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#### War power is the Presidential authority to conduct war as commander-in-chief

Black’s Law Dictionary 99(7th Edition, p. 1578-9)

"War Power" is defined as "[the constitutional authority of Congress to declare war and maintain armed forces (U.S. Const. art. I, § 8, cls. 11-14), and of the President to conduct war as commander-in-chief (U.S. Const. art. II, § 2, cl. 1)."

#### Violation —

The plan does not change the president’s ability to indefinitely detain during war— it only creates a legal process to resolve get people out of indefinite detention.

#### Standards —

Limits — their interpretation leads to the proliferation of oversight affs

Neg ground — affecting war time powers is critical to the core topic DA — prez flex

### DA

#### The Court will maintain Affirmative Action in the Schuette decision now

Scott Lemieux, Poly Sci Prof @ St. Rose, 7-9-2013, “Affirmative Action's Ominous Future,” Prospect, <http://prospect.org/article/affirmative-actions-ominous-future>

In fact, it's hard to imagine an existing program in higher education the current Court majority would vote to uphold as constitutional—just as it is nearly impossible to imagine a preclearance formula for the Voting Rights Act that this Court would approve—even if Kennedy is unwilling to hold affirmative action unconstitutional writ large. It's even possible that Kennedy will ultimately be willing to take the next step. One reason for the Court deciding to write a minimalist opinion in Fisher after sitting on the case for the better part of a year is that the facts of Fisher were not very favorable to opponents of affirmative action. Abigail Fisher, the plaintiff, probably would not have been admitted to U.T. Austin even under entirely race-neutral admissions criteria, making her a less-than-ideal vehicle for demonstrating the alleged injustices of affirmative action. Given a different set of facts, the Roberts Court may well be willing to go further.¶ However, the upcoming case, Schuette v. Coalition to Defend Affirmative Action, concerns the constitutionality of bans on affirmative action, rather than focusing on the constitutionality of affirmative-action programs. It's unlikely to overturn Grutter since the Court declined to do so in Fisher. In 2006, Michigan voters passed Proposal 2, which banned all affirmative-action programs by state agency. In November of last year, a badly divided Sixth Circuit ruled that Proposal 2 violated the equal protection clause of the Fourteenth Amendment. According to the majority opinion, Proposal 2 was unconstitutional because it "reallocates political power or reorders the decision-making process in a way that places special burdens on a minority group's ability to achieve its goals through that process."¶ This decision's odds of being upheld by the Supreme Court are near to nil. In all candor, it might be an uphill struggle for the opinion to get even one vote. I strongly believe that most affirmative-action programs are constitutional and deplore Proposal 2 as a policy matter, but it's a stretch to argue that Michigan is required to have affirmative-action programs. However, this case presents very different conceptual issues than Fisher did. Since it would be entirely possible to overrule the Sixth Circuit without saying anything about the constitutionality of affirmative action, it is very unlikely that the Court will use the case as a way to resolve the issues Fisher didn't. And so the can will likely be kicked down the road once more, hopefully awaiting a more favorable Court majority in the near future.

#### Court doesn’t want to rule on SOP or war powers issues – too politically charged

James M. Lindsay, 4-5-2011, "The Water's Edge: Is Operation Odyssey Dawn Constitutional? Part V," Council on Foreign Relations - The Water's Edge, http://blogs.cfr.org/lindsay/2011/04/05/is-operation-odyssey-dawn-constitutional-part-v/

Most Americans think of the Supreme Court as the legal equivalent of a baseball umpire. In their view, the Court’s job is to call legal balls and strikes, and thereby tell us what the law is. So why then is the question of whether presidents can initiate military hostilities so hotly debated?

It turns out that the Supreme Court does not see its job as most Americans do, enforcing the dividing line between the executive and legislative branches. The Court sometimes sidesteps separation-of-powers issues, especially when it comes to foreign policy. The Court has good reason to bite its tongue. However, when it comes to the war power, its silence alters the basic constitutional structure that the Framers created. The Supreme Court hasn’t always shied away from refereeing separation-of-powers questions on foreign policy. In Little v. Barreme (1804), for example, the Court protected Congress’s war power from executive encroachment. The case arose when a U.S. naval ship seized a vessel sailing from a French port during the Quasi-War of 1798 with France. The problem was that Congress had specifically directed the U.S. Navy to seize ships heading to French ports. The captain of the U.S. ship defended his actions on the grounds that the secretary of the Navy had ordered him to seize ships regardless of whether they were bound to or from French ports. The Supreme Court rejected the captain’s defense. It ruled that the executive branch could not change Congress’s instructions, even if doing so would have been a more effective way of achieving the military goals Congress sought. Noticeably absent in the Court’s decision was any reference to the powers the president might have as the nation’s commander in chief. The modern Supreme Court, however, generally shies away from wading into war powers cases. The Court offers several reasons for its reluctance. One reason is the courts’ preference to hear only lawsuits brought by someone who has legal standing, which is defined as having suffered concrete personal harm. Traditionally, the courts have held that neither Congress nor the president suffers concrete personal injury when the other branch tries to usurp its authority. So it is generally (though not always) the case, as the late great legal scholar Louis Henkin put it, that “the president himself cannot bring a judicial proceeding to challenge alleged usurpation of his authority by Congress, nor can Congress (or members of Congress) sue to enjoin an alleged usurpation by the president.” For example, when twenty-six members of the House of Representatives sued Bill Clinton in 1999 for ordering the bombing of Serbia without congressional authorization, the lower federal courts dismissed the lawsuit on the grounds that the legislators did not have legal standing. The Supreme Court refused to hear the appeal. A second reason the courts may sidestep separation-of-powers questions is the principle of ripeness. Courts are not debating societies for thrashing out hypothetical issues. They are places for assessing allegations of real or imminent harm. So courts generally take only cases that meet these criteria. For example, 110 members of Congress sued President George H.W. Bush in the fall of 1990, arguing that he could not use U.S. troops to liberate Kuwait unless he first had congressional authorization. The judge in Dellums v. Bush granted the members standing, but then dismissed the case because it was not ripe for judicial review. He argued that the case would be ripe only if “the plaintiffs in an action of this kind be or represent the majority of the members of Congress.” In short, if Congress did not formally stop Bush from acting, the courts would not bail it out. The third reason the courts might pass on a separation of powers issue is the doctrine of political questions. The idea here is that it is the courts’ job to rule on the legality of what the government has done and not on the wisdom of its decision. The Supreme Court takes a broad view of what constitutes a political question in foreign affairs. For instance, in 1979 President Jimmy Carter unilaterally terminated the Mutual Defense Treaty with Taiwan. Sen. Barry Goldwater (R-Ariz.) and more than a dozen of his colleagues filed suit alleging that Carter had exceeded his constitutional authority. To all of us who did not go to law school, Goldwater v. Carter seems to have raised a straightforward legal question: which branch of government has the authority to terminate a treaty? But four Supreme Court justices argued that the question was “‘political’ and therefore nonjusticiable because it involves the authority of the President in the conduct of our country’s foreign relations and the extent to which the Senate or the Congress is authorized to negate the action of the President.” (A fifth justice argued that the case was not ripe for trial because the Senate had taken no formal steps to stop Carter.) Why have the courts in recent decades shied away from policing the boundaries of the separation of powers? Two practical motives stand out. One is that the courts want to limit their workload. If anyone could sue, regardless of whether he or she had been personally harmed, the courts would be swamped. The same would be true if the courts agreed to hear cases about legal “what-ifs” or if they took on the task of passing judgment on the wisdom rather than the legality of what the government does. The second practical reason for the rules on justiciability is specific to the separation-of-powers issue. If lawmakers know they can toss tough problems into the courts’ lap, that’s precisely what they will do. Why cast a politically tough vote if you can dump the matter on justices who don’t have to face the voters? This would undermine the democratic idea that the two political branches—Congress and the president—should decide the country’s future course.

#### Ruling on the aff trades off with the court’s willingness to anger the same constituency – they’d issue a make up call on Aff Action

Peretti 1 - Terri Jennings Peretti, Professor of Political Science at Santa Clara University, 2001, In Defense of a Political Court, p. 152-153

To the degree that a justice cares deeply about her policy goals, she will be quite attentive to the degree of support and opposition among interest groups and political leaders for those goals. she will be aware of the re­sources (e.g., commitment, wealth, legitimacy) that the relevant interest groups possess who bear the burden of both carrying forward the appropri­ate litigation necessary for policy success and for pressuring the other branches for full and effective implementation. Only the policy-motivated justice will care about the willingness of other government officials to comply with the Court’s decisions or carry them out effectively. And only the policy-motivated justice will care about avoiding the application of political sanc­tions against the Court that might foreclose all future policy options.

The school desegregation cases illustrate these points quite nicely. The Court could not pursue the goal of racial integration and racial equality until there was an organized and highly regarded interest group such as the Na­tional Association for the Advancement of Colored People willing and able to help. The Court further was required to protect that group from political attack, as it did in NAACP v. Alabama’03 and NAACP v. Button.’04 Avoidance of other decisions that might harm its desegregation efforts was also deemed necessary. Thus, the Court had legal doctrine available to void anti discrimination statutes, but refused to do so on two occasions.’05 (Murphy notes that one justice was said to remark upon leaving the conference discussion, “One bombshell at a time is enough.”’06) The Court additionally softened the blow by adopting its “deliberate speed” implementation formula. Even so, the Court still needed the active cooperation of a broad range of government officials, in all branches and at all levels of government, in order to carry out its decisions effectively. Thus, significant progress in racial integration in the southern schools did not in fact occur until Congress and the Department of Health, Education, and Welfare decided to act. The Court further had to consider whether the political opposition that it knew would ensue would be sufficient to result in sanctions against the Court, such as withdrawal of jurisdiction or impeachment.. These considerations arose only in the process of caring deeply about the policy goal at hand—racial equality in public education. They were not a by-product of caring only about the logical or precedential consistency of an opinion or of worrying only about deriving a decision from the Framers' intentions.

#### Affirmative action is crucial to military readiness

Julie W. Becton Jr, Lt. Gen., 2-19-2003, “Amicus Curiae Brief,” http://www.vpcomm.umich.edu/admissions/legal/gru\_amicus-ussc/um/MilitaryL-both.pdf

The modern American military candidly acknowledges the critical link between minority officers and military readiness and effectiveness. "[T]he current leadership views complete racial integration as a military necessity – that is, as a prerequisite to a cohesive, and therefore effective, fighting force. In short, success with the challenge of diversity is [-18-] critical to national security." President’s Report § 7.1. The military’s continuing, race-conscious efforts to increase the percentage of minority officers have achieved some results, but this progress must continue. See Dep’t of Def., Population Representation in the Military Services 4-8 (Nov. 1998). Accordingly, the armed forces strive to identify and train the best qualified minority candidates to serve as officers. Infra at 18-27. As we show, these efforts include \*race-conscious recruiting, preparatory, and admissions policies\* at the service academies and in ROTC programs – efforts that underscore the military’s resolve to do what is necessary and effective to integrate the officer corps.

#### Readiness solves nuclear war

Robert Kagan, senior fellow @ Carnegie, 7-19-2007, “End of Dreams, Return of History,” <http://www.hoover.org/publications/policyreview/8552512.html>

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.

### CP

#### The United States federal judiciary should rule that all habeas corpus hearings of persons imprisoned under the War Powers Authority of the President of the United States be subject to due process guarantees and that such individuals who have won their habeas corpus hearings be released.

#### The use of the term “detention” to describe imprisonment sanitizes the process and euphemistically transforms a system of abuse and degradation into an unobjectionable administrative procedure – the language of “detention” actively legitimizes the worst excesses of the war on terror

**National Forum**, 6/28/**05** (http://72.14.203.104/search?q=cache:3qt2cbGSm7UJ:forum.onlineopinion.com.au/thread.asp%3Farticle%3D3592+%22detention+is%22+euphemism&hl=en&gl=us&ct=clnk&cd=267)

So it is Liberal policy to lock up children who have come to this country to seek refuge and discard those with a conscience. What is their crime? Wrong place wrong time?   
How do the Liberals and their supporters justify this cruelty to children? Orwell said " In our time, Political speech and writing are largely the defence of the indefensible." Today the Liberals dole out the euphemisms and PR to defend the indefensible. For instance: "mandatory detention" is really imprisonment without trial; an "illegal" is a mother, a child, a person - flesh and blood with feelings. The main argument that we get to counter refugees and others who protest against this cruelty in Australia is the "question-begging", the "what if" nonsense comparing the treatment that they would get at the hands of dictators without conscience (that most refugees are escaping from). These mothers, fathers, sons and daughters are denied our help because the humanitarian conscience that they are appealing to no longer recognises their humanity - the "sheer cloudy vagueness" has swallowed up their humanity. Vague, desperate, fleeting images in the distance behind bars.   
According to KD, the Liberals have "legitimised" gaoling children and their parents in prisons to discourage other refugees from entering our shores. A terrorist is a person who uses extreme fear to govern or coerce government or community. So, I think, those condoning this method of coercion, that is, locking up refugees to coerce boat people into staying away is based on the similar thinking as a terrorist uses - it is wrong.   
Moreover, political conformity of the kind KD encourages, engenders the machine-like responses Orwell talks of in his essays. Those in favour of gaoling the mums and dads from afar who seek our help to scare others have no conscience, or more precisely , a sense of justice. Conscience reminds us of our humanity - without it you are just cogs in a machine.

#### “Detention” is a euphemism---it functions to legitimizes government authority---undercuts public capacity to hold the Executive accountable for illegitimate arrests

Said **Shirazi**, Princeton-based analyst for Dissident Voice, 3/9/**06** (http://72.14.203.104/search?q=cache:gkwNaqfTznIJ:www.printculture.com/item-771.html+%22detention+is%22+euphemism&hl=en&gl=us&ct=clnk&cd=27)

By all means, if you suspect someone of terrorist activity arrest them, but charge them and let them work with counsel on defending themselves in case it turns out you’re wrong, as the U.S. was practically every time here. The benefit of the doubt must always be for the individual, not the peristaltic torpor of the bureaucratic Leviathan.¶ The linguistic irony is that "detained" is a less serious word than "arrested", but to be detained amounts to being arrested and held indefinitely without charge, which is of course much worse. Detention is a kind of limbo, and while technically accurate as a descriptive term, functions today as a euphemism for arrested without charge, a phrase whose sense is more plain. So if you enjoy paradoxes, here’s a good one for you: the problem is not that people are being arrested, but rather that they are not being arrested.¶ Special Registration, as the program was called, went into effect without proper public notice, only a posting in the Congressional Quarterly. It was already wrong from Day One, regardless of abuses that may have followed during incarceration, because it is based on racist assumptions, and because immigration laws were not intended to be used for an anti-terrorism dragnet. Applying immigration laws selectively to detain one group rather than another is discriminatory and illegal. Adding more groups to try to make it look less racist only makes it worse.¶ The public tends to assume that if the government does something, it must be okay, since the government is who says what's okay and what isn't. This is a dangerous oversimplification that blurs the crucial distinction between the legislative and the executive branch, and that overlooks the reality that agencies can and do overstep their authority.

#### This regime of sanitized language actively conceals the horror of totalitarianism---the language of euphemism clinically detaches people from any sense of ethical responsibility

Elias **Davidsson,** Centre for Research on Globalization, **2003** (<http://www.aldeilis.net/jus/econsanc/debate.pdf>)

In order to effectively describe a complex and highly politicized phenomenon, such as economic sanctions, the utmost care in the choice of terminology is necessary. Among the tools of politicians figure their creative use of language, including the invention of euphemisms and obfuscatory expressions.¶ Discussing the role of euphemisms in political discourse, Stanley Cohen writes:¶ The most familiar form of reinterpretation is the use of euphemistic labels and jargon. These are everyday devices for masking, sanitising, and conferring respectability by using palliative terms that deny or misrepresent cruelty or harm, giving them neutral or respectable status. Orwell's original account of the anaesthetic function of political language - how words insulate their users and listeners from experiencing fully the meaning of what they are doing - remains the classic source on the subject¶ [28]. Judge Weeramantry, in his Separate Dissenting Opinion on The legality of nuclear weapons (International Court of Justice (Advisory Opinion) (1996)), castigates [...] the use of euphemistic language - the disembodied language of military operations and the polite language of diplomacy. They conceal the horror of nuclear war, diverting attention to intellectual concepts such as self-defence, reprisals, and proportionate damage which can have little relevance to a situation of total destruction.¶ Horrendous damage to civilians and neutrals is described as collateral damage, because it was not directly intended; incineration of cities becomes "considerable thermal damage". One speaks of "acceptable levels of casualties", even if megadeaths are involved. Maintaining the balance of terror is described as "nuclear preparedness"; assured destruction as "deterrence", total devastation of the environment as "environmental damage". Clinically detached from their human context, such expressions bypass the world of human suffering, out of which humanitarian law has sprung.

#### This cynical detachment authorizes the genocidal extermination of the planet---Orwellian mind control both enables and necessitates a tolerance for brutality and violence

Halton Adler **Mann**, political writer for the Politix Group, 9/5/**03** (http://www.politixgroup.com/comm180.htm)

In George Orwell's "1984", his Everyman, Winston Smith perceives the significant signs of his repressive, tyrannical times; constant war and the xenophobia and paranoia it fosters and constant lotteries to keep the proletariat dumb, diverted and distracted. If this dreadful scenario seems familiar, it is the result of a felonious assault on the collective American sensibility, yes, but also and perhaps more inimical and insidious, a cynical and unconscionable attempt to subvert the very freedoms Americans cherish and for which the sustained struggle against the terrorist scourge is being waged. No president wants to surrender the 75 percent apogee of his approval to a more earth-bound reality. But when the attempt to retain such an artificial, unearned and anomalous figure includes a disgraceful equation of dissent with disloyalty by a de facto prime minister and the recruiting of a first lady to stand by her man then all Americans should be as concerned with the Bush administration's reaction to damning revelations of malfeasance regarding terrorism as to the terrorism itself. When Vice President Dick Cheney declared that criticizing the president in a time of war was an outrageous act of betrayal, he revealed his propagandist's soul and abysmal failure to comprehend the American ideal for which 3,000 innocents lived and died last September. Would they want the national debate over their c learly preventable American tragedies proscribed or even prohibited by those scoundrels seeking "refuge" in the "patriotism" Samuel Johnson scorned so memorably two and a half centuries ago? "In war, the first casualty is truth" as Hiram Johnson said but there are other casualties as well when truth's a trespass upon the body politic. One by one, every essential element of democracy can fall victim to the barbarism that must be confronted and conquered: Idealism, devotion, credibility, fulfillment, confidence, national spirit and the consuming conviction of that Dream known as distinctly American. It is sacred to the memory of all those millions who sought sanctuary in this Promised Land AND to those millions more who were denied it. As persecution, invasion, genocide and war consumed the European continent in the Thirties, America and the Western democracies were as complicit in their complacency as the Nazi barbarism that sentenced millions to a Fascist fate. In Nazi Germany, a "willing" population of "executioners"--to employ Daniel Jonah Goldhagen's indictment-- was raised on racism and harvested with hate, hate that does not require reason for its sustenance. So it is with every evil evolution, every belligerent belief created in a crucible of death-affirming fanaticism, in an inferno of intolerance**,** in a wanton world. Now, with the history of hatred repeating its repulsive virulence, freedom and justice--like all the precious promises of democracy-- must be defended to be defined. We do NOT have to understand the terrorist's hatred to know it exists, to know we must annihilate it if we are to survive. The United States denied this maxim to its perpetual peril and then to its unthinkable, unspeakable horror. Isolationist no longer, complacency shaken from its shoulders, America has awakened, FINALLY, as it did six decades ago, to the tumult and tragedy of our time. Now America must muster its indomitable will once again to defeat another scourge or be consumed by it. Now America must recruit sentient sentinels to repulse the barbarians before its "Golden Door". There is no mystery to the pathetic pathology, to the history of hatred. It begins in ignorance and envy, is fomented by fanatical exploiters of its existence, subverts the unsuspecting who are sacrificed to its febrile doctrine and ends in a cataclysm for all**.** "From fanaticism to barbarism is only one step" Diderot wrote. He could have written that from hatred to fanaticism, from demeaning a people to demonizing them is the same indistinct distance, the same simple synapse that sends murdered and murderer into the abyss. "If we believe absurdities, we shall commit atrocities" Voltaire wrote 250 years before the Holocaust and the national trauma of September 11th. Unlike tyranny, it is impossible to impose freedom. It cannot be destroyed easily, certainly not by the terrorist's hand. Once realized, it is relished. The longer it is denied, the longer it will require to recover its voice. In theory, the greatest repudiation of terrorism would be to further unfurl the blessings of liberty, the glory of freedom's franchise. In reality, terrorism's manifest motive is to make us LESS free, to put limits on liberty, to make us reflexive in our repression and put our demand for security above and beyond our love of freedom and so, serve as an unwitting accomplice to the anarchist's creed, to the terrorist's hatred of democracy whose sole purpose is to destroy the coherence of coexistence and put asunder the sun of life, the love of living. Desperation does NOT produce suicidal terrorist murder nor should it produce suicidal "security" as its response. In our tenacious battle against terrorism, we must NEVER deny dissent, the hallowed hallmark of our freedom. Democratic dissent will NEVER devolve to anti-democratic depredations if it is given its free forum, its vibrant voice.

#### Euphemisms are central to the capacity to wage an unregulated war on terror---the plan legitimizes the abuse of civil liberties and the mistreatment of prisoners

Andrew **Sullivan**, political journalist for New York Times Magazine, 11/12/**05** (http://www.andrewsullivan.com/index.php?dish\_inc=archives/2005\_11\_06\_dish\_archive.html)

EXEMPTING THE CIA: A former general counsel for the agency [argues](http://www.washingtonpost.com/wp-dyn/content/article/2005/11/08/AR2005110801108.html?nav=hcmodule) against Dick Cheney's case for legally codifying torture as a lawful activity for the CIA. Meanwhile, new evidence [emerges](http://www.nytimes.com/2005/11/09/politics/09detain.html) that individuals within the CIA have warned that illegality was occurring. Here's one question I hope the press asks the president some time soon: does he believe that "waterboarding" constitutes torture and has he ever authorized it himself? Since we know that the CIA has been granted permission to water-board detainees, this doesn't violate anything classified. And since no specific case is mentioned, it doesn't tell us anything but general policy. So why not ask the question? An important element of this debate has been euphemism. The terms "coercive interrogation" or "aggressive interrogation" or even "abuse" can obscure as much as they reveal. These techniques need to be described as Orwell would have demanded. What is actually done to another human being? Exactly? And who specifically authorized which techniques? There's a reason that politicians use Orwellian formulations as Bush does and Clinton did: to obscure reality. Except Clinton used them to cover up sexual embarrassment and perjury. Bush has used them to cover up rape, murder, near-drowning and torture of defenseless detainees.

