms. The political branches can neither require the Court to follow international or foreign law in interpreting the Constitution nor prohibit the Court from considering international or foreign law. Under current circumstances, the Supreme Court correctly does not engage in the practice, pursued by some other constitutional courts, of construing constitutional rights for the purpose of judicially implementing the positive international obligations of the nation under human rights treaties. The positive effect of treaty norms differs from the moral or functional insight that they may provide. Human rights treaties do not require implementation at the constitutional level, and in the U.S. legal system Congress retains ultimate control over the means of implementing--or breaching--a treaty. Entrenching positive human rights standards as  [\*89]  constitutional interpretation, for the purpose of ensuring compliance with the treaty as such, would deprive the political branches of their authority to choose methods of treaty implementation, and would not be consistent with current constitutional understandings. [33](http://www.lexis.com/research/retrieve?_m=f16f520b5403eb66bcb05e1ed38a5d91&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAB&_md5=93cd957f1bb60830f2ba00799f92b2ea" \l "n33" \t "_self)

#### Destroys heg

**Wilkinson 4** (J. Harvie, Circuit Judge – 4th Circuit, “Debate: The Use of International Law in Judicial Decisions”, Harvard Journal of Law & Public Policy, 27 Harv. J.L. & Pub. Pol'y 423, Spring, Lexis)

So of course international law should play a part in American judicial reasoning. It would be odd if it did not. In some areas, foreign and international law is made relevant by our Constitution, by statute or treaty, by the well-developed principles of common law, by overwhelming considerations of comity, or simply by private commercial agreement of the parties. But when judges, on their own motion and without any direction by Congress or the Constitution decide to make such precedents relevant, we are dealing with an entirely different question. So judges must not wade, sua sponte, into international law's deep blue sea. Rather, we ought to ask: How does American law make foreign or international standards relevant? Why should we ask this threshold question? Because it is important that the United States speak with one, not multiple, voices in foreign affairs. The Constitution is explicit on this: Article I, Section 10 says that "no State shall enter into any Treaty [or] Alliance" with a foreign power. [9](http://www.lexis.com/research/retrieve?_m=a3d8896cd2161a2cf9385040a5c0b9ca&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAB&_md5=7dae3857642b24f67dfc475df78d9d93" \l "n9" \t "_self) The Constitution leaves the conduct of foreign and military affairs largely to the political branches -- not the courts. The diplomatic credibility of the United States would plummet if the actions and pronouncements of the executive and legislative branches in foreign and military matters were later repudiated and contradicted by judicial decree.

#### Global nuclear war

**Kagan 7** (Robert, Senior Associate – Carnegie Endowment for International Peace, “End of Dreams, Return of History: International Rivalry and American Leadership”, Policy Review, August/September, http://www.hoover.org/publications/policyreview/8552512.html#n10)

The jostling for status and influence among these ambitious nations and would-be nations is a second defining feature of the new post-Cold War international system. Nationalism in all its forms is back, if it ever went away, and so is international competition for power, influence, honor, and status. American predominance prevents these rivalries from intensifying —  its regional as well as its global predominance. Were the United States to diminish its influence in the regions where it is currently the strongest power, the other nations would settle disputes as great and lesser powers have done in the past: sometimes through diplomacy and accommodation but often through confrontation and wars of varying scope, intensity, and destructiveness. One novel aspect of such a multipolar world is that most of these powers would possess nuclear weapons. That could make wars between them less likely, or it could simply make them more catastrophic. It is easy but also dangerous to underestimate the role the United States plays in providing a measure of stability in the world even as it also disrupts stability. For instance, the United States is the dominant naval power everywhere, such that other nations cannot compete with it even in their home waters. They either happily or grudgingly allow the United States Navy to be the guarantor of international waterways and trade routes, of international access to markets and raw materials such as oil. Even when the United States engages in a war, it is able to play its role as guardian of the waterways. In a more genuinely multipolar world, however, it would not. Nations would compete for naval dominance at least in their own regions and possibly beyond. Conflict between nations would involve struggles on the oceans as well as on land. Armed embargos, of the kind used in World War i and other major conflicts, would disrupt trade flows in a way that is now impossible. Such order as exists in the world rests not only on the goodwill of peoples but also on American power. Such order as exists in the world rests not merely on the goodwill of peoples but on a foundation provided by American power. Even the European Union, that great geopolitical miracle, owes its founding to American power, for without it the European nations after World War II would never have felt secure enough to reintegrate Germany. Most Europeans recoil at the thought, but even today Europe ’s stability depends on the guarantee, however distant and one hopes unnecessary, that the United States could step in to check any dangerous development on the continent. In a genuinely multipolar world, that would not be possible without renewing the danger of world war. People who believe greater equality among nations would be preferable to the present American predominance often succumb to a basic logical fallacy. They believe the order the world enjoys today exists independently of American power. They imagine that in a world where American power was diminished, the aspects of international order that they like would remain in place. But that ’s not the way it works. International order does not rest on ideas and institutions. It is shaped by configurations of power. The international order we know today reflects the distribution of power in the world since World War ii, and especially since the end of the Cold War. A different configuration of power, a multipolar world in which the poles were Russia, China, the United States, India, and Europe, would produce its own kind of order, with different rules and norms reflecting the interests of the powerful states that would have a hand in shaping it. Would that international order be an improvement? Perhaps for Beijing and Moscow it would. But it is doubtful that it would suit the tastes of enlightenment liberals in the United States and Europe. The current order, of course, is not only far from perfect but also offers no guarantee against major conflict among the world ’s great powers. Even under the umbrella of unipolarity, regional conflicts involving the large powers may erupt. War could erupt between China and Taiwan and draw in both the United States and Japan. War could erupt between Russia and Georgia, forcing the United States and its European allies to decide whether to intervene or suffer the consequences of a Russian victory. Conflict between India and Pakistan remains possible, as does conflict between Iran and Israel or other Middle Easternstates. These, too, could draw in other great powers, including the United States. Such conflicts may be unavoidable no matter what policies the United States pursues. But they are more likely to erupt if the United States weakens or withdraws from its positions of regional dominance. This is especially true in East Asia, where most nations agree that a reliable American power has a stabilizing and pacific effect on the region. That is certainly the view of most of China ’s neighbors. But even China, which seeks gradually to supplant the United States as the dominant power in the region, faces the dilemma that an American withdrawal could unleash an ambitious, independent, nationalist Japan. Conflicts are more likely to erupt if the United States withdraws from its positions of regional dominance. In Europe, too, the departure of the United States from the scene — even if it remained the world’s most powerful nation — could be destabilizing. It could tempt Russia to an even more overbearing and potentially forceful approach to unruly nations on its periphery. Although some realist theorists seem to imagine that the disappearance of the Soviet Union put an end to the possibility of confrontation between Russia and the West, and therefore  to the need for a permanent American role in Europe, history suggests that conflicts in Europe involving Russia are possible even without Soviet communism. If the United States withdrew from Europe — if it adopted what some call a strategy of “offshore balancing” — this could in time increase the likelihood of conflict involving Russia and its near neighbors, which could in turn draw the United States back in under unfavorable circumstances.

#### And causes a Congressional backlash --- turns all their impacts

**Kuhner 3** (Timothy, Professor of Law – Duke University, “Human Rights Treaties in U.S. Law: The Status Quo, Its Underlying Bases, and Pathways for Change”, Duke Journal of Comparative & International Law, Spring, 13 Duke J. Comp. & Int'l L. 419, Lexis)

The basic spectrum of possible approaches to reservations contrary to the object and purpose of the treaty could thus be summarized as follows: (1) the "gotcha" approach, whereby invalid reservations are stripped and the state is held to the treaty's full terms; [232](http://www.lexis.com/research/retrieve?_m=9dee30cc06608ca63ebc628a7bfc67ec&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAB&_md5=f452983775a488e2d0ab8a782db5e5b7" \l "n232" \t "_self) (2) the "one-size fits all" approach, whereby each treaty would be accompanied by a "guide to reservations practice" stipulating acceptable reservations practice; [233](http://www.lexis.com/research/retrieve?_m=9dee30cc06608ca63ebc628a7bfc67ec&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAB&_md5=f452983775a488e2d0ab8a782db5e5b7" \l "n233" \t "_self) (3) the "custom tailoring" approach, whereby reservations objected to by States Parties are respected and the relevant articles simply cease to operate vis-a-vis the reserving and objecting states; [234](http://www.lexis.com/research/retrieve?_m=9dee30cc06608ca63ebc628a7bfc67ec&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAB&_md5=f452983775a488e2d0ab8a782db5e5b7" \l "n234" \t "_self) and (4) the "boot" approach, whereby a party's membership in a treaty is revoked. The "gotcha" approach contradicts the principles of treaty law as understood by the United States. The Supreme Court in Foster and Percheman, affirmed that the mutual intent of the parties determines whether a given provision of a treaty is self-executing. [235](http://www.lexis.com/research/retrieve?_m=9dee30cc06608ca63ebc628a7bfc67ec&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAB&_md5=f452983775a488e2d0ab8a782db5e5b7#n235) Similarly, such an approach is at odds with one of the two most basic principles of treaty law - consent to be bound. [236](http://www.lexis.com/research/retrieve?_m=9dee30cc06608ca63ebc628a7bfc67ec&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAB&_md5=f452983775a488e2d0ab8a782db5e5b7#n236) If clearly expressed, the negotiated conditions that define the voluntary obligations a country assumes, are understood to be a precondition to the continued existence of said obligations. Since the U.S.' intent is clearly expressed and on the record (a precondition to ratification), a reviewing court would not have to examine the treaty's text. Other states could not have intended the treaty to be self-executing as it applies to the United States if they were apprised of the clear impossibility of the  [\*467]  same. [237](http://www.lexis.com/research/retrieve?_m=9dee30cc06608ca63ebc628a7bfc67ec&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAB&_md5=f452983775a488e2d0ab8a782db5e5b7#n237) Advocates of the "gotcha" approach must bear in mind the unintended consequences of enforcing upon a state obligations to which it did not consent, or could not reasonably be construed as having consented. For example, the United States might cease to advocate for human rights treaties and fail to join future treaties. This latter implication, however, seems increasingly irrelevant as U.S. "exceptionalism" grows. [238](http://www.lexis.com/research/retrieve?_m=9dee30cc06608ca63ebc628a7bfc67ec&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAB&_md5=f452983775a488e2d0ab8a782db5e5b7#n238) Nevertheless, even strong human rights proponents, such as Professor Louis Henkin, maintain that in a multilateral treaty, a reservation or understanding embodies the intent of the party and this intent is used to interpret what obligations that party undertook. [239](http://www.lexis.com/research/retrieve?_m=9dee30cc06608ca63ebc628a7bfc67ec&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAB&_md5=f452983775a488e2d0ab8a782db5e5b7#n239) The "gotcha" approach seeks to steamroll over the disjuncture between the Senate power as understood by the Senate and, presumably, the Supreme Court, and the official interpretation of applicable rights and duties under international law. The approach is only useful, insofar as its execution constitutes judicial notice of a problem in need of resolution and reminds the political branches that the Constitution  [\*468]  makes international law "our law." [240](http://www.lexis.com/research/retrieve?_m=9dee30cc06608ca63ebc628a7bfc67ec&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAB&_md5=f452983775a488e2d0ab8a782db5e5b7#n240)

### 1NC Mandamus CP

#### The United States Supreme Court should issue a writ of mandamus that orders the Executive and Legislative Branches of the United States to align indefinite detention policies with the Geneva Convention.

#### It competes and solves the whole case – making treaties self-executing mandates specific enforcements mechanisms and violates SOP – issuing writs of mandamus leave questions of enforcement to the political branches

Carter 10 (William M., Professor of Law – Temple University Beasley School of Law, “Treaties as Law and the Rule of Law: the Judicial Power to Compel Domestic Treaty Implementation,” Maryland Law Review, 69(2), <http://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=3421&context=mlr>)

The preceding analysis illuminates several principles. First, a non-self-executing treaty does not itself provide an individual with a private cause of action to seek a remedy for violations of the treaty's substantive provisions. Second, the most natural reading of the Supremacy Clause's text and history is that ***even a non-self-executing*** treaty, upon ratification, becomes part of the domestic law of the United States. The question then becomes, what does it mean for a ratified, non-self-executing treaty to be "supreme Law" domestically?

This Article contends that the Supremacy Clause makes such treaties binding domestic law. If the treaty imposes a duty of domestic implementation, compliance with that duty may be secured by the issuance of a writ of mandamus. Before beginning that inquiry, however, it is useful to consider the broader separation of powers concerns that even such a limited judicial role in domestic treaty enforcement might entail.

Scholars and courts have offered various rationales for die position thai, despite die Supremacy Clause, ratified treaties are not domestic law unless they are implemented by a subsequent act of Congress.71 This Article addresses only the objections based upon structural principles of federal lawmaking and based upon separation of powers.

The first argument concerns die process of federal lawmaking. The President's ratification of a treaty with die Senate's consent dif-fers from the bicameralism and presentment process for federal legislation because treaty ratification does not involve the House of Representatives.72 Some argue that while the Constitution may allow international obligations to be created by only the President and the Senate, such obligations should not become domestic law unless the full Congress participates.'3 Under this view, requiring implementing legislation to make a ratified treaty domestic law cures diis "democracy gap"'1 because die House must participate in order to pass implementing legislation. Commentators contend that indirecdy inserting die House in die treaty process in diis manner is necessary in order to ensure "that the treaty power [retains] majoritarian roots."75

This structural argument falls short. As Professor Henkin has accurately noted, "The question is not how many or which branches are involved [in creating a treaty versus a federal statute]; rather, the [relevant] issue is the constitutional status of the two instruments."7" The Constitution provides two different processes for creating supreme domestic law." Federal .statutes require bicameralism and presentment; treaties, under the text of the Supremacy Clause and die Treaty Clause, do not. The Framers presumably would have worded the Supremacy Clause or die Treaty Clause differently had diey intended die House's participation to be a prerequisite to treaties enjoying the status of domestic law.78 Moreover, even commentators who oppose judicial enforcement of treaties in private causes of action seem to agree that even non-self-executing treaties are domestic law in the sense that they have preemptive effect over contrary stale laws.79 As a structural matter, il is difficult to see why it is constitutionally permissible to exclude the House when creating federal law in the form of a treaty preempting state law, but not otherwise.80

The more substantial objections to the view that treaties become domestic law upon ratification relate to separation of powers principles. This Article readily acknowledges that even a limited judicial role in domestic treaty enforcement may raise separation of powers concerns. Opposition to domestic judicial enforcement of treaty obligations often rests upon the argument that the Constitution delegates the foreign affairs power to the political branches, as well as die corol-lary proposition thai the judiciary has no constitutional role in foreign affairs.81 Under this view, judicial enforcement of treaty obligations violates separation of powers principles. If the political branches want the judiciary to have a role in treaty enforcement, they can enact implementing legislation providing for a domestic cause of action. When the political branches have chosen not to do so, the argument goes, the judiciary should stand aside.

At the broadest level, describing all judicial involvement in treaty interpretation or enforcement as raising "separation of powers" concerns is imprecise. There are myriad situations in which international law interacts with our domestic legal system, only some of which actually raise real separation of powers concerns: "First, international law could be used to override domestic law or policy formulated by the elected branches .... Second, international law might be used to evaluate the legitimacy of actions undertaken by other nations .... Third, international law can be used to supplement existing [domestic] law."82

Different domestic uses of international law raise different separation of powers concerns, which may earn' more or less weight depending on the circumstances. Indeed, some uses of international law may not raise separation of powers problems at all. The ongoing debate regarding the use of international law as persuasive audiority to interpret the Eighth Amendment,83 for example, revolves around notions of domestic sovereignty and "American exceptionalism," not separation of powers.8'

Furthermore, this Article recognizes that Congress and die President have constitutional mechanisms—such as laler-m-time legislation diat supersedes the treaty,85 jurisdiction-stripping legislation, or reservations to the treaty—that diey can use to limit domestic treaty enforcement.86 Requiring actual legislation limiting the domestic applicability of a treaty is preferable to the sub silenlio attempt to accomplish the same result by adopting a treaty requiring domestic implementation but then refusing to implement it.87 If Congress were to ratify' a treaty and then pass legislation stripping the courts of jurisdiction over the treaty, die process would then at least be subject to pul>-Hc scrutiny and debate.

Moreover, diis separation of powers argument is generally couched in terms of avoiding lawsuits by private individuals seeking to determine the meaning of a treaty's substantive obligations. The concern is that we should have a single, consistent foreign policy determined by the President and Congress instead of multiple foreign policies determined ad hoc by individual litigants and federal judges.88 Under the approach that this Article advocates, however, the judicial role would be limited to enforcing the government's duty to make a treaty domestically effective. **A mandamus action would** not involve **an adjudication of the treaty's substantive obligations** or an inquiry into whether they have been breached. Rather, the Issue would be whether the treaty's terms impose a duty of domestic implementation. If so, the judicial task would be to **issue injunctive relief** **requiring the political branches** to comply with that duty by adequate and effective means of their own choosing.

## 1nc case

### squo solves modeling

#### Sq solves

Aaron B. Aft 11, J.D., Indiana University Maurer School of Law, Winter 2011, Respect My Authority: Analyzing Claims of Diminished U.S. Supreme Court Influence Abroad, Indiana Journal of Global Legal Studies, Vol. 18, No. 1

Considering the role cast for foreign precedent by its proponents and the trepidation of its opponents, one may tentatively conclude that the influence of foreign jurisprudence on the U.S. Supreme Court is limited to a modest background role. Based on the descriptions offered by Justice Breyer and Justice Kirby as to the use of foreign precedent, the influence of foreign precedent is perhaps less than the volume n54 of the debate might indicate. Certainly some shared ideas are influential, but this influence seems limited to providing background information, rather than serving a dispositive role in a given case.

Lastly, it may be tempting to infer from the preceding discussion that the hostility of some prominent U.S. judges to the use of foreign precedent may leave foreign jurists less inclined to cite U.S. precedent. However, that conclusion is premature, and to accurately assess the extent of the U.S. Supreme Court's influence abroad, it is necessary to examine the use of U.S. precedent overseas.

[\*431]

B. Use of U.S. Supreme Court Precedent Abroad

In contrast to the vigorous debate that characterizes the U.S. Supreme Court's use of foreign case law, many courts in other countries take a more expansive view of the use of foreign precedent. For example, in Australia, n55 Canada, n56 India, n57 Israel, n58 New Zealand, n59 Singapore, n60 and South Africa, n61 to name but a few, reference to U.S. precedent is not uncommon. n62 Many of the judges in these countries offer justifications for their comparative endeavors similar to those advanced by Justices Breyer and Kirby. n63

In Canada, citation to U.S. precedent is seen as "an aspect of a more general trend" of comparative exercise. n64 Indeed, the entire practice of referring to foreign precedent is merely reflective of the "legal cosmopolitanism" that Canadian jurists have found to be "a valuable source of enrichment and greater sophistication." n65 In Canada comparative practice has been used to provide important background on [\*432] legal questions via consideration of "the successes and failures of various approaches" taken by other states and is driven by a desire "to benefit from expertise acquired [by longstanding non-Canadian constitutional jurisprudence]." n66

Justices from Australia have advanced similar arguments. For example, Justice Kirby has been an outspoken advocate of comparative reference to foreign precedent. n67 As he notes in a recent article, references to foreign precedent by the High Court of Australia are quite uncontroversial. Such references are used because they "have been found helpful and informative and therefore useful in the development of the municipal decision-maker's own opinions concerning apparently similar problems presented by the municipal constitution or other laws." n68 And while reference to international law in certain contexts may be controversial, n69 the utility of referring to jurisprudence of other countries as a means of elucidating the meaning of the Australian Constitution remains unquestioned. n70

Although courts in many countries commonly refer to foreign precedent, Canada and Australia are particularly useful for measuring the influence of the U.S. Supreme Court abroad. Of obvious benefit is the fact that these countries speak English, n71 but of even more benefit is the fact that observers have extensively studied and documented the practices of the Supreme Court of Canada and the High Court of Australia with special attention to the citation of U.S. precedent. Section B will end by noting any conclusions that can be drawn from the discussion, with an eye to addressing arguments that the influence of the U.S. Supreme Court is waning due to hostility toward comparative practice. n72

As noted above, the relative influence (measured by citation analysis) of U.S. authority, and the U.S. Supreme Court in particular, on the Supreme Court of Canada has recently declined. At the same time, the data available regarding the citation practices of the High Court of Australia indicate that citation to U.S. authority in general is increasing. A review of how U.S. authority is used, as opposed to how often, will help determine the full extent of the influence the U.S. Supreme Court wields abroad, as well as any changes to it over time. Unfortunately, available studies of "how" are less thorough than the studies of "how often." n192

C. Informal Judicial Meetings and Exchanges

Though important, empirical study alone is insufficient to fully capture the U.S. Supreme Court's influence abroad. Advances in telecommunications have placed many court decisions at the fingertips of judges the world over, enabling a curious jurist to access decisions almost as soon as they are released. n193

Beyond technology, it is also important to consider the "informal" contacts-i.e. interactions beyond the context of adjudicating cases-between U.S. Supreme Court Justices and their colleagues and counterparts around the world. In addition to occasionally citing the opinions of their colleagues, "[j]udges are also meeting face to face" n194 and "are getting to know each other better as they interact at conferences and in personal meetings. . . ." n195 These informal contacts between judges provide opportunities for judges to engage in dialogue aside from citation of foreign law, undermining claims that the U.S. Supreme Court is "out of step" with the transnational judicial dialogue. n196 Anne-Marie Slaughter has expertly catalogued many [\*449] examples of such contacts, n197 and the following merely supplements her valuable work.