#### The role of the ballot is to interrogate the political language employed by the plan---the primary function of academics in America must be to ensure politics is conducted with honest language---the educational value of your ballot is essential

Edward S. **Herman**, professor emeritus at Wharton, 7/14/**93** (http://www.thirdworldtraveler.com/Herman%20/EHerman\_Barsamian.html)

In Beyond Hypocrisy, you quote George Orwell from his essay "Politics and the English Language." "In our time, political speech and writing are largely the defense of the indefensible. ... Thus political language has to consist largely of euphemism, question-begging and sheer, cloudy vagueness." What is the relationship between politics and language?¶ That pretty well captures it. The politicians are trying to please an awful lot of people. They therefore are really opportunistic users of language. In a country like the United States the press is not doing a very good job. The use of Orwellian language has been allowed to proliferate. If you had a really first class media, an adversary media, a really good one, the use of Orwellian language would be under real constraints. When they talk about "collateral casualties" and "self-defense" in bombing Iraq, an honest media would attack this with frenzy and with a lot of laughter, too. But they accommodate very well to language that is supportive of the ongoing establishment. So Orwellian language can be effective**.**¶ You also comment in your preface that, "Media collaboration with the government in fostering a world of doublespeak is essential, and this collaboration has been regularly forthcoming." Given the political economy of the media and the propaganda model that you outlined in Manufacturing Consent, can you realistically expect anything else?¶ No, you can't.¶ So aren't you beating a dead horse, in a sense?¶ Yes, you're beating a dead horse. But most people aren't aware that the horse is dead. In a brainwashed society I certainly think the constructive role of the critical intellectual in America is very easy, because the media and the government are doing terrible things and they're very vulnerable. But the public is not informed of this. It's our function to call these things by their right names. The fact that this scene is so blatant makes it extremely easy for us to do devastating work. It's easy. But the problem is it's very hard to get it across. Access is very limited. But nevertheless I still think it's very useful to keep pointing these things out and to show the contradictions on issue after issue and to explore them. The hope is that we will be able to reach people, new people as well as people whose biases we're merely supporting. But this educational function is fundamental.

## Advantage 1

### Hegemony

#### No impact to heg

Maher 11---adjunct prof of pol sci, Brown. PhD expected in 2011 in pol sci, Brown (Richard, The Paradox of American Unipolarity: Why the United States May Be Better Off in a Post-Unipolar World, Orbis 55;1)

At the same time, preeminence creates burdens and facilitates imprudent behavior. Indeed, because of America’s unique political ideology, which sees its own domestic values and ideals as universal, and the relative openness of the foreign policymaking process, the United States is particularly susceptible to both the temptations and burdens of preponderance. For decades, perhaps since its very founding, the United States has viewed what is good for itself as good for the world. During its period of preeminence, the United States has both tried to maintain its position at the top and to transform world politics in fundamental ways, combining elements of realpolitik and liberal universalism (democratic government, free trade, basic human rights). At times, these desires have conflicted with each other but they also capture the enduring tensions of America’s role in the world. The absence of constraints and America’s overestimation of its own ability to shape outcomes has served to weaken its overall position. And because foreign policy is not the reserved and exclusive domain of the president---who presumably calculates strategy according to the pursuit of the state’s enduring national interests---the policymaking process is open to special interests and outside influences and, thus, susceptible to the cultivation of misperceptions, miscalculations, and misunderstandings. Five features in particular, each a consequence of how America has used its power in the unipolar era, have worked to diminish America’s long-term material and strategic position. Overextension. During its period of preeminence, the United States has found it difficult to stand aloof from threats (real or imagined) to its security, interests, and values. Most states are concerned with what happens in their immediate neighborhoods. The United States has interests that span virtually the entire globe, from its own Western Hemisphere, to Europe, the Middle East, Persian Gulf, South Asia, and East Asia. As its preeminence enters its third decade, the United States continues to define its interests in increasingly expansive terms. This has been facilitated by the massive forward presence of the American military, even when excluding the tens of thousands of troops stationed in Iraq and Afghanistan. The U.S. military has permanent bases in over 30 countries and maintains a troop presence in dozens more.13 There are two logics that lead a preeminent state to overextend, and these logics of overextension lead to goals and policies that exceed even the considerable capabilities of a superpower. First, by definition, preeminent states face few external constraints. Unlike in bipolar or multipolar systems, there are no other states that can serve to reliably check or counterbalance the power and influence of a single hegemon. This gives preeminent states a staggering freedom of action and provides a tempting opportunity to shape world politics in fundamental ways. Rather than pursuing its own narrow interests, preeminence provides an opportunity to mix ideology, values, and normative beliefs with foreign policy. The United States has been susceptible to this temptation, going to great lengths to slay dragons abroad, and even to remake whole societies in its own (liberal democratic) image.14 The costs and risks of taking such bold action or pursuing transformative foreign policies often seem manageable or even remote. We know from both theory and history that external powers can impose important checks on calculated risk-taking and serve as a moderating influence. The bipolar system of the Cold War forced policymakers in both the United States and the Soviet Union to exercise extreme caution and prudence. One wrong move could have led to a crisis that quickly spiraled out of policymakers’ control. Second, preeminent states have a strong incentive to seek to maintain their preeminence in the international system. Being number one has clear strategic, political, and psychological benefits. Preeminent states may, therefore, overestimate the intensity and immediacy of threats, or to fundamentally redefine what constitutes an acceptable level of threat to live with. To protect itself from emerging or even future threats, preeminent states may be more likely to take unilateral action, particularly compared to when power is distributed more evenly in the international system. Preeminence has not only made it possible for the United States to overestimate its power, but also to overestimate the degree to which other states and societies see American power as legitimate and even as worthy of emulation. There is almost a belief in historical determinism, or the feeling that one was destined to stand atop world politics as a colossus, and this preeminence gives one a special prerogative for one’s role and purpose in world politics. The security doctrine that the George W. Bush administration adopted took an aggressive approach to maintaining American preeminence and eliminating threats to American security, including waging preventive war. The invasion of Iraq, based on claims that Saddam Hussein possessed weapons of mass destruction (WMD) and had ties to al Qaeda, both of which turned out to be false, produced huge costs for the United States---in political, material, and human terms. After seven years of war, tens of thousands of American military personnel remain in Iraq. Estimates of its long-term cost are in the trillions of dollars.15 At the same time, the United States has fought a parallel conflict in Afghanistan. While the Obama administration looks to dramatically reduce the American military presence in Iraq, President Obama has committed tens of thousands of additional U.S. troops to Afghanistan. Distraction. Preeminent states have a tendency to seek to shape world politics in fundamental ways, which can lead to conflicting priorities and unnecessary diversions. As resources, attention, and prestige are devoted to one issue or set of issues, others are necessarily disregarded or given reduced importance. There are always trade-offs and opportunity costs in international politics, even for a state as powerful as the United States. Most states are required to define their priorities in highly specific terms. Because the preeminent state has such a large stake in world politics, it feels the need to be vigilant against any changes that could impact its short-, medium-, or longterm interests. The result is taking on commitments on an expansive number of issues all over the globe. The United States has been very active in its ambition to shape the postCold War world. It has expanded NATO to Russia’s doorstep; waged war in Bosnia, Kosovo, Iraq, and Afghanistan; sought to export its own democratic principles and institutions around the world; assembled an international coalition against transnational terrorism; imposed sanctions on North Korea and Iran for their nuclear programs; undertaken ‘‘nation building’’ in Iraq and Afghanistan; announced plans for a missile defense system to be stationed in Poland and the Czech Republic; and, with the United Kingdom, led the response to the recent global financial and economic crisis. By being so involved in so many parts of the world, there often emerges ambiguity over priorities. The United States defines its interests and obligations in global terms, and defending all of them simultaneously is beyond the pale even for a superpower like the United States. Issues that may have received benign neglect during the Cold War, for example, when U.S. attention and resources were almost exclusively devoted to its strategic competition with the Soviet Union, are now viewed as central to U.S. interests. Bearing Disproportionate Costs of Maintaining the Status Quo. As the preeminent power, the United States has the largest stake in maintaining the status quo. The world the United States took the lead in creating---one based on open markets and free trade, democratic norms and institutions, private property rights and the rule of law---has created enormous benefits for the United States. This is true both in terms of reaching unprecedented levels of domestic prosperity and in institutionalizing U.S. preferences, norms, and values globally. But at the same time, this system has proven costly to maintain. Smaller, less powerful states have a strong incentive to free ride, meaning that preeminent states bear a disproportionate share of the costs of maintaining the basic rules and institutions that give world politics order, stability, and predictability. While this might be frustrating to U.S. policymakers, it is perfectly understandable. Other countries know that the United States will continue to provide these goods out of its own self-interest, so there is little incentive for these other states to contribute significant resources to help maintain these public goods.16 The U.S. Navy patrols the oceans keeping vital sea lanes open. During financial crises around the globe---such as in Asia in 1997-1998, Mexico in 1994, or the global financial and economic crisis that began in October 2008--- the U.S. Treasury rather than the IMF takes the lead in setting out and implementing a plan to stabilize global financial markets. The United States has spent massive amounts on defense in part to prevent great power war. The United States, therefore, provides an indisputable collective good---a world, particularly compared to past eras, that is marked by order, stability, and predictability. A number of countries---in Europe, the Middle East, and East Asia---continue to rely on the American security guarantee for their own security. Rather than devoting more resources to defense, they are able to finance generous social welfare programs. To maintain these commitments, the United States has accumulated staggering budget deficits and national debt. As the sole superpower, the United States bears an additional though different kind of weight. From the Israeli-Palestinian dispute to the India Pakistan rivalry over Kashmir, the United States is expected to assert leadership to bring these disagreements to a peaceful resolution. The United States puts its reputation on the line, and as years and decades pass without lasting settlements, U.S. prestige and influence is further eroded. The only way to get other states to contribute more to the provision of public goods is if the United States dramatically decreases its share. At the same time, the United States would have to give other states an expanded role and greater responsibility given the proportionate increase in paying for public goods. This is a political decision for the United States---maintain predominant control over the provision of collective goods or reduce its burden but lose influence in how these public goods are used. Creation of Feelings of Enmity and Anti-Americanism. It is not necessary that everyone admire the United States or accept its ideals, values, and goals. Indeed, such dramatic imbalances of power that characterize world politics today almost always produce in others feelings of mistrust, resentment, and outright hostility. At the same time, it is easier for the United States to realize its own goals and values when these are shared by others, and are viewed as legitimate and in the common interest. As a result of both its vast power but also some of the decisions it has made, particularly over the past eight years, feelings of resentment and hostility toward the United States have grown, and perceptions of the legitimacy of its role and place in the world have correspondingly declined. Multiple factors give rise toanti-American sentiment, and anti-Americanism takes different shapes and forms.17 It emerges partly as a response to the vast disparity in power the United States enjoys over other states. Taking satisfaction in themissteps and indiscretions of the imposing Gulliver is a natural reaction. In societies that globalization (which in many parts of the world is interpreted as equivalent to Americanization) has largely passed over, resentment and alienation are felt when comparing one’s own impoverished, ill-governed, unstable society with the wealth, stability, and influence enjoyed by the United States.18 Anti-Americanism also emerges as a consequence of specific American actions and certain values and principles to which the United States ascribes. Opinion polls showed that a dramatic rise in anti-American sentiment followed the perceived unilateral decision to invade Iraq (under pretences that failed to convince much of the rest of the world) and to depose Saddam Hussein and his government and replace itwith a governmentmuchmore friendly to the United States. To many, this appeared as an arrogant and completely unilateral decision by a single state to decide for itselfwhen---and under what conditions---military force could be used. A number of other policy decisions by not just the George W. Bush but also the Clinton and Obama administrations have provoked feelings of anti-American sentiment. However, it seemed that a large portion of theworld had a particular animus for GeorgeW. Bush and a number of policy decisions of his administration, from voiding the U.S. signature on the International Criminal Court (ICC), resisting a global climate change treaty, detainee abuse at Abu Ghraib in Iraq and at Guantanamo Bay in Cuba, and what many viewed as a simplistic worldview that declared a ‘‘war’’ on terrorism and the division of theworld between goodand evil.Withpopulations around theworld mobilized and politicized to a degree never before seen---let alone barely contemplated---such feelings of anti-American sentiment makes it more difficult for the United States to convince other governments that the U.S.’ own preferences and priorities are legitimate and worthy of emulation. Decreased Allied Dependence. It is counterintuitive to think that America’s unprecedented power decreases its allies’ dependence on it. During the Cold War, for example, America’s allies were highly dependent on the United States for their own security. The security relationship that the United States had with Western Europe and Japan allowed these societies to rebuild and reach a stunning level of economic prosperity in the decades following World War II. Now that the United States is the sole superpower and the threat posed by the Soviet Union no longer exists, these countries have charted more autonomous courses in foreign and security policy. A reversion to a bipolar or multipolar system could change that, making these allies more dependent on the United States for their security. Russia’s reemergence could unnerve America’s European allies, just as China’s continued ascent could provoke unease in Japan. Either possibility would disrupt the equilibrium in Europe and East Asia that the United States has cultivated over the past several decades. New geopolitical rivalries could serve to create incentives for America’s allies to reduce the disagreements they have with Washington and to reinforce their security relationships with the United States.

#### PRISM destroyed soft power / credibility

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For the past few months, the United States has been rocked by a series of scandals. It all started with the events in Benghazi, when Al Qaeda-affiliated terrorists attacked the General Consulate there and murdered four diplomats, including the U.S. ambassador to Libya. Then there was the scandal exposed when it was revealed that the Justice Department was monitoring the calls of the Associated Press. The Internal Revenue Service seems to have targeted certain political groups. Finally, there was the vast National Security Agency apparatus for monitoring online activity revealed by Edward Snowden. Together, these events provoke a number of questions about the path taken by contemporary Western societies, and especially the one taken by America.¶ Large and powerful institutions, especially those in the security sphere, have become unaccountable to the public, even to representatives of the people themselves. Have George Orwell’s cautionary tales of total government control over society been realized?¶ At the end of the 1960s and the beginning of the 1970s, my fellow students and I read Orwell’s 1984 and other dystopian stories and believed them to portray fascist Germany or the Soviet Union—two totalitarian regimes—but today it has become increasingly apparent that Orwell, Huxley and other dystopian authors had seen in their own countries (Britain and the United States) certain trends, especially as technological capabilities grew, that would ultimately allow governments to exert total control over their societies. The potential for this type of all-knowing regime is what Edward Snowden revealed, confirming the worst fears that the dystopias are already being realized.¶ On a practical geopolitical level, the spying scandals have seriously tarnished the reputation of the United States. They have circumscribed its ability to exert soft power; the same influence that made the U.S. model very attractive to the rest of the world. This former lustre is now diminished. The blatant everyday intrusions into the private lives of Americans, and violations of individual rights and liberties by runaway, unaccountable U.S. government agencies, have deprived the United States of its authority to dictate how others must live and what others must do. Washington can no longer lecture others when its very foundational institutions and values are being discredited—or at a minimum, when all is not well “in the state of Denmark.”¶ Perhaps precisely because not all is well, many American politicians seem unable to adequately address the current situation. Instead of asking what isn’t working in the government and how to ensure accountability and transparency in their institutions, they try, in their annoyance, to blame the messenger—as they are doing in Snowden’s case. Some Senators hurried to blame Russia and Ecuador for anti-American behavior, and threatened to punish them should they offer asylum to Snowden.¶ These threats could only cause confusion in sober minds, as every sovereign country retains the right to issue or deny asylum to whomever it pleases. In addition, the United States itself has a tradition of always offering political asylum to deserters of the secret services of other countries, especially in the case of the former Soviet Union and other ex-socialist countries. In those situations, the United States never gave any consideration to how those other countries might react—it considered the deserters sources of valuable information. As long as deserters have not had a criminal and murderous past, they can receive political asylum in any country that considers itself sovereign and can stand up to any pressure and blackmail.¶ Meanwhile, the hysteria of some politicians, if the State Department or other institutions of the executive branch join it, can only accelerate the process of Snowden’s asylum. For any country he might ask will only be more willing to demonstrate its own sovereignty and dignity by standing up to a bully that tries to dictate conditions to it. In our particular case, political pressure on Russia and President Putin could turn out to be utterly counterproductive. I believe that Washington has enough levelheaded people to understand that fact, and correctly advise the White House. The administration will need sound advice, as many people in Congress fail to understand the consequences of their calls for punishment of sovereign countries or foreign political leaders that don’t dance to Washington’s tune.¶ Judging by the latest exchange between Moscow and Washington, it appears that the executive branches of both countries will find adequate solutions to the Snowden situation without attacks on each other’s dignity and self-esteem. Russia and the United States are both Security Council members, and much hinges on their decisions, including a slew of common problems that make cooperation necessary.¶ Yet the recent series of scandals has caused irreparable damage to the image and soft power of the United States. I do not know how soon this damage can be repaired. But gone are the days when Orwell was seen as a relic of the Cold War, as the all-powerful Leviathan of the security services has run away from all accountability to state and society. Today the world is looking at America—and its model for governance—with a more critical eye.

### Terror

#### No terror attacks- Al Qaeda weak and focused on local initiatives- anti-western rhetoric is posturing

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The decline of al-Qaida Core is the easiest aspect of the current state of affairs to explain. It is¶ fundamentally a story of what terrorism scholars call government “learning”, i.e., gradual accumulation of information about the identity and location of the members of the rebel group, which in turn allows for increasingly targeted and more effective repressive measures. At the beginning of the war on terror, al-Qaida enjoyed an informational advantage over the US government – as do all terrorist groups at the outset of their campaigns – because it knew where to¶ find us but we did not know where to find them. With the help of time and massive investments in¶ intelligence, we were able to map the organization, contain it, and eliminate leaders faster than it could train new ones. Learning is also behind the moderate decline in attacks by independents. Advances in data mining and analysis have allowed governments to collect, accumulate, and exploit data about the¶ fringes of the jihadi network to a much greater extent than before, allowing for the identification of many, though not all, plots before they reach execution. Governments are helped here by the fact¶ that true lone wolves are extremely rare, and that, for most individuals, the radicalization process¶ involves socialization with other activists and/or consumption of jihadi propaganda online, both of which leave traces to be exploited. This, incidentally, is one of several reasons why the Internet is proving to be less of a boon to terrorists than many analysts predicted some years ago. For all their skill using the internet for propaganda distribution, jihadists are struggling use the web for operational purposes; they are having particular problems avoiding surveillance and establishing¶ trust between one another online. The more contentious question is why the affiliates are not attacking in the West more often. One argument holds that this is a capability issue, i.e, that the groups are not operationally¶ capable of circumventing the many countermeasures and detection systems that Western¶ governments have put in place since 9/11. This argument is unconvincing for two main reasons. One¶ is that several affiliates, especially AQIM and al-Shabaab, do have economic resources and human¶ assets that should arguably enable them to carry out at least some attacks in the West. The other¶ reason is if capability was the main problem, we should still expect to see more attempts. The¶ combination of high intent and low capability is observable in the form of failed and foiled attacks. The fact that we do not see many such attempts, except from AQAP, suggests most affiliates are not really trying.¶ I argue that the relatively low supply of anti-Western plots from the affiliates reflects low motivation, which in turn has two origins: a preference for local targets and fear of US retaliation. For all their anti-Western rhetoric and declared allegiance to al-Qaida Core, many affiliates appear to¶ place greater emphasis on achieving local political objectives than inflicting harm on the West. We¶ can infer this preference from the content of group declarations. Some groups say explicitly that¶ they do not plan to attack in the West; others are more ambiguous in their statements, but reveal their preferences by devoting more attention to local topics than to global ones or describing close¶ enemies with more vitriol than distant ones. Groups also reveal their preferences by the way they allocate operational resources. Most affiliates devote their resources overwhelmingly to local or regional operations. Even those organizations that have attempted operations against the West have conducted a much larger number of operations in the local theatre. This is in stark contrast to AQ core, which devoted nearly all of its resources after 2001 to attacks in the West. By far the most plausible explanation for these allocations is that groups value local political gains higher than¶ international ones. If your aim is to establish control over a given territory and you are caught up in a¶ fight with a regional enemy, it makes little strategic sense to attack the West. However, you might have an incentive to launch verbal attacks on the West, because this makes you appear strong and¶ principled in your local setting. Attacking the West makes even less strategic sense for such groups given the cost to the organization of provoking the ire of the American military. There is solid evidence from captured¶ documentation that leaders of jihadi organizations think strategically and make decisions based on¶ an informed calculus of costs and benefits. Leaders are, as a rule, not suicidal or irrational. There is also extensive evidence – from internal strategy documents – that leaders are aware of the¶ capabilities of the US military and seek to avoid unnecessary exposure to these capabilities. In the 1990s, some jihadi leaders explicitly admitted fearing US retaliation and cited it as a reason not to¶ pursue Osama bin Ladin’s “America first” strategy. Such explicit admissions are rare today, but it would be surprising if the prospect of retaliation did not factor into the decision calculus in an era where the US has proven much more willing to use force against terrorists than perhaps ever before¶ in modern history. Most likely, affiliate leaders understand that targeting the US homeland might bring their own demise.