Slaughter observes that judges around the world are meeting at inter-judicial conferences, n198 via judicial exchanges, n199 and through conferences sponsored by law schools and NGOs. n200 One prominent example is the gathering of the Organization of Supreme Courts of the Americas (OSCA), hosted in Washington, D.C. in 1995. Chaired by then-Chief Justice William Rehnquist, the meeting boasted attendees from twenty-five countries representing North America, Central America, South America, and the Caribbean. n201 Some of these experiences have been noted in judicial opinions. n202 In addition, "[a] flood of foundation and government funding for judicial seminars, training programs, and [\*450] educational materials under the banner [of] 'rule of law' programs has significantly expanded the opportunities for cross-fertilization." n203 Furthermore, U.S. Supreme Court Justices have given at least seven speeches in four countries over the last ten years. n204 Some Justices have engaged in literary projects with counterparts from abroad, n205 and the Court has paid tribute to fallen colleagues abroad. n206

### no norms

#### No one cites the US for anything---there are too many other countries to look to---\*but the SQ solves their impacts because other countries reject excessive Presidentialism now

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

Unsurprisingly, attempting to gauge one constitution’s “influence” on another involves various conceptual and methodological challenges. To illustrate, a highly generic constitution may be generic because others have followed its lead, because it has modeled others, or simply by coincidence. That said, if two constitutions are becoming increasingly dissimilar, by definition, one cannot be following the other. That is, neither is exerting influence on the other (at least not in a positive way).

This is the phenomenon we observed in comparing the U.S. Constitution to the rest of the world; based on the rights index, the U.S. has become less similar to the world since 1946 and, with a current index of 0.30, is less similar now than at any point during the studied period. This phenomenon has occurred even among current American allies; among countries in regions with close cultural and historic ties to the U.S. (namely, Latin America and Western Europe); and among democracies. Only among common law countries is constitutional similarity higher than it was after World War II, but even that similarity has decreased since the 1960s.

Rights provisions are not the only constitutional elements that have lost favor with the rest of the world; structural provisions pioneered by American constitutionalism—such as federalism, presidentialism, and judicial review—have also been losing their global appeal.

For instance, in the early 20th century, 22 percent of constitutions provided for federalistic systems, while today, just 12 percent do.

A similar trend has occurred for presidentialism, another American innovation. Since the end of World War II, the percentage of countries employing purely presidential systems has declined, mainly in favor of mixed systems, which were a favorite of former Soviet bloc countries.

Finally, though judicial review is not mentioned in the U.S. Constitution, it has proved the most popular American structural innovation. But though the popularity of judicial review in general has exploded over the past six decades, most countries have opted for the European style of review (which designates a single, constitutional court which alone has the power to nullify laws inconsistent with the constitution) over the American model (in which all courts are empowered to strike unconstitutional laws). In 1946, over 80 percent of countries exercised American-style constitutional review; today, fewer than half do.

Reasons for the Decline

It appears that several factors are driving the U.S. Constitution’s increasing atypicality. First, while in 2006 the average national constitutions contained 34 rights (of the 60 we identify), the U.S. Constitution contains relatively few—just 21—and the rights it does contain are often themselves atypical.

Just one-third of constitutions provide for church and state separation, as does the U.S. Establishment Clause, and only 2 percent of constitutions (including, e.g., Mexico and Guatemala) contain a “right to bear arms.” Conversely, the U.S. Constitution omits some of the most globally popular rights, such as women’s rights, the right to social security, the right to food, and the right to health care.

These peculiarities, together with the fact that the U.S. Constitution is both old and particularly hard to amend, have led some to characterize the Constitution as simply antiquated or obsolete.

#### Modeling fails – constitutions must be endogenous

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

As I describe above, our article conceptualizes a “generic constitution”—that is, one that contains the 25 most popular global constitution rights elements—but we do not suggest that a “generic” constitution is an “ideal” constitution or that it otherwise should serve as a model for the United States or other countries. To the contrary, I tend to resist the notion that constitutional design based on a standardized template is generally desirable. Rather, I adhere to the view that constitutions should be written with popular input and tailored to the needs, traditions, values, and interests of the society they govern. There is no “one-size-fits-all” constitution.

Indeed, history and the literature have documented the adverse effects of foreign values being inserted into a citizenry that is unprepared to accept them. As an example, most former British colonies in Africa and the Caribbean received the exact same bill of rights upon independence, rights which were taken from the European Convention on Human Rights. In most cases, these bills of rights, oblivious to the deep ethnic tensions and persistent poverty, became a grand failure.

#### No spillover—countries act based on opinions of specific policies

**Mendelsohn 10** (Barak Mendelsohn is an assistant professor of political science at Haverford College and a senior fellow of Foreign Policy Research Institute, June 2010, “The Question of International Cooperation in the War on Terrorism,” http://www.fpri.org/enotes/201006.mendelsohn.cooperationwarterror.html)

International cooperation is hard to achieve. And, in general, international relations is not a story of harmony. A state’s first inclination is to think about its own interests, and states always prefer doing less

over doing more. The inclination to pass the buck or to free ride on the efforts of others is always in the background. If a hegemon is willing to lead in pursuit of collective interests and to shoulder most of the burden, it can improve the prospects of international cooperation. However, even when there is a hegemon willing to lead a collective action and when states accept that action is needed, obstacles may still arise. These difficulties can be attributed to various factors, but especially prominent is the disagreement over the particular strategy that the hegemon promotes in pursuing the general interest. When states think that the strategy and policies offered by the hegemon are not compatible with the accepted rules of “rightful conduct” and break established norms, many will disapprove and resist. Indeed, while acceptance of a hegemon’s leadership in international society may result in broad willingness to cooperate with the hegemon in pursuit of shared interests it does not guarantee immediate and unconditional compliance with all the policies the hegemon articulates. While its legitimacy does transfer to its actions and grants some leeway, that legitimacy does not justify every policy the hegemon pursues—particularly those policies that are not seen as naturally deriving from the existing order. As a result, specific policies must be legitimated before cooperation takes place. This process constrains the hegemon’s actions and prevents the uninhibited exercise of power. In sum, a hegemon must: pursue goals that serve the collective, as well as offer a strategy consistent with the fundamental principles of the international society—such as sovereignty and non-intervention—to translate its will into actual measures. States may be inclined to cooperate with U.S. hegemony in the war on terrorism, but whether a state cooperates with the hegemon on specific issues depends heavily on case-specific legitimacy. The level of collaboration with the hegemon, in each sphere of action, corresponds to whether the goals promoted are seen to be legitimate and the means of achieving these goals are viewed as acceptable.

### at: disease

#### No extinction

Posner 5—Senior Lecturer, U Chicago Law. Judge on the US Court of Appeals 7th Circuit. AB from Yale and LLB from Harvard. (Richard, Catastrophe, http://goliath.ecnext.com/coms2/gi\_0199-4150331/Catastrophe-the-dozen-most-significant.html)

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

#### Intervening actors check

Zakaria 9**—**Editor of Newsweek, BA from Yale, PhD in pol sci, Harvard. He serves on the board of Yale University, The Council on Foreign Relations, The Trilateral Commission, and Shakespeare and Company. Named "one of the 21 most important people of the 21st Century" (Fareed, “The Capitalist Manifesto: Greed Is Good,” 13 June 2009, http://www.newsweek.com/id/201935)

Note—Laurie Garrett=science and health writer, winner of the Pulitzer, Polk, and Peabody Prize

It certainly looks like another example of crying wolf. After bracing ourselves for a global pandemic, we've suffered something more like the usual seasonal influenza. Three weeks ago the World Health Organization declared a health emergency, warning countries to "prepare for a pandemic" and said that the only question was the extent of worldwide damage. Senior officials prophesied that millions could be infected by the disease. But as of last week, the WHO had confirmed only 4,800 cases of swine flu, with 61 people having died of it. Obviously, these low numbers are a pleasant surprise, but it does make one wonder, what did we get wrong? Why did the predictions of a pandemic turn out to be so exaggerated? Some people blame an overheated media, but it would have been difficult to ignore major international health organizations and governments when they were warning of catastrophe. I think there is a broader mistake in the way we look at the world. Once we see a problem, we can describe it in great detail, extrapolating all its possible consequences. But we can rarely anticipate the human response to that crisis. Take swine flu. The virus had crucial characteristics that led researchers to worry that it could spread far and fast. They described—and the media reported—what would happen if it went unchecked. But it did not go unchecked. In fact, swine flu was met by an extremely vigorous response at its epicenter,

Mexico. The Mexican government reacted quickly and massively, quarantining the infected population, testing others, providing medication to those who needed it. The noted expert on this subject, Laurie Garrett, says, "We should all stand up and scream, 'Gracias, Mexico!' because the Mexican people and the Mexican government have sacrificed on a level that I'm not sure as Americans we would be prepared to do in the exact same circumstances. They shut down their schools. They shut down businesses, restaurants, churches, sporting events. They basically paralyzed their own economy. They've suffered billions of dollars in financial losses still being tallied up, and thereby really brought transmission to a halt." Every time one of these viruses is detected, writers and officials bring up the Spanish influenza epidemic of 1918 in which millions of people died. Indeed, during the last pandemic scare, in 2005, President George W. Bush claimed that he had been reading a history of the Spanish flu to help him understand how to respond. But the world we live in today looks nothing like 1918. Public health-care systems are far better and more widespread than anything that existed during the First World War. Even Mexico, a developing country, has a first-rate public-health system—far better than anything Britain or France had in the early 20th century.

### africa democracy now

#### African democratization is up – overall trend solves the aff

Joseph Siegle, Working Group Chair, Africa Center for Strategic Studies, et al, 11-3-2011, “African Spring: a new era of democratic expectations?” Democracy Digest, http://www.demdigest.net/blog/2011/11/african-spring-a-new-era-of-democratic-expectations/

A question often asked since the launch of the Arab Spring in January 2011 is what effect will these popular protests have on democracy in the rest of Africa. Frequently overlooked in this discussion is that Sub-Saharan Africa has been experiencing its own democratic surge during this time with important advances in Guinea, Côte d’Ivoire, Niger, Nigeria, and Zambia, among other countries. This progress builds on nearly two decades of democratic institution building on the continent. Even so, the legacy of “big-man” politics continues to cast a long shadow over Africa’s governance norms. Regime models on the continent, moreover, remain highly varied, ranging from hard core autocrats, to semi-authoritarians, democratizers, and a select number of democracies. Recognizing these complex and still fluid crosscurrents, a Working Group embarked on an analysis of the linkages between the Arab Spring and African democracy — with an eye on the implications for governance norms on the continent over the next several years. A key finding of this analysis is that the effects of the Arab Spring on Africa must be understood in the much larger and longer-term context of Africa’s democratic evolution. While highly varied and at different stages of progress, democracy in Sub-Saharan Africa is not starting from scratch, unlike in most of the Arab world. Considered from this broader and more heterogeneous perspective, the direct effects of the Arab Spring on Sub-Saharan Africa’s democratic development are muted. There are few linear relationships linking events in North Africa to specific shifts in democratization on the continent. That said, the angst and frustration propelling the protests and unfolding transitions in the Arab world, particularly Egypt and Tunisia, resonate deeply with many Africans who are closely following events in the north. The Arab Spring is thus serving as a trigger, rather than a driver, for further democratic reforms in the region. There have been protests in more than a dozen African capitals demanding greater political pluralism, transparency, and accountability following the launch of the Arab Spring. Some have even explicitly referenced North Africa as a model. Likewise, a number of African governments are so fearful of the Arab Spring’s influence that they have banned mention of the term on the Internet or public media. The democratic protests in North Africa, consequently, are having an impact and shaping the debate on the future of democracy in Africa. They are also teaching important lessons that democracy is not bestowed on but earned by its citizens. Once initiated, it is not a passive or self-perpetuating governance model, but one that requires the active engagement of citizens. Perhaps most meaningfully, then, the Arab Spring is instigating changes in expectations that African citizens have of their governments. What makes these changed expectations especially potent is that they dovetail with more fundamental drivers of change that are likely to spur further democratic advances in Africa in the next several years. Access to information technology has exploded in Africa, dramatically enhancing the capacity for collective action and accountability. Rapid urbanization is further facilitating this capacity for mass action. Africa’s youthful and better educated population is restive for more transparency from public officials and expanded livelihood opportunities. These youth are increasingly aware of governance norms elsewhere in the world and yearn for the same basic rights in their societies. Rising governance standards in the region and internationally, in turn, are placing ever greater value on legitimacy while heightening intolerance of unconstitutional transitions of power. Civil society, typically the bottom-up vehicle for governance change, has grown in breadth, sophistication, and influence over the past several decades. And Africa’s democratic institutions have begun to put down roots. Parliaments have become more capable and autonomous, independent media is more diverse and accessible than ever, and elections are becoming increasingly common, transparent, and meaningful.

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

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

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

### treaties defense

#### Treaties and multilateralism have no means to solve conflict escalation – prediction and response failure

Fred Tanner 9-30-2K; Fred Tanner is Deputy Director of the Geneva Centre for Security Policy.

“Conflict prevention and conflict resolution: limits of multilateralism” 30-09-2000 Article, International Review of the Red Cross, No. 839 http://www.icrc.org/eng/resources/documents/misc/57jqq2.htm

But despite all these developments, conflict prevention remains an enigma. Conflicts continue to emerge and many of them turn violent. In the 1990s decade alone, approximately 5.5 million people were killed in almost 100 armed conflicts. These deadly conflicts have led to widespread devastation and regional instabilities, as well as large numbers of refugees. The international community remains unable to prevent the outbreak of war and the scope of action of many organizations is confined to limiting the negative effects of violence. The main source of frustration for the international community is its inability to credibly and accurately predict and rapidly respond to conflicts that threaten to turn violent. This is due both to the complex dynamics of internal, ethnic and communal conflicts and to the reluctance of many States to take steps that involve risks and costs. Nevertheless, the increasing presence of international organizations and State and non-State entities in conflict-prone areas raises the hope that a multilateralization of conflict prevention could reduce the number of missed opportunities in the future.

### nsa alt cause

#### Alt cause—NSA

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

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

### terrorism d

#### No retaliation—definitely no escalation

**Mueller 5** (John, Professor of Political Science – Ohio State University, Reactions and Overreactions to Terrorism, http://polisci.osu.edu/faculty/jmueller/NB.PDF)

However, history clearly demonstrates that overreaction is not necessarily inevitable. Sometimes, in fact, leaders have been able to restrain their instinct to overreact. Even more important, **restrained reaction--or even capitulation to terrorist acts--has often proved to be entirely acceptable politically**. That is, there are many instances where leaders did nothing after a terrorist attack (or at least refrained from overreacting) and did not suffer politically or otherwise. Similarly, after an unacceptable loss of American lives in Somalia in 1993, Bill Clinton responded by withdrawing the troops without noticeable negative impact on his 1996 re-election bid. Although Clinton responded with (apparently counterproductive) military retaliations after the two U.S. embassies were bombed in Africa in 1998 as discussed earlier, his administration did not have a notable response to terrorist attacks on American targets in Saudi Arabia (Khobar Towers) in 1996 or to the bombing of the U.S.S. Cole in 2000, and these non-responses never caused it political pain. George W. Bush's response to the anthrax attacks of 2001 did include, as noted above, a costly and wasteful stocking-up of anthrax vaccine and enormous extra spending by the U.S. Post Office. However, beyond that, it was the same as Clinton's had been to the terrorist attacks against the World Trade Center in 1993 and in Oklahoma City in 1995 and the same as the one applied in Spain when terrorist bombed trains there in 2004 or in Britain after attacks in 2005: the dedicated application of police work to try to apprehend the perpetrators. This approach was politically acceptable even though the culprit in the anthrax case (unlike the other ones) has yet to be found. The demands for retaliation may be somewhat more problematic in the case of suicide terrorists since the direct perpetrators of the terrorist act are already dead, thus sometimes impelling a vengeful need to seek out other targets. Nonetheless, the attacks in Lebanon, Saudi Arabia, Great Britain, and against the Cole were all suicidal, yet no direct retaliatory action was taken. **Thus, despite short-term demands that some sort of action must be taken**, experience suggests politicians can often successfully ride out this demand after the obligatory (and inexpensive) expressions of outrage are prominently issued.

#### No risk of nuclear terrorism---too many obstacles

John J. Mearsheimer 14, R. Wendell Harrison Distinguished Service Professor of Political Science at the University of Chicago, “America Unhinged”, January 2, nationalinterest.org/article/america-unhinged-9639?page=show

Am I overlooking the obvious threat that strikes fear into the hearts of so many Americans, which is terrorism? Not at all. Sure, the United States has a terrorism problem. But it is a minor threat. There is no question we fell victim to a spectacular attack on September 11, but it did not cripple the United States in any meaningful way and another attack of that magnitude is highly unlikely in the foreseeable future. Indeed, there has not been a single instance over the past twelve years of a terrorist organization exploding a primitive bomb on American soil, much less striking a major blow. Terrorism—most of it arising from domestic groups—was a much bigger problem in the United States during the 1970s than it has been since the Twin Towers were toppled.¶ What about the possibility that a terrorist group might obtain a nuclear weapon? Such an occurrence would be a game changer, but the chances of that happening are virtually nil. No nuclear-armed state is going to supply terrorists with a nuclear weapon because it would have no control over how the recipients might use that weapon. Political turmoil in a nuclear-armed state could in theory allow terrorists to grab a loose nuclear weapon, but the United States already has detailed plans to deal with that highly unlikely contingency.¶ Terrorists might also try to acquire fissile material and build their own bomb. But that scenario is extremely unlikely as well: there are significant obstacles to getting enough material and even bigger obstacles to building a bomb and then delivering it. More generally, virtually every country has a profound interest in making sure no terrorist group acquires a nuclear weapon, because they cannot be sure they will not be the target of a nuclear attack, either by the terrorists or another country the terrorists strike. Nuclear terrorism, in short, is not a serious threat. And to the extent that we should worry about it, the main remedy is to encourage and help other states to place nuclear materials in highly secure custody.

### china defense

#### Interdependence checks

**Perry and Scowcroft 9** William (Michael and Barbara Berberian professor at Stanford University.) and Brent (resident trustee of the Forum for International Policy.) “US Nuclear Weapons Policy.” 2009. Council on Foreign Relations. Online.

Economic interdependence provides an incentive to avoid military conflict and nuclear confrontation. Although the United States has expressed concern about the growing trade deficit with China, the economies of the two countries have become increasingly intertwined and interdependent. U.S. consumers have bought massive quantities of cheap Chinese goods, and Beijing has lent huge amounts of money to the United States. Similarly, Taiwan and the mainland are increasingly bound in a reciprocal economic relationship. These economic relation- ships should reduce the probability of a confrontation between China and Taiwan, and keep the United States and China from approaching the nuclear brink, were such a confrontation to occur. On other nuclear issues, China and the United States have generally supported each other, as they did in the six-party talks to dismantle North Korea’s nuclear weapons programs. Here, the supportive Beijing-Washington relationship points toward potentially promising dialogues on larger strategic issues.

## 2nc

### distinguishing rulings fail

#### Distinguishing an opinion means the precedential effect is limited solely to the facts of the case – their ev says the court could rule by distinguishing; the plan doesn’t do this – it attempts to create a precedent

**Lamond, 04** (Grant, Boston College, “Precedent as Decision” Draft for Analytical Legal Philosophy Conference, April,

<http://www.law.nyu.edu/newscalendars/2003_2004/legalphilosophy/lamond.pdf#search=%22overrule%20distinguish%20Llewellyn%20precedent%20thirteen%20list%22>)

From this perspective it is easy to see why distinguishing has been thought to be the most difficult feature of the common law doctrine of precedent to reconcile with the conventional view of rationes as rules.13 Distinguishing is the practice whereby later courts cite some difference between the facts of the precedent case and the facts of the later case to explain why they are not following the precedent. A later case may clearly fall within the scope of the earlier ratio, i.e. it may be a straightforward case of {J, K, L}, but the later court may decline to reach the result C on the basis that there is some feature in the later case, not present in the earlier case, which provides a good reason not to reach the result C. For example when a former member of a violent criminal organisation sought to rely on the defence of duress to a criminal charge under English law, it was held that the defence was not available because the defendant had voluntarily exposed himself to the risk of such threats, despite the earlier formulations of the defence mentioning no such restriction on the availability of the defence.14 The existence of distinguishing raises two problems for the conventional view of precedent. The first is whether it is compatible with the idea that rationes are rules (in the robust way akin to statutes). The second is whether there is a satisfactory rationale for the practice from a rule-based perspective.

#### Distinguishing is the worst of all worlds – it creates lower court confusion, and inconsistent precedent

**Smith ’2** (Stephen, professor of law at University of Virginia, 80 Tex. L. 1057, April, lexis)

n215. In this sense, reactivism serves the same purposes as the Warren Court's retroactivity rules did. By making controversial, law-changing rulings like Miranda and Mapp prospective only - that is, applicable only in future prosecutions - the Warren Court was able to overrule scores of restrictive precedents in favor of vastly expanded rights of the accused yet avoid the need to reverse scores of past convictions obtained in compliance with the overruled precedents. See generally Richard H. Fallon, Jr. & Daniel J. Meltzer, New Law, Non-Retroactivity, and Constitutional Remedies, 104 Harv. L. Rev. 1733, 1738-45 (1991). In much the same way, reactivism facilitates legal change by allowing the Court to ameliorate prior instances of activism without having to bear the costs of explicitly rejecting activist precedents. Needless to say, however, if the Court is willing to overrule the previous erroneous precedent, that would be the preferred course to take. After all, there would be no reason to settle for second-best when the Court to go all the way to first-best. Indeed, to do so would produce unnecessary costs in the form of greater doctrinal complexity and the attendant risk of confusion among lower courts: when prior precedents are hedged, limited, and distinguished, the law becomes more complex than it would have been had the earlier disfavored precedents simply been overruled. Thus, where the Court is both willing and able to overturn prior precedents deemed erroneous, that is the logical course to take.

#### Distinguishing hollows out a precedent – creates legal confusion and undermines the rule of law

**Filippatos, 91** (Parisis, “The Doctrine of Stare Decisis and the Protection of Civil Rights and Liberties in the Rehnquist Court,” 11 B. C. Third World L. J. 335 (1991), HeinOnline)

A pattern emerges from Patterson and Webster. The Rehnquist Court first pays homage to the principle of stare decisis and then proceeds to "distinguish" or to "qualify" the precedent in question instead of explicitly overru1ing it.282 By **disingenuously** applying the concept of relevance, the Court explains away the principle of stare decisis. A precedent is effectively extinguished when it no longer contains normative substance. To proclaim a hollowed-out precedent as an example of stare decisis is to present a fossil of a dinosaur as evidence that such a creature still roams the earth.283 The doctrine of stare decisis serves the rule of law, and as such it demands clarity, not deception.284 Currently, a great deal of constitutional scholarship and constitutional decision-making is lost in minutiae.285 The important issues of the times are being debated with the use of increasingly ephemeral abstractions. This sophistry contradicts the belief that constitutional adjudication is a means by which all individuals can secure their fundamental- rights and liberties against the encroachments of society.286 The essence of stare decisis dictates that precedent should only be disregarded with valid and **explicit** reason. Supreme Court precedents should only be overturned if *a priori* wrongly decided or *a posteriori* deleterious. Departure from the principle of stare decisis should be carefully justified, well reasoned, and explicit. When the Court considers departing from precedents that uphold civil rights and liberties it should impose a juridically introspective strict scrutiny on its own rationale, just as it imposes strict scrutiny on other governmental actors that seek to circumvent or restrict constitutional protections and guarantees. When the Court chooses not to follow the doctrine of stare decisis, it should make a detailed comparison between the seminal and revolutionary cases before addressing the applicability of stare decisis. The Court must show that the former was either wrongly decided or has become deleterious, and that the latter is necessary to implement desired change. Each specific rule of the seminal case must be either upheld or overruled and replaced with a corresponding rule in the revolutionary case. In short, if the Court is working a fundamental change it should not distinguish precedent and overrule past decisions sub silentio; rather, it should expressly address exactly what, how, and why such a change is occurring.

### iran overview

#### Turns case – sets a precedent to delegate authority – draws us into war

**Richman, 12/29/13** (Sheldon, Counterpunch, “AIPAC's Stranglehold Congress Must Not Cede Its War Power to Israel”, <http://www.counterpunch.org/2013/12/27/congress-must-not-cede-its-war-power-to-israel/>)

The American people should know that pending right now in Congress is a bipartisan bill that would virtually commit the United States to go to war against Iran if Israel attacks the Islamic Republic. “The bill outsources any decision about resort to military action to the government of Israel,” Columbia University Iran expert Gary Sick wrote to Sen. Chuck Schumer (D-NY) in protest, one of the bill’s principal sponsors.

The mind boggles at the thought that Congress would let a foreign government decide when America goes to war, so here is the language (PDF):

If the government of Israel is compelled to take military action in legitimate self-defense against Iran’s nuclear weapon program, the United States Government should stand with Israel and provide, in accordance with the law of the United States and the constitutional responsibility of Congress to authorize the use of military force, diplomatic, military and economic support to the Government of Israel in its defense of its territory, people and existence.

This section is legally nonbinding, but given the clout of the bill’s chief supporter outside of Congress — the American-Israel Public Affairs Committee (AIPAC [PDF]), leader of the pro-Israel lobby — that is a mere formality.

Since AIPAC wants this bill passed, it follows that so does the government of Israeli Prime Minister Benjamin Netanyahu, who opposes American negotiations with Iran and has repeatedly threatened to attack the Islamic Republic. Against all evidence, Netanyahu insists the purpose of Iran’s nuclear program is to build a weapon with which to attack Israel. Iran says its facilities, which are routinely inspected, are for peaceful civilian purposes: the generation of electricity and the production of medical isotopes.

The bill, whose other principal sponsors are Sen. Robert Menendez (D-NJ) and Sen. Mark Kirk (R-IL), has a total of 26 Senate cosponsors. If it passes when the Senate reconvenes in January, it could provoke a historic conflict between Congress and President Obama, whose administration is engaged in negotiations with Iran at this time. Aside from declaring that the U.S. government should assist Israel if it attacks Iran, the bill would also impose new economic sanctions on the Iranian people. Obama has asked the Senate not to impose additional sanctions while his administration and five other governments are negotiating with Iran on a permanent settlement of the nuclear issue.

A six-month interim agreement is now in force, one provision of which prohibits new sanctions on Iran. “The [Menendez-Schumer-Kirk] bill allows Obama to waive the new sanctions during the current talks by certifying every 30 days that Iran is complying with the Geneva deal and negotiating in good faith on a final agreement,” Ali Gharib writes at Foreign Policy magazine. That would effectively give Congress the power to undermine negotiations. As Iran’s foreign minister, Javad Zarif, told Time magazine, if Congress imposes new sanctions, even if they are delayed for six months, “The entire deal is dead. We do not like to negotiate under duress.”

Clearly, the bill is designed to destroy the talks with Iran, which is bending over backward to demonstrate that its nuclear program has no military aims.

#### Deal failure itself causes global war

**PressTV, 11/13/13** (“Global nuclear conflict between US, Russia, China likely if Iran talks fail,” <http://www.presstv.ir/detail/2013/11/13/334544/global-nuclear-war-likely-if-iran-talks-fail/>)

A global conflict between the US, Russia, and China is likely in the coming months should the world powers fail to reach a nuclear deal with Iran, an American analyst says.

“If the talks fail, if the agreements being pursued are not successfully carried forward and implemented, then there would be enormous international pressure to drive towards a conflict with Iran before [US President Barack] Obama leaves office and that’s a very great danger that no one can underestimate the importance of,” senior editor at the Executive Intelligence Review Jeff Steinberg told Press TV on Wednesday.

“The United States could find itself on one side and Russia and China on the other and those are the kinds of conditions that can lead to miscalculation and general roar,” Steinberg said.

“So the danger in this situation is that if these talks don’t go forward, we could be facing a global conflict in the coming months and years and that’s got to be avoided at all costs when you’ve got countries like the United States, Russia, and China with” their arsenals of “nuclear weapons,” he warned.

The warning came one day after the White House told Congress not to impose new sanctions against Tehran because failure in talks with Iran could lead to war.

#### An Iran deal is vital to America’s global standing

**Leverett, 11/10/13 -** senior fellow at the New America Foundation in Washington, D.C. and a professor at the Pennsylvania State University School of International Affairs(Flynt, “Nuclear Negotiations and America’s Moment of Truth About Iran” <http://www.campaigniran.org/casmii/?q=node/13358>)

America’s Iran policy is at a crossroads. Washington can abandon its counterproductive insistence on Middle Eastern hegemony, negotiate a nuclear deal grounded in the Nuclear Non-Proliferation Treaty (NPT), and get serious about working with Tehran to broker a settlement to the Syrian conflict. In the process, the United States would greatly improve its ability to shape important outcomes there. Alternatively, America can continue on its present path, leading ultimately to strategic irrelevance in one of the world’s most vital regions—with negative implications for its standing in Asia as well. U.S. policy is at this juncture because the costs of Washington’s post-Cold War drive to dominate the Middle East have risen perilously high. President Obama’s self-inflicted debacle over his plan to attack Syria after chemical weapons were used there in August showed that America can no longer credibly threaten the effective use of force to impose its preferences in the region. While Obama still insists “all options are on the table” for Iran, the reality is that, if Washington is to deal efficaciously with the nuclear issue, it will be through diplomacy. In this context, last month’s Geneva meeting between Iran and the P5+1 brought America’s political class to a strategic and political moment of truth. Can American elites turn away from a self-damaging quest for Middle Eastern hegemony by coming to terms with an independent regional power? Or are they so enthralled with an increasingly surreal notion of America as hegemon that, to preserve U.S. “leadership,” they will pursue a course further eviscerating its strategic position? The proposal for resolving the nuclear issue that Iran’s foreign minister, Javad Zarif, presented in Geneva seeks answers to these questions. It operationalizes the approach advocated by Hassan Rohani and other Iranian leaders for over a decade: greater transparency on Iran’s nuclear activities in return for recognizing its rights as a sovereign NPT signatory—especially to enrich uranium under international safeguards—and removal of sanctions. For years, the Bush and Obama administrations rejected this approach. Now Obama must at least consider it. The Iranian package provides greater transparency on Tehran’s nuclear activities in two crucial respects. First, it gives greater visibility on the conduct of Iran’s nuclear program. Iran has reportedly offered to comply voluntarily for some months with the Additional Protocol (AP) to the NPT—which it has signed but not yet ratified and which authorizes more proactive and intrusive inspections—to encourage diplomatic progress. Tehran would ratify the AP—thereby committing to its permanent implementation—as part of a final deal. Second, the package aims to validate Iran’s declarations that its enrichment infrastructure is not meant to produce weapons-grade fissile material. Iran would stop enriching at the near-20 percent level of fissile-isotope purity needed to fuel the Tehran Research Reactor and cap enrichment at levels suitable for fueling power reactors. Similarly, Iran is open to capping the number of centrifuges it would install—at least for some years—at its enrichment sites in Natanz and Fordo. Based on conversations with Iranian officials and political figures in New York in September (during Rohani and Zarif’s visit to the UN General Assembly) and in Tehran last month, it is also possible to identify items that the Iranian proposal almost certainly does not include. Supreme Leader Ayatollah Seyed Ali Khamenei has reportedly given President Rohani and his diplomats flexibility in negotiating a settlement—but he has also directed that they not compromise Iran’s sovereignty. Thus, the Islamic Republic will not acquiesce to American (and Israeli) demands to suspend enrichment, shut its enrichment site at Fordo, stop a heavy-water reactor under construction at Arak, and ship its current enriched uranium stockpile abroad. On one level, the Iranian package is crafted to resolve the nuclear issue based on the NPT, within a year. Iran’s nuclear rights would be respected; transparency measures would reduce the proliferation risks of its enrichment activities below what Washington tolerates elsewhere. On another level, though, the package means to test America’s willingness and capability to resolve the issue on this basis. It tests this not just for Tehran’s edification, but also for that of other P5+1 states, especially China and Russia, and of rising powers like India and South Korea. America can fail the Iranian test in two ways. First, the Obama administration—reflecting America’s political class more broadly—may prove unwilling to acknowledge Iran’s nuclear rights in a straightforward way, insisting on terms for a deal that effectively suborn these rights and violate Iranian sovereignty. There are powerful constituencies—e.g., the Israel lobby, neoconservative Republicans, their Democratic “fellow travelers,” and U.S.-based Iran “experts”—that oppose any deal recognizing Iran’s nuclear rights. They understand that acknowledging these rights would also mean accepting the Islamic Republic as an enduring entity representing legitimate national interests; to do so, America would have to abandon its post-Cold War pretensions to Middle Eastern hegemony. Those pretensions have proven dangerously corrosive of America’s ability to accomplish important objectives in the Middle East, and of its global standing. Just witness the profoundly self-damaging consequences of America’s invasion and occupation of Iraq, and how badly the “global war on terror” has eviscerated the perceived legitimacy of American purposes in the Muslim world. But, as the drama over Obama’s call for military action against Syria indicates, America’s political class remains deeply attached to imperial pretense—even as the American public turns away from it. If Washington could accept the Islamic Republic as a legitimate regional power, it could work with Tehran and others on a political solution to the Syrian conflict. Instead, Washington reiterates hubristic demands that President Bashar al-Assad step down before a political process starts, and relies on a Saudi-funded “Syrian opposition” increasingly dominated by al-Qa’ida-like extremists. If Obama does not conclude a deal recognizing Iran’s nuclear rights, it will confirm suspicions already held by many Iranian elites—including Ayatollah Khamenei—and in Beijing and Moscow about America’s real agenda vis-à-vis the Islamic Republic. It will become undeniably clear that U.S. opposition to indigenous Iranian enrichment is not motivated by proliferation concerns, but by determination to preserve American hegemony—and Israeli military dominance—in the Middle East. If this is so, why should China, Russia, or rising Asian powers continue trying to help Washington—e.g., by accommodating U.S. demands to limit their own commercial interactions with Iran—obtain an outcome it does not actually want?

### courts link

#### Obama nominated 2 justices and will be seen as responsible for new liberal decisions – he’ll get the blame, that’s Mirengoff

#### Liberal Court decisions create elections pressure against Democrats

**Tucker, 95** – associate professor of political science at the University of Melbourne (D.F.B. The Rehnquist Court and Civil Rights, p. 221-222)

Conceding that other forces were at work contributing to the difficulties that Democratic candidates have faced in presidential contests, we see from this brief review of recent history how the Supreme Court’s role cannot be regarded as insignificant. Although most voters to not follow developments on the Court and dsiplay little knowledge of legal matters or of actual cases, we must suppose that the liberal landmark cases that were brought down under Warren and Burger had an important impact, encouraging the Democrats too far to the left to be competitive and tempting the Republicans to pander to the worst instincts at work in United States culture. By projecting issues like quotas, abortion and capital punishment into the political arena at a time when progressive politicians had no capacity to defend the policies endorsed by the Supreme Court, the liberal justices ensured that there would be a backlash that would shift the agenda far to the right of the political spectrum.

#### That’s the motivating factor behind potential Democratic defections on Iran – they need political strength to resist AIPAC pressure – that’s our 1nc Lobe evidence and diminishing Obama’s standing further changes the calculus

**Krasuhaar, 11/21/13** (Josh, National Journal, “The Iran Deal Puts Pro-Israel Democrats in a Bind” <http://www.nationaljournal.com/magazine/the-iran-deal-puts-pro-israel-democrats-in-a-bind-20131121>)

All of this puts Democrats, who routinely win overwhelming support from Jewish Americans on Election Day, in an awkward position. Do they stand with the president on politically sensitive foreign policy issues, or stake their own course? That difficult dynamic is currently playing out in Congress, where the Obama administration is resisting a Senate push to maintain tough sanctions against Iran. This week, Obama met with leading senators on the Banking and Foreign Relations committees to dissuade them from their efforts while diplomacy is underway.

"There's a fundamental disagreement between the vast majority of Congress and the president when it comes to increasing Iran sanctions right now," said one Democratic operative involved in the advocacy efforts. "Pro-Israel groups, like AIPAC, try to do things in a bipartisan way; they don't like open confrontation. But in this instance, it's hard."

That awkwardness has been evident in the lukewarm reaction from many of Obama's Senate Democratic allies to the administration's outreach to Iran. Senate Foreign Relations Committee Chairman Robert Menendez of New Jersey said last week he was concerned that the administration seems "to want the deal almost more than the Iranians." Normally outspoken Sen. Chuck Schumer of New York, a reliable ally of Israel, has been conspicuously quiet about his views on the negotiations. In a CNN interview this month, Democratic Rep. Debbie Wasserman Schultz of Florida, whose job as chairwoman of the Democratic National Committee is to defend the president, notably declined to endorse the administration's approach, focusing instead on Obama's past support of sanctions. This, despite the full-court press from Secretary of State John Kerry, a former congressional colleague.

On Tuesday, after meeting with Obama, Menendez and Schumer signed a bipartisan letter to Kerry warning the administration about accepting a deal that would allow Iran to continue its nuclear program. The letter was also signed by Sens. John McCain, R-Ariz., Lindsey Graham, R-S.C., Susan Collins, R-Maine, and Robert Casey, D-Pa.

Democrats, of course, realize that the president plays an outsized role in the policy direction of his party. Just as George W. Bush moved the Republican Party in a more hawkish direction during his war-riven presidency, Obama is nudging Democrats away from their traditionally instinctive support for the Jewish state. "I can't remember the last time the differences [between the U.S. and Israel] were this stark," said one former Democratic White House official with ties to the Jewish community. "There's now a little more freedom [for progressive Democrats] to say what they want to say, without fear of getting their tuchus kicked by the organized Jewish community."

A Gallup survey conducted this year showed 55 percent of Democrats sympathizing with the Israelis over the Palestinians, compared with 78 percent of Republicans and 63 percent of independents who do so. A landmark Pew poll of American Jews, released in October, showed that 35 percent of Jewish Democrats said they had little or no attachment to Israel, more than double the 15 percent of Jewish Republicans who answered similarly. At the 2012 Democratic National Convention, many delegates booed a platform proposal supporting the move of the U.S. Embassy in Israel from Tel Aviv to Jerusalem. In 2011, Democrats lost Anthony Weiner's heavily Jewish, solidly Democratic Brooklyn House seat because enough Jewish voters wanted to rebuke the president's perceived hostility toward Israel.

Pro-Israel advocacy groups rely on the mantra that support for Israel carries overwhelming bipartisan support, a maxim that has held true for decades in Congress. But most also reluctantly acknowledge the growing influence of a faction within the Democratic Party that is more critical of the two countries' close relationship. Within the Jewish community, that faction is represented by J Street, which positions itself as the home for "pro-Israel, pro-peace Americans" and supports the Iran negotiations. "Organizations that claim to represent the American Jewish community are undermining [Obama's] approach by pushing for new and harsher penalties against Iran," the group wrote in an action alert to its members.

Some supporters of Israel view J Street with concern. "There's a small cadre of people that comes from the progressive side of the party that are in the business of blaming Israel first. There's a chorus of these guys," said a former Clinton administration foreign policy official. "But that doesn't make them the dominant folks in the policy space of the party, or the Hill."

Pro-Israel activists worry that one of the ironies of Obama's situation is that as his poll numbers sink, his interest in striking a deal with Iran will grow because he'll be looking for any bit of positive news that can draw attention away from the health care law's problems. Thus far, Obama's diminished political fortunes aren't deterring Democrats from protecting the administration's prerogatives. Congressional sources expect the Senate Banking Committee, chaired by South Dakota Democrat Tim Johnson, to hold off on any sanctions legislation until there's a resolution to the Iranian negotiations.

But if Obama's standing continues to drop, and negotiations produce a deal that Israel doesn't like, don't be surprised to see Democrats become less hesitant about going their own way.

#### Obama’s appointments give him a judicial legacy

Reuters 8/5/10 ("Senate approves Obama nominee Kagan to top court," http://webcache.googleusercontent.com/search?q=cache:8oM3T-dMCDYJ:www.reuters.com/article/idUSTRE6744YW20100805+obama+kagan+supreme+court+2+appointees&cd=3&hl=en&ct=clnk&gl=us)

(Reuters)—President Barack Obama's nomination of Elena Kagan to the Supreme Court won Senate approval on Thursday, his second appointment to the court that decides abortion, death penalty and other contentious cases. The Democratic-led Senate voted largely along party lines, 63-37, to confirm the former Harvard Law School dean as the fourth female justice in U.S. history and the 112th high court member. Kagan was Obama's solicitor general, arguing government cases before the Supreme Court, when he named her in May as his choice to replace the retiring liberal Justice John Paul Stevens. The 50-year-old Kagan, who will be the third woman on the current court, is not expected to change the ideological balance of power on the closely divided panel, which for years has been dominated by a 5-4 conservative majority. All Democratic senators but one voted for her, two independent senators voted for her and five Republicans voted for her. All other Republican senators opposed her nomination. OBAMA'S JUDICIAL LEGACY Kagan becomes Obama's second lifetime appointee on the nine-member Supreme Court, allowing him to reshape the court and leave a judicial legacy that could last long after he leaves office. U.S. appeals court Judge Sonia Sotomayor was confirmed last year by a 68-31 vote as the first Hispanic Supreme Court justice. The two appointments underscore an effort by Obama to move the court to the left after Republican President George W. Bush nominated a pair of conservative judges to the bench.

#### Supreme Court rulings get blamed on Obama

Harrison 5—Professor of Law—University of Miami, FL [Lindsay, “Does the Court Act as "Political Cover" for the Other Branches?,” http://legaldebate.blogspot.com/]

While the Supreme Court may have historically been able to act as political cover for the President and/or Congress, that is not true in a world post-Bush v. Gore. The Court is seen today as a politicized body, and especially now that we are in the era of the Roberts Court, with a Chief Justice hand picked by the President and approved by the Congress, it is highly unlikely that Court action will not, at least to some extent, be blamed on and/or credited to the President and Congress. The Court can still get away with a lot more than the elected branches since people don't understand the technicalities of legal doctrine like they understand the actions of the elected branches; this is, in part, because the media does such a poor job of covering legal news. Nevertheless, it is preposterous to argue that the Court is entirely insulated from politics, and equally preposterous to argue that Bush and the Congress would not receive at least a large portion of the blame for a Court ruling that, for whatever reason, received the attention of the public.