#### No scenario for nuclear terror---consensus of experts

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For over a decade now, one of the most oft-repeated threats raised by policymakers—the one that in many ways justified the invasion of Iraq—has been that of nuclear terrorism. Officials in both the Bush and Obama administrations, including the presidents themselves, have raised the specter of the atomic terrorist. But beyond mere rhetoric, how likely is a nuclear terrorist attack really?¶ While pessimistic estimates about America’s ability to avoid a nuclear terrorist attack became something of a cottage industry following the September 11th attacks, a number of scholars in recent years have pushed back against this trend. Frank Gavin has put post-9/11 fears of nuclear terrorism into historical context (pdf) and argued against the prevailing alarmism. Anne Stenersen of the Norwegian Defence Research Establishment has challenged the idea that al Qaeda was ever bound and determined to acquire a nuclear weapon. John Mueller ridiculed the notion of nuclear terrorism in his book Atomic Obsessions and highlighted the numerous steps a terrorist group would need to take—all of which would have to be successful—in order to procure, deliver, and detonate an atomic weapon. And in his excellent, and exceedingly even-handed, treatment of the subject, On Nuclear Terrorism, Michael Levi outlined the difficulties terrorists would face building their own nuclear weapon and discussed how a “system of systems” could be developed to interdict potential materials smuggled into the United States—citing a “Murphy’s law of nuclear terrorism” that could possibly dissuade terrorists from even trying in the first place.¶ But what about the possibility that a rogue state could transfer a nuclear weapon to a terrorist group? That was ostensibly why the United States deposed Saddam Hussein’s regime: fear he would turnover one of his hypothetical nuclear weapons for al Qaeda to use.¶ Enter into this discussion Keir Lieber and Daryl Press and their article in the most recent edition of International Security, “Why States Won’t Give Nuclear Weapons to Terrorists.” Lieber and Press have been writing on nuclear issues for just shy of a decade—doing innovative, if controversial work on American nuclear strategy. However, I believe this is their first venture into the debate over nuclear terrorism. And while others, such as Mueller, have argued that states are unlikely to transfer nuclear weapons to terrorists, this article is the first to tackle the subject with an empirical analysis.¶ The title of their article nicely sums up their argument: states will not turn over nuclear weapons terrorists. To back up this claim, Lieber and Press attack the idea that states will transfer nuclear weapons to terrorists because terrorists operate of absent a “return address.” Based on an examination of attribution following conventional terrorist attacks, the authors conclude:¶ [N]either a terror group nor a state sponsor would remain anonymous after a nuclear attack. We draw this conclusion on the basis of four main findings. First, data on a decade of terrorist incidents reveal a strong positive relationship between the number of fatalities caused in a terror attack and the likelihood of attribution. Roughly three-quarters of the attacks that kill 100 people or more are traced back to the perpetrators. Second, attribution rates are far higher for attacks on the U.S. homeland or the territory of a major U.S. ally—97 percent (thirty-six of thirty-seven) for incidents that killed ten or more people. Third, tracing culpability from a guilty terrorist group back to its state sponsor is not likely to be difficult: few countries sponsor terrorism; few terrorist groups have state sponsors; each sponsor terrorist group has few sponsors (typically one); and only one country that sponsors terrorism, has nuclear weapons or enough fissile material to manufacture a weapon. In sum, attribution of nuclear terror incidents would be easier than is typically suggested, and passing weapons to terrorists would not offer countries escape from the constraints of deterrence.¶ From this analysis, Lieber and Press draw two major implications for U.S. foreign policy: claims that it is impossible to attribute nuclear terrorism to particular groups or potential states sponsors undermines deterrence; and fear of states transferring nuclear weapons to terrorist groups, by itself, does not justify extreme measures to prevent nuclear proliferation.¶ This is a key point. While there are other reasons nuclear proliferation is undesirable, fears of nuclear terrorism have been used to justify a wide-range of policies—up to, and including, military action. Put in its proper perspective however—given the difficulty in constructing and transporting a nuclear device and the improbability of state transfer—nuclear terrorism hardly warrants the type of exertions many alarmist assessments indicate it should.

### Russia

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

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

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

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

#### No extinction impact

Quinlan 9 [Michael Quinlan, former British Permanent Under Secretary of State for Defence, former Director of the Ditchley Foundation, Visiting Professor at King's College London, “Thinking About Nuclear Weapons: Principles, Problems, Prospects,” Oxford University Press, p. 63-4]

Even if initial nuclear use did not quickly end the fighting, the supposition of inexorable momentum in a developing exchange, with each side rushing to overreaction amid confusion and uncertainty, is implausible. It fails to consider what the situation of the decisionmakers would really be. Neither side could want escalation. Both would be appalled at what was going on. Both would be desperately looking for signs that the other was ready to call a halt. Both, given the capacity for evasion or concealment which modern delivery platforms and vehicles can possess, could have in reserve significant forces invulnerable enough not to entail use-or-lose pressures. (It may be more open to question, as noted earlier, whether newer nuclear weapon possessors can be immediately in that position; but it is within reach of any substantial state with advanced technological capabilities, and attaining it is certain to be a high priority in the development of forces.) As a result, neither side can have any predisposition to suppose, in an ambiguous situation of fearful risk, that the right course when in doubt is to go on copiously launching weapons. And none of this analysis rests on any presumption of highly subtle or pre-concerted rationality. The rationality required is plain.

## Advantage 2

### Judical Power

#### **1. Turn — Court Stripping**

#### **The Court’s pursuing an incremental strategy in regards to War Powers now---**the **plan causes massive backlash and executive non-acquiescence**

Neavl Devins 10, Goodrich Professor of Law and Professor of Government, College of William & Mary., Talk Loudly and Carry a Small Stick: The Supreme Court and Enemy Combatants, 12 U. Pa. J. Const. L. 491

Congress, the President, and the Court. Throughout the enemy combatant litigation, Congress signaled to the Court that it would go along with whatever ruling the Court made in these cases. In other words, contrary to the portrayal by academics and the news media of the Supreme Court's willingness to stand up to Congress and the executive branch, lawmakers repeatedly stood behind Court rulings limiting elected branch power. At the same time, as I will detail in the next Part, the Court pursued an incremental strategy - declining to test the boundaries of lawmaker acquiescence and, instead, issuing decisions that it knew would be acceptable to lawmakers. n85¶ The 2004 rulings in Hamdi and Rasul triggered anything but a backlash. In the days following the decisions, no lawmaker spoke on the House or Senate floor about the decision, and only a handful issued [\*508] press releases about the cases. n86 And while eight members of Congress signed onto amicus briefs backing administration policy, n87 Congress did not seriously pursue legislative reform on this issue until the Supreme Court had agreed to hear the Hamdan case. n88¶ When Congress enacted the Detainee Treatment Act (DTA) in December 2005, "lawmakers made clear that they did not see the DTA as an attack on either the Court or an independent judiciary." n89 Most significant, even though the DTA placed limits on federal court consideration of enemy combatant habeas petitions, lawmakers nevertheless anticipated that the Supreme Court would decide the fate of the President's military tribunal initiative. Lawmakers deleted language in the original bill precluding federal court review of Hamdan and other pending cases. n90 Lawmakers, moreover, depicted themselves as working collegially with the Court; several Senators, for example, contended that the "Supreme Court has been shouting to us in Congress: Get involved," n91 and thereby depicted Rasul as a challenge [\*509] to Congress, n92 "asking the Senate and the House, do you intend for ... enemy combatants ... to challenge their detention [in federal courts] as if they were American citizens?" n93 Lawmakers also spoke of detainee habeas petitions as an "abuse[]" n94 of the federal courts, and warned that such petitions might unduly clog the courts, n95 thus "swamping the system" n96 with frivolous complaints. n97 Under this view, the DTA's cabining of federal court jurisdiction "respects" the Court's independence and its role in the detainee process. n98¶ Following Hamdan, lawmakers likewise did not challenge the Court's conclusions that the DTA did not retrospectively bar the Hamdan litigation and that the President could not unilaterally pursue his military tribunal policy. n99 Even though the Military Commissions Act (MCA) eliminates federal court jurisdiction over enemy combatant habeas petitions, lawmakers depicted themselves as working in tandem with the Court. Representative Duncan Hunter (R. Cal.), who introduced the legislation on the House floor, said during the debates that the bill was a response to the "mandate of the Supreme Court that Congress involve itself in producing this new structure to prosecute terrorists." n100 And DTA sponsor Lindsey Graham stated: "The Supreme Court has set the rules of the road and the [\*510] Congress and the president can drive to the destination together." n101 Even lawmakers who expressed disappointment in the Court's ruling did not criticize the Court. Senator Sessions (R. Ala.), for example, blamed Hamdan's lawyers for misleading the Court about the legislative history of the DTA. n102¶ Debates over the MCA habeas provision, moreover, reveal that lawmakers thought that the Supreme Court was responsible for assessing the reach of habeas protections. Fifty-one Senators (fifty Republicans and one Democrat) voted against a proposed amendment to provide habeas protections to Guantanamo detainees. Arguing that enemy combatants possessed no constitutional habeas rights, n103 these lawmakers contended that they could eliminate habeas claims without undermining judicial authority. One of the principal architects of the MCA, Senator Lindsey Graham, put it this way: Enemy combatants have "a statutory right of habeas ... . And if [the Supreme Court finds] there is a constitutional right of habeas corpus given to enemy combatants, that is ... totally different ... and it would change in many ways what I have said." n104 Forty-eight Senators (forty-three Democrats, four Republicans, and one Independent) argued that the habeas-stripping provision was unconstitutional, that the courts would "clean it up," n105 and that Congress therefore should fulfill its responsibility to protect "that great writ." n106¶ When the Supreme Court agreed to rule on the constitutionality of the MCA, the Congress no longer supported the MCA's habeas-stripping provisions. Democrats had gained control of both Houses of Congress. Not surprisingly, there was next-to-no lawmaker criticism of Boumediene. In the week following the decision, no member [\*511] of the House, and only two Senators, made critical comments about the decision on the House or the Senate floor. n107¶ \* \* \* Supreme Court enemy combatant decisions were not out-of-step with prevailing social and political forces. Academics (including prominent conservatives), the media (again including conservative newspapers), former judges, and bar groups had all lined up against the administration. Interest groups too opposed the administration (including some conservative groups). Over the course of the enemy combatant litigation, the American people increasingly opposed the Bush administration. This opposition, in part, was tied to policy missteps (some of which implicated enemy combatant policy-making). These missteps were highly visible and contributed to widespread opposition to the Bush administration. For its part, Congress did not question the Court's role in policing the administration's enemy combatant initiative. By the time the Court decided Boumediene, voter disapproval of the President had translated into widespread opposition to the administration's enemy combatant initiative; a Democratic Congress supported habeas protections for enemy combatants and presidential candidates John McCain and Barack Obama called for the closing of Guantanamo Bay.¶ In the next part of this Essay, I will discuss the incremental nature of the Court's decision making. This discussion will provide additional support for the claims made in this section. Specifically, I will show that each of the Court's decisions was in sync with changing attitudes towards the Bush administration. More than that, Part II will belie the myth that Court enemy combatant decisions were especially consequential. Unlike newspaper and academic commentary about these cases, Court decision making had only a modest impact. Correspondingly, the Court never issued a decision that risked its institutional capital; the Court knew that its decisions would be followed by elected officials and that its decisions would not ask elected officials to take actions that posed some national security risk. [\*512] ¶ II. Judicial Modesty or Judicial Hubris: Making Sense of the Enemy Combatant Cases ¶ From 1952 (when the Supreme Court slapped down President Truman's war-time seizure of the steel mills) n108 until 2004 (when the Court reasserted itself in the first wave of enemy combatant cases), the judiciary largely steered clear of war powers disputes. n109 In part, the Court deferred to presidential desires and expertise. The President sees the "rights of governance in the foreign affairs and war powers areas" as core executive powers. n110 Correspondingly, the President has strong incentives to expand his war-making prerogatives. n111 For its part, the Court has limited expertise in this area, and, as such, is extremely reluctant to stake out positions that may pose significant national security risks. n112 The Court, moreover, is extremely reluctant to risk elected branch opprobrium. Lacking the powers of purse and sword, the Court cannot ignore the risks of elected branch non-acquiescence. n113¶ Against this backdrop, the Court's repudiation of the Bush administration's enemy combatant initiative appears a dramatic break from past practice. Academic and newspaper commentary back up this claim - with these decisions being labeled "stunning" (Harold [\*513] Koh), n114 "unprecedented" (John Yoo), n115 "breathtaking" (Charles Krauthammer), n116 "astounding" (Neal Katyal), n117 "sweeping and categorical" (New York Times), n118 and "historic" (Washington Post and Wall Street Journal). n119 Upon closer inspection, however, the Court's decisions are anything but a dramatic break from past practice. Part I detailed how Court rulings tracked larger social and political forces. In this Part, I will show how the Court risked neither the nation's security nor elected branch non-acquiescence. n120 The Court's initial rulings placed few meaningful checks on the executive; over time, the Court - reflecting increasing public disapproval of the President - imposed additional constraints but never issued a ruling that was out-of-sync with elected government preferences. Separate and apart from reflecting growing public and elected government disapproval of Bush administration policies, the Court had strong incentives to intervene in these cases. The Bush administration had challenged the Court's authority to play any role in national security matters. n121 This frontal assault on judicial power prompted the Court to stand up for its authority to "say what the law is." In Part III, I will talk about the Court's interest in protecting its turf - especially in cases implicating individual rights.¶ [\*514] Small Steps: Hamdi and Rasul. These decisions were a minimalist opening volley in Court efforts to place judicial limits on the Bush administration. While rejecting claims of executive branch unilateralism in national security matters, the Court said next-to-nothing about how it would police the President's enemy combatant initiative. Rasul simply held that Guantanamo Bay was a "territory over which the United States exercises exclusive jurisdiction and control," and, consequently, that the President's enemy combatant initiative is subject to existing habeas corpus legislation. n122 This ruling "avoided any constitutional judgment" and offered no guidance on "what further proceedings may become necessary" after enemy combatants filed habeas corpus petitions. n123 Hamdi, although ruling that United States citizens have a constitutional right to challenge their detention as an enemy combatant, placed few meaningful limits on executive branch detentions. Noting that "enemy-combatant proceedings may be tailored to alleviate their uncommon potential to burden the Executive," the Court ruled both that hearsay evidence was admissible, and that "the Constitution would not be offended by a presumption in favor of the Government's evidence." n124¶ The Bush administration, as John Yoo put it, saw the limited reach of Hamdi and Rasul as creating an "opportunity" for the administration to regain control over its detention policy. n125 In particular, the administration asked Congress to enact legislation that would limit federal court review of enemy combatant claims. The administration also launched Combatant Status Review Tribunals (CSRT) as a more formal substitute for unilateral executive determinations of a detainee's enemy combatant status. n126 Capitalizing on Rasul's failure to consider the constitutional dimensions of enemy combatant claims, CSRTs largely operated as a rubber stamp of administration determinations. In 2006, ninety-nine out of 102 detainees brought before CSRTs were designated as enemy combatants. n127 The Justice Department reconvened CSRTs to reconsider the remaining three cases [\*515] and, ultimately, the remaining three were determined to be enemy combatants. n128¶ Hamdi and Rasul were both "narrow, incompletely theorized [minimalist] decisions." n129 And while newspapers and academics focused their attention on the Court's open-ended declaration that "a state of war is not a blank check for the President," n130 the decisions did not meaningfully limit the executive. Well aware that Congress and the American people supported the President's military commission initiative, n131 the Court understood that a sweeping denunciation of administration policies might trigger a fierce backlash. n132 Moreover, by ruling that Congress had authorized the President's power to detain enemy combatants (through its post-9/11 Authorization for the Use of Military Force Resolution), and by suggesting that the Court would make use of pro-government presumptions when reviewing military commission decision making, the Court formally took national security interests into account. n133 Actions taken by the executive in response to these rulings underscore that the Court's de minimis demands neither risked national security nor executive branch non-acquiescence.¶ None of this is to say that the 2004 decisions were without impact. Following Rasul, for example, the administration understood that it needed to make use of some type of military court review - a requirement that may have impacted the military's handling of enemy combatants. At the same time, the Court did not issue a potentially debilitating blow to the Bush administration by decisively and resoundingly rejecting key elements of the administration's legal policy. n134 Instead, the Court simply carved out space for itself to review administration policy-making - without setting meaningful boundaries on what the administration could or could not do.

#### Court involvement in national security causes massive blowback that crushes judicial legitimacy

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

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

#### 2. Turn — Salaries

#### Judges will get pay raises now, but Congress still has the ability to wreck salaries – key to judicial independence

Lyle Denniston, SCOTUSblog badass, covered the court for 54 years, National Constitution Center’s Adviser on Constitutional Literacy, 10-8-2012, “Major gain for judges’ independence,” Constitution Daily, http://blog.constitutioncenter.org/2012/10/major-gain-for-judges%E2%80%99-independence/

That has been, from the beginning, one of the ways the Founders guaranteed the independence of the federal judiciary (another was a promise of life tenure “during good behavior”). But for the past 34 years, federal judges have been pursuing a series of lawsuits, claiming that Congress has frequently acted in ways that – in real-dollar terms – reduced their pay, in violation of the Compensation Clause. The theory was that, if a federal judges’ pay remains constant, it will be eroded over time by the effects of inflation in money’s value. Last Friday, that legal struggle finally resulted in a historic constitutional victory for the judges – a victory that is likely to be tested in the Supreme Court before it could take final effect. The U.S. Court of Appeals for the Federal Circuit – a specialized court that decides claims for money from the federal government – ruled by a 10-2 vote that Congress has several times violated a promise made in 1989 to give federal judges an annual cost-of-living increase in their pay level. The decision does not mean that Congress has lost the power to set federal judges’ salary levels, or that it has a constitutional duty to give them a period, inflation-countering raise. But it does mean that Congress cannot promise a raise, and then break that promise, and that the lawmakers cannot take steps that reduce the value of a sitting judge’s salary scale. The judges’ fight has been a long-running labor for them and their lawyers, and the issue raises such fundamental constitutional questions that it has gone to the Supreme Court, in one form or another, three times. It almost certainly will return there again, because the Justice Department does not believe the judges have a valid claim that the Compensation Clause has been violated, and the Department has the authority to seek Supreme Court review. The Federal Circuit Court’s ruling in the judges’ favor (in the case of Beer v. U.S.) is a strong statement of support for judicial independence, and for the role that a secure salary plays in helping to protect that independence. In the Declaration of Independence, the court recalled, America’s revolutionary generation protested that the King of England had made judges depend upon his grace for their tenure and for their pay. Alexander Hamilton wrote in The Federalist Papers: “Next to permanence in office, nothing can contribute more to the independence of the judges than a fixed provision for their support.”

#### Congress will backlash against the plan and cut judicial pay

Philip A. Talmadge, Justice, Washington State Supreme Court, Winter 1999, Seattle University Law Review, 22 Seattle Univ. L. R. 695, p. 701-704

The doctrine of judicial restraint has been encrusted in recent years with considerable ideological cant of both the left and the right. 17 The ideological discussion highlights particular political issues of the day. Many conservatives decry judicial activism with respect to the courts' role in racial desegregation in America or [\*702] reproductive rights issues. 18 Liberals complain today of judicial activism in property and economic issues. 19 But this doctrine need not be the captive of the left or the right. The doctrine itself has become "political" largely because it is not susceptible to rigorous and predictable definition. That the courts are not entirely trusted by the partisan branches of government to announce constitutional principles is illustrated by recent Washington legislation. In 1997, a bill was introduced in the Washington State House of Representatives with thirty-three sponsors. The bill challenged the doctrine of judicial review: "The doctrine of judicial review that the courts have the sole and final say in interpreting the Constitution on behalf of all three branches of government has been subject to serious analysis and criticism by scholars, jurists, and others for almost two hundred years." 20 The legislation's apparent intent was to undercut the finality and authority of judicial review of constitutional questions by permitting the legislature to disagree with a judicial interpretation of the Washington Constitution and to submit the issue to the voters in a statewide referendum. 21 [\*703] The sense that the courts are too powerful sometimes conflicts with direction to judges from the partisan branches to state their views more publicly. In 1997, twenty-two sponsors introduced in the Washington State House of Representatives a measure urging the Supreme Court to amend Canon 7 of the Code of Judicial Conduct to afford judges and judicial candidates the right to "speak freely and without fear of governmental retaliation, on issues that are not then before the court." 22 The United States Congress has also raised serious questions about judicial performance through a different methodology. The United States Senate's recent glacial pace in confirming nominees to judicial vacancies increases judicial workloads and instills trepidation in the minds of the nominees. 23 In recent legislation, 24 Congress [\*704] sought to restrain "judicial activism" by denying judges cost-of-living salary adjustments and limiting federal court jurisdiction. Various versions of the legislation would deny federal courts the power to release federal prisoners because of bad prison conditions and establish special procedures to hear challenges to state initiative measures. In summary, these issues illustrate the need for the courts continually to revisit and review the core constitutional functions of the judiciary. 25 Within the constitutional sphere, however, the courts should be active and the other branches of government constrained not to act unconstitutionally. The judiciary cannot "restrain" itself from declaring the enactments of legislative bodies violative of constitutional norms. The courts must vigorously protect individuals, particularly minorities, from majoritarian tyranny. But this protective role does not allow the courts to "constitutionalize" every controversy. Judicial self-restraint lends support to the legitimacy of judicial independence. In our system of separation of powers, achievement of the necessary balance between a judiciary vigorous within its constitutional sphere and independent of the partisan branches of government, and a judiciary restrained in its inclination to right every wrong, is no easy task. That necessary balance is, however, the essence of ordered liberty in the American constitutional system. Likewise, the other branches of government must regard the authority and independence of the judiciary by respecting judicial review, properly funding the courts, and avoiding the imposition of nonjudicial duties or ever-escalating caseloads. The fulfillment of separation of powers is found in the principles of restraint employed in the federal and state court systems.

#### Adequate funding for the judiciary is key to the rule of law – it’s watched internationally

Testimony of Associate Justice Anthony M. Kennedy before the United States Senate Committee on the Judiciary Judicial Security and Independence February 14, 2007 http://judiciary.senate.gov/testimony.cfm?id=2526&wit\_id=6070

The provision of judicial resources by Congress over the years is admirable in most respects. Your expeditious consideration of the pending court-security bill is just one example of your understanding of our needs. Our facilities have been, and are, the envy of the judiciaries of the several States and, indeed, of judges throughout the world. Our staff, our libraries, our electronic data systems, and our courthouses are excellent. These resources have been the special concern of Congress. Your interest, your oversight, and your understanding of our needs set a standard for our own States and for nations around the world. Just one example is the Federal Judicial Center. When visitors come to Washington, we recommend they observe it to learn how a successful judicial-education center functions. Those visitors are awed by what they see. As you know, the Center produces an elaborate series of programs for judicial education, under a small budget emphasizing turn-key projects. Around the world, the allocation of scarce resources to judiciaries is, to be candid, a tough sell. There are urgent demands for funds for defense; for roads and schools; for hospitals, doctors, and health care; and for basic utilities and necessities such as clean water. Even rich countries like our own find it hard to marshal the necessary resources for all these endeavors. What, then, is the reception an elected representative receives when he or she tells constituents the legislature has increased funding for judicial resources? The report, to be frank, is not likely to generate much excitement. Perhaps this is an educational failure on our part, for there is a proper response to this predictable public reaction. It is this: An efficient, highly qualified judiciary is part of the infrastructure necessary in any society that seeks to safeguard its freedom. A judiciary committed to excellence secures the Rule of Law; and the Rule of Law is a building block no less important to the advance of freedom and prosperity than infrastructure systems such as roads and utilities. Without a functioning, highly qualified, efficient judiciary, no nation can hope to guarantee its prosperity and secure the liberties of its people. The Committee knows that judges throughout the United States are increasingly concerned about the persisting low salary levels Congress authorizes for judicial service. Members of the federal judiciary consider the problem so acute that it has become a threat to judicial independence. This subject is a most delicate one and, indeed, is difficult for me to address. It is, however, an urgent matter requiring frank and open exchange of views. Please permit me to make some remarks on the subject.