### at: courts announce later

**This makes them non-topical – substantially requires immediate announcement and visibility**

**Words and Phrases** 19**64** (40 W&P 759)

The words “outward, open, actual, visible, substantial, and exclusive,” in connection with a change of possession, mean substantially the same thing. They mean not concealed; not hidden; exposed to view; free from concealment, dissimulation, reserve, or disguise; in full existence; denoting that which not merely can be, but is opposed to potential, apparent, constructive, and imaginary; veritable; benuine; certain; absolute; real at **present** time, as a matter of fact, not merely nominal; opposed to form; actually existing; true; not including admitting, or pertaining to any others; undivided; sole; opposed to inclusive.

**Bush v. Gore released its opinion a day and half after it was decided**

**Herz, 2002** – professor of law at Cardozo School of Law, Yeshiva University (Michael, 35 Akron L. Rev. 185, “THE SUPREME COURT IN REAL TIME: HASTE, WASTE, AND BUSH V. GORE,” lexis)

All of which is not to say that we should be wholly sanguine about Bush v. Gore. For one thing, to say these four cases were not embarrassments is a pretty low standard. And dodging bullets does not mean that the bullets are not dangerous. More important, there are real differences between these prior cases and Bush v. Gore. Bush v. Gore was the fastest of all; to release full opinions a day-and-a-half after argument and a week after the lower court decision beats all records. Moreover, the lower court litigation had been significantly more extensive in each of the earlier cases. n56 As a result, there was a more  [\*199]  developed record, the attorneys had had more time to think through the issues; the Justices had the benefit of more considered judicial views. Furthermore, in the earlier cases the Court at least knew what the case was about when it agreed to hear it. Here, the Court (and the lawyers) initially thought that Bush v. Gore was, in essence, a statutory case about the meaning of the Florida election laws and the fairness of the state Supreme Court's interpretation thereof, and about 3 U.S.C. 5. Indeed, the Court denied cert on the equal protection and due process questions in Bush I. Only at the very last minute did it discover that this was an equal protection case after all.

**Immediate decisions are possible, even if they’re the exception – and speeding up the decision uniquely draws the Court into political battles**

**Herz, 2002** – professor of law at Cardozo School of Law, Yeshiva University (Michael, 35 Akron L. Rev. 185, “THE SUPREME COURT IN REAL TIME: HASTE, WASTE, AND BUSH V. GORE,” lexis)

Exactly that sort of advantage is usually enjoyed by the Supreme Court. In Bush v. Gore, unfortunately, the Court put itself in the role of the television reporters who were fumbling in the dark rather than those who could read first and report later, in the clear light of day. The Court attempted the judicial equivalent of instantaneousness, operating in real time. The fiasco that resulted will not cause the Court irreparable harm (to use language with which the nation became familiar over that weekend), but it is a reminder of the importance of the Court keeping some distance from the disputes it decides. In particular, the episode highlights the increased risks of both actual and perceived politicization when the Court is in the middle of the fray, participating in an event in the present rather than evaluating it after the fact.[\*187]  II The conventional wisdom is that distance enhances the Court's decisionmaking. Many factors ensure a separation between a particular controversy and its participants, on the one hand, and the Court, on the other. The Justices' political insulation (life tenure, salary protections, no need to please a boss or an electorate), their lack of a personal stake in the controversy, and training and a turn of mind that, generally and relatively speaking, incline toward considerations of law and principle rather than politics and expediency are all part of the picture. No less important, however, is the time lag between a particular event or legislative or judicial decision and the Court's subsequent review of it. n5 Normally, a Supreme Court case involves events that occurred years ago, and legal issues that have percolated through the lower courts. Bush v. Gore was just the opposite--a mad dash. Although preceded and surrounded by other lawsuits, n6 the specific case that became Bush v. Gore began on November 27, 2000, after the Florida Secretary of State certified George Bush as the winner of that state's electoral votes. This was an election contest action brought by Vice President Gore against Governor Bush and others under Florida Statutes' 102.168 seeking the inclusion of certain Gore votes and a recount in specified counties. Following a two-day trial, on December 4, 2000, the trial court entered judgment for the defendants. n7 The next day, the Florida Supreme Court  [\*188]  agreed to hear a direct appeal; briefs were due by noon December 6; oral argument was set for the morning of December 7. The court decided the case the next day, December 8, reversing in part and affirming in part. n8 Critically, it ordered a statewide manual recount, under the supervision of a state circuit court judge, pursuant to which observers would seek to determine the "intent of the voter" in all cases where machine-counting had not indicated any vote for President. That day, President Bush sought a stay of the state Supreme Court's ruling from the United States Supreme Court. The lawyers argued that the recounts mandated by the state supreme court would run past the December 12 "deadline," were inconsistent with the state election statutes, and were arbitrary and standardless. Accordingly, they violated (1) the federal statutory provision governing congressional counting of electoral votes, n9 (2) the constitutional allocation of authority to the state legislature to determine the manner in which the state selects its electors, n10 and (3) the equal protection and due process clauses. n11 The Court granted the stay the next day, Saturday, December 9, and, treating the petition for a stay as a petition for certiorari, granted certiorari as well. n12 Briefs were due by 4:00 p.m. on December 10, and oral argument set for 10:00 a.m. Monday, December 11. n13 The Court handed down its decision at a little before 10:00 p.m. the following evening. n14 Only four similar instances come to mind in which the modern Court considered cases involving matters of great national importance on a highly expedited schedule. The steel seizure case, n15 the Nixon tapes case, n16 the Iranian assets case, n17 and the Pentagon Papers case n18 were all  [\*189]  litigated in a matter of weeks or months and produced almost instant opinions from the Supreme Court (19, 16, 8, and 4 days after oral argument, respectively). But these are rarities. And even by these standards Bush v. Gore set new records for speed--for the overall litigation, for the briefing schedule, and for the period within which the Court reached its decision. The speed of Bush v. Gore is less striking when compared to the standards of an earlier time. The Supreme Court once decided cases much more quickly than is the current norm. During the period from 1815 to 1835, for example, the Court decided 66 constitutional cases with full opinion; 17 of those opinions were handed down within five days of the argument, including several of the Court's most significant rulings. n19 "By contemporary standards, the Marshall Court was breathtakingly swift to render decisions." n20 By the following century, the pace had slowed. Robert Post has calculated that during the 1912-1920 Terms the Court averaged 63.7 days from the argument of a case to the announcement of a full opinion. n21 In contrast, during the 1993-1998 Terms the Court took an average of 91.1 days after argument to hand down its decision. n22 Even by Marshall Court standards, however, Bush v. Gore was something astonishing. Compare, for example, McCulloch v. Maryland. n23 Oral argument in McCulloch ended on March 3, 1819; Marshall handed down his opinion for the Court a mere three days later, on March 6. The turnaround time was so quick, and the opinion so lengthy and complex, that some have speculated that Marshall had written it before the argument. Such was the supposition of Albert Beveridge, who deemed it "not unlikely" and "reasonably probable" that Marshall worked out the framework, if not the actual text, well in advance. n24 Speedy though this is, the scenario is still quite different  [\*190]  from Bush v. Gore. The fact that Marshall took three days rather than a day and a half is the least of it. More important, McCulloch was decided after nine days of oral argument, n25 it concerned a completely familiar legal issue that had been argued by leading figures for decades n26 and whose resolution was not seriously in doubt, n27 and the decision was unanimous. n28 Most important, the only rush in McCulloch was between argument and opinion; the overall litigation had proceeded at a quick but not at all extraordinary pace. n29 The risks of the mad dash are several, and all were painfully on display in Bush v. Gore. First, rather than giving their considered judgment, the Justices were shooting from the hip on extremely difficult legal issues. They were completely without time for reflection, study, or debate, all the things one wants when faced with a difficult problem. In addition, the Court was without the usual assistance from the parties or  [\*191]  other judges. The parties themselves had had very little time to develop, refine, and brief the issues. The equal protection issue, on which the case turned, had received no consideration from any other court or individual judge before it was laid before the Supreme Court. n30 As the Court in other circumstances has emphasized, it benefits from the "percolation" of legal issues in the lower courts before it decides them. n31 Thus, many basic structures designed to give the Court the best chance of getting it right were absent. The point is not just that slow work is sure work, though that is part of it. n32 The point is also that when the Court's consideration is so rapid the chances increase that the decision will rest on purely political considerations. Deciding a case based on one's initial, impressionistic reaction; being all too aware of how different outcomes will affect a current emergency; not having the chance to let the problem sit and then come back to it--all these make it more likely that one's decision will reflect intuition, prejudice, and preference. Now, judicial decisionmaking always reflects intuition, prejudice, and preference;  [\*192]  nonetheless, it can do so in varying degrees, and those tendencies are often mitigated simply by giving a problem some time. This risk is particularly acute when the case involves unfamiliar legal issues. Bush v. Gore was not one more search and seizure case, or one more free speech case, arising in an area with which the Justices are familiar and already have a doctrinal framework and a jurisprudential worldview within which to fit the specific dispute. Compare, for example, McCulloch, which involved an utterly familiar and longstanding constitutional question. n33 A more contemporary example is United States v. Eichman, n34 in which the Court struck down the federal Flag Protection Act of 1989, n35 handing down its decision a mere 27 days after argument, on direct appeal from the District Court, after expedited briefing and a special late-Term oral argument, all under pressure of a statute requiring expedited review. n36 From the date the Court took the case to the date it decided it was only 73 days. n37 While still a far cry from Bush v. Gore, that was pretty fast. But the case itself was largely a  [\*193]  reprise of the previous Term's decision in Texas v. Johnson, n38 to which the Flag Protection Act was a response. The Justices were on well-trod turf, having only to consider whether the slight differences between the federal law and the state law they had just struck down in Johnson justified a different result. The specific problem and the overall setting were familiar. In utter contrast, Bush v. Gore presented novel issues. It is no slight to the Justices' erudition to suggest that none was familiar with the intricacies of the Electoral College provisions in Title 3 of the U.S. Code or with the Florida contest and protest statutes. Finally, by rushing into the maelstrom rather than reviewing it in the calm light of day, the Court did much to further the perception that it had become a purely political actor. The decision has been overwhelmingly attacked as partisan. n39 This reaction stems primarily from the 5-4 conservative/liberal split, combined with an apparent abandonment by all nine Justices of their usual positions on "neutral principles" such as federalism, respect for state courts, and narrow or broad readings of constitutional rights. The validity of the ubiquitous political-operatives-in-robes attack is beyond the scope of this essay. My narrower point is that the extraordinary speed with which the Court acted significantly added to the overwhelming impression of the Court as a partisan institution. At a minimum, it eliminated an important barrier to hyper-legal-realist cynicism; it may have contributed to that  [\*194]  cynicism. If the Court accelerates its ordinary processes in order to solve a political crisis, it will inescapably be perceived as deciding on political grounds, for that is how political problems are decided. Not only was the Court in Bush v. Gore ruling on a political battle, it had become a participant in that battle. The usual insulation and distance had evaporated.

### yes israel strikes

#### Israeli motive exists, Menedez lowers the threshold and green lights attack

Lennard 13 (Natasha, assistant news editor , “Senate resolution would greenlight Israeli attack,” Salon, 3-1, <http://www.salon.com/2013/03/01/senate_resolution_would_greenlight_israeli_attack_on_iran/>)

Senate resolution would greenlight Israeli attack

On Thursday, Ali Gharib at the Daily Beast drew attention to a resolution set to be introduced in the Senate, which declares U.S. support for an Israeli military strike against Iran’s nuclear program. The resolution, to be introduced by Sens. Lindsey Graham, R-S.C., and Robert Menendez, D-N.J., has bipartisan support and the backing of AIPAC. Via Gharib:

With prominent liberal Democrats already signing on, AIPAC’s lobbying heft will likely propel a bill that, in Congressional sentiment at least, commits the U.S. to active support of a potential Israeli attack that experts think could have consequences as grave as further destabilization in the region, adverse global economic consequences, and even a hardening of Iranian resolve to get a weapon.

Although the bill’s supporters have stressed that it is does not advocate war or use of force, the non-binding resolution’s language is strong. Gharib cites a passage that reads, “if the Government of Israel is compelled to take military action in self-defense, the United States Government should stand with Israel and provide diplomatic, military, and economic support to the Government of Israel in its defense of its territory, people, and existence.”

A CIA official dismissed the resolution’s geopolitical importance. He told Gharib that “the discussions between the Obama administration and the Israelis about potential military action on Iran have nothing to do with these kinds of resolutions.” However, Gharib, who has reported U.S. foreign policy and the Middle East for many years sees these non-binding resolutions, although not policy decisions, as among the many incremental pushes that create the conditions for conflict. He explained:

While non-binding Congressional resolutions don’t directly make policy, the language therein often manifests itself both in later, binding legislative efforts and, more frequently, in the public discourse. In this case, the resolution builds steam for a hawkish push against Iran at a time when the Islamic Republic and world powers are amid a negotiating process over the former’s nuclear program, which is widely believed to be aimed at producing weapons.

Indeed, with strong AIPAC support, these resolutions have in the past had profound impact on the public discourse on Israel and Iran, in turn impacting policy frameworks. Gharib highlights as exemplar the shift in the U.S. “red line” on Iran moving from Tehran acquiring a weapon to having the “capability” to do so:

Like a previous Graham effort, the new resolution misstates U.S. policy as “to prevent Iran from acquiring a nuclear weapon capability” (my emphasis)—phrasing the Senate overwhelmingly approved in another AIPAC-backed measure last September. The “capability” language sets a lower threshold for war than Barack Obama’s stated policy to “prevent Iran from obtaining a nuclear weapon,” fullstop—a distinction at the heart of Obama’s flaplast autumn with Israeli Prime Minister Benjamin Netanyahu.

#### Sanctions collapse the deal, cause Israeli strikes

**Keller, 12/11**/13 - Former New York Times Executive Editor and currently an Op-Ed columnist (Bill, “Iran’s Hardliners, and Ours” New York Times, http://keller.blogs.nytimes.com/2013/12/11/irans-hardliners-and-ours/?\_r=0)

America’s hawks, in turn, would suffer a serious blow to their bellicose notion of America’s role if the evilest spoke in the Axis of Evil turned out to be amenable to diplomacy.

And so a failure of negotiations would delight both of them – American hawks because Israel could get on with the business of bombing, Iranian hawks because there’s nothing like an attack by the infidels to unify a fractious public behind an authoritarian regime.

For the moment, our hard-liners pose a greater problem than Iran’s. The moves on Capitol Hill to impose new sanctions before the interim deal even takes effect may pass for tough-mindedness, but they are effectively sabotage. They would undermine President Rouhani’s precarious position at home. Paradoxically, they could also endanger the cooperation Obama has painstakingly earned from the other nuclear powers, and lead to the collapse of the global sanctions. We would lose a united front (which includes China and Russia) against the nuclearization of Iran, and demonstrate that Iranian hardliners are right about what really motivates Washington.

#### Both the US and Israel will strike if talks collapse

**Kearn, 1/19/14** - Assistant Professor, St. John’s University (David, Huffington Post, “The Folly of New Iran Sanctions,” <http://www.huffingtonpost.com/david-w-kearn/the-folly-of-new-iran-san_b_4619522.html>)

Nonetheless, this debate has effectively been made moot by official U.S. and Israeli policies. The clear commitment of the Obama administration to thwart Tehran from acquiring a nuclear weapon has been in place for some time. Containment is not an option, and military force will ostensibly be used to prevent an Iranian nuclear weapon from becoming operational. Despite this commitment, the Israeli government has consistently expressed its willingness to act alone to stop an Iranian bomb even without U.S. support. While hardliners in Tel Aviv and Washington may not agree, these are both credible threats that the regime in Tehran must take seriously. Thus, the situation confronting Iran and the world is either the peaceful negotiated solution to the nuclear question, or the high likelihood of another destructive, costly war in a region already torn apart by conflict.

The current sanctions bill in the Senate is not about providing President Obama and Secretary Kerry with greater leverage in the negotiations. The Iranian delegation has made clear that it views any such sanctions as an indication of bad faith that will wreck the process and undo any progress made to this point. With the interim agreement set to go into effect next week, this is clearly not the time for the Senate to usurp the authority of the commander-in-chief and his chief diplomat. Taking their respective rationales at face value, the Democratic members of the Senate supporting the sanctions legislation may have good intentions to provide a stronger "bad cop" to Secretary Kerry's "good cop" in Geneva. This is short-sighted. New sanctions will not only play into the narrative of hard-liners in Iran who don't want agreement, it will also isolate the United States from its negotiating partners and likely cripple the cohesive united front that has seemingly emerged throughout the talks. In doing so, it is most likely to fulfill the wishes of hardliners in Israel and the United States that simply don't want an agreement and refuse to take any "yes" for an answer. However, with a failure of negotiations, military conflict is much more likely.

#### No defense—Israeli anxiety is extreme and even defensive measures escalate

Ehud Eiran 13 is an Assistant Professor at the University of Haifa and an Affiliate of the Middle East Negotiation Initiative at the Program on Negotiation, Harvard Law School. Eiran is also a former Assistant to the Foreign Policy Advisor to Israel’s Prime Minister. The Sum of all Fears: Israel’s Perception of a Nuclear-Armed Iran, <http://live.belfercenter.org/files/thesumofallfears.pdf>, The Washington Quarterly • 36:3 pp. 7789

First, Israel not only has a particular view of the threat posed by the military dimension of the Iranian nuclear program, it also has an independent means of taking action to alleviate its fears. Although Israel is less capable than the United States, if Israel were to launch strikes on Iran to set back the nuclear program, the effects would ripple across the region and beyond. Meir Dagan, former head of Israel’s external intelligence agency, the Mossad, warned a number of times that an Israeli attack on Iran would ‘‘ignite a regional war.’’1

Second, Israel’s anxieties over Iran could produce a series of defensive moves and escalating responses which spiral out of control in a manner that neither side intends. As the history of war and conflict in the Middle East from the June 1967 Six-Day War to the November 2012 round of violence between Israel and the Gaza-based Hamas reminds us, the Middle East is a tinderbox where a few sparks could all too easily ignite a major conflagration.

Finally, as President Obama’s March 2013 visit to Israel demonstrated, Israel’s fears of Iran have become an inescapable and urgent concern for U.S. policy in the Middle East. Given the U.S.—Israeli friendship, President Obama will need to pay close attention to these sensitivities toward Iran. A clear understanding of Israeli perceptions of Iran will remain essential to U.S. policy toward Tehran.