#### That causes nuclear war

Charles S. Rhyne, Founder and Senior Partner of Rhyne & Rhyne law firm. “Law Day Speech for Voice of America.” May 1, 1958. American Bar Association. http://www.abanet.org/publiced/lawday/rhyne58.html

In these days of soul-searching and re-evaluation and inventorying of basic concepts and principles brought on by the expansion of man’s vision to the new frontiers and horizons of outer space, we want the people of the world to know that we in America have an unshakable belief in the most essential ingredient of our way of life—the rule of law. The law we honor is the basis and foundation of our nation’s freedom and the freedom for the individual which exists here. And to Americans our freedom is more important than our very lives. The rule of law has been the bulwark of our democracy. It has afforded protection to the weak, the oppressed, the minorities, the unpopular; it has made it possible to achieve responsiveness of the government to the will of people. It stands as the very antithesis of Communism and dictatorship. When we talk about “justice” under our rule of law, the absence of such justice behind the Iron Curtain is apparent to all. When we talk about “freedom” for the individual, Hungary is recalled to the minds of all men. And when we talk about peace under law—peace without the bloodbath of war—we are appealing to the foremost desire of all peoples everywhere. The tremendous yearning of all peoples for peace can only be answered by the use of law to replace weapons in resolving international disputes. We in our country sincerely believe that [hu]mankind’s best hope for preventing the tragic consequences of nuclear-satellite-missile warfare is to persuade the nations of the entire world to submit all disputes to tribunals of justice for all adjudication under the rule of law. We lawyers of America would like to join lawyers from every nation in the world in fashioning an international code of law so appealing that sentiment will compel its general acceptance. Man’s relation to man is the most neglected field of study, exploration and development in the world community. It is also the most critical. The most important basic fact of our generation is that the rapid advance of knowledge in science and technology has forced increased international relationships in a shrunken and indivisible world. Men must either live together in peace or in modern war we will surely die together. History teachers that the rule of law has enabled [hu]mankind to live together peacefully within nations and it is clear that this same rule of law offers our best hope as a mechanism to achieve and maintain peace between nations. The lawyer is the technician in man’s relationship to man. There exists a worldwide challenge to our profession to develop law to replace weapons before the dreadful holocaust of nuclear war overtake our people.

\*\*\*[gender paraphrased]

### CMR

#### No impact – empirics prove

Feaver and Kohn 5 - Peter Feaver, professor of Political Science and Public Policy and the director of the Triangle Institute for Security Studies at Duke University, and Richard H. Kohn, Professor of History at the University of North Carolina, 2005, “The Gap: Soldiers, Civilians, and Their Mutual Misunderstanding,” in American Defense Policy, 2005 edition, ed. Paul J. Bolt, Damon V. Coletta, Collins G. Shackelford, p. 339

Concerns about a troublesome divide between the armed forces and the society they serve are hardly new and in fact go back to the beginning of the Republic. Writing in the 1950s, Samuel Huntington argued that the divide could best be bridged by civilian society tolerating, if not embracing, the conservative values that animate military culture. Huntington also suggested that politicians allow the armed forces a substantial degree of cultural autonomy. Countering this argument, the sociologist Morris Janowitz argued that in a democracy, military culture necessarily adapts to changes in civilian society, adjusting to the needs and dictates of its civilian masters.2 The end of the Cold War and the extraordinary changes in American foreign and defense policy that resulted have revived the debate. The contemporary heirs of Janowitz see the all volunteer military as drifting too far away from the norms of American society, thereby posing problems for civilian control. They make tour principal assertions. First, the military has grown out of step ideologically with the public, showing itself to be inordinately right-wing politically, and much more religious (and fundamentalist) than America as a whole, having a strong and almost exclusive identification with the Republican Party. Second, the military has become increasingly alienated from, disgusted with, and sometimes even explicitly hostile to, civilian culture. Third, the armed forces have resisted change, particularly the integration of women and homosexuals into their ranks, and have generally proved reluctant to carry out constabulary missions. Fourth, civilian control and military effectiveness will both suffer as the military—seeking ways to operate without effective civilian oversight and alienated from the society around it—loses the respect and support of that society. By contrast, the heirs of Huntington argue that a degenerate civilian culture has strayed so far from traditional values that it intends to eradicate healthy and functional civil-military differences, particularly in the areas of gender, sexual orientation, and discipline. This camp, too, makes four key claims. First, its members assert that the military is divorced in values from a political and cultural elite that is itself alienated from the general public. Second, it believes this civilian elite to be ignorant of, and even hostile to, the armed forces—eager to employ the military as a laboratory for social change, even at the cost of crippling its warfighting capacity. Third, it discounts the specter of eroding civilian control because it sees a military so thoroughly inculcated with an ethos of subordination that there is now too much civilian control, the effect of which has been to stifle the military's ability to function effectively Fourth, because support for the military among the general public remains sturdy, any gap in values is inconsequential. The problem, if anything, is with the civilian elite. The debate has been lively (and inside the Beltway, sometimes quite vicious), but it has rested on very thin evidence—(tunneling anecdotes and claims and counterclaims about the nature of civilian and military attitudes. Absent has been a body of systematic data exploring opinions, values, perspectives, and attitudes inside the military compared with those held by civilian elites and the general public. Our project provides some answers.

### Bioweapons

#### Attack would fail

Mueller 6 - John Mueller, Professor of Political Science and International Relations at Ohio State, 06, Overblown p. 20-22

Properly developed and deployed, biological weapons could indeed, if thus far only in theory, kill hundreds of thousands, perhaps even mil­lions of people. The discussion remains theoretical because biological weapons have scarcely ever been used. **Belligerents have eschewed such weapons with good reason: they are extremely difficult to deploy and to control.** Terrorist groups or rogue states may be able to solve such problems in the future with advances in technology and knowledge, but, notes scientist Russell **Seitz**, while bioterrorism may look easy on paper, ''the learning curve is lethally steep in practice." The record so far is unlikely to be very encouraging. For example, Japan reportedly infected wells in Manchuria and bombed several Chinese cities with plague-infested fleas before and during World War II. These ventures (by a state, not a terrorist group) may have killed thousands of Chinese, but they apparently also caused considerable unintended casualties among Japanese troops and seem to have had little military impact.20

For the most destructive results, biological weapons need to be dis­persed in very low-altitude aerosol clouds. Because aerosols do not appreciably settle, pathogens like anthrax (which is not easy to spread or catch and is not contagious) would probably have to be sprayed near nose level. Moreover, 90 percent of the microorganisms are likely to die during the process of aerosolization, and their effectiveness could be reduced still further by sunlight, smog, humidity, and temperature changes. Explosive methods of dispersion may destroy the organisms, and, except for anthrax spores, long-term storage of lethal organisms in bombs or warheads is difficult: even if refrigerated, most of the organ­isms have a **limited lifetime**. The effects of such weapons can take days or weeks to have full effect, during which time they can be countered with medical and civil defense measures. And their impact is very diffi­cult to predict; in combat situations they may spread back onto the attacker. In the judgment of two careful analysts, delivering microbes and toxins over a wide area in the form most suitable for inflicting mass casualties—as an aerosol that can be inhaled—-requires a delivery system whose development "would outstrip the technical capabilities of all but the most sophisticated terrorist." Even then effective dispersal could easily be disrupted by unfavorable environmental and meteoro­logical conditions.21

After assessing, and stressing, the difficulties a nonstate entity would find in obtaining, handling, growing, storing, processing, and dispersing lethal pathogens effectively, biological weapons expert Milton Leiten-berg compares Ms conclusions with glib pronouncements in the press about how biological attacks can be pulled off by anyone with "a little training and a few glass jars," or how it would be "about as difficult as producing beer." He sardonically concludes, ''The less the commenta­tor seems to know about biological warfare the easier he seems to think the task is."

#### They don’t cause mass destruction

O’Neill 4O’Neill 8/19/2004 [Brendan, “Weapons of Minimum Destruction” http://www.spiked-online.com/Articles/0000000CA694.htm]

David C Rapoport, professor of political science at University of California, Los Angeles and editor of the Journal of Terrorism and Political Violence, has examined what he calls 'easily available evidence' relating to the historic use of chemical and biological weapons. He found something surprising - such weapons do not cause mass destruction. Indeed, whether used by states, terror groups or dispersed in industrial accidents, they tend to be far less destructive than conventional weapons. 'If we stopped speculating about things that might happen in the future and looked instead at what has happened in the past, we'd see that our fears about WMD are misplaced', he says. Yet such fears remain widespread. Post-9/11, American and British leaders have issued dire warnings about terrorists getting hold of WMD and causing mass murder and mayhem. President George W Bush has spoken of terrorists who, 'if they ever gained weapons of mass destruction', would 'kill hundreds of thousands, without hesitation and without mercy' (1). The British government has spent £28million on stockpiling millions of smallpox vaccines, even though there's no evidence that terrorists have got access to smallpox, which was eradicated as a natural disease in the 1970s and now exists only in two high-security labs in America and Russia (2). In 2002, British nurses became the first in the world to get training in how to deal with the victims of bioterrorism (3). The UK Home Office's 22-page pamphlet on how to survive a terror attack, published last month, included tips on what to do in the event of a 'chemical, biological or radiological attack' ('Move away from the immediate source of danger', it usefully advised). Spine-chilling books such as Plague Wars: A True Story of Biological Warfare, The New Face of Terrorism: Threats From Weapons of Mass Destruction and The Survival Guide: What to Do in a Biological, Chemical or Nuclear Emergency speculate over what kind of horrors WMD might wreak. TV docudramas, meanwhile, explore how Britain might cope with a smallpox assault and what would happen if London were 'dirty nuked' (4). The term 'weapons of mass destruction' refers to three types of weapons: nuclear, chemical and biological. A chemical weapon is any weapon that uses a manufactured chemical, such as sarin, mustard gas or hydrogen cyanide, to kill or injure. A biological weapon uses bacteria or viruses, such as smallpox or anthrax, to cause destruction - inducing sickness and disease as a means of undermining enemy forces or inflicting civilian casualties. We find such weapons repulsive, because of the horrible way in which the victims convulse and die - but they appear to be less 'destructive' than conventional weapons. 'We know that nukes are massively destructive, there is a lot of evidence for that', says Rapoport. But when it comes to chemical and biological weapons, 'the evidence suggests that we should call them "weapons of minimum destruction", not mass destruction', he says. Chemical weapons have most commonly been used by states, in military warfare. Rapoport explored various state uses of chemicals over the past hundred years: both sides used them in the First World War; Italy deployed chemicals against the Ethiopians in the 1930s; the Japanese used chemicals against the Chinese in the 1930s and again in the Second World War; Egypt and Libya used them in the Yemen and Chad in the postwar period; most recently, Saddam Hussein's Iraq used chemical weapons, first in the war against Iran (1980-1988) and then against its own Kurdish population at the tail-end of the Iran-Iraq war. In each instance, says Rapoport, chemical weapons were used more in desperation than from a position of strength or a desire to cause mass destruction. 'The evidence is that states rarely use them even when they have them', he has written. 'Only when a military stalemate has developed, which belligerents who have become desperate want to break, are they used.' (5) As to whether such use of chemicals was effective, Rapoport says that at best it blunted an offensive - but this very rarely, if ever, translated into a decisive strategic shift in the war, because the original stalemate continued after the chemical weapons had been deployed. He points to the example of Iraq. The Baathists used chemicals against Iran when that nasty trench-fought war had reached yet another stalemate. As Efraim Karsh argues in his paper 'The Iran-Iraq War: A Military Analysis': 'Iraq employed [chemical weapons] only in vital segments of the front and only when it saw no other way to check Iranian offensives. Chemical weapons had a negligible impact on the war, limited to tactical rather than strategic [effects].' (6) According to Rapoport, this 'negligible' impact of chemical weapons on the direction of a war is reflected in the disparity between the numbers of casualties caused by chemicals and the numbers caused by conventional weapons. It is estimated that the use of gas in the Iran-Iraq war killed 5,000 - but the Iranian side suffered around 600,000 dead in total, meaning that gas killed less than one per cent. The deadliest use of gas occurred in the First World War but, as Rapoport points out, it still only accounted for five per cent of casualties. Studying the amount of gas used by both sides from1914-1918 relative to the number of fatalities gas caused, Rapoport has written: 'It took a ton of gas in that war to achieve a single enemy fatality. Wind and sun regularly dissipated the lethality of the gases. Furthermore, those gassed were 10 to 12 times as likely to recover than those casualties produced by traditional weapons.' (7) Indeed, Rapoport discovered that some earlier documenters of the First World War had a vastly different assessment of chemical weapons than we have today - they considered the use of such weapons to be preferable to bombs and guns, because chemicals caused fewer fatalities. One wrote: 'Instead of being the most horrible form of warfare, it is the most humane, because it disables far more than it kills, ie, it has a low fatality ratio.' (8) 'Imagine that', says Rapoport, 'WMD being referred to as more humane'. He says that the contrast between such assessments and today's fears shows that actually looking at the evidence has benefits, allowing 'you to see things more rationally'. According to Rapoport, even Saddam's use of gas against the Kurds of Halabja in 1988 - the most recent use by a state of chemical weapons and the most commonly cited as evidence of the dangers of 'rogue states' getting their hands on WMD - does not show that unconventional weapons are more destructive than conventional ones. Of course the attack on Halabja was horrific, but he points out that the circumstances surrounding the assault remain unclear. 'The estimates of how many were killed vary greatly', he tells me. 'Some say 400, others say 5,000, others say more than 5,000. The fighter planes that attacked the civilians used conventional as well as unconventional weapons; I have seen no study which explores how many were killed by chemicals and how many were killed by firepower. We all find these attacks repulsive, but the death toll may actually have been greater if conventional bombs only were used. We know that conventional weapons can be more destructive.' Rapoport says that terrorist use of chemical and biological weapons is similar to state use - in that it is rare and, in terms of causing mass destruction, not very effective. He cites the work of journalist and author John Parachini, who says that over the past 25 years only four significant attempts by terrorists to use WMD have been recorded. The most effective WMD-attack by a non-state group, from a military perspective, was carried out by the Tamil Tigers of Sri Lanka in 1990. They used chlorine gas against Sri Lankan soldiers guarding a fort, injuring over 60 soldiers but killing none. The Tamil Tigers' use of chemicals angered their support base, when some of the chlorine drifted back into Tamil territory - confirming Rapoport's view that one problem with using unpredictable and unwieldy chemical and biological weapons over conventional weapons is that the cost can be as great 'to the attacker as to the attacked'. The Tigers have not used WMD since.

### ILaw

#### Prefer our evidence---all their scholarship rests on unproven assertions about the capacity and willingness of the Courts to restrain the Executive

Daniel Abebe & Eric A. Posner 11, Assistant Professor and Kirkland & Ellis Professor, University of Chicago Law School, The Flaws of Foreign Affairs Legalism, 51 Va. J. Int'l L. 507

Scholarship on foreign affairs law - the body of law, mainly constitutional, that governs the foreign affairs of the United States - reflects a striking divide between the courts and the academy. In the courts, the dominant judicial approach to foreign affairs law is "executive primacy" - the view that judges should defer to the executive's judgments about foreign affairs. n1 In the academy, the dominant approach is what we will call "foreign affairs legalism." Foreign affairs legalism holds that courts should impose more restrictions on the executive than they have in the past or that Congress should play a greater role in foreign affairs. This normative argument rests on two usually implicit descriptive premises: that courts and Congress have the capacity and motivation to restrain the executive, and that the courts and Congress will do so for the sake of promoting international law.

This disjunction between academic and judicial thought matters today more than it ever did in the past. The conflict with al Qaeda has generated an enormous quantity of jurisprudence, including some cases that reflect a new legalist sensibility in tension with the old commitment to executive primacy. n2 Globalization has produced more cross-border conflicts involving trade, migration, human rights, and investment - and the debate between executive primacy and foreign affairs legalism will help determine how courts handle these conflicts.

[\*509] Despite its prominence in the academy, there is no official school of foreign affairs legalism; no single scholar explicitly defends it. Much of the foreign affairs scholarship of the last twenty years advances this account, however; but the problem is that the argument is mostly implicit. In this Article, our minimal goal is to tease out the distinctive empirical and normative assumptions of foreign affairs legalism. We also argue, more ambitiously, that foreign affairs legalism rests on unproven and inaccurate assumptions about the capacities and motivations of courts and the executive, and it reflects confusion about the nature of international law. Of particular importance, foreign affairs legalists falsely assume that the judiciary seeks to advance international law while the executive seeks to limit it.

#### No chance the Courts enforce I-Law

Daniel Abebe & Eric A. Posner 11, Assistant Professor and Kirkland & Ellis Professor, University of Chicago Law School, The Flaws of Foreign Affairs Legalism, 51 Va. J. Int'l L. 507

Foreign affairs legalists make sweeping claims about the American judiciary's promotion of international law, but the support for these claims is weak. In this section, we discuss some examples of contributions to international law by Congress, the courts and the executive. We then evaluate the institutional capacities and incentives of the different branches to promote international law. As we will show, the evidence points to the executive, not the judiciary, as the branch most responsible for advancing international law.

[\*528]

1. The American Judiciary's Contribution to International Law

Foreign affairs legalists celebrate the American judiciary's contributions to international law, but they can only point to a few concrete accomplishments. A handful of judge-made doctrines put limited pressure on the political branches to comply with international law. For example, the Charming Betsy canon makes it more difficult for Congress to pass a statute that violates international law by requiring Congress to be clearer than it would otherwise be. n101 International comity rules, in limited circumstances, avoid violations of international jurisdictional law that suggest that certain types of disputes are best resolved in the state with the most contacts to the litigation. n102 The federal courts' admiralty jurisprudence has developed in tandem with admiralty cases in other states, and in this way it could be considered a contribution to international law. One could also point to the willingness of the federal courts to suspend federalism constraints in order to enforce treaties in cases like Missouri v. Holland, n103 but these cases are weak and inconsistent. n104

Moreover, the empirical literature regarding the judiciary's support of international law is thin. Benvenisti cites a handful of cases that suggest that national courts - mainly in developing countries - have used international law in an effort to constrain their executives. n105 Koh also cites a very small number of cases n106 - his best examples are American ATS cases, which we discuss below. n107 Slaughter rests much of her argument on the rise of international judicial conferences, where judges from different countries meet and exchange ideas. n108 She does not provide evidence that these conferences have affected judicial outcomes. Another possibility is that judges enjoy meeting each other and learning about foreign judicial decisions, but they do not, as a matter of pragmatics or principle, allow what they learn to affect the way that they decide cases. n109

In contrast, many court decisions and judge-made doctrines cut against the claims of foreign affairs legalism. The early decision in Foster [\*529] v. Neilson n110 to distinguish between self-executing and non-self-executing treaties, n111 recently reaffirmed in Medellin v. Texas, n112 ensures that many treaties cannot be judicially enforced. These rules have been reinforced by the reluctance to find judicially enforceable rights even in treaties that are self-executing. The tradition of executive deference also limits the judiciary's ability to contribute to international law. The judiciary generally follows the executive's lead instead of pushing the executive toward greater international engagement. In treaty interpretation cases, courts frequently defer to the executive. n113

On questions of international law - the area most important to foreign affairs legalists - the judiciary's record is poor. In the notable federal common law case The Paquete Habana, n114 the Supreme Court made clear that the executive could unilaterally decide that the United States would not comply with CIL, in which case the victims of the legal violation would have had no remedy. n115 Courts have held that both the executive and Congress have the authority to violate international law n116 and that violations of international law cannot be a basis for federal-question jurisdiction. n117 For example, the Supreme Court found that an illegal, extrajudicial abduction that circumvented the terms of an international extradition treaty did not preclude a U.S. trial court's jurisdiction over the abductee. n118

The Supreme Court's treatment of international law in Medellin v. Texas n119 is also instructive. Here, the Court held that the Vienna Convention [\*530] on Consular Relations n120 was not self-executing or judicially enforceable in U.S. courts. n121 That case involved a Mexican national who had been deprived of his right to consular notification under the Convention after he was arrested. He was later sentenced to death. n122 The International Court of Justice held that the United States violated international law by failing to provide the Mexican national with access to his consulate. n123 What is striking in the Medellin context is that not only did the Supreme Court refuse to intervene in order to vindicate rights under international law (earlier, it had held that the ICJ judgment was not binding on U.S. courts), n124 but it also prevented President Bush from vindicating those rights. n125 Bush had tried to order state courts to take account of the ICJ ruling, but the Supreme Court held that he did not have the power to do so. n126

#### Ilaw fails --- states will either inevitably cooperate, or ilaw can’t convince them to

Eric A. Posner 9, Kirkland and Ellis Professor of Law at the University of Chicago Law School. The Perils of Global Legalism, 34-6

34 ¶ Most global legalists acknowledge that international law is created and enforced by states. They believe that states are willing to expand international law along legalistic lines because states’ long-term interests lie in solving global collective action problems. In the absence of a world govern- ment or other forms of integration, international law seems like the only way for states to solve these problems. The great difﬁculty for the global legalist is explaining why, if states create and maintain international law, they will also not break it when they prefer to free ride. In the absence of an enforcement mechanism, what ensures that states that create law and legal institutions that are supposed to solve global collective action prob- lems will not ignore them? ¶ For the rational choice theorist, the answer is plain: states cannot solve global collective action problems by creating institutions that themselves depend on global collective action. This is not to say that international law is not possible at all. Certainly, states can cooperate by threatening to retaliate against cheaters, and where international problems are matters of coordination rather than conﬂ ict, international law can go far, indeed.7 But if states (or the individuals who control states) cannot create a global government or q uasi-g overnment institutions, then it seems unlikely that they can solve, in spontaneous fashion, the types of problems that, at the national level, require the action of governments. ¶ Global legalists are not enthusiasts for rational choice theory and have ¶ 35¶ grappled with this problem in other ways.8 I will criticize their attempts in chapter 3. Here I want to focus on one approach, which is to insist that just as individuals can be loyal to government, so too can individuals (and their governments) be loyal to international law and be willing to defer to its requirements even when self-i nterest does not strictly demand that they do so. International law has force because (or to the extent that) it is legitimate.9 ¶ What makes governance or law legitimate? This is a complicated ques- tion best left to philosophers, but a simple and adequate point for present purposes is that no system of law will be perceived as legitimate unless those governed by that law believe that the law does good — serves their interests or respects and enforces their values. Perhaps more is required than this — such as political participation, for example — but we can treat the ﬁ rst condition as necessary if not sufﬁ cient. If individuals believe that a system of law does not advance their interests and respect their values, that instead it advances the interests of others or is dysfunctional and helps no one at all, they will not believe that the law is legitimate and will not voluntarily submit to its authority. ¶ Unfortunately, international law does not satisfy this condition, mainly because of its institutional weaknesses; but of course, its institutional weaknesses stem from the state system — states are not willing to tolerate powerful international agencies. In classic international law, states enjoy sovereign equality, which means that international law cannot be created unless all agree, and that international law binds all states equally. What this means is that if nearly everyone in the world agrees that some global legal instrument would be beneﬁ cial (a climate treaty, the UN charter), it can be blocked by a tiny country like Iceland (population 300,000) or a dictatorship like North Korea. What is the attraction of a system that puts a tiny country like Iceland on equal footing with China? When then at- torney general Robert Jackson tried to justify American aid for Britain at the onset of World War II on the grounds that the Nazi Germany was the aggressor, international lawyers complained that the United States could not claim neutrality while providing aid to a belligerent — there was no such thing as an aggressor in international law.10 Nazi Germany had not agreed to such a rule of international law; therefore, such a rule could not exist. Only through the destruction of Nazi Germany could international law be changed; East and West Germany could reenter international so-¶ 36¶ ciety only on other people’s terms. How could such a system be perceived to be legitimate? ¶ There is, of course, a reason why international law works in this fash- ion. Because no world government can compel states to comply with inter- national law, states will comply with international law only when doing so is in their interest. In this way, international law always depends on state consent. So international law must take states as they are, which means that little states, big states, good states, and bad states, all exist on a plane of equality. ¶

# 2NC

### 2NC—Condo Good

#### Counter-interpretation—one conditional CP/one conditional critique.

Standards—

Argument Innovation—debaters are risk-averse—a fallback strategy encourages introduction of new positions—solves research skills.

Neg Flex—in-round testing is critical to balance aff prep.

Nuanced Advocacy—contradictory positions force aff defense of the political middle-ground through specific solvency deficits—prevents ideological extremism.

Strategic Thinking—causes introduction of the best arguments—necessitates intelligent coverage decisions—key to info processing and argument evaluation.

[If Dispo] Logic—a decision maker can always chose the status quo.

Substance crowd-out—re-appropriating time spent on condo solves fairness offense.

High Threshold—the 2AR is reactive and persuasive—theory has a 1-to-5 time trade-off—unless we make debate impossible, vote neg.

Defense—

Fairness impossible—resource and coaching differentials—no terminal impact—no one quits b/c of the process CP.

Skew inevitable—DAs and T

Contradictions inevitable—Security K and Deterrence DA

2NR collapse solves depth.

Cheating strategies lose to theory & competition args.

Judge is a referee—potential abuse isn’t a voter—blaming us for other teams behavior is unfair—voting down abuse solves their offence.

## DA

## Advantage 1

### Hegemony

#### PRISM destroyed soft power / credibility

Migranyan 7/5 (Andranik is the director of the Institute for Democracy and Cooperation in New York. He is also a professor at the Institute of International Relations in Moscow, a former member of the Public Chamber and a former member of the Russian Presidential Council. “Scandals Harm U.S. Soft Power,” 2013, http://nationalinterest.org/commentary/scandals-harm-us-soft-power-8695)

For the past few months, the United States has been rocked by a series of scandals. It all started with the events in Benghazi, when Al Qaeda-affiliated terrorists attacked the General Consulate there and murdered four diplomats, including the U.S. ambassador to Libya. Then there was the scandal exposed when it was revealed that the Justice Department was monitoring the calls of the Associated Press. The Internal Revenue Service seems to have targeted certain political groups. Finally, there was the vast National Security Agency apparatus for monitoring online activity revealed by Edward Snowden. Together, these events provoke a number of questions about the path taken by contemporary Western societies, and especially the one taken by America.¶ Large and powerful institutions, especially those in the security sphere, have become unaccountable to the public, even to representatives of the people themselves. Have George Orwell’s cautionary tales of total government control over society been realized?¶ At the end of the 1960s and the beginning of the 1970s, my fellow students and I read Orwell’s 1984 and other dystopian stories and believed them to portray fascist Germany or the Soviet Union—two totalitarian regimes—but today it has become increasingly apparent that Orwell, Huxley and other dystopian authors had seen in their own countries (Britain and the United States) certain trends, especially as technological capabilities grew, that would ultimately allow governments to exert total control over their societies. The potential for this type of all-knowing regime is what Edward Snowden revealed, confirming the worst fears that the dystopias are already being realized.¶ On a practical geopolitical level, the spying scandals have seriously tarnished the reputation of the United States. They have circumscribed its ability to exert soft power; the same influence that made the U.S. model very attractive to the rest of the world. This former lustre is now diminished. The blatant everyday intrusions into the private lives of Americans, and violations of individual rights and liberties by runaway, unaccountable U.S. government agencies, have deprived the United States of its authority to dictate how others must live and what others must do. Washington can no longer lecture others when its very foundational institutions and values are being discredited—or at a minimum, when all is not well “in the state of Denmark.”¶ Perhaps precisely because not all is well, many American politicians seem unable to adequately address the current situation. Instead of asking what isn’t working in the government and how to ensure accountability and transparency in their institutions, they try, in their annoyance, to blame the messenger—as they are doing in Snowden’s case. Some Senators hurried to blame Russia and Ecuador for anti-American behavior, and threatened to punish them should they offer asylum to Snowden.¶ These threats could only cause confusion in sober minds, as every sovereign country retains the right to issue or deny asylum to whomever it pleases. In addition, the United States itself has a tradition of always offering political asylum to deserters of the secret services of other countries, especially in the case of the former Soviet Union and other ex-socialist countries. In those situations, the United States never gave any consideration to how those other countries might react—it considered the deserters sources of valuable information. As long as deserters have not had a criminal and murderous past, they can receive political asylum in any country that considers itself sovereign and can stand up to any pressure and blackmail.¶ Meanwhile, the hysteria of some politicians, if the State Department or other institutions of the executive branch join it, can only accelerate the process of Snowden’s asylum. For any country he might ask will only be more willing to demonstrate its own sovereignty and dignity by standing up to a bully that tries to dictate conditions to it. In our particular case, political pressure on Russia and President Putin could turn out to be utterly counterproductive. I believe that Washington has enough levelheaded people to understand that fact, and correctly advise the White House. The administration will need sound advice, as many people in Congress fail to understand the consequences of their calls for punishment of sovereign countries or foreign political leaders that don’t dance to Washington’s tune.¶ Judging by the latest exchange between Moscow and Washington, it appears that the executive branches of both countries will find adequate solutions to the Snowden situation without attacks on each other’s dignity and self-esteem. Russia and the United States are both Security Council members, and much hinges on their decisions, including a slew of common problems that make cooperation necessary.¶ Yet the recent series of scandals has caused irreparable damage to the image and soft power of the United States. I do not know how soon this damage can be repaired. But gone are the days when Orwell was seen as a relic of the Cold War, as the all-powerful Leviathan of the security services has run away from all accountability to state and society. Today the world is looking at America—and its model for governance—with a more critical eye.

#### No impact to heg

Maher 11---adjunct prof of pol sci, Brown. PhD expected in 2011 in pol sci, Brown (Richard, The Paradox of American Unipolarity: Why the United States May Be Better Off in a Post-Unipolar World, Orbis 55;1)

At the same time, preeminence creates burdens and facilitates imprudent behavior. Indeed, because of America’s unique political ideology, which sees its own domestic values and ideals as universal, and the relative openness of the foreign policymaking process, the United States is particularly susceptible to both the temptations and burdens of preponderance. For decades, perhaps since its very founding, the United States has viewed what is good for itself as good for the world. During its period of preeminence, the United States has both tried to maintain its position at the top and to transform world politics in fundamental ways, combining elements of realpolitik and liberal universalism (democratic government, free trade, basic human rights). At times, these desires have conflicted with each other but they also capture the enduring tensions of America’s role in the world. The absence of constraints and America’s overestimation of its own ability to shape outcomes has served to weaken its overall position. And because foreign policy is not the reserved and exclusive domain of the president---who presumably calculates strategy according to the pursuit of the state’s enduring national interests---the policymaking process is open to special interests and outside influences and, thus, susceptible to the cultivation of misperceptions, miscalculations, and misunderstandings. Five features in particular, each a consequence of how America has used its power in the unipolar era, have worked to diminish America’s long-term material and strategic position. Overextension. During its period of preeminence, the United States has found it difficult to stand aloof from threats (real or imagined) to its security, interests, and values. Most states are concerned with what happens in their immediate neighborhoods. The United States has interests that span virtually the entire globe, from its own Western Hemisphere, to Europe, the Middle East, Persian Gulf, South Asia, and East Asia. As its preeminence enters its third decade, the United States continues to define its interests in increasingly expansive terms. This has been facilitated by the massive forward presence of the American military, even when excluding the tens of thousands of troops stationed in Iraq and Afghanistan. The U.S. military has permanent bases in over 30 countries and maintains a troop presence in dozens more.13 There are two logics that lead a preeminent state to overextend, and these logics of overextension lead to goals and policies that exceed even the considerable capabilities of a superpower. First, by definition, preeminent states face few external constraints. Unlike in bipolar or multipolar systems, there are no other states that can serve to reliably check or counterbalance the power and influence of a single hegemon. This gives preeminent states a staggering freedom of action and provides a tempting opportunity to shape world politics in fundamental ways. Rather than pursuing its own narrow interests, preeminence provides an opportunity to mix ideology, values, and normative beliefs with foreign policy. The United States has been susceptible to this temptation, going to great lengths to slay dragons abroad, and even to remake whole societies in its own (liberal democratic) image.14 The costs and risks of taking such bold action or pursuing transformative foreign policies often seem manageable or even remote. We know from both theory and history that external powers can impose important checks on calculated risk-taking and serve as a moderating influence. The bipolar system of the Cold War forced policymakers in both the United States and the Soviet Union to exercise extreme caution and prudence. One wrong move could have led to a crisis that quickly spiraled out of policymakers’ control. Second, preeminent states have a strong incentive to seek to maintain their preeminence in the international system. Being number one has clear strategic, political, and psychological benefits. Preeminent states may, therefore, overestimate the intensity and immediacy of threats, or to fundamentally redefine what constitutes an acceptable level of threat to live with. To protect itself from emerging or even future threats, preeminent states may be more likely to take unilateral action, particularly compared to when power is distributed more evenly in the international system. Preeminence has not only made it possible for the United States to overestimate its power, but also to overestimate the degree to which other states and societies see American power as legitimate and even as worthy of emulation. There is almost a belief in historical determinism, or the feeling that one was destined to stand atop world politics as a colossus, and this preeminence gives one a special prerogative for one’s role and purpose in world politics. The security doctrine that the George W. Bush administration adopted took an aggressive approach to maintaining American preeminence and eliminating threats to American security, including waging preventive war. The invasion of Iraq, based on claims that Saddam Hussein possessed weapons of mass destruction (WMD) and had ties to al Qaeda, both of which turned out to be false, produced huge costs for the United States---in political, material, and human terms. After seven years of war, tens of thousands of American military personnel remain in Iraq. Estimates of its long-term cost are in the trillions of dollars.15 At the same time, the United States has fought a parallel conflict in Afghanistan. While the Obama administration looks to dramatically reduce the American military presence in Iraq, President Obama has committed tens of thousands of additional U.S. troops to Afghanistan. Distraction. Preeminent states have a tendency to seek to shape world politics in fundamental ways, which can lead to conflicting priorities and unnecessary diversions. As resources, attention, and prestige are devoted to one issue or set of issues, others are necessarily disregarded or given reduced importance. There are always trade-offs and opportunity costs in international politics, even for a state as powerful as the United States. Most states are required to define their priorities in highly specific terms. Because the preeminent state has such a large stake in world politics, it feels the need to be vigilant against any changes that could impact its short-, medium-, or longterm interests. The result is taking on commitments on an expansive number of issues all over the globe. The United States has been very active in its ambition to shape the postCold War world. It has expanded NATO to Russia’s doorstep; waged war in Bosnia, Kosovo, Iraq, and Afghanistan; sought to export its own democratic principles and institutions around the world; assembled an international coalition against transnational terrorism; imposed sanctions on North Korea and Iran for their nuclear programs; undertaken ‘‘nation building’’ in Iraq and Afghanistan; announced plans for a missile defense system to be stationed in Poland and the Czech Republic; and, with the United Kingdom, led the response to the recent global financial and economic crisis. By being so involved in so many parts of the world, there often emerges ambiguity over priorities. The United States defines its interests and obligations in global terms, and defending all of them simultaneously is beyond the pale even for a superpower like the United States. Issues that may have received benign neglect during the Cold War, for example, when U.S. attention and resources were almost exclusively devoted to its strategic competition with the Soviet Union, are now viewed as central to U.S. interests. Bearing Disproportionate Costs of Maintaining the Status Quo. As the preeminent power, the United States has the largest stake in maintaining the status quo. The world the United States took the lead in creating---one based on open markets and free trade, democratic norms and institutions, private property rights and the rule of law---has created enormous benefits for the United States. This is true both in terms of reaching unprecedented levels of domestic prosperity and in institutionalizing U.S. preferences, norms, and values globally. But at the same time, this system has proven costly to maintain. Smaller, less powerful states have a strong incentive to free ride, meaning that preeminent states bear a disproportionate share of the costs of maintaining the basic rules and institutions that give world politics order, stability, and predictability. While this might be frustrating to U.S. policymakers, it is perfectly understandable. Other countries know that the United States will continue to provide these goods out of its own self-interest, so there is little incentive for these other states to contribute significant resources to help maintain these public goods.16 The U.S. Navy patrols the oceans keeping vital sea lanes open. During financial crises around the globe---such as in Asia in 1997-1998, Mexico in 1994, or the global financial and economic crisis that began in October 2008--- the U.S. Treasury rather than the IMF takes the lead in setting out and implementing a plan to stabilize global financial markets. The United States has spent massive amounts on defense in part to prevent great power war. The United States, therefore, provides an indisputable collective good---a world, particularly compared to past eras, that is marked by order, stability, and predictability. A number of countries---in Europe, the Middle East, and East Asia---continue to rely on the American security guarantee for their own security. Rather than devoting more resources to defense, they are able to finance generous social welfare programs. To maintain these commitments, the United States has accumulated staggering budget deficits and national debt. As the sole superpower, the United States bears an additional though different kind of weight. From the Israeli-Palestinian dispute to the India Pakistan rivalry over Kashmir, the United States is expected to assert leadership to bring these disagreements to a peaceful resolution. The United States puts its reputation on the line, and as years and decades pass without lasting settlements, U.S. prestige and influence is further eroded. The only way to get other states to contribute more to the provision of public goods is if the United States dramatically decreases its share. At the same time, the United States would have to give other states an expanded role and greater responsibility given the proportionate increase in paying for public goods. This is a political decision for the United States---maintain predominant control over the provision of collective goods or reduce its burden but lose influence in how these public goods are used. Creation of Feelings of Enmity and Anti-Americanism. It is not necessary that everyone admire the United States or accept its ideals, values, and goals. Indeed, such dramatic imbalances of power that characterize world politics today almost always produce in others feelings of mistrust, resentment, and outright hostility. At the same time, it is easier for the United States to realize its own goals and values when these are shared by others, and are viewed as legitimate and in the common interest. As a result of both its vast power but also some of the decisions it has made, particularly over the past eight years, feelings of resentment and hostility toward the United States have grown, and perceptions of the legitimacy of its role and place in the world have correspondingly declined. Multiple factors give rise toanti-American sentiment, and anti-Americanism takes different shapes and forms.17 It emerges partly as a response to the vast disparity in power the United States enjoys over other states. Taking satisfaction in themissteps and indiscretions of the imposing Gulliver is a natural reaction. In societies that globalization (which in many parts of the world is interpreted as equivalent to Americanization) has largely passed over, resentment and alienation are felt when comparing one’s own impoverished, ill-governed, unstable society with the wealth, stability, and influence enjoyed by the United States.18 Anti-Americanism also emerges as a consequence of specific American actions and certain values and principles to which the United States ascribes. Opinion polls showed that a dramatic rise in anti-American sentiment followed the perceived unilateral decision to invade Iraq (under pretences that failed to convince much of the rest of the world) and to depose Saddam Hussein and his government and replace itwith a governmentmuchmore friendly to the United States. To many, this appeared as an arrogant and completely unilateral decision by a single state to decide for itselfwhen---and under what conditions---military force could be used. A number of other policy decisions by not just the George W. Bush but also the Clinton and Obama administrations have provoked feelings of anti-American sentiment. However, it seemed that a large portion of theworld had a particular animus for GeorgeW. Bush and a number of policy decisions of his administration, from voiding the U.S. signature on the International Criminal Court (ICC), resisting a global climate change treaty, detainee abuse at Abu Ghraib in Iraq and at Guantanamo Bay in Cuba, and what many viewed as a simplistic worldview that declared a ‘‘war’’ on terrorism and the division of theworld between goodand evil.Withpopulations around theworld mobilized and politicized to a degree never before seen---let alone barely contemplated---such feelings of anti-American sentiment makes it more difficult for the United States to convince other governments that the U.S.’ own preferences and priorities are legitimate and worthy of emulation. Decreased Allied Dependence. It is counterintuitive to think that America’s unprecedented power decreases its allies’ dependence on it. During the Cold War, for example, America’s allies were highly dependent on the United States for their own security. The security relationship that the United States had with Western Europe and Japan allowed these societies to rebuild and reach a stunning level of economic prosperity in the decades following World War II. Now that the United States is the sole superpower and the threat posed by the Soviet Union no longer exists, these countries have charted more autonomous courses in foreign and security policy. A reversion to a bipolar or multipolar system could change that, making these allies more dependent on the United States for their security. Russia’s reemergence could unnerve America’s European allies, just as China’s continued ascent could provoke unease in Japan. Either possibility would disrupt the equilibrium in Europe and East Asia that the United States has cultivated over the past several decades. New geopolitical rivalries could serve to create incentives for America’s allies to reduce the disagreements they have with Washington and to reinforce their security relationships with the United States.

### 2NC — PRISM

#### PRISM caused huge and long lasting backlash

Hudgins 7/17 (Sarabrynn, Internet Freedom and Human Rights Program Associate at the New America Foundation's Open Technology Institute, “US Surveillance Unsettles Civilians More Than States,” 2013, http://www.huffingtonpost.com/sarabrynn-hudgins/us-surveillance-unsettles\_b\_3610941.html)

Allegations of American decline persist despite the United States' command of the world's largest economy and strongest military. It is in global esteem that the US is lagging, and where the international implications of US mass surveillance could do long-lasting harm.¶ Revelations about the National Security Agency's (NSA) surveillance programs have drawn enormous attention and opprobrium. US officials are fielding questions while Congress members draft legislation and civil rights groups file lawsuits. But these apparatuses have largely failed to address how US surveillance efforts affect non-Americans.¶ In a wired world where the US tells other countries that "full respect for human rights must be maintained" online, the privacy of US citizens and non-Americans alike must be part of the conversation. Hawks too should be concerned, for the soft power hits that come with serious international anger will only hamper US security and foreign policy. That is why the frustrations of everyday citizens around the world - not their governments - are more problematic for the US.¶ Governments React...Rather Weakly¶ French President Hollande insisted that NSA surveillance programs "stop immediately" and demanded a US explanation, while German Chancellor Angela Merkel stated her intention to question Obama on the "possible impairment of German citizens." Media speculates that European ire may inspire the European Parliament (EP) to veto the passage of the wide-ranging Trans-Atlantic Trade Deal. The Parliament did, after all, term the surveillance programs a "serious violation" and call for an investigation whose findings could threaten transatlantic cooperation.¶ These fears are overblown. Any recommendations to come from the EP will require passage not only by Parliamentarians, but also EU member states, before becoming law, in a labyrinthine process that is unlikely to occur. Also far-fetched is the notion that EU states will make a principled stand against the trade deal to their own financial detriment, or that they would suspend collaboration on security measures like the Terrorist Finance Tracking Programme.¶ Brazil, whose President called US surveillance of the Brazilian military an affront to Brazilian sovereignty and human rights, may pose the most serious state challenge to US surveillance.¶ Yet, considering that the NSA's PRISM program had 117,675 active foreign surveillance targets by April 2013, these reactions are rather tame.¶ State indignation (especially in Europe) may be muted, as some allege, because most web-savvy countries, including France, Great Britain, and the Netherlands, conduct their own sweeping surveillance programs. These black pots are loathe to disparage the US kettle, no matter how dark. The German government's outcry, the loudest in Europe, has been derided as largely "a flurry of activity apparently designed to reassure German electors." Le Monde ascribes France's "weak signs of protest" to "two excellent reasons: Paris already knew. And it does the same thing."¶ The song and dance of recrimination will continue mainly because governments want to appease "public pressure to respond assertively." US officials understand that they need not worry about real intergovernmental hostilities, at least for now.¶ The Civilian Storm¶ Foreign governments know that their constituents, on the other hand, are furious. Individuals around the world accuse the US government and US-based businesses like Google and Apple of far-reaching surveillance that inexcusably subsumes non-US citizens under US law. These people, and the groups through which they organize, point to the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights to demand freedom of expression and the right to privacy.¶ In comparison to heads of state, however, they lack the power levers necessary to demand US attention and a sincere response. Swiss civil rights groups have filed a criminal complaint saying that US surveillance violates local law, but such arguments will fall deaf in Washington, and the Swiss government has not taken up their mantle. Another European-based human rights group delivered a letter demanding data protections to the US Embassy, but a sympathetic US response will be rhetorical at best.¶ 96 international activists and organizations wrote an open letter to the United Nations Human Rights Council demanding that it ask states to "report on practices and laws in place on surveillance and what corrective steps will they will take to meet human rights standards." A similar letter addressed to the US Congress then asked the US "to take immediate action to dismantle existing, and prevent the creation of future, global Internet and telecommunications based surveillance systems." The expression of "serious alarm" by the 372 individuals and non-profits from 53 countries that signed the latter letter likely represents millions or billions more around the world who are outraged even if their governments will not make strong public stands against the US.¶ Speak Now, or Forever Hold Your Peace¶ Sorting out the extent of NSA surveillance efforts and how those programs affect everyday users will take time. As lawmakers and public officials debate programs like PRISM, it is all of us, American and otherwise, who should be concerned about their implications for privacy and freedom of expression. The preservation of human rights online cannot be contained by national borders.¶ While governments continue to wink at one another over stoic speeches, individuals around the world are authentically angry. If allowed to foment unabated, public pressure could yet back governments into punishing the US-- whether through trade breaks, diplomatic downgrade, or disengagement from US technology firms-- despite their current reticence to do so. Such moves will ensure that it is not just the right to privacy, but also American standing, that suffers. If for that reason alone, American officials should engage the international community, and not just their governmental counterparts, sooner rather than later.