#### They overlook Israeli calculations—they THINK they’ll succeed

Sadot 12-30-13 (Uri, research associate at the Council on Foreign Relations and holds a master’s degree in international affairs from Princeton University, A Raid on Iran?, Weekly Standard, VOL. 19, NO. 16, <http://www.weeklystandard.com/articles/raid-iran_771518.html?page=1>)

American analysts are divided on Israel’s ability to take effective military action. However, history shows that Israel’s military capabilities are typically underestimated. The Israel Defense Forces keep finding creative ways to deceive and ~~cripple~~ their targets by leveraging their qualitative advantages in manners that confound not only skeptical observers but also, and more important, Israel’s enemies. Military triumphs like the Six-Day War of June 1967 and the 1976 raid on Entebbe that freed 101 hostages are popular Israeli lore for good reason—these “miraculous” victories were the result of assiduously planned, rehearsed, and well-executed military operations based on the elements of surprise, deception, and innovation, core tenets of Israeli military thinking. Inscribed on one of the walls of the IDF’s officer training academy is the verse from Proverbs 24:6: “For by clever deception thou shalt wage war.” And this has been the principle driving almost all of Israel’s most successful campaigns, like the 1981 bombing of Iraq’s nuclear reactor, the 1982 Beka’a Valley air battle, and the 2007 raid on Syria’s plutonium reactor, all of which were thought improbable, if not impossible, until Israel made them reality. And yet in spite of Israel’s record, some American experts remain skeptical about Israel’s ability to do anything about Iran’s nuclear weapons facilities. Even the most optimistic assessments argue that Israel can only delay the inevitable. As a September 2012 report from the Center for Strategic and International Studies contends: “Israel does not have the capability to carry out preventive strikes that could do more than delay Iran’s efforts for a year or two.” An attack, it continued, “would be complex and high risk in the operational level and would lack any assurances of a high mission success rate.” Equally cautious is the chairman of the Joint Chiefs of Staff, General Martin Dempsey, who argued that while “Israel has the capability to strike Iran and to delay the production or the capability of Iran to achieve a nuclear weapons status,” such a strike would only delay the program “for a couple of years.” The most pessimistic American assessments contend that Israel is all but neutered. Former director of the CIA Michael Hayden, for instance, said that airstrikes capable of seriously setting back Iran’s nuclear program are beyond Israel’s capacity. Part of the reason that Israeli and American assessments diverge is the difference in the two countries’ recent military histories and political cultures. While the American debate often touches on the limits of military power and its ability to secure U.S. interests around the globe, the Israeli debate is narrower, befitting the role of a regional actor rather than a superpower, and focuses solely on Israel’s ability to provide for the security of its citizens at home. That is to say, even if Israel and the United States saw Iran and its nuclear arms program in exactly the same light, there would still be a cultural gap. Accordingly, an accurate understanding of how Israelis see their own recent military history provides an important insight into how Israel’s elected leaders and military officials view the IDF’s abilities regarding Iran. Any account of surprise and deception as key elements in Israeli military history has to start with the aerial attack that earned Israel total air supremacy over its adversaries in the June 1967 war. Facing the combined Arab armies, most prominently those of Egypt, Syria, and Jordan, Israel’s Air Force was outnumbered by a ratio of 3 planes to 1. Nonetheless, at the very outset of the war, the IAF dispatched its jets at a time when Egyptian pilots were known to be having breakfast. Israeli pilots targeted the enemy’s warplanes on their runways, and in two subsequent waves of sorties, destroyed the remainder of the Egyptian Air Force, as well as Jordan’s and most of Syria’s. Within six hours, over 400 Arab planes, virtually all of the enemy’s aircraft, were in flames, with Israel losing only 19 planes. Israel’s sweeping military victory over the next six days was due to its intimate familiarity with its enemy’s operational routines—and to deception. For instance, just before the actual attack was launched, a squad of four Israeli training jets took off, with their radio signature mimicking the activity of multiple squadrons on a training run. Because all of Israel’s 190 planes were committed to the operation, those four planes were used to make the Egyptians believe that the IAF was simply training as usual. The IAF’s stunning success was the result not only of intelligence and piloting but also of initiative and creativity, ingredients that are nearly impossible to factor into standard predictive models. The 1981 raid on Iraq’s nuclear reactor at Osirak is another example of Israel’s ability to pull off operations that others think it can’t. The success caught experts by surprise because every assessment calculated that the target was out of the flight range of Israel’s newly arrived F-16s. The former deputy chief of mission at the U.S. embassy in Israel Bill Brown recounted that on the day after the attack, “I went in with our defense attaché, Air Force Colonel Pete Hoag, to get a briefing from the chief of Israeli military intelligence. He laid out how they had accomplished this mission. .  .  . Hoag kept zeroing in on whether they had refueled the strike aircraft en route, because headquarters of the U.S. Air Force in Washington wanted to know, among other things, how in the world the Israelis had refueled these F-16s. The chief of Israeli military intelligence kept saying: ‘We didn’t refuel.’ For several weeks headquarters USAF refused to believe that the Israelis could accomplish this mission without refueling.” Washington later learned that Israel’s success came from simple and creative field improvisations. First, the pilots topped off their fuel tanks on the tarmac, with burners running, only moments before takeoff. Then, en route, they jettisoned their nondetachable fuel drop tanks to reduce air friction and optimize gas usage. Both these innovations involved some degree of risk, as they contravened safety protocols. However, they gave the Israeli jets the extra mileage needed to safely reach Baghdad and return, and also to gain the element of surprise by extending their reach beyond what the tables and charts that guided thinking in Washington and elsewhere had assumed possible. Surprise won Israel a similar advantage one year later in the opening maneuvers of the 1982 invasion of Lebanon. For students of aerial warfare, the Beka’a Valley air battle is perhaps Israel’s greatest military maneuver, even surpassing the June 1967 campaign. On June 9, Israel destroyed the entire Soviet-built Syrian aerial array in a matter of hours. Ninety Syrian MiGs were downed and 17 of 19 surface-to-air missile batteries were put out of commission, while the Israeli Air Force suffered no losses. The brutal—and for Israel, still controversial—nature of the Lebanon war of which this operation was part dimmed its shine in popular history, but the operation is still studied around the world. At the time it left analysts dumbfounded. The 1982 air battle was the culmination of several years’ worth of tension on Israel’s northern border. Israel was concerned that Syria’s deployment of advanced aerial defense systems in Lebanon’s Beka’a Valley would limit its freedom to operate against PLO attacks from Lebanon. When Syria refused to pull back its defenses and U.S. mediation efforts failed, Israel planned for action. Although Israel was widely understood to enjoy a qualitative advantage, no one could have imagined the knockout blow it was about to deliver. Israel launched its aerial campaign on the fourth day of the offensive, commencing with a wave of unmanned proto-drones that served as decoys to trigger the Syrian radars. Rising to the bait, the aerial defense units launched rockets and thus exposed their locations to Israel’s artillery batteries and air-to-ground missiles. In parallel, Israel used advanced electronic jammers to further incapacitate Syrian radars, which cleared the path for the IAF’s fighter-bombers to attack the remaining missile launchers. When Syrian pilots scrambled for their planes, their communications had already been severed and their radars blinded. Israeli pilots later noted the “admirable bravery” of their Syrian counterparts, whom they downed at a ratio of 90 to 0. A RAND report later concluded that Israel’s success was due not to its technological advantage. “The Syrians were simply outflown and outfought by vastly superior Israeli opponents. .  .  . The outcome would most likely have been heavily weighted in Israel’s favor even had the equipment available to each side been reversed. At bottom, the Syrians were .  .  . [defeated] by the IDF’s constant retention of the operational initiative and its clear advantages in leadership, organization, tactical adroitness, and adaptability.” In other words, Israel won because of its creative and skillful orchestration of a well-organized fighting force. And then there is Israel’s most recent high-profile conflict with Syria. When Israeli intelligence discovered that Bashar al-Assad’s regime was building a plutonium reactor in the northeast Syrian Desert, Israeli and American leaders disagreed on the best course of action. Israel’s then-prime minister Ehud Olmert argued for a military solution, while the Bush administration feared the risks, demurred, and Secretary of State Condoleezza Rice pushed to take the matter to the U.N. The Israelis, however, confident in their cyberwarfare capabilities, knew they could disable Syria’s air defenses. Moreover, as careful students of Syrian decision-making, they believed they could destroy the reactor without triggering a costly reaction from Assad. And on September 6, 2007, Israel once again overturned the expert predictions and assessments of others and successfully destroyed the Syrian reactor at Al Kibar. With Iran, American and Israeli leaders once again disagree on what might be gained by a military strike. While the American debate is riddled with doubts about the efficacy of force, Israeli experts harbor far fewer doubts. As former chief of military intelligence Amos Yadlin asserts unequivocally: “It can be done.” There are some Israeli strategists less optimistic, but the nature of their dissent is fundamentally different from that of American skeptics. U.S. policymakers and analysts question Israel’s ability to strike, or how far even the most successful strike might set back Iran’s nuclear program, but Israelis largely believe they can take effective military action. The question for Israeli strategists is at what cost? A 2012 IAF impact evaluation report predicted 300 civilian casualties in the event of an Iranian retaliatory missile attack. Former defense minister Ehud Barak offered a higher number, contending that open conflict with Iran would claim less than 500 Israeli casualties. Responding to Barak’s relatively optimistic assessment, onetime Mossad director Meir Dagan argued instead that an attack on Iran would take a heavy toll in terms of loss of life and would paralyze life in Israel. Regardless of the number of potential casualties, the frank discussion of what an attack on Iran might cost Israel in human lives is an essential part of preparing the country, and steeling it, for the possibility of war. Israel has also devoted material resources to the eventuality of a military campaign against the regime in Tehran. According to Ehud Olmert, Israel has spent over $10 billion on preparations for a potential showdown with Iran. “We’ve worked long and hard to prepare ourselves,” former IDF chief of staff Gabi Ashkenazi said recently. Israel, he added, “will be able to deal with the consequences of a military attack on Iran.” The question of how exactly Israel might act to stop the Iranian nuclear program is an open one. In part, that’s because it’s hard to know how Israeli strategists see the problem or might reconfigure the working paradigm. The basic operational assumption is that Israel would attack from the air, but who knows? If the goal is to slow down Iran’s nuclear program, there are other ways to do it, perhaps by targeting Iran’s economy, its powergrid, its oil fields, or the regime itself. Or military action might not take the form of an aerial attack at all, but rather a commando heist of Iran’s uranium. Recall the raid on Entebbe: With commandos operating 2,000 miles from Israel’s borders disguised as a convoy carrying the Ugandan leader Idi Amin, that 1976 operation, like many of Israel’s air triumphs, combined strategic surprise with tactical deception. What is certain, however—what many historical precedents make clear—is that it would be an error of the first order to dismiss Israel’s ability to take meaningful military action against Iran. Israel has left its enemies, as well as American policymakers and military experts, surprised in the past, and it may very well do so again.

### pc key

#### Political capital is key – 1nc Benen and Kampeas say the only reason there isn’t overwhelming Senate support is Obama’s intense lobbying with Dems.

#### Obama’s direct lobbying is preventing override

**Dyer, 1/14/14** – Washington Bureau for the Financial Times (Geoff, “Barack Obama steps up lobby against new Iran sanctions bill” Financial Times, <http://www.ft.com/intl/cms/s/0/9a9a045c-7d44-11e3-a579-00144feabdc0.html#axzz2qfrkluW5>)

President Barack Obama has summoned Senate Democrats to the White House for a rare meeting on Wednesday as he seeks to head off a congressional rebellion that he fears could undermine his efforts at diplomacy with Iran.

Just as US diplomats begin final-stage talks with Iran over its nuclear programme, Mr Obama is stepping up his intense lobbying within his own party to prevent Congress from passing new Iran sanctions legislation.

At present, 16 Democrats are among the 59 senators who have sponsored a bill that would impose swingeing new restrictions on Iranian oil exports if Tehran violates the interim nuclear agreement that was finalised at the weekend. Iran has threatened to pull out of the talks if the bill is passed.

Coming during one of the most difficult periods of his presidency, Mr Obama’s efforts to pressure Senate Democrats could become a defining moment in his often troubled relationship with Congress. Although Mr Obama has threatened to veto the legislation, 67 votes in the Senate would overcome a veto. Support in the House of Representatives is also expected to be vetoproof.

At the same time, the sanctions bill is putting many Democrats in a delicate position at the start of an election year. The legislation is being pushed strongly by pro-Israel lobby groups, such as the American Israel Public Affairs Committee, which are influential among some party donors. Yet opinion polls show that Mr Obama’s diplomacy towards Iran is very popular among voters, especially Democrats.

#### Their PC ev doesn’t assume a major decrease on a foreign policy issue

**Krasuhaar, 13** (Josh, National Journal, “The Iran Deal Puts Pro-Israel Democrats in a Bind” <http://www.nationaljournal.com/magazine/the-iran-deal-puts-pro-israel-democrats-in-a-bind-20131121>)

All of this puts Democrats, who routinely win overwhelming support from Jewish Americans on Election Day, in an awkward position. Do they stand with the president on politically sensitive foreign policy issues, or stake their own course? That difficult dynamic is currently playing out in Congress, where the Obama administration is resisting a Senate push to maintain tough sanctions against Iran. This week, Obama met with leading senators on the Banking and Foreign Relations committees to dissuade them from their efforts while diplomacy is underway. "There's a fundamental disagreement between the vast majority of Congress and the president when it comes to increasing Iran sanctions right now," said one Democratic operative involved in the advocacy efforts. "Pro-Israel groups, like AIPAC, try to do things in a bipartisan way; they don't like open confrontation. But in this instance, it's hard." That awkwardness has been evident in the lukewarm reaction from many of Obama's Senate Democratic allies to the administration's outreach to Iran. Senate Foreign Relations Committee Chairman Robert Menendez of New Jersey said last week he was concerned that the administration seems "to want the deal almost more than the Iranians." Normally outspoken Sen. Chuck Schumer of New York, a reliable ally of Israel, has been conspicuously quiet about his views on the negotiations. In a CNN interview this month, Democratic Rep. Debbie Wasserman Schultz of Florida, whose job as chairwoman of the Democratic National Committee is to defend the president, notably declined to endorse the administration's approach, focusing instead on Obama's past support of sanctions. This, despite the full-court press from Secretary of State John Kerry, a former congressional colleague. On Tuesday, after meeting with Obama, Menendez and Schumer signed a bipartisan letter to Kerry warning the administration about accepting a deal that would allow Iran to continue its nuclear program. The letter was also signed by Sens. John McCain, R-Ariz., Lindsey Graham, R-S.C., Susan Collins, R-Maine, and Robert Casey, D-Pa. Democrats, of course, realize that the president plays an outsized role in the policy direction of his party. Just as George W. Bush moved the Republican Party in a more hawkish direction during his war-riven presidency, Obama is nudging Democrats away from their traditionally instinctive support for the Jewish state. "I can't remember the last time the differences [between the U.S. and Israel] were this stark," said one former Democratic White House official with ties to the Jewish community. "There's now a little more freedom [for progressive Democrats] to say what they want to say, without fear of getting their tuchus kicked by the organized Jewish community." A Gallup survey conducted this year showed 55 percent of Democrats sympathizing with the Israelis over the Palestinians, compared with 78 percent of Republicans and 63 percent of independents who do so. A landmark Pew poll of American Jews, released in October, showed that 35 percent of Jewish Democrats said they had little or no attachment to Israel, more than double the 15 percent of Jewish Republicans who answered similarly. At the 2012 Democratic National Convention, many delegates booed a platform proposal supporting the move of the U.S. Embassy in Israel from Tel Aviv to Jerusalem. In 2011, Democrats lost Anthony Weiner's heavily Jewish, solidly Democratic Brooklyn House seat because enough Jewish voters wanted to rebuke the president's perceived hostility toward Israel. Pro-Israel advocacy groups rely on the mantra that support for Israel carries overwhelming bipartisan support, a maxim that has held true for decades in Congress. But most also reluctantly acknowledge the growing influence of a faction within the Democratic Party that is more critical of the two countries' close relationship. Within the Jewish community, that faction is represented by J Street, which positions itself as the home for "pro-Israel, pro-peace Americans" and supports the Iran negotiations. "Organizations that claim to represent the American Jewish community are undermining [Obama's] approach by pushing for new and harsher penalties against Iran," the group wrote in an action alert to its members. Some supporters of Israel view J Street with concern. "There's a small cadre of people that comes from the progressive side of the party that are in the business of blaming Israel first. There's a chorus of these guys," said a former Clinton administration foreign policy official. "But that doesn't make them the dominant folks in the policy space of the party, or the Hill." Pro-Israel activists worry that one of the ironies of Obama's situation is that as his poll numbers sink, his interest in striking a deal with Iran will grow because he'll be looking for any bit of positive news that can draw attention away from the health care law's problems. Thus far, Obama's diminished political fortunes aren't deterring Democrats from protecting the administration's prerogatives. Congressional sources expect the Senate Banking Committee, chaired by South Dakota Democrat Tim Johnson, to hold off on any sanctions legislation until there's a resolution to the Iranian negotiations. But if Obama's standing continues to drop, and negotiations produce a deal that Israel doesn't like, don't be surprised to see Democrats become less hesitant about going their own way.

#### Spills over – external controversy was what created Dem support for sanctions in the first place

**Rohde, 1/15/14 -** columnist for Reuters, two-time winner of the Pulitzer Prize and a former reporter for The New York Times**.**(David, “Newest victim of congressional wrecking ball: Iran policy” Reuters, http://blogs.reuters.com/david-rohde/2014/01/15/newest-victim-of-the-congressional-wrecking-ball-iran-policy/)

In this way, Obama is the victim of an increasingly craven Washington — where members of his own party are abandoning him out of political expedience. At the same time, the White House is also a victim of its sometimes erratic responses to events in the Middle East.

For the last six years, the president has repeatedly declared that he does not want the United States entangled in another conflict in the Middle East. As a result, allies and enemies at home and abroad, from members of Congress to Israeli and Iranian hawks, question his commitment to use force against Iran if negotiations fail.

Experts warn that the stakes are enormous. Political opportunism, maximalist positions and mixed messages could take on a life of their own, scuttle the talks and inadvertently spark military action.

George Perkovich, director of the Nuclear Policy Program at the Carnegie Endowment for International Peace, lambasted the bill’s congressional sponsors in Foreign Affairs. He accused Senators Robert Menendez (D-N.J.), Charles Schumer (D-N.Y.) and Mark Kirk (R-Ill.) of reckless grandstanding.

“The Menendez-Kirk-Schumer bill may be politically expedient,” Perkovich wrote, “but it is also entirely unnecessary and dangerous.”

Much of the Democrats’ maneuvering is old-fashioned political posturing. All the Democratic officeholders now supporting the sanctions bill, David Weigel noted in Slate Tuesday, face tough re-election battles. Rejecting calls from the American Israel Public Affairs Committee to support the new sanctions bill could make them vulnerable to attacks of capitulating to Iran. So far, Democrats from “safer, bluer” turf — including Senators Tim Kaine (D-Va.) and Chris Murphy (D-Conn.) — are not supporting the bill.

Ambition also plays a role here. Schumer, who is safe in New York, is looking to succeed Senator Harry Reid (D-Nev.) as majority leader. His chief rival for this job, Senator Dick Durban (D-Ill.), who was the senior senator from Illinois when Obama was the junior senator, is backing the administration.

Democrats who support the new sanctions bill claim that their goal is to give Obama greater leverage in talks with Tehran. But Perkovich and other experts warn that the proposed sanctions threaten to spark a tit-for-tat cycle of escalation.

As American hard-liners saber rattle, Iranian hard-liners are saber rattling back. If Congress does pass the new sanctions bill, a senior member of the Iranian parliament has threatened, his nation would respond by beginning to enrich uranium to 60 percent — a level close to that needed for a nuclear bomb.

The major unresolved issue — and the biggest threat to a comprehensive deal — is whether Iran should be allowed any enrichment capability.

The White House has signaled that it would accept a tightly monitored program in Iran — one that enriches uranium only to the level used for energy and research.

Israeli Prime Minister Benjamin Netanyahu and hawkish members of Congress argue that increased sanctions will force the regime to give up enrichment or collapse.

Reza Marashi, research director of the National Iranian American Council, an advocacy group that supports the nuclear talks, said it is political suicide for any Iranian official to accept no enrichment. Tehran’s hard-liners would accuse them of capitulation to the United States and Israel.

“I don’t know any Iran analyst — except for those on the far, far right,” Marashi told me in a telephone interview Tuesday, “who think that zero enrichment is possible.”

Obama has also made foreign policy missteps. As I wrote last week the administration’s shifting positions on Syria — from demanding President Bashar al-Assad “must go” to declaring “red lines” on chemical weapons use and then backing away from military action — has hurt his credibility in the region.

Perkovich said domestic missteps have played a role as well. The interim agreement with Iran was announced just as the Obamacare website began its botched rollout. Congressional Democrats facing tough re-election battles decided they simply could not trust the White House.

“The timing was disastrous [to Congress],” Perkovich told me in a telephone interview Tuesday. “They thought ‘these guys are totally incompetent.’”

#### Loss of cred is the only override scenario

**The Economist, 1/14/14** (“Mr Obama’s Iran problem” <http://www.economist.com/news/united-states/21594295-congress-not-helping-president-deal-islamic-republic-mr-obamas-iran-problem>)

Now Iran is again causing angst in Washington. Barack Obama faces acute, bipartisan scepticism in Congress, after his envoys joined other world powers in brokering an interim nuclear agreement with the Islamic Republic. This is due to take effect on January 20th, easing international sanctions in exchange for slowing Iran’s nuclear work, and buying time for a more comprehensive deal. At the time of writing 59 of 100 senators say they back a proposal to hold extra sanctions over Iran’s head, despite warnings from Mr Obama that if Congress votes for new sanctions Iran may abandon the talks. That means Senate sceptics are not far from the two-thirds majority they need to override Mr Obama’s threat of a veto. (The Republican-controlled House of Representatives strongly backs tougher sanctions, either because members think the Iranians are bluffing about walking out, or because their favoured Iran strategy involves regime change.) Team Obama has let rip, asserting that passing new sanctions—even ones whose bite is suspended—will wreck talks, shatter international unity over Iran and trigger a “march toward war”. A National Security Council staffer said that if some members of Congress want military action against Iran, “they should be upfront with the American public and say so.”

Some of the forces at work have changed little since 2007. Friends such as Israel and allies such as Saudi Arabia still believe that Iran is a rogue power that will always break nuclear promises. Many members of Congress sincerely loathe Iran’s regime, partly because it sponsors terrorism and tortures dissidents, but also, perhaps, because of a sense that Iran bested America in the battle for influence in post-Saddam Iraq. If the Iranian government of President Hassan Rohani presents a smiling face to the world, many American lawmakers see that as a trick or as a sign that existing tough sanctions have worked, making it imperative to keep a boot on the regime’s neck, while reminding Iran that fresh cheating will be punished.

Another constant is domestic politics, especially in a mid-term election year. An influential pro-Israel group, the American Israel Public Affairs Committee (AIPAC), has been lobbying members of Congress to keep the pressure on Iran. So have members of the People’s Mujahedeen of Iran (often known by the Persian acronym MEK), a group with a violent past whose opposition to the Iranian regime has nonetheless earned it allies in Congress. Lastly, cynicism remains a lodestar. Democratic leaders in the Senate are not rushing to put plans for extra sanctions to a vote, and insiders say that suits some senators very well. For such opportunists, co-sponsoring a sanctions bill that goes nowhere is an ideal outcome: it avoids hard foreign-policy trade-offs, while warding off attack ads that call them soft on Iran.