#### PRISM created a crisis of confidence — Russia is usurping US soft power

Van Herpen 7/19 (Marcel H., director of the Cicero Foundation, a pro-EU think tank. “The PRISM Scandal, the Kremlin, and the Eurasian Union,” 2013, http://www.atlantic-community.org/-/the-prism-scandal-the-kremlin-and-the-eurasian-union)

The PRISM scandal should serve as a wake-up call for Europe and the US to pay attention to the new geopolitical fault lines in Europe, as the scandal has diminished US soft power, deepened the crisis of confidence between the EU and US, and offered Putin a new opportunity. Putin is poised to launch his project of a Eurasian Union, which would seek to expand Russian influence into the "weak Orthodox underbelly" of Europe and directly compete with the EU.¶ The PRISM scandal was an unexpected, but welcomed present for Russian President Vladimir Putin, for four reasons:¶ The scandal caused a decline in American soft power. After the presidency of George W. Bush, Barack Obama incarnated the promise of a new, value-oriented America, a promise for which he received – rather prematurely – the Nobel Peace Prize. Five years later, the PRISM affair has dealt a heavy blow to Obama's – and America's – reputation, which was already dented by the unresolved question of the Guantanamo detainees and Obama's secret drone war.¶ The PRISM scandal had a negative effect on the transatlantic relationship. It differed in this respect from the Watergate scandal: in the latter case it was Americans, not Europeans, who were the victims of illegal spying activities. For Europeans the news that the US was tapping telephones, bugging buildings, and hacking computers – not of its traditional "usual suspects," but of its European friends and allies – came as a bad surprise.¶ This scandal came on top of an already existing transatlantic estrangement which runs far deeper than a momentary dip that could easily be repaired. It is a symptom of a crisis of confidence between the transatlantic partners, which finds an expression in US criticism of Europe's low defense expenditures, and in European fears that Obama's "Asian pivot" means that the US is turning its attention away from Europe.¶ Not to be neglected is the fact that the scandal has opened an unexpected window of opportunity for Mr. Putin. Not only has the affair offered him a unique chance to pose as a principled defender of privacy and free information, but the transatlantic estrangement will help him realize his pet project: the establishment of a "Eurasian Union."¶ This project, presented by him in an Izvestia article in November 2011, is the most important geostrategic project Russia has been engaged in since the demise of the Soviet Union. It would expand the existing Customs Union of Russia, Belarus, and Kazakhstan, further into the former Soviet space. On the surface it looks like an innocent copy of the European Union, however, it is infact a neo-imperial project with one overriding goal: to bring Ukraine definitively back into the Russian orbit. Its final objectives are even more ambitious, as according to Igor Panarin, former Dean of the Russian Diplomatic Academy, the Eurasian Union should have four capitals: St. Petersburg, Almaty, Kiev, and Belgrade. In addition to Ukraine, Serbia, Montenegro, and Moldova are also designated by him as future members. The Eurasian Union is, therefore, in direct competition with the EU.¶ This ambitious project seeks to expand Russian influence into the "weak Orthodox underbelly" of Europe. Fitting into this scheme are the recent Russian overtures made to Cyprus with the aim of opening a naval base on the island – which would compensate for the eventual loss of the Russian naval facility in the Syrian port of Tartus.¶ At a moment in which a heavily rearming Russia plays a "Great Game" in the former Soviet space, the European Union is in a dire state. Inward-looking and in a never-ending crisis, the EU looks like a rudderless ship, with the French lacking clear ideas, the British menacing to leave the boat, and the Germans attacked everywhere for their supposed arrogance. The EU, wrongly considered a space in which a Kantian "eternal peace" has been realized, rather finds itself increasingly on the fault line of a new East-West competition.¶ The PRISM scandal, which diminishes US soft power, deepens the crisis of confidence between Europeans and Americans, and offers Mr. Putin new opportunities, is therefore an unwelcomed surprise, for some involved. Europeans and Americans should sit around the table – not only to build a free trade area, but also to face the new geopolitical challenges in Europe.

#### PRISM kills soft power — hypocrisy

Arkedis 13 (Jim, a Senior Fellow at the Progressive Policy Institute and was a DOD counter-terrorism analyst, “PRISM Is Bad for American Soft Power,” 6/19, <http://www.theatlantic.com/international/archive/2013/06/prism-is-bad-for-american-soft-power/277015/>) \*allies

The lack of public debate, shifting attitudes towards civil liberties, insufficient disclosure, and a decreasing terrorist threat demands that collecting Americans' phone and Internet records must meet the absolute highest bar of public consent. It's a test the Obama administration is failing.¶ This brings us back to Harry Truman and Jim Crow. Even though PRISM is technically legal, the lack of recent public debate and support for aggressive domestic collection is hurting America's soft power.¶ The evidence is rolling in. The China Daily, an English-language mouthpiece for the Communist Party, is having a field day, pointing out America's hypocrisy as the Soviet Union did with Jim Crow. Chinese dissident artist Ai Wei Wei made the link explicitly, saying "In the Soviet Union before, in China today, and even in the U.S., officials always think what they do is necessary... but the lesson that people should learn from history is the need to limit state power."¶ Even America's allies are uneasy, at best. German Chancellor Angela Merkel grew up in the East German police state and expressed diplomatic "surprise" at the NSA's activities. She vowed to raise the issue with Obama at this week's G8 meetings. The Italian data protection commissioner said the program would "not be legal" in his country. British Foreign Minister William Hague came under fire in Parliament for his government's participation.¶ If Americans supported these programs, our adversaries and allies would have no argument. As it is, the next time the United States asks others for help in tracking terrorists, it's more likely than not that they will question Washington's motives.

### 2NC Heg---War Defense

#### No impact to hegemony – that’s Maher

#### 1) Free-riding---withdrawal results in stable regional power balancers---regional powers are more adept to solve conflicts in their own neighborhood---no reason the US military is more effective than others

#### 2) Exaggeration---because they have an interest in maintaining the status quo, preeminent states blow up tiny risks as huge threats to global stability---be skeptical of their scenarios

#### 3) No offense---hegemony causes overstretch of priorities which prevents our ability to resolve conflicts---none of their evidence assumes the ever-expanding nature of the United States’ priorities---multipolarity would increase allies dependence on the US and solve war because they would be scared of other great powers

#### They should have to provide a specific scenario – generic heg ‘solves all war’ arguments are pure rhetoric that would be thrown out in academia

#### Hegemony’s no longer key to peace---decline just means allies fill in

Elizabeth Cobbs Hoffman ‘13, professor of American foreign relations at San Diego State University, 3/4/13, “Come Home, America,” http://www.nytimes.com/2013/03/05/opinion/come-home-america.html?nl=todaysheadlines&emc=edit\_th\_20130305&pagewanted=print&\_r=0

EVERYONE talks about getting out of Iraq and Afghanistan. But what about Germany and Japan?

The sequester — $85 billion this year in across-the-board budget cuts, about half of which will come from the Pentagon — gives Americans an opportunity to discuss a question we’ve put off too long: Why we are still fighting World War II?

Since 1947, when President Harry S. Truman set forth a policy to stop further Soviet expansion and “support free peoples” who were “resisting subjugation by armed minorities or by outside pressures,” America has acted as the world’s policeman.

For more than a century, Britain had “held the line” against aggression in Eurasia, but by World War II it was broke. Only two years after the Allies met at Yalta to hammer out the postwar order, London gave Washington five weeks’ notice: It’s your turn now. The Greek government was battling partisans supplied by Communist Yugoslavia. Turkey was under pressure to allow Soviet troops to patrol its waterways. Stalin was strong-arming governments from Finland to Iran.

Some historians say Truman scared the American people into a broad, open-ended commitment to world security. But Americans were already frightened: in 1947, 73 percent told Gallup that they considered World War III likely.

From the Truman Doctrine emerged a strategy comprising multiple alliances: the Rio Pact of 1947 (Latin America), the NATO Treaty of 1949 (Canada and Northern and Western Europe), the Anzus Treaty of 1951 (Australia and New Zealand) and the Seato Treaty of 1954 (Southeast Asia). Seato ended in 1977, but the other treaties remain in force, as do collective-defense agreements with Japan, South Korea and the Philippines. Meanwhile, we invented the practice of foreign aid, beginning with the Marshall Plan.

It was a profound turn even from 1940, when Franklin D. Roosevelt won a third term pledging not to plunge the United States into war. Isolationism has had a rich tradition, from Washington’s 1796 warning against foreign entanglements to the 1919 debate over the Treaty of Versailles, in which Henry Cabot Lodge argued, “The less we undertake to play the part of umpire and thrust ourselves into European conflicts the better for the United States and for the world.”

World War II, and the relative impotence of the United Nations, convinced successive administrations that America had to fill the breach, and we did so, with great success. The world was far more secure in the second half of the 20th century than in the disastrous first half. The percentage of the globe’s population killed in conflicts between states fell in each decade after the Truman Doctrine. America experienced more wars (Korea, Vietnam, the two Iraq wars, Afghanistan) but the world, as a whole, experienced fewer.

We were not so much an empire — the empire decried by the scholar and veteran Andrew J. Bacevich and celebrated by the conservative historian Niall Ferguson — as an umpire, one that stood for equal access by nation-states to political and economic gains; peaceful arbitration of international conflict; and transparency in trade and business.

But conditions have changed radically since the cold war. When the United States established major bases in West Germany and Japan, they were considered dangerous renegades that needed to be watched. Their reconstructed governments also desired protection, particularly from the Soviet Union and China. NATO’s first secretary general, Hastings Ismay, famously said the alliance existed “to keep the Russians out, the Americans in, and the Germans down.”

Today, our largest permanent bases are still in Germany and Japan, which are perfectly capable of defending themselves and should be trusted to help their neighbors. It’s time they foot more of the bill or operate their own bases. China’s authoritarian capitalism hasn’t translated into territorial aggression, while Russia no longer commands central and eastern Europe. That the military brass still talk of maintaining the capacity to fight a two-front war — presumably on land in Europe, and at sea in the Pacific — speaks to the irrational endurance of the Truman Doctrine.

Our wars in the Middle East since 2001 doubled down on that costly, outdated doctrine. The domino theory behind the Vietnam War revived under a new formulation: but for the American umpire, the bad guys (Al Qaeda, Iran, North Korea) will win.

Despite his supporters’ expectations, President Obama has followed a Middle East policy nearly identical to his predecessor’s. He took us out of Iraq, only to deepen our commitment to Afghanistan, from which we are just now pulling out. He rejected the most odious counterterrorism techniques of George W. Bush’s administration, but otherwise did not change basic policies. Mr. Obama’s gestures toward multilateralism were not matched by a commensurate commitment from many of our allies.

Cynics assert that the “military-industrial complex” Dwight D. Eisenhower presciently warned against has primarily existed to enrich and empower a grasping, imperialist nation. But America was prosperous long before it was a superpower; by 1890, decades before the two world wars, it was already the world’s largest and richest economy. We do not need a large military to be rich. Quite the opposite: it drains our resources.

Realists contend that if we quit defending access to the world’s natural resources — read, oil — nobody else would. Really? It’s not likely that the Europeans, who depend on energy imports far more than the nation that owns Texas and Alaska would throw up their hands and bury their heads in the sand. It’s patronizing and naïve to think that America is the only truly “necessary” country. Good leaders develop new leaders. The Libyan crisis showed that our allies can do a lot.

The United States can and should pressure Iran and North Korea over their nuclear programs. It must help to reform and strengthen multilateral institutions like the United Nations, the International Monetary Fund and the World Bank. It must champion the right of small nations, including Israel, to “freedom from fear.” But there are many ways of achieving these goals, and they don’t all involve more borrowing and spending.

Partisan debates that focus on shaving a percentage point off the Pentagon budget here or there won’t take us where we need to go. Both parties are stuck in a paradigm of costly international activism while emerging powers like China, India, Brazil and Turkey are accumulating wealth and raising productivity and living standards, as we did in the 19th century. The long-term consequences are obvious.

America since 1945 has paid a price in blood, treasure and reputation. Umpires may be necessary, but they are rarely popular and by definition can’t win. Perhaps the other players will step up only if we threaten to leave the field. Sharing the burden of security with our allies is more than a fiscal necessity. It’s the sine qua non of a return to global normalcy.

#### Empirically proven

Geller 99**---**Geller and Singer, 99 – \*Chair of the Department of Political Science @ Wayne State University (Daniel S and Joel David, Nations at war: a scientific study of international conflict, p. 116-117)

**Note – Hopf = Visiting Professor of Peace Research, The Mershon Center, Ohio State University PhD in pol sci from Columbia.**

**Levy = Board of Governors’ Professor of Political Science at Rutgers University and an Affiliate at the Arnold A. Saltzman Institute of War and Peace Studies at Columbia University. Past president of the International Studies Association and of the Peace Science Society. Has held tenured positions at the UT Austin, and U Minnesota, and visiting positions at Stanford, Harvard, Yale University, Columbia, Tulane, and NYU. Received the American Political Science Association’s Award for the best dissertation in IR as well as the Distinguished Scholar Award from the Foreign Policy Analysis Section of the International Studies Association. PhD**

Hopf (1991) and Levy (1984) examine the frequency, magnitude and severity of wars using polarity (Hopf) and “system size” (Levy) as predictors. Hopf’s database includes warfare in the European subsystems for the restricted temporal period of 1495–1559. The system is classified as multipolar for the years 1495–1520 and as bipolar for the years 1521–1559. Hopf reports that the amount of warfare during those two periods was essentially equivalent. He concludes that polarity has little relationship to patterns of war for the historical period under examination. Levy (1984) explores a possible linear association between the number of great powers (system size) and war for the extended temporal span of 1495 – 1974. His findings coincide with those of Hopf; he reports that the frequency, magnitude and severity of war in the international system is unrelated to the number of major powers in the system.

#### Prefer our ev

Layne 6**---**pol sci prof, A&M (Christopher, The Peace of Illusions: American Grand Strategy from 1940 to the Present, Cornell University Press, p. 185-186)

The fundamental problem with all these scenarios, both historical and hypothetical, is that distant peer competitors have never been able to do the one thing they would need to do to challenge the United States in its own neighborhood: move freely across the sea. Since the beginning of the twentieth century, the United States has been able to generate more than enough naval (and strategic air) power to stop dead in the water any distant rival that might attempt to take on the United States over here. And, if anything, since 1945 nuclear weapons have made America's regional primacy all but unassailable.83 Rather than detracting from U.S. security, nuclear weapons enhanced it significantly. These overblown notions of American vulnerability to a Eurasian hegemon reflect an underlying worldview shared by U.S. policy-makers and popularized by Wilson and FDR: that in the modern world, the United States lives perpetually under the shadow of war. This grand strategic narrative rests on two key assumptions. First, because of advances in modern military technology, others can acquire the means to inflict grave damage on the United States. Second, the world is shrinking. As a result, the argument goes, the United States itself is at risk and must involve itself in the security affairs of distant regions to ward off threats to the American homeland. These arguments have a very familiar ring, because they have been invoked by the Bush II administration to justify expanding the war on terror and the invasion of Iraq. Although a straight line connects the administration's grand strategic narrative with those of Wilson and FDR, the conception of American security embodied in these narratives always has been based on a deeply flawed premise. For, far from shrinking the world grand strategically, for the United States, modern weaponry naval and strategic airpower, intercontinental delivery systems, and nuclear weapons has widened it. Proponents of offshore balancing are sensitive to the fact that the threat posed by potential Eurasian hegemons has often been exaggerated deliberately and used as a pretext for intervening in conflicts where America's security clearly has not been at risk. When policymakers use arguments about technology and a shrinking world to warn of American vulnerability, they are, as Michael S. Sherry notes, doing a lot more than simply depicting reality. They are trying to shape public perceptions and to create a new reality, which is why this narrative of U.S. national security is "an ideological construction, not merely a perceptual reaction."84 To be blunt, U.S. officials often have invoked the specter of a Eurasian hegemon to rationalize the pursuit of America's own hegemonic, Open Door-driven ambitions. Although it is always possible that the threat of a Eurasian hegemon justifiably might compel U.S. intervention, whenever this argument is made to justify a specific intervention, red lights should flash and it should be scrutinized very carefully, because U.S. officials have cried wolf way too many times in the past.

#### Their scenario happened in the 90s – no war resulted

Fettweis, 11 Christopher J. Fettweis, Department of Political Science, Tulane University, 9/26/11, Free Riding or Restraint? Examining European Grand Strategy, Comparative Strategy, 30:316–332, EBSCO

It is perhaps worth noting that there is no evidence to support a direct relationship between the relative level of U.S. activism and international stability. In fact, the limited data we do have suggest the opposite may be true. During the 1990s, the United States cut back on its defense spending fairly substantially. By 1998, the United States was spending $100 billion less on defense in real terms than it had in 1990.51 To internationalists, defense hawks and believers in hegemonic stability, this irresponsible “peace dividend” endangered both national and global security. “No serious analyst of American military capabilities,” argued Kristol and Kagan, “doubts that the defense budget has been cut much too far to meet America’s responsibilities to itself and to world peace.”52 On the other hand, if the pacific trends were not based upon U.S. hegemony but a strengthening norm against interstate war, one would not have expected an increase in global instability and violence. The verdict from the past two decades is fairly plain: The world grew more peaceful while the United States cut its forces. No state seemed to believe that its security was endangered by a less-capable United States military, or at least none took any action that would suggest such a belief. No militaries were enhanced to address power vacuums, no security dilemmas drove insecurity or arms races, and no regional balancing occurred once the stabilizing presence of the U.S. military was diminished. The rest of the world acted as if the threat of international war was not a pressing concern, despite the reduction in U.S. capabilities. Most of all, the United States and its allies were no less safe. The incidence and magnitude of global conflict declined while the United States cut its military spending under President Clinton, and kept declining as the Bush Administration ramped the spending back up. No complex statistical analysis should be necessary to reach the conclusion that the two are unrelated. Military spending figures by themselves are insufficient to disprove a connection between overall U.S. actions and international stability. Once again, one could presumably argue that spending is not the only or even the best indication of hegemony, and that it is instead U.S. foreign political and security commitments that maintain stability. Since neither was significantly altered during this period, instability should not have been expected. Alternately, advocates of hegemonic stability could believe that relative rather than absolute spending is decisive in bringing peace. Although the United States cut back on its spending during the 1990s, its relative advantage never wavered. However, even if it is true that either U.S. commitments or relative spending account for global pacific trends, then at the very least stability can evidently be maintained at drastically lower levels of both. In other words, even if one can be allowed to argue in the alternative for a moment and suppose that there is in fact a level of engagement below which the United States cannot drop without increasing international disorder, a rational grand strategist would still recommend cutting back on engagement and spending until that level is determined. Grand strategic decisions are never final; continual adjustments can and must be made as time goes on. Basic logic suggests that the United States ought to spend the minimum amount of its blood and treasure while seeking the maximum return on its investment. And if the current era of stability is as stable as many believe it to be, no increase in conflict would ever occur irrespective of U.S. spending, which would save untold trillions for an increasingly debt-ridden nation. It is also perhaps worth noting that if opposite trends had unfolded, if other states had reacted to news of cuts in U.S. defense spending with more aggressive or insecure behavior, then internationalists would surely argue that their expectations had been fulfilled. If increases in conflict would have been interpreted as proof of the wisdom of internationalist strategies, then logical consistency demands that the lack thereof should at least pose a problem. As it stands, the only evidence we have regarding the likely systemic reaction to a more restrained United States suggests that the current peaceful trends are unrelated to U.S. military spending. Evidently the rest of the world can operate quite effectively without the presence of a global policeman. Those who think otherwise base their view on faith alone.

### Terror

#### No terror attacks- Al Qaeda weak and focused on local initiatives- anti-western rhetoric is posturing

Thomas Hegghammer 7/18/13, PhD in political science Zuckerman Fellow, Center for International Security and Cooperation, Stanford University Senior Research Fellow, Norwegian Defense Research Establishment (FFI), 7/18/13, "The Future of Anti-Western Jihadism," Statement before the House Committee on Foreign Affairs Subcommittee on Terrorism, Nonproliferation, and Trade On “Global al-Qaeda: Affiliates, Objectives, and Future Challenges,” http://docs.house.gov/meetings/FA/FA18/20130718/101155/HHRG-113-FA18-Wstate-HegghammerT-20130718.pdf¶

The decline of al-Qaida Core is the easiest aspect of the current state of affairs to explain. It is¶ fundamentally a story of what terrorism scholars call government “learning”, i.e., gradual accumulation of information about the identity and location of the members of the rebel group, which in turn allows for increasingly targeted and more effective repressive measures. At the beginning of the war on terror, al-Qaida enjoyed an informational advantage over the US government – as do all terrorist groups at the outset of their campaigns – because it knew where to¶ find us but we did not know where to find them. With the help of time and massive investments in**¶** intelligence, we were able to map the organization, contain it, and eliminate leaders faster than it could train new ones. Learning is also behind the moderate decline in attacks by independents. Advances in data mining and analysis have allowed governments to collect, accumulate, and exploit data about the¶ fringes of the jihadi network to a much greater extent than before, allowing for the identification of many, though not all, plots before they reach execution. Governments are helped here by the fact¶ that true lone wolves are extremely rare, and that, for most individuals, the radicalization process**¶** involves socialization with other activists and/or consumption of jihadi propaganda online, both of which leave traces to be exploited. This, incidentally, is one of several reasons why the Internet is proving to be less of a boon to terrorists than many analysts predicted some years ago. For all their skill using the internet for propaganda distribution, jihadists are struggling use the web for operational purposes; they are having particular problems avoiding surveillance and establishing¶ trust between one another online. The more contentious question is why the affiliates are not attacking in the West more often. One argument holds that this is a capability issue, i.e, that the groups are not operationally¶ capable of circumventing the many countermeasures and detection systems that Western¶ governments have put in place since 9/11. This argument is unconvincing for two main reasons. One¶ is that several affiliates, especially AQIM and al-Shabaab, do have economic resources and human¶ assets that should arguably enable them to carry out at least some attacks in the West. The other¶ reason is if capability was the main problem, we should still expect to see more attempts. The¶ combination of high intent and low capability is observable in the form of failed and foiled attacks. The fact that we do not see many such attempts, except from AQAP, suggests most affiliates are not really trying.¶ I argue that the relatively low supply of anti-Western plots from the affiliates reflects low motivation, which in turn has two origins: a preference for local targets and fear of US retaliation. For all their anti-Western rhetoric and declared allegiance to al-Qaida Core, many affiliates appear to¶ place greater emphasis on achieving local political objectives than inflicting harm on the West. We¶ can infer this preference from the content of group declarations. Some groups say explicitly that¶ they do not plan to attack in the West; others are more ambiguous in their statements, but reveal their preferences by devoting more attention to local topics than to global ones or describing close¶ enemies with more vitriol than distant ones. Groups also reveal their preferences by the way they allocate operational resources. Most affiliates devote their resources overwhelmingly to local or regional operations. Even those organizations that have attempted operations against the West have conducted a much larger number of operations in the local theatre. This is in stark contrast to AQ core, which devoted nearly all of its resources after 2001 to attacks in the West. By far the most plausible explanation for these allocations is that groups value local political gains higher than**¶** international ones. If your aim is to establish control over a given territory and you are caught up in a¶ fight with a regional enemy, it makes little strategic sense to attack the West. However, you might have an incentive to launch verbal attacks on the West, because this makes you appear strong and**¶** principled in your local setting. Attacking the West makes even less strategic sense for such groups given the cost to the organization of provoking the ire of the American military. There is solid evidence from captured¶ documentation that leaders of jihadi organizations think strategically and make decisions based on¶ an informed calculus of costs and benefits. Leaders are, as a rule, not suicidal or irrational. There is also extensive evidence – from internal strategy documents – that leaders are aware of the**¶** capabilities of the US military and seek to avoid unnecessary exposure to these capabilities. In the 1990s, some jihadi leaders explicitly admitted fearing US retaliation and cited it as a reason not to¶ pursue Osama bin Ladin’s “America first” strategy. Such explicit admissions are rare today, but it would be surprising if the prospect of retaliation did not factor into the decision calculus in an era where the US has proven much more willing to use force against terrorists than perhaps ever before¶ in modern history. Most likely, affiliate leaders understand that targeting the US homeland might bring their own demise.

#### No scenario for nuclear terror---consensus of experts

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For over a decade now, one of the most oft-repeated threats raised by policymakers—the one that in many ways justified the invasion of Iraq—has been that of nuclear terrorism. Officials in both the Bush and Obama administrations, including the presidents themselves, have raised the specter of the atomic terrorist. But beyond mere rhetoric, how likely is a nuclear terrorist attack really?¶ While pessimistic estimates about America’s ability to avoid a nuclear terrorist attack became something of a cottage industry following the September 11th attacks, a number of scholars in recent years have pushed back against this trend. Frank Gavin has put post-9/11 fears of nuclear terrorism into historical context (pdf) and argued against the prevailing alarmism. Anne Stenersen of the Norwegian Defence Research Establishment has challenged the idea that al Qaeda was ever bound and determined to acquire a nuclear weapon. John Mueller ridiculed the notion of nuclear terrorism in his book Atomic Obsessions and highlighted the numerous steps a terrorist group would need to take—all of which would have to be successful—in order to procure, deliver, and detonate an atomic weapon. And in his excellent, and exceedingly even-handed, treatment of the subject, On Nuclear Terrorism, Michael Levi outlined the difficulties terrorists would face building their own nuclear weapon and discussed how a “system of systems” could be developed to interdict potential materials smuggled into the United States—citing a “Murphy’s law of nuclear terrorism” that could possibly dissuade terrorists from even trying in the first place.¶ But what about the possibility that a rogue state could transfer a nuclear weapon to a terrorist group? That was ostensibly why the United States deposed Saddam Hussein’s regime: fear he would turnover one of his hypothetical nuclear weapons for al Qaeda to use.¶ Enter into this discussion Keir Lieber and Daryl Press and their article in the most recent edition of International Security, “Why States Won’t Give Nuclear Weapons to Terrorists.” Lieber and Press have been writing on nuclear issues for just shy of a decade—doing innovative, if controversial work on American nuclear strategy. However, I believe this is their first venture into the debate over nuclear terrorism. And while others, such as Mueller, have argued that states are unlikely to transfer nuclear weapons to terrorists, this article is the first to tackle the subject with an empirical analysis.¶ The title of their article nicely sums up their argument: states will not turn over nuclear weapons terrorists. To back up this claim, Lieber and Press attack the idea that states will transfer nuclear weapons to terrorists because terrorists operate of absent a “return address.” Based on an examination of attribution following conventional terrorist attacks, the authors conclude:¶ [N]either a terror group nor a state sponsor would remain anonymous after a nuclear attack. We draw this conclusion on the basis of four main findings. First, data on a decade of terrorist incidents reveal a strong positive relationship between the number of fatalities caused in a terror attack and the likelihood of attribution. Roughly three-quarters of the attacks that kill 100 people or more are traced back to the perpetrators. Second, attribution rates are far higher for attacks on the U.S. homeland or the territory of a major U.S. ally—97 percent (thirty-six of thirty-seven) for incidents that killed ten or more people. Third, tracing culpability from a guilty terrorist group back to its state sponsor is not likely to be difficult: few countries sponsor terrorism; few terrorist groups have state sponsors; each sponsor terrorist group has few sponsors (typically one); and only one country that sponsors terrorism, has nuclear weapons or enough fissile material to manufacture a weapon. In sum, attribution of nuclear terror incidents would be easier than is typically suggested, and passing weapons to terrorists would not offer countries escape from the constraints of deterrence.¶ From this analysis, Lieber and Press draw two major implications for U.S. foreign policy: claims that it is impossible to attribute nuclear terrorism to particular groups or potential states sponsors undermines deterrence; and fear of states transferring nuclear weapons to terrorist groups, by itself, does not justify extreme measures to prevent nuclear proliferation.¶ This is a key point. While there are other reasons nuclear proliferation is undesirable, fears of nuclear terrorism have been used to justify a wide-range of policies—up to, and including, military action. Put in its proper perspective however—given the difficulty in constructing and transporting a nuclear device and the improbability of state transfer—nuclear terrorism hardly warrants the type of exertions many alarmist assessments indicate it should.

### 2NC: No nuke terror

#### Chance of acquiring one is 1 in 3.5 billion

Schneidmiller 9(Chris, Experts Debate Threat of Nuclear, Biological Terrorism, 13 January 2009, http://www.globalsecuritynewswire.org/gsn/nw\_20090113\_7105.php)

There is an "almost vanishinglysmall" likelihood that terrorists would ever be able to acquire and detonate a nuclear weapon, one expert said here yesterday (see GSN, Dec. 2, 2008). In even the most likely scenario of nuclear terrorism, there are 20 barriers between extremists and a successful nuclear strike on a major city, said John Mueller, a political science professor at Ohio State University. The process itself is seemingly straightforward but exceedingly difficult -- buy or steal highly enriched uranium, manufacture a weapon, take the bomb to the target site and blow it up. Meanwhile, variables strewn across the path to an attack would increase the complexity of the effort, Mueller argued. Terrorists would have to bribe officials in a state nuclear program to acquire the material, while avoiding a sting by authorities or a scam by the sellers. The material itself could also turn out to be bad. "Once the purloined material is purloined, [police are] going to be chasing after you. They are also going to put on a high reward, extremely high reward, on getting the weapon back or getting the fissile material back," Mueller said during a panel discussion at a two-day Cato Institute conference on counterterrorism issues facing the incoming Obama administration. Smuggling the material out of a country would mean relying on criminals who "are very good at extortion" and might have to be killed to avoid a double-cross, Mueller said. The terrorists would then have to find scientists and engineers willing to give up their normal lives to manufacture a bomb, which would require an expensive and sophisticated machine shop. Finally, further technological expertise would be needed to sneak the weapon across national borders to its destination point and conduct a successful detonation, Mueller said. Every obstacle is "difficult but not impossible" to overcome, Mueller said, putting the chance of success at no less than one in three for each. The likelihood of successfully passing through each obstacle, in sequence, would be roughly one in 3 1/2 billion, he said, but for argument's sake dropped it to 3 1/2 million. "It's a total gamble. This is a very expensive and difficult thing to do," said Mueller, who addresses the issue at greater length in an upcoming book, *Atomic Obsession*. "So unlike buying a ticket to the lottery ... you're basically putting everything, including your life, at stake for a gamble that's maybe one in 3 1/2 million or 3 1/2 billion." Other scenarios are even less probable, Mueller said. A nuclear-armed state is "exceedingly unlikely" to hand a weapon to a terrorist group, he argued: "States just simply won't give it to somebody they can't control." Terrorists are also not likely to be able to steal a whole weapon, Mueller asserted, dismissing the idea of "loose nukes." Even Pakistan, which today is perhaps the nation of greatest concern regarding nuclear security, keeps its bombs in two segments that are stored at different locations, he said (see *GSN*, Jan. 12). Fear of an "extremely improbable event" such as nuclear terrorism produces support for a wide range of homeland security activities, Mueller said. He argued that there has been a major and costly overreaction to the terrorism threat -- noting that the Sept. 11 attacks helped to precipitate the invasion of Iraq, which has led to far more deaths than the original event. Panel moderator Benjamin Friedman, a research fellow at the Cato Institute, said academic and governmental discussions of acts of nuclear or biological terrorism have tended to focus on "worst-case assumptions about terrorists' ability to use these weapons to kill us." There is need for consideration for what is probable rather than simply what is possible, he said. Friedman took issue with the finding late last year of an experts' report that an act of WMD terrorism would "more likely than not" occur in the next half decade unless the international community takes greater action. "I would say that the report, if you read it, actually offers no analysis to justify that claim**,** which seems to have been made to change policy by generating alarm in headlines." One panel speaker offered a partial rebuttal to Mueller's presentation. Jim Walsh, principal research scientist for the Security Studies Program at the Massachusetts Institute of Technology, said he agreed that nations would almost certainly not give a nuclear weapon to a nonstate group, that most terrorist organizations have no interest in seeking out the bomb, and that it would be difficult to build a weapon or use one that has been stolen.

#### Terrorists don’t have the technical know-how or resources for nuclear weapons

Umana 11 – Felipe Umana is a contributor to Foreign Policy In Focus, from the Institute for Policy Studies. August 17, 2011, "Loose Nukes: Real Threat?" http://www.fpif.org/articles/loose\_nukes\_real\_threat

Actors seeking to acquire an atomic weapon – or the capability to produce one – generally do not have the essential training, knowledge, or materials. Nor do they generally have the necessary resources to achieve nuclear capabilities. In fact, for non-state actors, smuggling already-manufactured weapons or available materials is the only practical way to go nuclear. Terrorist organizations like Aum Shinrikyo (now known as Aleph) and al-Qaeda are typically **composed of men with little scientific training** and ersatz scientific knowledge, if any. Unless they steal blueprints, these actors can't construct a usable fissile weapon. Moreover, it's not easy to move such sensitive materials around. Anatoly Bulochnikov, director of the Center for Export Controls in Moscow, contrasted nuclear materials with mundane goods: “[These items are] not potatoes, not something you can keep anywhere.” Another hindrance is a lack of steady funds and resources. Non-state actors simply don't have the money to purchase bomb-grade nuclear material (in 1991, a kilogram of enriched uranium went for $700,000), the means to enrich uranium, or the storage facilities to contain the material.

### Russia

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

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

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

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

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

#### No extinction impact

Quinlan 9 [Michael Quinlan, former British Permanent Under Secretary of State for Defence, former Director of the Ditchley Foundation, Visiting Professor at King's College London, “Thinking About Nuclear Weapons: Principles, Problems, Prospects,” Oxford University Press, p. 63-4]

Even if initial nuclear use did not quickly end the fighting, the supposition of inexorable momentum in a developing exchange, with each side rushing to overreaction amid confusion and uncertainty, is implausible. It fails to consider what the situation of the decisionmakers would really be. Neither side could want escalation. Both would be appalled at what was going on. Both would be desperately looking for signs that the other was ready to call a halt. Both, given the capacity for evasion or concealment which modern delivery platforms and vehicles can possess, could have in reserve significant forces invulnerable enough not to entail use-or-lose pressures. (It may be more open to question, as noted earlier, whether newer nuclear weapon possessors can be immediately in that position; but it is within reach of any substantial state with advanced technological capabilities, and attaining it is certain to be a high priority in the development of forces.) As a result, neither side can have any predisposition to suppose, in an ambiguous situation of fearful risk, that the right course when in doubt is to go on copiously launching weapons. And none of this analysis rests on any presumption of highly subtle or pre-concerted rationality. The rationality required is plain.

### Afghanistan Add On

#### Stability increasing

DoD July 2013, Department of Defense, July 2013, "Report on¶ Progress Toward Security and¶ Stability in Afghanistan," http://www.defense.gov/pubs/Section\_1230\_Report\_July\_2013.pdf¶

The conflict in Afghanistan has shifted into a fundamentally new phase. For the past 11 years, ¶ the United States and our coalition partners have led the fight against the Taliban, but now ¶ Afghan forces are conducting almost all combat operations. The progress made by the ¶ International Security Assistance Force (ISAF)-led surge over the past three years has put the ¶ Government of the Islamic Republic of Afghanistan (GIRoA) firmly in control of all of ¶ Afghanistan’s major cities and 34 provincial capitals and driven the insurgency into the ¶ countryside. ISAF’s primary focus has largely transitioned from directly fighting the insurgency ¶ to training, advising and assisting the Afghan National Security Forces (ANSF) in their efforts to ¶ hold and build upon these gains, enabling a U.S. force reduction of roughly 34,000 personnel—¶ half the current force in Afghanistan—by February 2014. ¶ As agreed by President Obama and President Karzai at their January 2013 meeting in ¶ Washington, D.C., and in line with commitments made at the Lisbon and Chicago NATO ¶ summits, "Milestone 2013" was announced on June 18, 2013, marking ISAF’s official transition ¶ to its new role. The ANSF has grown to approximately 96 percent of its authorized end-strength ¶ of 352,000 personnel and is conducting almost all operations independently. As a result, ISAF ¶ casualties are lower than they have been since 2008. The majority of ISAF bases has been ¶ transferred to the ANSF or closed (although most large ISAF bases remain), and construction of¶ most ANSF bases is complete. Afghanistan’s populated areas are increasingly secure; the ANSF ¶ has successfully maintained security gains in areas that have transitioned to Afghan lead ¶ responsibility. To contend with the continuing Taliban threat, particularly in rural areas, the ¶ ANSF will require training and key combat support from ISAF, including in extremis close air ¶ support, through the end of 2014.

## Advantage 2

### Judical Power

#### **1. Turn — Court Stripping**

#### **The Court’s pursuing an incremental strategy in regards to War Powers now---**the **plan causes massive backlash and executive non-acquiescence**

Neavl Devins 10, Goodrich Professor of Law and Professor of Government, College of William & Mary., Talk Loudly and Carry a Small Stick: The Supreme Court and Enemy Combatants, 12 U. Pa. J. Const. L. 491

Congress, the President, and the Court. Throughout the enemy combatant litigation, Congress signaled to the Court that it would go along with whatever ruling the Court made in these cases. In other words, contrary to the portrayal by academics and the news media of the Supreme Court's willingness to stand up to Congress and the executive branch, lawmakers repeatedly stood behind Court rulings limiting elected branch power. At the same time, as I will detail in the next Part, the Court pursued an incremental strategy - declining to test the boundaries of lawmaker acquiescence and, instead, issuing decisions that it knew would be acceptable to lawmakers. n85¶ The 2004 rulings in Hamdi and Rasul triggered anything but a backlash. In the days following the decisions, no lawmaker spoke on the House or Senate floor about the decision, and only a handful issued [\*508] press releases about the cases. n86 And while eight members of Congress signed onto amicus briefs backing administration policy, n87 Congress did not seriously pursue legislative reform on this issue until the Supreme Court had agreed to hear the Hamdan case. n88¶ When Congress enacted the Detainee Treatment Act (DTA) in December 2005, "lawmakers made clear that they did not see the DTA as an attack on either the Court or an independent judiciary." n89 Most significant, even though the DTA placed limits on federal court consideration of enemy combatant habeas petitions, lawmakers nevertheless anticipated that the Supreme Court would decide the fate of the President's military tribunal initiative. Lawmakers deleted language in the original bill precluding federal court review of Hamdan and other pending cases. n90 Lawmakers, moreover, depicted themselves as working collegially with the Court; several Senators, for example, contended that the "Supreme Court has been shouting to us in Congress: Get involved," n91 and thereby depicted Rasul as a challenge [\*509] to Congress, n92 "asking the Senate and the House, do you intend for ... enemy combatants ... to challenge their detention [in federal courts] as if they were American citizens?" n93 Lawmakers also spoke of detainee habeas petitions as an "abuse[]" n94 of the federal courts, and warned that such petitions might unduly clog the courts, n95 thus "swamping the system" n96 with frivolous complaints. n97 Under this view, the DTA's cabining of federal court jurisdiction "respects" the Court's independence and its role in the detainee process. n98¶ Following Hamdan, lawmakers likewise did not challenge the Court's conclusions that the DTA did not retrospectively bar the Hamdan litigation and that the President could not unilaterally pursue his military tribunal policy. n99 Even though the Military Commissions Act (MCA) eliminates federal court jurisdiction over enemy combatant habeas petitions, lawmakers depicted themselves as working in tandem with the Court. Representative Duncan Hunter (R. Cal.), who introduced the legislation on the House floor, said during the debates that the bill was a response to the "mandate of the Supreme Court that Congress involve itself in producing this new structure to prosecute terrorists." n100 And DTA sponsor Lindsey Graham stated: "The Supreme Court has set the rules of the road and the [\*510] Congress and the president can drive to the destination together." n101 Even lawmakers who expressed disappointment in the Court's ruling did not criticize the Court. Senator Sessions (R. Ala.), for example, blamed Hamdan's lawyers for misleading the Court about the legislative history of the DTA. n102¶ Debates over the MCA habeas provision, moreover, reveal that lawmakers thought that the Supreme Court was responsible for assessing the reach of habeas protections. Fifty-one Senators (fifty Republicans and one Democrat) voted against a proposed amendment to provide habeas protections to Guantanamo detainees. Arguing that enemy combatants possessed no constitutional habeas rights, n103 these lawmakers contended that they could eliminate habeas claims without undermining judicial authority. One of the principal architects of the MCA, Senator Lindsey Graham, put it this way: Enemy combatants have "a statutory right of habeas ... . And if [the Supreme Court finds] there is a constitutional right of habeas corpus given to enemy combatants, that is ... totally different ... and it would change in many ways what I have said." n104 Forty-eight Senators (forty-three Democrats, four Republicans, and one Independent) argued that the habeas-stripping provision was unconstitutional, that the courts would "clean it up," n105 and that Congress therefore should fulfill its responsibility to protect "that great writ." n106¶ When the Supreme Court agreed to rule on the constitutionality of the MCA, the Congress no longer supported the MCA's habeas-stripping provisions. Democrats had gained control of both Houses of Congress. Not surprisingly, there was next-to-no lawmaker criticism of Boumediene. In the week following the decision, no member [\*511] of the House, and only two Senators, made critical comments about the decision on the House or the Senate floor. n107¶ \* \* \* Supreme Court enemy combatant decisions were not out-of-step with prevailing social and political forces. Academics (including prominent conservatives), the media (again including conservative newspapers), former judges, and bar groups had all lined up against the administration. Interest groups too opposed the administration (including some conservative groups). Over the course of the enemy combatant litigation, the American people increasingly opposed the Bush administration. This opposition, in part, was tied to policy missteps (some of which implicated enemy combatant policy-making). These missteps were highly visible and contributed to widespread opposition to the Bush administration. For its part, Congress did not question the Court's role in policing the administration's enemy combatant initiative. By the time the Court decided Boumediene, voter disapproval of the President had translated into widespread opposition to the administration's enemy combatant initiative; a Democratic Congress supported habeas protections for enemy combatants and presidential candidates John McCain and Barack Obama called for the closing of Guantanamo Bay.¶ In the next part of this Essay, I will discuss the incremental nature of the Court's decision making. This discussion will provide additional support for the claims made in this section. Specifically, I will show that each of the Court's decisions was in sync with changing attitudes towards the Bush administration. More than that, Part II will belie the myth that Court enemy combatant decisions were especially consequential. Unlike newspaper and academic commentary about these cases, Court decision making had only a modest impact. Correspondingly, the Court never issued a decision that risked its institutional capital; the Court knew that its decisions would be followed by elected officials and that its decisions would not ask elected officials to take actions that posed some national security risk. [\*512] ¶ II. Judicial Modesty or Judicial Hubris: Making Sense of the Enemy Combatant Cases ¶ From 1952 (when the Supreme Court slapped down President Truman's war-time seizure of the steel mills) n108 until 2004 (when the Court reasserted itself in the first wave of enemy combatant cases), the judiciary largely steered clear of war powers disputes. n109 In part, the Court deferred to presidential desires and expertise. The President sees the "rights of governance in the foreign affairs and war powers areas" as core executive powers. n110 Correspondingly, the President has strong incentives to expand his war-making prerogatives. n111 For its part, the Court has limited expertise in this area, and, as such, is extremely reluctant to stake out positions that may pose significant national security risks. n112 The Court, moreover, is extremely reluctant to risk elected branch opprobrium. Lacking the powers of purse and sword, the Court cannot ignore the risks of elected branch non-acquiescence. n113¶ Against this backdrop, the Court's repudiation of the Bush administration's enemy combatant initiative appears a dramatic break from past practice. Academic and newspaper commentary back up this claim - with these decisions being labeled "stunning" (Harold [\*513] Koh), n114 "unprecedented" (John Yoo), n115 "breathtaking" (Charles Krauthammer), n116 "astounding" (Neal Katyal), n117 "sweeping and categorical" (New York Times), n118 and "historic" (Washington Post and Wall Street Journal). n119 Upon closer inspection, however, the Court's decisions are anything but a dramatic break from past practice. Part I detailed how Court rulings tracked larger social and political forces. In this Part, I will show how the Court risked neither the nation's security nor elected branch non-acquiescence. n120 The Court's initial rulings placed few meaningful checks on the executive; over time, the Court - reflecting increasing public disapproval of the President - imposed additional constraints but never issued a ruling that was out-of-sync with elected government preferences. Separate and apart from reflecting growing public and elected government disapproval of Bush administration policies, the Court had strong incentives to intervene in these cases. The Bush administration had challenged the Court's authority to play any role in national security matters. n121 This frontal assault on judicial power prompted the Court to stand up for its authority to "say what the law is." In Part III, I will talk about the Court's interest in protecting its turf - especially in cases implicating individual rights.¶ [\*514] Small Steps: Hamdi and Rasul. These decisions were a minimalist opening volley in Court efforts to place judicial limits on the Bush administration. While rejecting claims of executive branch unilateralism in national security matters, the Court said next-to-nothing about how it would police the President's enemy combatant initiative. Rasul simply held that Guantanamo Bay was a "territory over which the United States exercises exclusive jurisdiction and control," and, consequently, that the President's enemy combatant initiative is subject to existing habeas corpus legislation. n122 This ruling "avoided any constitutional judgment" and offered no guidance on "what further proceedings may become necessary" after enemy combatants filed habeas corpus petitions. n123 Hamdi, although ruling that United States citizens have a constitutional right to challenge their detention as an enemy combatant, placed few meaningful limits on executive branch detentions. Noting that "enemy-combatant proceedings may be tailored to alleviate their uncommon potential to burden the Executive," the Court ruled both that hearsay evidence was admissible, and that "the Constitution would not be offended by a presumption in favor of the Government's evidence." n124¶ The Bush administration, as John Yoo put it, saw the limited reach of Hamdi and Rasul as creating an "opportunity" for the administration to regain control over its detention policy. n125 In particular, the administration asked Congress to enact legislation that would limit federal court review of enemy combatant claims. The administration also launched Combatant Status Review Tribunals (CSRT) as a more formal substitute for unilateral executive determinations of a detainee's enemy combatant status. n126 Capitalizing on Rasul's failure to consider the constitutional dimensions of enemy combatant claims, CSRTs largely operated as a rubber stamp of administration determinations. In 2006, ninety-nine out of 102 detainees brought before CSRTs were designated as enemy combatants. n127 The Justice Department reconvened CSRTs to reconsider the remaining three cases [\*515] and, ultimately, the remaining three were determined to be enemy combatants. n128¶ Hamdi and Rasul were both "narrow, incompletely theorized [minimalist] decisions." n129 And while newspapers and academics focused their attention on the Court's open-ended declaration that "a state of war is not a blank check for the President," n130 the decisions did not meaningfully limit the executive. Well aware that Congress and the American people supported the President's military commission initiative, n131 the Court understood that a sweeping denunciation of administration policies might trigger a fierce backlash. n132 Moreover, by ruling that Congress had authorized the President's power to detain enemy combatants (through its post-9/11 Authorization for the Use of Military Force Resolution), and by suggesting that the Court would make use of pro-government presumptions when reviewing military commission decision making, the Court formally took national security interests into account. n133 Actions taken by the executive in response to these rulings underscore that the Court's de minimis demands neither risked national security nor executive branch non-acquiescence.¶ None of this is to say that the 2004 decisions were without impact. Following Rasul, for example, the administration understood that it needed to make use of some type of military court review - a requirement that may have impacted the military's handling of enemy combatants. At the same time, the Court did not issue a potentially debilitating blow to the Bush administration by decisively and resoundingly rejecting key elements of the administration's legal policy. n134 Instead, the Court simply carved out space for itself to review administration policy-making - without setting meaningful boundaries on what the administration could or could not do.