Yet at least one big thing is new: a widespread belief, certainly among Republicans, that Mr Obama is in exactly the opposite position to Mr Bush. Plenty of people in the world doubt his willingness to use force, even to prevent Iran from building a nuclear bomb on his watch. If Congress is willing to risk scuppering talks with Iran at this early stage, a big part of the explanation is that Mr Obama is suffering a crisis of presidential credibility. That crisis dates back, most acutely, to his failure to secure congressional approval for promised strikes on Syria for using chemical weapons. Put bluntly, Washington critics think Mr Obama talks endlessly and wields only sticks small enough to be delivered by drone.

#### Prefer our evidence:

#### 1. They overlook Obama’s new team

**Wall Street Journal, 1/3/14** (“Obama's 2014 Priorities Face Early Tests in Congress” <http://online.wsj.com/news/articles/SB10001424052702303640604579298813059939366>)

While much of the Obama agenda remains the same as last year, the White House's outreach to Capitol Hill will look different in 2014. Moving to shore up what many lawmakers had said was an underpowered effort to work with lawmakers, the White House has named Katie Beirne Fallon, a former longtime aide to Sen. Chuck Schumer (D., N.Y.), as its legislative-affairs director.

Phil Schiliro, who held that post earlier in the Obama administration, is returning to the White House, and John Podesta, a White House chief of staff under Bill Clinton, will be a senior adviser. All three have personal relationships with key members of Congress.

Rep. Steve Israel (D., N.Y.) said he already has seen the White House's stepped-up efforts to work with Capitol Hill. "They understand that the next 10 months will define the final two years of the Obama administration, and that is going to require teamwork and hard work," he said. "I've seen enhanced communication. I had a conference call [Thursday] night as the blizzard struck" while Mr. Israel was home on Long Island. He said the call was about the health-care law.

#### 2. Specific to veto

**Slezak, 7 -** University of California, Los Angeles(Nicole, “The Presidential Veto: A Strategic Asset,” <http://www.thepresidency.org/storage/documents/Vater/Slezak.pdf>)

Spitzer states that the veto is the “key presidential weapon,”13 and I suggest that it offers him a strategy to take both the defensive and the offensive against an often divided and combative Congress. The president takes the defensive by waiting for legislation to be sent to him from Congress and then vetoing legislation that is unacceptable and offensive to his administration’s goals. The veto is a way for the president to “go public” and to show his dislike for the legislation through his veto message. In addition, he can prove to Congress that unless they amend the legislation in accordance with his suggestions, he will not pass the bills that they send him. Gattuso speaks on this matter by stating, “The veto, moreover, is a very effective device for grabbing the public’s attention and focusing it on the President’s struggle to pursue policies on behalf of all the people and against special interests. A veto message may be a President’s most effective bully pulpit.”14

However, the veto is more than a tool to block, and the president may also take the offensive by using the veto threat. Aside from the conventional use of the veto (blocking legislation from passing), it can also be used in this more subtle and less potentially damaging way. The veto threat is a special tool that allows the president to warn Congress of a veto before the legislation is even presented to him. The veto threat stems from the power that the veto has built over the centuries and which relies heavily on a president’s possession of political capital. If the president is in the fourth year of his term, when Congress is most likely to be confrontational, the president should not use the veto threat as often as he did in the first year of his term. This is due to the fact that when a president enters office he is riding on the mandate of his election and has a large amount of political capital to spend. This is why Spitzer warns that, “like a veto itself, a threat applied too often loses its potency, and a threat not considered credible is not a threat at all.”15

Once the president makes the decision to make a veto threat and does so, there are four outcomes that are possible. Congress can decide to shape the legislation in a manner that is acceptable to the president so that he will sign it into public law, Congress can construct a compromise with the president and pass an altered bill, the president can give in and sign the bill if Congress sends it unchanged, or neither side can compromise and will lead to Congress passing the bill unchanged and the president vetoing it.16

In order to take advantage of the strategic uses of the veto, both in its defensive and offensive applications, it must be determined what factors lead a president to veto or pass legislation. To do this, I will assess what factors scholars believe influence a president’s decision to veto legislation. To determine if these widely supported factors are important in the president’s decision to veto, they will be tested to determine whether they are statistically significant. Once it is known what factors truly cause the president to veto legislation, and which actually matter, it will help the president create a reliable veto strategy. The veto strategy is a model to help the president assess when the use of the veto will maximize effectiveness. This allows the president to calculate when it is an opportune time to risk political capital and a potential override in order to veto legislation, or when he should avoid losing capital and attempt to bargain with Congress or simply pass legislation.

### at: uniqueness overwhelm

#### Twenty one Dems are in the air so personal leverage matters

**Kampeas, 1/22/14 -** JTA's Washington bureau chief, responsible for coordinating coverage in the U.S. capital and analyzing political developments that affect the Jewish world(Ron, Jewish Telegraph Agency, “Doing the math on Dems and the Iran sanctions bill”

<http://www.jta.org/2014/01/22/news-opinion/politics/doing-the-math-on-dems-and-the-iran-sanctions-bill>

I count 19 members of the Senate Democratic caucus opposed to a vote, versus 15 who might be assumed to support one, with 21 not accounted for.

Here’s how I got there.

There are 16 Democrats out of the 59 Senators co-sponsoring the bill, including lead sponsor Sen. Robert Menendez (D-N.J.). (On Dec. 19, when the bill was launched, 15 Democrats signed on; Sen. Michael Bennet of Colorado is the sole Democrat to have signed onto the bill since Congress returned to work this month.) Subtract from those 16 Sen. Richard Blumenthal (D-Conn.), who now opposes advancing the bill while talks are underway between Iran and the major powers. The White House and sympathetic Democrats say the bill could scuttle the talks; backers of the bill say new sanctions would enhance the U.S. hand in the talks.

So that’s 15 one might assume still back advancing the bill.

As Sargent notes, there are 10 committee chairs who signed a letter opposing the bill. In addition to those, there are another nine senators who in recent weeks have told interlocutors they oppose advancing the bill for now: There are Murray and Warren, plus Blumenthal. There are another four listed in this Huffington Post roundup. Sen. Bernard Sanders, the Vermont independent who caucuses with Democrats, is listed here. And I’ve heard from Rhode Island Jewish officials that Sen. Jack Reed (D-R.I.) is opposed to advancing the bill now.

The White House is competing hard with backers of the bill, including leading pro-Israel groups, for the remaining 21 members of the Democratic caucus. Among them are key players in states with substantial Jewish communities, like Sen. Harry Reid (D-Nev.), the majority leader; Sen. Dick Durbin (D-Ill.), the assistant majority leader; and Sen. Sherrod Brown (D-Ohio.).

#### Current lobbying means no vote – but it’s reversible – and opponents seize upon signs of weakness like the plan

**Sargent, 1/22/14** – editor of The Plum Line blog for the Washington Post (Greg, “Another blow to the Iran sanctions bill” <http://www.washingtonpost.com/blogs/plum-line/wp/2014/01/22/another-blow-to-the-iran-sanctions-bill/?tid=pm_pop>

If current conditions remain, a vote is starting to look less and less likely. Right now, the bill has 58 co-sponsors. On the other side, 10 Dem Senate committee chairs have signed a letter opposing a vote. Around half a dozen Dem Senators subsequently came out against it. With Murray and Warren, the number of Dems against a vote has comfortably surpassed the number who want one.

Meanwhile, announcements like the one earlier this month indicating that the deal with Iran is moving forward make a vote still less likely. With Murray now opposed, that means virtually the whole Dem leadership is a No. On the other hand, those who adamantly want a vote — insisting it would only help the White House and make success more likely, despite what the White House itself wants – will be looking for any hook they can find to reactivate pressure.

And it’s worth stressing that if this ever did come to a vote, it’s quite possible that many of the Dems still remaining silent could still vote Yes. Those Democrats would be putting themselves in a ridiculous, untenable position if they did that, but since many appear convinced that the alternative is politically worse, it remains a very real possibility.

## 1nr

### at: contractors offense

#### Lawsuits not effective at taking down contractors

Hossain, ’13 JD Candidate (http://www.firstamendmentstudies.org/wp/pdf/2nd\_pl\_hossain.pdf)//CC

If a plaintiff chooses a viable cause of action, two government immunities are likely to come into play against their favor in U.S. drones litigation: qualified immunity and sovereign immunity. Even if a Bivens remedy is recognized by the court, victims of drones attacks will need to overcome qualified immunity, the lowest form of immunity that all public officials enjoy from constitutional tort claims.130 Qualified immunity protects government officials from liability for civil damages so long as their conduct does not violate “clearly established law” that a reasonable person would have known.131 Because most targeted killing victims are foreign nationals who are not entitled to constitutional protections, until their rights are clearly established, federal officials will be immune from most potential Bivens suits from drone attacks.132 In addition, defendants could reasonably claim that they had authority under established laws of war, and where these military judgments are unclear, the court would likely defer to the executive.133 Judge Bates did not reach the issue of qualified immunity in Al-Aulaqi v. Obama. Also, in the United States, the federal government may not be sued unless it has waived sovereign immunity or consented to suit. If a plaintiff seeks damages for personal injury or property damages from the government, they must show that Congress has waived the government’s sovereign immunity for such claims.134 The two principal statutes that allow for waivers of sovereign immunity from damages are the Federal Tort Claims Act (FTCA) and the Tucker Act, but neither provides a basis for monetary compensation for drones victims.135 Furthermore, it will be difficult for non-citizen drone survivor or next of friend to bring a suit under the Westfall Act even by means of the Alien Tort Statute, in which a plaintiff must be an alien, because the FTCA would bar an ATS suit against American officials, although suits against alien officials can go forward.136 Judge Bates did not find Al-Aulaqi’s arguments to overcome sovereign immunity to be persuasive.137 Standing Deciding the proper cause of action and overcoming government immunities are just two of the obstacles facing targeted killing plaintiffs. The principal reason why Nasser Al-Aulaqi’s claim against the government failed was due to the judge’s decision that he had not established standing to represent his son. To establish standing, a plaintiff must “demonstrate a concrete and particularized injury resulting from a defendant’s allegedly illegal conduct.”138 An interest in a problem is insufficient for standing, so unless an organization has a client who him or herself was a target of a drone strike, those opposed to U.S. targeted killing will probably be unable to challenge this policy in federal court.139 Representing such a client is difficult both because the Obama administration’s targeted killing list is secret and because al-Qaeda members will be unwilling to turn themselves into U.S. authority in order to seek relief.140 Furthermore, in the case of an anticipated attack, standing requires the harm suffered by a plaintiff to be actual or imminent, not merely speculative, and again, this information is classified.141 Judge Bates specifically determined that Nasser Al-Aulaqi did not have third party standing to sue on his son’s behalf because a) he was unable to show that Anwar Al-Aulaqi was unable to vindicate his own rights by peaceably turning himself in, and b) because of Anwar Al-Aulaqi’s apparent disinterest in seeking access to American courts.142 The district court judge provided two ways Anwar Al-Aulaqi could have established standing: 1) he could have surrendered to American authorities and express a desire to assert his constitutional rights in U.S. courts, or 2) he could have remained and hiding and “[communicated] with attorneys via Internet” or videoconference.143 Judge Bates’ solutions have been criticized as “illusory.”144 First, while turning himself in would likely allow Al-Aulaqi to live, “managing to avoid assassination is not the same as challenging the government’s right to assassinate in the first place.”145 Second, there is “no evidence in the record that Al-Awlaki had any direct access to videoconferencing equipment or the Internet…in the ‘remote mountains of Yemen.’”146 These suggestions are thus likely untenable for potential targeted killing plaintiffs to establish standing. Political Question Doctrine The second reason that Al-Aulaqi’s case was dismissed was because it invited the Court to address questions reserved for the executive branch. Judge Bates cited the six factors the Supreme Court presented in Baker v. Carr, each of which can involve a political question: [1] a textually demonstrable constitutional commitment of the issue to a coordinate political department; or [2] a lack of judicially discoverable and manageable standards for resolving it; or [3] the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or [4] the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or [5] an unusual need for unquestioning adherence to a political decision already made; or [6] the potentiality of embarrassment from multifarious pronouncements by various departments on one question.147 The judge also cited to the D.C. Circuit’s opinion in El-Shifa Pharmaceutical Industries Co. v. United States, 148 in holding that “the courts cannot assess the merits of the President’s decision to launch an attack on a foreign target,” 149 even with the target is a U.S. citizen. Judge Bates’ analysis has been criticized, however, because El-Shifa involved “a one-off use of force against a wholly foreign threat identified by the executive branch. It did not involve the review of the executive’s prosecution of an armed conflict authorized by Congress,” the latter typically not being a political question, but review of executive conduct.150 Despite the conclusion that this presents “circular logic,”151 it is accepted that the textbook political question case is one in which plaintiffs are challenging a military or foreign policy decision constitutionally committed to Congress and the President, which implicates nearly every Baker factor.152 Because courts lack discoverable standards for deciding these issues, they have refused to review political questions that similar to those that may be implicated in targeted killing.153 States Secrets Privilege If a suit survives all the preceding barriers to challenging targeted killing in a U.S. court, the states secrets doctrine will likely be its “death knell.”154 The common law privilege allows the government to prevent disclosure of evidence that may entail a reasonable danger of revealing national security secrets. States secrets may keep plaintiffs not only from introducing vital evidence to their case, e.g. if one has been placed on a kill list or whether a drone attack had sound basis through intelligence sources, 155 but could also result in dismissal of their suit altogether.

Current regulations solve, after their evidence

Beard, 7

(Law Prof-UCLA & Former General Counsel-DOD, “The Geneva Boomerang: The Military Commissions Act of 2006 And U.S. Counterterror Operations,” 101 A.J.I.L. 56, January, Lexis)

Images depicting the mistreatment of Iraqi detainees by U.S. personnel at the Abu Ghraib prison prompted calls in the U.S. Congress for the enactment of clearer and more humane standards to govern the detention and interrogation of persons in U.S. custody. n49 While many commentators suggested that these graphic images of detainee abuse would lead to the mistreatment of captured U.S. personnel, some legal scholars have argued that the logic behind such claims is dubious. n50 In examining states' compliance with obligations under the law of war, these scholars question implicit assumptions about the conditions of symmetry and reciprocity that make such obligations genuinely self-enforcing, and enable and motivate states to keep conflicts limited. n51 Whether or not individual violations of the law of war by a state in a particular conflict produce immediate and traceable reciprocal action by other states, an act of Congress that officially attempts to reinterpret or revise key obligations under the Geneva Conventions and the law of war presents more complex and overarching law-related problems. As a powerful state with worldwide military interests, the United States has had strong incentives to participate in formulating, supporting, and strengthening the Geneva Conventions and the law of war. Beyond promoting the rule of law, encouraging the proper treatment of captured U.S personnel, and serving larger humanitarian purposes, the observance of obligations under the law of war is viewed by the U.S. military as fundamentally advancing U.S. military objectives. n52 For these reasons, the United States has generally resisted taking official actions with respect to law of war obligations and rights that would undermine the long-term American interests in maintaining the existing law of war regime. It is thus not surprising that the Bush administration has already been forced to withdraw some "aggressive" interpretations of Geneva Convention obligations in light of their potential long-term negative impact on U.S operations. For example, President Bush decided on January 18, 2002, that the Geneva Conventions were inapplicable to Afghanistan's Taliban regime [\*65] largely on the basis of memorandums from the Department of Justice arguing that it was a "failed state" or nothing more than a militant group of terrorists. n53 While accepting the Department of Justice's conclusion that he had the authority "to suspend [the Third Geneva Convention] as between the United States and Afghanistan," the president ultimately declined to exercise that authority and determined that the Geneva Conventions did apply to the conflict with the Taliban. n54 This reevaluation of the complete inapplicability of the Geneva Conventions took place in the context of memorandums to the president from the Department of State emphasizing the negative impact of such an action on long-term U.S. interests. n55 While captured Taliban fighters could properly be determined not to have fulfilled the four prerequisites of lawful belligerency and thus not to have qualified as prisoners of war (POWs), n56 the issuance of sweeping pronouncements about the inapplicability of the Geneva Conventions to foreign countries by attaching labels to those countries would undermine the overall U.S. commitment to the Conventions and serve as a dangerous precedent in future conflicts. Such actions also make little sense for the U.S. government, as it has often taken a broad view of the different types of conflicts and enemies that can give rise to demands that captured U.S. soldiers be accorded POW status. n57 At a fundamental level, unilateral revision of the Geneva Conventions by the United States undermines the credibility of the U.S. commitment to the existing Geneva regime. In an international setting that lacks effective external enforcement mechanisms, allowing the easy violation of agreements, a state may seek to send a signal of credible commitment to other states by constraining its own ability to act in ex ante legal structures, institutions, or procedures that reduce ex post incentives for such noncompliance. n58 A legislative act that restrains or makes it [\*66] costly to exercise such discretionary power and reduces the attractiveness of breaching an agreement can serve such a signaling function. n59 To the extent, however, that the MCA is perceived as unilaterally revising key obligations in the Geneva Conventions and providing the president with the discretion to issue further reinterpretations, it undermines the credible commitment of the United States to other states in the international community. n60 And to the extent that the U.S. commitment is perceived as increasingly less credible, theory suggests that other countries are unlikely to maintain the stringency of their own commitments. As for the future assertion of particular legal rights or obligations, the revisions of the Geneva Conventions officially sanctioned by the MCA may impede or estop the United States from taking legal positions that it has previously relied on to support its operations and protect its personnel from violations of the law of war. Furthermore, in adopting a statute that incorporates a flawed approach to the law of war to advance immediate U.S. objectives against terrorism, Congress may have inadvertently offered adversaries of the United States a legal model for future conflicts, with attendant negative consequences for U.S. operations and personnel. In spite of the inherent risks for the United States that are associated with unilaterally reinterpreting or revising the Geneva Conventions, the MCA nonetheless does so. By redefining the concept of combatancy, for example, the MCA may have created a particularly destructive legal boomerang. Prior to the MCA's enactment, the U.S. government had sought carefully to maintain the distinction between combatants and noncombatants, not only for the purpose of preserving key law of war principles but also in a self-interested effort to prevent large numbers of U.S. civilians and contractors who support U.S. operations from becoming legitimate targets under the law of war. This effort appears to be particularly important as private contractors assume an increasingly significant role in supporting U.S. operations in countries such as Iraq. n61 Current DoD regulations reflect considerable diligence in attempting to distinguish such contractors from combatants, in part by defining as "indirect" the role played by private contractors who provide communications support, transport munitions and other supplies, [\*67] maintain military equipment, and furnish various security and logistic services. n62 Such concerns, along with interests in attending to command-and-control issues, are reflected in DoD regulations aimed at preventing contractors from becoming too closely associated with or involved in "major combat operations" that are "ongoing or imminent." n63 Rather than expecting accredited contractors who accompany and support U.S. forces to be treated as unlawful combatants in the event that they are captured in an armed conflict, DoD regulations presume they will be entitled to POW status under the Third Geneva Convention as "[p]ersons who accompany the armed forces without actually being members thereof." n64 Such status for civilians, however, remains contingent under the Third Geneva Convention on their not actively or directly participating in hostilities. Although legal risks may be associated with any civilian activity that closely supports combat operations, the fact that a civilian contributes in some general way to the war effort or is employed by or accompanies the armed forces does not turn him into a combatant. n65 This statement has long been widely accepted as a formulation of the current rules, at least before Congress expanded the definition of combatancy in the MCA and risked confusing this extraordinarily key distinction upon which the United States has long relied. n66

### no modeling

#### Modeling fails – constitutions must be endogenous

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

As I describe above, our article conceptualizes a “generic constitution”—that is, one that contains the 25 most popular global constitution rights elements—but we do not suggest that a “generic” constitution is an “ideal” constitution or that it otherwise should serve as a model for the United States or other countries. To the contrary, I tend to resist the notion that constitutional design based on a standardized template is generally desirable. Rather, I adhere to the view that constitutions should be written with popular input and tailored to the needs, traditions, values, and interests of the society they govern. There is no “one-size-fits-all” constitution.

Indeed, history and the literature have documented the adverse effects of foreign values being inserted into a citizenry that is unprepared to accept them. As an example, most former British colonies in Africa and the Caribbean received the exact same bill of rights upon independence, rights which were taken from the European Convention on Human Rights. In most cases, these bills of rights, oblivious to the deep ethnic tensions and persistent poverty, became a grand failure.

### at: zoonotic disease

#### Zoonotics are less threatening than normal ones—they are contained now

**Torres 99** (Alfonso, D.V.M., M.S., Ph.D., Deputy Administrator, USDA, Animal Plant and Health Inspection Service, Veterinary Services, “International Economic Considerations Concerning Agricultural Diseases and Human Health Costs of Zoonotic Diseases,” Annals of the New York Academy of Sciences 894:80-82)

Animal diseases can negatively affect the number and availability of animals, their productivity, or their appearance. 1 A few centuries ago, animal diseases affected mostly individual owners or herdsmen, but did not have serious consequences on the larger community. A similar event today will not only have a negative impact on the animal owners, but more importantly, will significantly affect the general economy of the region, the entire nation, even a group of nations. The importance of animal diseases as an element affecting international trade of animals and animal products has reached its full impact level with the recent designation by the World Trade Organization (WTO) of the International Office of Epizootics (OIE) as the international agency in charge of establishing animal health standards upon which international commerce can institute restrictions to prevent the spread of animal diseases from one nation to another. It is important to point out that while the spread of human diseases around the world is due to the unrestricted movement of people across political boundaries, animal diseases are, for the most part, restricted to defined geographic areas of the world due to the implementation of animal importation requirements, quarantines, animal movement regulations, and by disease control measures that include mass vaccination campaigns and animal depopulation practices. A number of animal diseases have been eradicated from countries or even from continents around the world by aggressive, well-coordinated, long-term animal health campaigns. This is in contrast to the relatively few human diseases successfully eradicated from large areas of the world.

#### Intervening actors check

Zakaria 9**—**Editor of Newsweek, BA from Yale, PhD in pol sci, Harvard. He serves on the board of Yale University, The Council on Foreign Relations, The Trilateral Commission, and Shakespeare and Company. Named "one of the 21 most important people of the 21st Century" (Fareed, “The Capitalist Manifesto: Greed Is Good,” 13 June 2009, http://www.newsweek.com/id/201935)

Note—Laurie Garrett=science and health writer, winner of the Pulitzer, Polk, and Peabody Prize

It certainly looks like another example of crying wolf. After bracing ourselves for a global pandemic, we've suffered something more like the usual seasonal influenza. Three weeks ago the World Health Organization declared a health emergency, warning countries to "prepare for a pandemic" and said that the only question was the extent of worldwide damage. Senior officials prophesied that millions could be infected by the disease. But as of last week, the WHO had confirmed only 4,800 cases of swine flu, with 61 people having died of it. Obviously, these low numbers are a pleasant surprise, but it does make one wonder, what did we get wrong? Why did the predictions of a pandemic turn out to be so exaggerated? Some people blame an overheated media, but it would have been difficult to ignore major international health organizations and governments when they were warning of catastrophe. I think there is a broader mistake in the way we look at the world. Once we see a problem, we can describe it in great detail, extrapolating all its possible consequences. But we can rarely anticipate the human response to that crisis. Take swine flu. The virus had crucial characteristics that led researchers to worry that it could spread far and fast. They described—and the media reported—what would happen if it went unchecked. But it did not go unchecked. In fact, swine flu was met by an extremely vigorous response at its epicenter,

Mexico. The Mexican government reacted quickly and massively, quarantining the infected population, testing others, providing medication to those who needed it. The noted expert on this subject, Laurie Garrett, says, "We should all stand up and scream, 'Gracias, Mexico!' because the Mexican people and the Mexican government have sacrificed on a level that I'm not sure as Americans we would be prepared to do in the exact same circumstances. They shut down their schools. They shut down businesses, restaurants, churches, sporting events. They basically paralyzed their own economy. They've suffered billions of dollars in financial losses still being tallied up, and thereby really brought transmission to a halt." Every time one of these viruses is detected, writers and officials bring up the Spanish influenza epidemic of 1918 in which millions of people died. Indeed, during the last pandemic scare, in 2005, President George W. Bush claimed that he had been reading a history of the Spanish flu to help him understand how to respond. But the world we live in today looks nothing like 1918. Public health-care systems are far better and more widespread than anything that existed during the First World War. Even Mexico, a developing country, has a first-rate public-health system—far better than anything Britain or France had in the early 20th century.

#### They can’t stop it—failed campaigns prove containment is impossible

**Blancou et al 2005** (Jean, former General Director of OEI, Bruno and Albino, “Emerging or re-emerging bacterial zoonoses: factors of emergence, surveillance and control,” Vet. Res., pg 507-522)

The main obstacles that are encounteredin the control of bacterial zoonoses are thesame as those opposed to the control of anyinfectious disease, that is most often finan-cial and human obstacles rather than tech-nical limitations.The financial resources needed to effi-ciently fight against zoonotic agents are notavailable for all countries. Only the international community’s financial support,could, notably, allow developing countriesto organize a proper control of zoonotic dis-eases, but it is rare that this is materializedas a financial gift and mobilization of spe-cific funds, even by well-known interna-tional organizations (such as WHO, FAO,OIE), is limited for such diseases. Due to allthese difficulties, many sanitary authoritiesof these countries have given up the estab-lishment of such prevention programs. Oth-ers manage, with a lot of perseverance, toelaborate complicated multilateral financialarrangements. This allows punctual projectsto be realized, but rarely to establish thelong-term prophylaxis plans that they reallyneed.When financial and material problemsare supposedly solved, human-related dif-ficulties should not be underestimated. Thesedifficulties can originate within the servicesin charge of applying the national prophy-laxis plans, when these services are notthemselves convinced of the good use ofthese plans, or when they do not seem to getspecific benefits from it. The obstaclessometimes result from a lack of cooperationbetween specific professional categories,amongst which figure breeders, as well aslivestock brokers or even veterinariansbothered by the application of certain pro-grams of control or the limited incentivegiven by the health authorities for perform-ing prophylaxis tasks. Finally, the obstacleto such plans may be caused by the activeopposition of the public opinion to certainmethods of control. This is notably the casefor the hostility of some groups to the massslaughtering of animals during epizootics,or to the use of vaccines issued from geneticengineering. By lack of an appropriate con-sensus, the control of some zoonotic dis-eases may simply be impossible in somecountries.

### judicial independence/africa

#### Judicial independence doesn’t solve democratic transitions – self interest guarantees failure of the rule of law.

Frank B. Cross – Prof of Law and Business Law at the University of Texas – 03

(64 Ohio St. L.J. 195)

[\*198]  One potential problem with judicial independence is that judges may have their own self-interests and ideological fervor. An independent, unchecked judiciary may simply decide cases according to its own whims and predilections, rather than according to the rule of law. [**10**](http://www.lexis.com/research/retrieve?_m=d8ac6524bdc67d1ea8d4915ba5b3eee3&csvc=le&cform=byCitation&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVlz-zSkAW&_md5=9d13de7766fafcb067889625e599ce35#n10) For example, because of the great independence of the federal life-tenured judiciary, many political scientists believe that they are more ideological in their decisions than elected legislators or executives. [**11**](http://www.lexis.com/research/retrieve?_m=d8ac6524bdc67d1ea8d4915ba5b3eee3&csvc=le&cform=byCitation&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVlz-zSkAW&_md5=9d13de7766fafcb067889625e599ce35#n11) Judges may allow corruption and bribery to influence their decisions. [**12**](http://www.lexis.com/research/retrieve?_m=d8ac6524bdc67d1ea8d4915ba5b3eee3&csvc=le&cform=byCitation&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVlz-zSkAW&_md5=9d13de7766fafcb067889625e599ce35#n12) They may even be lazy and decide poorly, given the lack of oversight. In these circumstances, the means (independent judiciary) does not advance the end (rule of law). We cannot rely entirely upon judicial self-discipline and restraint to avoid these circumstances. There is nothing intrinsic in judges that causes them to favor, say, rule-of-law impartiality and the freedoms recognized in the Bill of Rights. Saintliness is not a historic precondition to becoming a judge, nor does the process of doffing judicial robes magically make one saintly. There are surely temptations not to apply the neutral rule of law. Given the absence of any threat of removal, "we should expect to see the decisions of judges heavily influenced by the intellectual orientation and political inclinations that they brought with them to the bench in the first place." [**13**](http://www.lexis.com/research/retrieve?_m=d8ac6524bdc67d1ea8d4915ba5b3eee3&csvc=le&cform=byCitation&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVlz-zSkAW&_md5=9d13de7766fafcb067889625e599ce35#n13) In addition to internal political desires, there may even be external pressures to this effect. Paul Carrington observed that those calling for judicial self-restraint "would have Justices eschew fame, the adoration of the media and the academy, and even 'greatness' to settle for the modest facelessness of drones." [**14**](http://www.lexis.com/research/retrieve?_m=d8ac6524bdc67d1ea8d4915ba5b3eee3&csvc=le&cform=byCitation&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVlz-zSkAW&_md5=9d13de7766fafcb067889625e599ce35#n14) There is little reason to expect that a wholly independent,  [\*199]  unaccountable judiciary would appropriately restrain itself and sincerely seek to apply neutral legal principles to the cases they decide.

African democratization is up – overall trend solves the aff

Joseph Siegle, Working Group Chair, Africa Center for Strategic Studies, et al, 11-3-2011, “African Spring: a new era of democratic expectations?” Democracy Digest, http://www.demdigest.net/blog/2011/11/african-spring-a-new-era-of-democratic-expectations/

A question often asked since the launch of the Arab Spring in January 2011 is what effect will these popular protests have on democracy in the rest of Africa. Frequently overlooked in this discussion is that Sub-Saharan Africa has been experiencing its own democratic surge during this time with important advances in Guinea, Côte d’Ivoire, Niger, Nigeria, and Zambia, among other countries. This progress builds on nearly two decades of democratic institution building on the continent. Even so, the legacy of “big-man” politics continues to cast a long shadow over Africa’s governance norms. Regime models on the continent, moreover, remain highly varied, ranging from hard core autocrats, to semi-authoritarians, democratizers, and a select number of democracies. Recognizing these complex and still fluid crosscurrents, a Working Group embarked on an analysis of the linkages between the Arab Spring and African democracy — with an eye on the implications for governance norms on the continent over the next several years. A key finding of this analysis is that the effects of the Arab Spring on Africa must be understood in the much larger and longer-term context of Africa’s democratic evolution. While highly varied and at different stages of progress, democracy in Sub-Saharan Africa is not starting from scratch, unlike in most of the Arab world. Considered from this broader and more heterogeneous perspective, the direct effects of the Arab Spring on Sub-Saharan Africa’s democratic development are muted. There are few linear relationships linking events in North Africa to specific shifts in democratization on the continent. That said, the angst and frustration propelling the protests and unfolding transitions in the Arab world, particularly Egypt and Tunisia, resonate deeply with many Africans who are closely following events in the north. The Arab Spring is thus serving as a trigger, rather than a driver, for further democratic reforms in the region. There have been protests in more than a dozen African capitals demanding greater political pluralism, transparency, and accountability following the launch of the Arab Spring. Some have even explicitly referenced North Africa as a model. Likewise, a number of African governments are so fearful of the Arab Spring’s influence that they have banned mention of the term on the Internet or public media. The democratic protests in North Africa, consequently, are having an impact and shaping the debate on the future of democracy in Africa. They are also teaching important lessons that democracy is not bestowed on but earned by its citizens. Once initiated, it is not a passive or self-perpetuating governance model, but one that requires the active engagement of citizens. Perhaps most meaningfully, then, the Arab Spring is instigating changes in expectations that African citizens have of their governments. What makes these changed expectations especially potent is that they dovetail with more fundamental drivers of change that are likely to spur further democratic advances in Africa in the next several years. Access to information technology has exploded in Africa, dramatically enhancing the capacity for collective action and accountability. Rapid urbanization is further facilitating this capacity for mass action. Africa’s youthful and better educated population is restive for more transparency from public officials and expanded livelihood opportunities. These youth are increasingly aware of governance norms elsewhere in the world and yearn for the same basic rights in their societies. Rising governance standards in the region and internationally, in turn, are placing ever greater value on legitimacy while heightening intolerance of unconstitutional transitions of power. Civil society, typically the bottom-up vehicle for governance change, has grown in breadth, sophistication, and influence over the past several decades. And Africa’s democratic institutions have begun to put down roots. Parliaments have become more capable and autonomous, independent media is more diverse and accessible than ever, and elections are becoming increasingly common, transparent, and meaningful.

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

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

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

### treaties fail

#### No global political will

Fred Tanner 9-30-2K; Fred Tanner is Deputy Director of the Geneva Centre for Security Policy.

“Conflict prevention and conflict resolution: limits of multilateralism” 30-09-2000 Article, International Review of the Red Cross, No. 839 http://www.icrc.org/eng/resources/documents/misc/57jqq2.htm

4. There is no consensus on the utility of early warning in conflict prevention. Some analysts argue today that failed opportunities for conflict prevention have occurred not because of insufficient time to respond, but because of a lack of political will to react to the warning. The Carnegie Commission on Preventing Deadly Conflict made one of the first efforts to link early warning with receptivity of warning and early response. But, as the 1999 Rwanda Report pointed out, early warning makes sense only if the warning signals are correctly analysed and transferred to the relevant decision-making authority. In this context, the capacity to gather and analyse information for the UN has fallen prey to “downsizing efforts”. In 1992, the UN did away with the Office for Research and Collection of Information (OCRI) and transferred some of its functions to the Department of Political Affairs and, as a consequence, the 1995 Report of the Commission on Global Governance proposed that the UN develop a new system to collect information on trends and situations that may lead to violent conflict or humanitarian tragedies. [7 ]

### europe cooperates

**They need us more than we need them**

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

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

### terrorism defense

#### Russia will be cautious because they know we don’t plan on randomly nuking them

**Karas 1** (Thomas H., Advanced Concepts Group for Sandia National Laboratories, prepared for the DOE, "De-alerting and De-activating Strategic Nuclear Weapons")

Nevertheless, interpretation of warning information will take place in the context of information about the general state of relations between the potential adversaries. If there is no reason to think that a state of conflict exists, decision-makers are more likely to question false alarms and delay a response until the situation can be sorted out. On January 25, 1995, a scientific rocket probe launched from Norway appeared on Russian radar screens. Within minutes, President Yeltsin was alerted that this might be a U.S. submarine-launched missile (no one having been told that the Norwegians had notified Russian authorities of the launch plan weeks earlier). A few minutes later the Russian military determined that the rocket posed no threat. We do not know how close the Russians came to erroneously concluding that the rocket was a missile, or whether President Yeltsin would have ordered a counterattack based solely on the warning that a single missile was coming. Nevertheless, **given the extreme improbability of a “bolt-from-the-blue” U.S. attack, a rapid nuclear response seems unlikely**.

#### No retaliation—definitely no escalation

**Mueller 5** (John, Professor of Political Science – Ohio State University, Reactions and Overreactions to Terrorism, http://polisci.osu.edu/faculty/jmueller/NB.PDF)

However, history clearly demonstrates that overreaction is not necessarily inevitable. Sometimes, in fact, leaders have been able to restrain their instinct to overreact. Even more important, **restrained reaction--or even capitulation to terrorist acts--has often proved to be entirely acceptable politically**. That is, there are many instances where leaders did nothing after a terrorist attack (or at least refrained from overreacting) and did not suffer politically or otherwise. Similarly, after an unacceptable loss of American lives in Somalia in 1993, Bill Clinton responded by withdrawing the troops without noticeable negative impact on his 1996 re-election bid. Although Clinton responded with (apparently counterproductive) military retaliations after the two U.S. embassies were bombed in Africa in 1998 as discussed earlier, his administration did not have a notable response to terrorist attacks on American targets in Saudi Arabia (Khobar Towers) in 1996 or to the bombing of the U.S.S. Cole in 2000, and these non-responses never caused it political pain. George W. Bush's response to the anthrax attacks of 2001 did include, as noted above, a costly and wasteful stocking-up of anthrax vaccine and enormous extra spending by the U.S. Post Office. However, beyond that, it was the same as Clinton's had been to the terrorist attacks against the World Trade Center in 1993 and in Oklahoma City in 1995 and the same as the one applied in Spain when terrorist bombed trains there in 2004 or in Britain after attacks in 2005: the dedicated application of police work to try to apprehend the perpetrators. This approach was politically acceptable even though the culprit in the anthrax case (unlike the other ones) has yet to be found. The demands for retaliation may be somewhat more problematic in the case of suicide terrorists since the direct perpetrators of the terrorist act are already dead, thus sometimes impelling a vengeful need to seek out other targets. Nonetheless, the attacks in Lebanon, Saudi Arabia, Great Britain, and against the Cole were all suicidal, yet no direct retaliatory action was taken. **Thus, despite short-term demands that some sort of action must be taken**, experience suggests politicians can often successfully ride out this demand after the obligatory (and inexpensive) expressions of outrage are prominently issued.

#### Retaliation won’t cause global war

**Schuyler 2007** (Dave, “Restating the U.S. Policy of Nuclear Deterrence,” Last Mod Nov 13)

A recent post on nuclear deterrence on American Future drew several comments on another blog. The blogger at American Future, Marc Schulman, outlines the responses in this post. In summary the responses were that a nuclear response to a nuclear terrorist attack was itself terrorism, a nuclear retaliation would inevitably draw other state actors to escalate the exchange, a nuclear retaliation would be collective punishment, and attacking Muslim holy sites would be counterproductive. I agree with this last point but I want to deal with each of the other points in some detail. \* A nuclear response to a nuclear terrorist attack is terrorism.There’s no generally accepted definition of terrorism so before tackling this point I’ll propose one. Ignoring the issue of state actors vs. non-state actors I think that a terrorist attack is an attack on civilians or civilian assets whose purpose is to provoke terror. It has no other tactical or strategic significance. Any nuclear response by the United States would be against military or governmental facilities, sites involved in military production, or command and control. The objective would be to eliminate the possibility of future attacks or the support for those who would engage in future attacks. That such a response would inevitably result in massive civilian casualties is sad. But such a response would not, by definition, be terrorism \* A nuclear retaliation Iran in response to a terrorist nuclear attack would inevitably draw France, Russia, and China to enter the conflict.To believe this you must believe that France, Russia, and China will act irrationally. There is absolutely no reason to believe that this is the case. All three nations know that their intervention against the U. S. would result in total annihilation. There are other issues as well and let’s examine the two distinct cases: Russia on the one hand and France and China on the other. As a major non-Gulf producer of oil Russia would be in a position to benefit enormously in case of a disruption of Gulf oil production or shipment. That being the case they would publicly deplore a retaliation against Iran but privately rejoice. Both France and China are in an extremely delicate position. A nuclear response by either would result in total annihilation and, equally importantly, wouldn’t keep the oil flowing. Lack of a blue water navy means that both nations are completely at the mercy of the United States’s (or more specifically the U. S. Navy’s) willingness to keep shipments of oil moving out of the Gulf. China is particularly vulnerable since it has only about two weeks’ worth of strategic oil reserves. Neither France nor China has any real ability to project military force other than nuclear force beyond their borders. They’d be upset. But they’re in no position to do anything about it.

#### No China war

Robert J. **Art**, Fall **2010** Christian A. Herter Professor of International Relations at Brandeis University and Director of MIT's Seminar XXI Program The United States and the rise of China: implications for the long haul Political Science Quarterly 125.3 (Fall 2010): p359(33)

The workings of these three factors should make us cautiously optimistic about keeping Sino-American relations on the peaceful rather than the warlike track. The peaceful track does not, by any means, imply the absence of political and economic conflicts in Sino-American relations, nor does it foreclose coercive diplomatic gambits by each against the other. What it does mean is that the conditions are in place for war to be a low-probability event, if policymakers are smart in both states (see below), and that an **all-out war is** nearly **impossible** to imagine. By the historical standards of recent dominant-rising state dyads, this is no mean feat. In sum, there will be some security dilemma dynamics at work in the U.S.-China relationship, both over Taiwan and over maritime supremacy in East Asia, should China decide eventually to contest America's maritime hegemony, and there will certainly be political and military conflicts, but nuclear weapons should work to mute their severity because the security of **each state's homeland will never be in doubt** as long as each maintains a second-strike capability vis-a-vis the other. If two states cannot conquer one another, then the character of their relation and their competition **changes dramatically**. These three benchmarks--China's ambitions will grow as its power grows; the United States cannot successfully wage economic warfare against a China that pursues a smart reassurance (peaceful rise) strategy; and Sino-American relations are not doomed to follow recent past rising-dominant power dyads--are the starting points from which to analyze America's interests in East Asia. I now turn to these interests.

#### Won’t go nuclear

**Moore 6** (Scott; Research Assistant – East Asia Nonproliferation Program – James Martin Center for Nonproliferation Studies – Monterey Institute of International Studies, “Nuclear Conflict in the 21st Century: Reviewing the Chinese Nuclear Threat,” 10/18, http://www.nti.org/e\_research/e3\_80.html)

Despite the tumult, there is broad consensus among experts that the concerns generated in this discussion are exaggerated. The size of the Chinese nuclear arsenal is small, estimated at around 200 warheads;[3] Jeffrey Lewis, a prominent arms control expert, claims that 80 is a realistic number of deployed warheads.[4] In contrast, the United States has upwards of 10,000 warheads, some 5,700 of which are operationally deployed.[5]

Even with projected improvements and the introduction of a new long-range Intercontinental Ballistic Missile, the DF-31A China's nuclear posture is likely to remain one of "minimum deterrence."[6] Similarly, despite concern to the contrary, there is every indication that China is extremely unlikely to abandon its No First Use (NFU) pledge.[7] The Chinese government has continued to deny any change to the NFU policy, a claim substantiated by many Chinese academic observers.[8] In sum, then, fears over China's current nuclear posture seem somewhat exaggerated.

This document, therefore, does not attempt to discuss whether China's nuclear posture poses a probable, general threat to the United States; most signs indicate that even in the longer term, it does not. Rather, it seeks to analyze the most likely scenarios for nuclear conflict. Two such possible scenarios are identified in particular: a declaration of independence by Taiwan that is supported by the United States, and the acquisition by Japan of a nuclear weapons capability.

Use of nuclear weapons by China would require a dramatic policy reversal within the policymaking apparatus, and it is with an analysis of this potential that this brief begins. Such a reversal would also likely require crises as catalysts, and it is to such scenarios, involving Taiwan and Japan, that this brief progresses. It closes with a discussion of the future of Sino-American nuclear relations.

## 2nr

### at: fettweis

#### Fettweis wrong

Beede, 11 [BENJAMIN R. BEEDE Rutgers, The State University of New JerseyFettweis, Christopher J. 2008. Losing Hurts Twice as Bad: The Four States to Moving Beyond Iraq. New York, NY: W.W. Norton & Company. 270 pages. ISBN-13: 978-0393067613, $25.95 hardcover, p. internet]

Fettweis’ book might easily be dismissed as an intriguing analysis, but one that has been superseded by the advent of the Obama Administration, and the changes in direction that the Obama team has advocated and that it may implement. Fettweis made a number of assumptions that have now been invalidated, moreover, including a continuation of prosperity. Despite its flaws, however, the book is a provocative contribution to the literature that criticizes the forcefulness of the U.S. foreign and military policy. Fettweis states that his objective is to analyze the “likely consequences of disaster in Iraq” (16), but he really has two purposes. One is to explain to people in the United States how they can adjust to the loss of the Iraq war. The second is to persuade readers that the United States can safely reduce its activity in international affairs. Although the author’s discussion of Iraq must be addressed, this review emphasizes Fettweis’ contention that the United States can safely be less assertive in world affairs because the world is not as dangerous a place as often claimed, and his closely related point that the public needs to develop a more discriminating approach to assessing threats from abroad, thereby enabling it to hold its government to higher levels of competency and accountability. Fettweis’ book title comes from a remark by sports figure Sparky Anderson that “losing hurts twice as bad as winning feels good” (13). He believes that this observation is valid, and he comes back to those words repeatedly. To support his contention concerning the significance of Anderson’s statement, Fettweis borrows from the literature of psychology to explain how people experience losses, ranging from having relatives or friends taken from them by death to having their favorite sports teams lose games. In competitive situations, the harmful psychological effects of losing are said to be intensified significantly when one adversary or opponent was “supposed” to win because of its strength. The number of instances where large countries have lost to guerrilla movements demonstrates that perceptions of the military advantages that the seemingly stronger side enjoys may well be outweighed by other factors, however (see Arreguin-Toft 2005; Record 2007). Fettweis recommends a rapid withdrawal of the U.S. forces from Iraq. He believes that the Iraq war has “been the worst kind of defeat for the United States: an unnecessary one, in a war that should never have been fought” (16, emphasis in the original). Not only was the war a huge error, Iraq is in such bad OCTOBER BOOK REVIEWS | 865 shape that the United States cannot do much to assist its reconstruction. A long-term occupation might eliminate many problems in Iraq, but he doubts the United States will stay long enough to affect major changes in that country. Little harm will come from the withdrawal, despite predictions by many that there would be civil war in Iraq and a security breakdown in the entire region. Fettweis is not a specialist in Middle Eastern affairs, and his interest is in the effects the Iraq war is having and will have on the United States, not so much in the Iraq situation. Thus, his book is not comparable to studies like that by O’Leary (2009). There are at least two schools of thought about the Iraq war, but Fettweis ignores this division of opinion. One school, which includes Fettweis, criticizes the Bush Administration for having rashly invaded Iraq and for having failed to plan and execute the operation properly. Fettweis writes that “[w]e were led into the Iraq morass not by evil people lying on behalf of oil companies but by poor strategists with a shallow, naive understanding of international politics” (29). Another school of interpretation views the Iraq (and Afghanistan) commitments simply as steps in a campaign undertaken to give the United States a lasting hegemony in the world. From the Bush Administration’s perspective, Iraq might even be considered a success. The executive branch demonstrated once again that it can wage war with few checks on its actions, and gave the United States a greater presence in the Middle East. The Obama Administration has altered Bush’s course to some extent, but so far, there has not been a radical shift. Indeed, there has been and remains the possibility of a greater commitment in the region, especially into Pakistan. Iraq and the United States have agreed to the removal of coalition forces by 2011, but the continued violence in Iraq and the construction of substantial military bases suggest that a U.S. military presence might continue past 2011. In February 2009, Secretary of Defense Gates reiterated the Obama Administration’s commitment to 2011, but in late May 2009, the army chief of staff, George Casey, declared that his service branch, at least, is planning for U.S. forces to remain in Iraq for another decade. In any event, there is little prospect for a full disengagement from southwest Asia any time soon. Given one of the purposes of his book, it is hardly surprising that Fettweis focuses almost entirely on Iraq. He ignores Afghanistan, except for repeatedly citing the Soviet persistence in trying to hold that country as an example of a great power making the error of invading a small country in the face of deep nationalism in the latter. He might have been well advised to view the entire area of southwestern Asia. Ahmed Rashid (2008) has described the U.S. involvement in the region that has extended well beyond Iraq and Afghanistan, and that suffers from the same kinds of misjudgments made in Iraq and Afghanistan, especially an overreliance on military measures and a reluctance to commit substantial resources to economic development. Fettweis uses Iraq to argue for a strategy of restraint based on his sanguine view that “we [the United States and, indeed, the entire world] are living in a golden age” (31, emphasis in the original), and that “[g]reat power conflict today is all but unthinkable; therefore, calculations surrounding the dangers posed by a united Eurasia should change, since the threats it once posed no longer exist” (208). With the end of the Cold War, the ability of the enemies of the United States to harm this country is quite limited. Hostile acts can be perpetrated, but such attacks cannot overthrow the United States (31). This strategy is hardly new. Years ago, it was summarized in these words, “Instead of preserving obsolete Cold War alliances and embarking on an expensive and dangerous campaign for global stability, the United States should view the collapse of Soviet power as an opportunity to adopt a less interventionist policy” (Carpenter 1992, 167). Despite the optimistic picture painted by some national security theorists, the world does contain some dangerous elements. David E. Sanger (2009), for example, presents a chilling picture of nuclear weapons in very possibly unsteady hands. Much is said in the book concerning national “credibility,” that is, the ability of a country to maintain its prestige and its reputation for decisive action based on its past performance. Fettweis argues that many governmental leaders, academic commentators, and journalists have been obsessed with this element of national power and have wanted the United States to deal with virtually any political crisis that occurs (161-75). Fettweis states that “[f]or some reason, U.S. policymakers seem to be especially prone to overestimate the threats they face” (116). There is no explanation of why this should be the case,

nor is there any comparison with the propensity of leaders in other countries to make similar inaccurate projections. Numerous instances can be cited where governmental leaders and commentators have argued heatedly for “action” on the ground that “inaction” will damage the reputation of the United States. Early in the Carter Administration, for example, National Security Advisor Zbigniew Brzezinski dedicated himself for some time to instigating the dispatch of navy task force to the Horn of Africa during a period of tension between Ethiopia and Somalia. After failing to persuade the secretaries of state and defense that such action was necessary, Brzezinski waged a covert effort through the media to bring a decision in favor of his policy (Gardner 2008, 40-2). Two case histories cited in the book as examples of a disastrous insistence on maintaining credibility are the Spanish and British efforts to hold the Netherlands and the British colonies that became the United States, respectively. More recent instances that could have been cited are the controversies in the United States concerning the “loss” of China in the late 1940s and the establishment of a communist regime in Cuba in the late 1950s. Sensitivity concerning Cuba led in part to the intervention in the Dominican Republic in 1965, and other episodes where the United States committed itself to fighting insurgencies in Latin America. OCTOBER BOOK REVIEWS | 867 Concerns about the political impact of the “loss” of Vietnam played a significant role in decisions to support the Republic of Vietnam. These episodes are largely omitted, though. Fear is a potent political weapon, and foreign threats, whether real or imaginary, are highly useful within the domestic political arena. Claims of a “missile gap” helped John F. Kennedy win the presidency, for example. The armed services and the various intelligence agencies are rewarded because of fears of foreign threats. Although the armed forces may be cautious about entering a given conflict or making other violent moves, they are unlikely to stress the peaceful nature of the world if they want to retain their budgets and their prestige. Another element in strategy formulation in the United States has been its experience with long-term threats. White (1997) asserts that the long conflict with the Soviet Union fundamentally structured the discussion and resolution of public policy issues in the United States, and greatly strengthened the presidency at the expense of Congress and the political parties. Although his book was written before 9/11, his observation that political activists and the public have become accustomed to protracted battles with foreign enemies makes it easy to understand why they could readily accept a “long war” against terrorism. Somewhat along the same line, Sherry (1995) maintains that this country has been under emergency conditions from the Great Depression onward, perhaps even before, permeating the United States with “militarism” in its broadest sense. Going back even further, some writers have argued that United States’ assertiveness may be traced to the late nineteenth and especially the early twentieth century. Lears (2009) points critically to Theodore Roosevelt as a key player in this development, and Ninkovich (1999) offers a more favorable view of the “crisis internationalism” of Woodrow Wilson. Fettweis touches on this history, but he underestimates the extent to which the United States has been conditioned to react vigorously to a range of foreign policy issues, and overestimates the differences in foreign and military policy brought about by changes from one administration to another. Given this conditioning, changing the mind-sets of both elites and the public may be an extremely difficult task. To a degree, Fettweis’ arguments resemble those of the “American empire” theorists, such as Bacevich (2008), Johnson (2006), and Gardner and Young (2005). Critics of the “American empire” believe that the United States produces much of the unrest and the tension in the world through its unilateral actions and its emphasis on military power. Fettweis does not go that far, but his advocacy of “strategic restraint” is certainly compatible with such views. He agrees that the United States’ involvements—especially military commitments—abroad may unsettle conditions in countries as much as they may stabilize them, but his purpose is primarily to reassure the people of the United States that less assertive activity by their country will not result in world chaos. Thus he does not have much to say about the motivations of elite figures 868 | POLITICS & POLICY / October 2011 who advocate an active foreign policy. His argument seems to be that the United States is vastly overextended in its commitments as a result of a number of individual mistakes stemming from an overconcern with credibility rather than a flawed strategy. Despite his disclaimers, Fettweis’ words sometimes resemble the arguments of pre-World War II isolationists. Indeed, throughout the book, the word “internationalists,” which properly describes those concerned with international cooperation, is used to refer to those who should be termed “interventionists,” whether their motivations are power political, economic, or humanitarian, or a mixture of the three. Fettweis believes that there was little that the United States could have done to prevent the outbreak of World War II in Europe, moreover. On the contrary, firmer U.S. support of France and Great Britain might have encouraged those countries to force Germany to evacuate the newly reoccupied Rhineland and to render it much more cautious in its later actions. After he successfully implemented his plan to put troops into the Rhineland in 1936, Hitler told his confidants that a French demand for a withdrawal would have been successful owing to Germany’s military weakness. Fettweis even praises the United States because it “had the wisdom to remain neutral for more than two years” and thus “escaped the worst of the suffering” (206). This is surely wrong. An earlier involvement in the war would doubtless have reduced U.S. casualties and other costs because invasions of Europe would have been unnecessary if the French and British had held at least part of the continent, and because Germany might not have developed a cushion of occupied territories to protect it from land attacks and from air assaults for a time. Whether a public educated by books like this one would be able to make suitable threat assessments, and thereby be better able to exercise control over governmental actions abroad is another question. Fettweis’ work may be quite persuasive because he expresses his views clearly and avoids highly charged language. However, if elites agree about dangers from abroad, then popular opinion may have little effect on policy making and policy implementation. Fettweis’ thinking is significantly flawed by his assumption that “politics is, and always will be, the enemy of strategy,” and reiterates his point (26, 157). Fettweis adds that “it would be naive to suggest that it is possible to keep politics completely separate from strategy, nor would it be fully desirable to do so in a democracy” (26-7), but “for the sake of this book, we will attempt to clarify the national interest by keeping the two realms separate, to the extent possible” (27). Determining national strategy is necessarily a highly political act, and it cannot be established without considering the demands of major internal stakeholders. What he terms “politics” may often be differing opinions based on different data or interpretations of the same data. Political survival is critical for a political leader, and such leaders can understandably be hesitant in exercising restraint if they believe their opponents will attack them, perhaps decisively, for being “soft” on the enemies of the day. Fettweis is fond of the term “realist” to OCTOBER BOOK REVIEWS | 869 refer to some defense and foreign policy analysts, but describing someone as a “realist” may simply mean that the person agrees with the views of the individual applying that description. In certain instances, “realism” can mean being restrained, and, in other instances, being highly assertive. Appropriate policy decisions are likely to be made on the basis of accurate intelligence and careful assessments rather than adherence to a general outlook.

### courts link

**Court decisions are heavily politicized, triggers GOP backlash.**

**Calabresi, 2008**

[Massimo, TIME, 6-26, “Obama's Supreme Move to the Center Washington” Thursday, http://www.time.com/time/politics/article/0,8599,1818334,00.html]

When the Supreme Court issues rulings on hot-button issues like gun control and the death penalty in the middle of a presidential campaign, Republicans could be excused for thinking they'll have the perfect opportunity to paint their Democratic opponent as an out-of-touch social liberal. But while Barack Obama may be ranked as one of the Senate's most liberal members, his reactions to this week's controversial court decisions showed yet again how he is carefully moving to the center ahead of the fall campaign. On Wednesday, after the Supreme Court ruled that the death penalty was unconstitutional in cases of child rape, Obama surprised some observers by siding with the hardline minority of Justices Scalia, Thomas, Roberts and Alito. At a press conference after the decision, Obama said, "I think that the rape of a small child, six or eight years old, is a heinous crime and if a state makes a decision that under narrow, limited, well-defined circumstances the death penalty is at least potentially applicable, that that does not violate our Constitution." Then Thursday, after Justice Scalia released his majority opinion knocking down the city of Washington's ban on handguns, Obama said in a statement, "I have always believed that the Second Amendment protects the right of individuals to bear arms, but I also identify with the need for crime-ravaged communities to save their children from the violence that plagues our streets through common-sense, effective safety measures. The Supreme Court has now endorsed that view." John McCain's camp wasted no time in attacking, with one surrogate, conservative Senator Sam Brownback of Kansas, calling Obama's gun control statement "incredible flip-flopping." McCain advisor Randy Scheunemann was even tougher in a conference call Thursday. "What's becoming clear in this campaign," Scheunemann said, is "that for Senator Obama the most important issue in the election is the political fortunes of Senator Obama. He has demonstrated that there really is no position he holds that isn't negotiable or isn't subject to change depending on how he calculates it will affect his political fortunes." Politicians are always happy to get a chance to accuse opponents of flip-flopping, but McCain's team may be more afraid of Obama's shift to the center than their words betray. Obama has some centrist positions to highlight in the general election campaign on foreign policy and national security, social issues and economics. His position on the child rape death penalty case, for example, is in line with his record in Illinois of supporting the death penalty. He is on less solid ground on the gun ban as his campaign said during the primary that he believed the D.C. law was constitutional. A top legal adviser to Obama says both cases are consistent with his previous positions. "I don't see him as moving in his statements on the death penalty or the gun case," says Cass Sunstein, a former colleague of Obama's at the University of Chicago. Sunstein says Obama is "not easily characterized" on social issues, and says the Senator's support for allowing government use of the Ten Commandments in public, in some cases, is another example of his unpredictability on such issues. On the issue of gun control, he says Obama has always expressed a belief that the Second Amendment guarantees a private right to bear arms, as the court found Thursday. But Obama's sudden social centrism would sound more convincing in a different context. Since he wrapped up the primary earlier this month and began to concentrate on the independent and moderate swing voters so key in a general election, Obama has consistently moved to the middle. He hired centrist economist Jason Furman, known for defending the benefits of globalization and private Social Security accounts, to the displeasure of liberal economists. On Father's Day, Obama gave a speech about the problem of absentee fathers and the negative effects it has on society, in particular scolding some fathers for failing to "realize that what makes you a man is not the ability to have a child — it's the courage to raise one." Last week, after the House passed a compromise bill on domestic spying that enraged liberals and civil libertarians, Obama announced that though he was against other eavesdropping compromises in the past, this time he was going to vote for it. Whether Obama's new centrist sheen is the result of flip-flopping or reemphasizing moderate positions, the Supreme Court decisions have focused attention again on the role of the court in the campaign season. McCain himself is vulnerable to charges of using the Supreme Court for political purposes. Earlier this month, when the court granted habeas corpus rights to accused terrorist prisoners at Guantanamo Bay, McCain attacked the opinion in particularly harsh language, though advisers say closing the prison there is high on his list of actions to rehabilitate America's image around the world. Liberals are hoping that despite Obama's moderate response to the Supreme Court decisions, the issues alone will rally supporters to him. "What both of these decisions say to me is that the Supreme Court really is an election-year issue," says Kathryn Kolbert, president of People For the American Way. "We're still only one justice away from a range of really negative decisions that would take away rights that most Americans take for granted," she says. And Obama's run to the center surely won't stop conservatives from using the specter of a Democratic-appointed Supreme Court to try to rally support. "Its pretty clear that if he's elected and Justice Scalia or Kennedy retires that he's going to appoint someone who's very likely to reverse [the gun control decision]," says Eugene Volokh, a professor at the UCLA School of Law. Given how Obama has been responding to the recent Supreme Court decisions, however, you're not likely to hear him talking about appointing liberal justices much between now and November.

### at: reid

#### Reid is able to fend off a vote because Obama is pressuring Democrats – if those dynamics change, Reid would be forced to cave

**Kaper, 1/17/14** – Stacy, National Journal, “U.S. Senate's Iran Hawks Flounder Against Reid-Obama Coalition” <http://www.nti.org/gsn/article/us-senates-iran-hawks-flounder-against-reid-obama-coalition/>)

The U.S. Senate's Iran hawks have lots of votes to back their sanctions legislation. What they lack is a plan to get the bill to the floor. Fifty-nine senators -- including 16 Democrats -- have signed onto sanctions legislation from Democratic Senator Robert Menendez (N.J.) and Republican Senator Mark Kirk (Ill.). The measure would punish Iran with sanctions if it reneges on an interim nuclear agreement, or if that agreement does not ultimately abolish any nuclear-weapons capabilities for Iran. The count has climbed rapidly since the bipartisan pair introduced their legislation in late December. But now it's unclear whether that support will be enough to clear the bill's next major hurdle: Senate Majority Leader Harry Reid. The Nevada Democrat is siding with the White House, which has put intense pressure on lawmakers not to act on sanctions, arguing it could result in both a nuclear-armed and hostile Iranian state. And without Reid's backing, supporters of the Menendez-Kirk bill are unsure how to move the measure to the floor. "I assume that if the Democrat senators put enough pressure on **Senator** Reid he might bring it to the floor," said Missouri Republican Senator Roy Blunt. "But, you know, we are at a moment in the Senate where nothing happens that Senator Reid doesn't want to happen; and this is something at this moment that Senator Reid doesn't want to happen." And for now, sanctions supporters are still mulling their strategy. "We are talking amongst ourselves. There is a very active debate and discussion ongoing about how best to move forward," said Democratic Senator Richard Blumenthal of Connecticut, a cosponsor of the bill. "There are a number of alternative strategies, but we're deliberating them." While Reid has, at least for now, foiled their policy plans, sanctions supporters are still scoring the desired political points on the issue. They can report their efforts to their constituents while blaming Reid for the inaction. But whatever pressure Reid is getting from his colleagues, he's also getting support from the commander in chief. In a White House meeting Wednesday night, President Obama made a hard sell to Democrats on the issue, pleading with them to back off sanctions while his team worked on a nuclear pact. "The president did speak passionately about how [we] must seize this opportunity, that we need to seize this six months … and that if Iran isn't willing to in the end make the decisions necessary to make it work, he'll be ready to sign a bill to tighten those sanctions -- but we gotta give this six months," said Senator Jeff Merkley of Oregon, after returning from the White House. In the meantime, many bill supporters reason that Reid will eventually feel the heat. "We'll just have to ratchet up the pressure, that's all," said Republican Senator John McCain (Ariz.). "The president is pushing back, obviously, and he's appealing to the loyalty of Democrats, but there are a lot of other forces out there that are pushing in the other direction, so we'll see how they react." Earlier this week Senator Lindsey Graham (R-S.C.) said he was hoping to find more Democratic cosponsors over the recess and was talking to House Majority Leader Eric Cantor (Va.) about whether the Republican-controlled House might take up the Senate sanctions bill as a way to spur the Senate to act. But neither of Graham's approaches represents a broad, coordinated campaign. Democrats, who have more power to drive the train in the Senate, seem to be in little hurry. "I don't think there is any time schedule related to it at this point," said Democratic cosponsor Ben Cardin of Maryland. "We are all trying to figure out how we can be most helpful and make sure Iran does not become a nuclear-weapon state." Menendez, who chairs the Senate Foreign Relations Committee and is the lead Democratic sponsor, said he is focused on hearing more from the administration about the reported unofficial secret "side deal" with Tehran. About the plans to proceed, Menendez said noncommittally, "We'll see." Kirk, the Republican who is the other lead sponsor, said he was counting on elections pressure to spark action. "My hope is that, as we get towards midterm elections, members are going to want to be on record being against giving up billions of dollars to Iran," Kirk said. Other members are hoping lobbying groups can carry the weight on this one. McCain said he hoped pro-Israel groups could convince Democrats to spring into action or that supporters could make it uncomfortable for Reid to continue blocking the bill.