#### Court involvement in national security causes massive blowback that crushes judicial legitimacy

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

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

#### 2. Turn — Salaries

#### Judges will get pay raises now, but Congress still has the ability to wreck salaries – key to judicial independence

Lyle Denniston, SCOTUSblog badass, covered the court for 54 years, National Constitution Center’s Adviser on Constitutional Literacy, 10-8-2012, “Major gain for judges’ independence,” Constitution Daily, http://blog.constitutioncenter.org/2012/10/major-gain-for-judges%E2%80%99-independence/

That has been, from the beginning, one of the ways the Founders guaranteed the independence of the federal judiciary (another was a promise of life tenure “during good behavior”). But for the past 34 years, federal judges have been pursuing a series of lawsuits, claiming that Congress has frequently acted in ways that – in real-dollar terms – reduced their pay, in violation of the Compensation Clause. The theory was that, if a federal judges’ pay remains constant, it will be eroded over time by the effects of inflation in money’s value. Last Friday, that legal struggle finally resulted in a historic constitutional victory for the judges – a victory that is likely to be tested in the Supreme Court before it could take final effect. The U.S. Court of Appeals for the Federal Circuit – a specialized court that decides claims for money from the federal government – ruled by a 10-2 vote that Congress has several times violated a promise made in 1989 to give federal judges an annual cost-of-living increase in their pay level. The decision does not mean that Congress has lost the power to set federal judges’ salary levels, or that it has a constitutional duty to give them a period, inflation-countering raise. But it does mean that Congress cannot promise a raise, and then break that promise, and that the lawmakers cannot take steps that reduce the value of a sitting judge’s salary scale. The judges’ fight has been a long-running labor for them and their lawyers, and the issue raises such fundamental constitutional questions that it has gone to the Supreme Court, in one form or another, three times. It almost certainly will return there again, because the Justice Department does not believe the judges have a valid claim that the Compensation Clause has been violated, and the Department has the authority to seek Supreme Court review. The Federal Circuit Court’s ruling in the judges’ favor (in the case of Beer v. U.S.) is a strong statement of support for judicial independence, and for the role that a secure salary plays in helping to protect that independence. In the Declaration of Independence, the court recalled, America’s revolutionary generation protested that the King of England had made judges depend upon his grace for their tenure and for their pay. Alexander Hamilton wrote in The Federalist Papers: “Next to permanence in office, nothing can contribute more to the independence of the judges than a fixed provision for their support.”

#### Congress will backlash against the plan and cut judicial pay

Philip A. Talmadge, Justice, Washington State Supreme Court, Winter 1999, Seattle University Law Review, 22 Seattle Univ. L. R. 695, p. 701-704

The doctrine of judicial restraint has been encrusted in recent years with considerable ideological cant of both the left and the right. 17 The ideological discussion highlights particular political issues of the day. Many conservatives decry judicial activism with respect to the courts' role in racial desegregation in America or [\*702] reproductive rights issues. 18 Liberals complain today of judicial activism in property and economic issues. 19 But this doctrine need not be the captive of the left or the right. The doctrine itself has become "political" largely because it is not susceptible to rigorous and predictable definition. That the courts are not entirely trusted by the partisan branches of government to announce constitutional principles is illustrated by recent Washington legislation. In 1997, a bill was introduced in the Washington State House of Representatives with thirty-three sponsors. The bill challenged the doctrine of judicial review: "The doctrine of judicial review that the courts have the sole and final say in interpreting the Constitution on behalf of all three branches of government has been subject to serious analysis and criticism by scholars, jurists, and others for almost two hundred years." 20 The legislation's apparent intent was to undercut the finality and authority of judicial review of constitutional questions by permitting the legislature to disagree with a judicial interpretation of the Washington Constitution and to submit the issue to the voters in a statewide referendum. 21 [\*703] The sense that the courts are too powerful sometimes conflicts with direction to judges from the partisan branches to state their views more publicly. In 1997, twenty-two sponsors introduced in the Washington State House of Representatives a measure urging the Supreme Court to amend Canon 7 of the Code of Judicial Conduct to afford judges and judicial candidates the right to "speak freely and without fear of governmental retaliation, on issues that are not then before the court." 22 The United States Congress has also raised serious questions about judicial performance through a different methodology. The United States Senate's recent glacial pace in confirming nominees to judicial vacancies increases judicial workloads and instills trepidation in the minds of the nominees. 23 In recent legislation, 24 Congress [\*704] sought to restrain "judicial activism" by denying judges cost-of-living salary adjustments and limiting federal court jurisdiction. Various versions of the legislation would deny federal courts the power to release federal prisoners because of bad prison conditions and establish special procedures to hear challenges to state initiative measures. In summary, these issues illustrate the need for the courts continually to revisit and review the core constitutional functions of the judiciary. 25 Within the constitutional sphere, however, the courts should be active and the other branches of government constrained not to act unconstitutionally. The judiciary cannot "restrain" itself from declaring the enactments of legislative bodies violative of constitutional norms. The courts must vigorously protect individuals, particularly minorities, from majoritarian tyranny. But this protective role does not allow the courts to "constitutionalize" every controversy. Judicial self-restraint lends support to the legitimacy of judicial independence. In our system of separation of powers, achievement of the necessary balance between a judiciary vigorous within its constitutional sphere and independent of the partisan branches of government, and a judiciary restrained in its inclination to right every wrong, is no easy task. That necessary balance is, however, the essence of ordered liberty in the American constitutional system. Likewise, the other branches of government must regard the authority and independence of the judiciary by respecting judicial review, properly funding the courts, and avoiding the imposition of nonjudicial duties or ever-escalating caseloads. The fulfillment of separation of powers is found in the principles of restraint employed in the federal and state court systems.

#### Adequate funding for the judiciary is key to the rule of law – it’s watched internationally

Testimony of Associate Justice Anthony M. Kennedy before the United States Senate Committee on the Judiciary Judicial Security and Independence February 14, 2007 http://judiciary.senate.gov/testimony.cfm?id=2526&wit\_id=6070

The provision of judicial resources by Congress over the years is admirable in most respects. Your expeditious consideration of the pending court-security bill is just one example of your understanding of our needs. Our facilities have been, and are, the envy of the judiciaries of the several States and, indeed, of judges throughout the world. Our staff, our libraries, our electronic data systems, and our courthouses are excellent. These resources have been the special concern of Congress. Your interest, your oversight, and your understanding of our needs set a standard for our own States and for nations around the world. Just one example is the Federal Judicial Center. When visitors come to Washington, we recommend they observe it to learn how a successful judicial-education center functions. Those visitors are awed by what they see. As you know, the Center produces an elaborate series of programs for judicial education, under a small budget emphasizing turn-key projects. Around the world, the allocation of scarce resources to judiciaries is, to be candid, a tough sell. There are urgent demands for funds for defense; for roads and schools; for hospitals, doctors, and health care; and for basic utilities and necessities such as clean water. Even rich countries like our own find it hard to marshal the necessary resources for all these endeavors. What, then, is the reception an elected representative receives when he or she tells constituents the legislature has increased funding for judicial resources? The report, to be frank, is not likely to generate much excitement. Perhaps this is an educational failure on our part, for there is a proper response to this predictable public reaction. It is this: An efficient, highly qualified judiciary is part of the infrastructure necessary in any society that seeks to safeguard its freedom. A judiciary committed to excellence secures the Rule of Law; and the Rule of Law is a building block no less important to the advance of freedom and prosperity than infrastructure systems such as roads and utilities. Without a functioning, highly qualified, efficient judiciary, no nation can hope to guarantee its prosperity and secure the liberties of its people. The Committee knows that judges throughout the United States are increasingly concerned about the persisting low salary levels Congress authorizes for judicial service. Members of the federal judiciary consider the problem so acute that it has become a threat to judicial independence. This subject is a most delicate one and, indeed, is difficult for me to address. It is, however, an urgent matter requiring frank and open exchange of views. Please permit me to make some remarks on the subject.

#### That causes nuclear war

Charles S. Rhyne, Founder and Senior Partner of Rhyne & Rhyne law firm. “Law Day Speech for Voice of America.” May 1, 1958. American Bar Association. http://www.abanet.org/publiced/lawday/rhyne58.html

In these days of soul-searching and re-evaluation and inventorying of basic concepts and principles brought on by the expansion of man’s vision to the new frontiers and horizons of outer space, we want the people of the world to know that we in America have an unshakable belief in the most essential ingredient of our way of life—the rule of law. The law we honor is the basis and foundation of our nation’s freedom and the freedom for the individual which exists here. And to Americans our freedom is more important than our very lives. The rule of law has been the bulwark of our democracy. It has afforded protection to the weak, the oppressed, the minorities, the unpopular; it has made it possible to achieve responsiveness of the government to the will of people. It stands as the very antithesis of Communism and dictatorship. When we talk about “justice” under our rule of law, the absence of such justice behind the Iron Curtain is apparent to all. When we talk about “freedom” for the individual, Hungary is recalled to the minds of all men. And when we talk about peace under law—peace without the bloodbath of war—we are appealing to the foremost desire of all peoples everywhere. The tremendous yearning of all peoples for peace can only be answered by the use of law to replace weapons in resolving international disputes. We in our country sincerely believe that [hu]mankind’s best hope for preventing the tragic consequences of nuclear-satellite-missile warfare is to persuade the nations of the entire world to submit all disputes to tribunals of justice for all adjudication under the rule of law. We lawyers of America would like to join lawyers from every nation in the world in fashioning an international code of law so appealing that sentiment will compel its general acceptance. Man’s relation to man is the most neglected field of study, exploration and development in the world community. It is also the most critical. The most important basic fact of our generation is that the rapid advance of knowledge in science and technology has forced increased international relationships in a shrunken and indivisible world. Men must either live together in peace or in modern war we will surely die together. History teachers that the rule of law has enabled [hu]mankind to live together peacefully within nations and it is clear that this same rule of law offers our best hope as a mechanism to achieve and maintain peace between nations. The lawyer is the technician in man’s relationship to man. There exists a worldwide challenge to our profession to develop law to replace weapons before the dreadful holocaust of nuclear war overtake our people.

\*\*\*[gender paraphrased]

### UQ---Boumediene

#### Boumediene

Neavl Devins 10, Goodrich Professor of Law and Professor of Government, College of William & Mary., Talk Loudly and Carry a Small Stick: The Supreme Court and Enemy Combatants, 12 U. Pa. J. Const. L. 491

A Marked Departure or the Inevitable Next Step: Making Sense of Boumediene v. Bush. In March 2007, the first wave of constitutional challenges to the Military Commission Act made their way to the Supreme Court. n151 At that time, the Justices did not want to reenter this fray and, in April 2007, the Court denied certiorari. Justices Stevens and Kennedy attached a written explanation to the certiorari denial - stating that the Court ought to steer clear of this dispute until enemy combatants had made use of all legal remedies available to them under the congressionally approved military tribunal scheme. n152 This decision is very much consistent with prior Court rulings. The Court preserved a role for itself without formally entering the dispute and second-guessing the adequacy of Military Commission Act procedures.¶ Two months later, the Court reversed course and agreed to rehear the case. n153 This reversal was a marked departure from normal Supreme Court practice. "In the absence of an intervening court decision or some other landscape-changing development," as Linda Greenhouse reported, the Court had only granted such rehearings on two occasions - "one [in] 1930 and the other [in] 1947." n154 In understanding the Court's about-face, there is little question that revelations about the inner-workings of Combatant Status Review Tribunals played a significant role. As discussed in Part I, the Court was presented with documents suggesting that CSRT proceedings were a sham. n155¶ The question remains: Did the Court break from its practice of issuing incremental decisions that did not fundamentally challenge the [\*520] President's enemy combatant initiative? Did Boumediene, unlike earlier rulings, risk national security or elected branch backlash? After all, the Court ruling - unlike earlier decisions - did speak to the constitutional merits of a military tribunal system that denied habeas corpus review to enemy combatants. Concluding that the writ of habeas corpus is an "essential mechanism in the separation-of-powers scheme," an "essential design of the Constitution," and a writ that generally "protects persons [not just] citizens," the Boumediene Court decisively repudiated the Military Commission Act's habeas-stripping provisions. n156¶ For this very reason, Boumediene was seen as "historic" n157 and "among the Court's most important modern statements on the separation of powers." n158 At a minimum, it was seen as the death knell to the military tribunal system championed by President Bush and the Congress that enacted the MCA. Upon closer inspection, however, Boumediene is a far less dramatic, far less consequential decision. While the Court certainly made broad pronouncements about the centrality of habeas corpus and the illegitimacy of the Bush administration campaign to substitute military tribunals for judicial review, the Justices had no reason to think that the practical consequences of their handiwork would meaningfully impede elected officials from pursuing their preferred policy on enemy combatants. Instead, Boumediene seemed more a rebuke of the policies and practices of the outgoing Bush administration, than an effect to fundamentally retool future executive branch practices.¶ When the Court agreed to hear the case, Democrats (who were nearly unanimous in voting against the habeas-stripping provision in the MCA) controlled the Congress. More significant, when the Court decided the case, presumptive presidential candidates Barack Obama and John McCain had both promised to close Guantanamo Bay. n159 In commenting about the decision, Senator McCain - who had voted for the habeas-stripping provision - said the decision "obviously concerns me ... [but I have] always favored closing ... Guantanamo Bay." n160 Needless to say, congressional Democrats, including Senator Barack [\*521] Obama, expressed support for the Court's ruling. n161 Against this backdrop, the Court understood that its decision (issued less than five months before the presidential elections) would not trigger any type of political backlash.¶ For much the same reason, the Court understood that its decision posed few national security risks. The Court said nothing about the President's power to indefinitely detain enemy combatants, nor did the Court detail how habeas proceedings were to be conducted. n162 The Court, moreover, said nothing about the availability of habeas corpus by enemy combatants held outside U.S. soil or at facilities (like Guantanamo) that were under the control of the United States. n163 Assuming that the next administration would close Guantanamo, the decision would only impact governmental practices for a short time. n164 More than that, the Court had been told by the Bush administration that "any reopening of the prisoners' right to habeas would not be swift, but would face a variety of "fundamental and unprecedented issues' complicating that process." n165 In other words, the Court understood that the Bush administration would do everything in its power to slow down the release of enemy combatants during its final months in office. n166 For all these reasons, Boumediene should not be seen as an attempt by the Court to meaningfully transform U.S. policy towards enemy combatants (a decision that might risk national security or prompt an elected government backlash). Instead, Boumediene principally served as a vehicle for the Court to make strong symbolic statements about the judicial power to "say what the law is" and, correspondingly, [\*522] the necessity of the political branches to respect the centrality of habeas corpus limits on governmental power.¶ \* \* \* In November 2008, Boumediene's limited reach seemed secure. Barack Obama (who voted against the MCA and embraced Boumediene) won the presidency and the Democratic party expanded their control of Congress. By the summer of 2009, however, there was reason to question whether Guantanamo would be closed and whether the Obama administration would fully disavow the practices of its predecessor. n167 For its part, the Supreme Court initially steered clear of Obama-era practices. In the spring of 2009, they agreed to moot an ongoing dispute between the executive and an enemy combatant held at a U.S. army base; in the summer of 2009, they refused to act on a certiorari petition by fourteen Chinese Muslim Uighurs (parties to the original Boumediene litigation who had successfully filed a habeas petition but nevertheless remained at Guantanamo). n168 In the fall of 2009, the Court agreed to hear the Uighur petition but delayed oral argument until March 2010 (thereby allowing the Obama administration time to either close Guantanamo or relocate the Uighur petitioners). n169

### 2NC Turns Case

#### Court stripping destroys judicial legitimacy and separation of powers---even unsuccessful backlash can put the entire edifice of judicial review in question

Andrew D. Martin 1, Prof of Political Science at Washington University 2001. Statuatory Battles and Constitutional Wars: Congress and the Supreme Court

But the large policy payoff in the constitutional cases. What does the ability of the President and Congress to attack through overrides or other means constitutional court decisions imply in terms of the cost of the justices bear? If an attack succeeds and the court does not back down, it effectively removes the court from the policy game and may seriously or, even irrevocably harm its reputation, credibility, and legitimacy. Indeed, such an attack would effectively remove the court from policy making, thus incurring an infinite cost. With no constitutional prescription for judicial review, this power is vulnerable, and would be severely damaged if congress and the president were effective in attack on the Court. But even if the attack is unsuccessful, the integrity of the court may be damaged, for the assault may compromise its ability to make future constitutional decisions and, thus, more long-lasting policy. One does not have to peer as far back as scott v. sandford to find examples; Bush v. Gore (2000, U.S.) may provide one. To be sure, the new President and Congress did not attack the decision, but other members of government did of course, unsuccessfully at least in terms of the ruling’s impact. Yet, there seems little doubt that the critics (not to mention the decision itself) caused some major damage to the reputation of the court, the effects of which the justices may feel in the not-so-distant future.

#### The Court has zero legitimacy in foreign affairs cases which means the plan will be ignored---backlash will prompt Congress to question judicial review on domestic issues---that’s obviously way worse for all their modeling advs

Jide Nzelibe 4, Bigelow Fellow and Lecturer in Law, University of Chicago Law School, March, “The Uniqueness of Foreign Affairs,” 89 Iowa L. Rev. 941, Lexis

In many contexts, the courts are reluctant to involve themselves in foreign affairs controversies because of the perceived lack of institutional authoritativeness or legitimacy. The notion that the courts may invoke the doctrine in order to avoid a confrontation with the political branches is not entirely new. Indeed, one of the rationales that Professor Bickel put forth in support of the political question doctrine involved what he described as "the anxiety, not so much that the judicial judgment will be ignored, as that perhaps that it should but will not be ... ." n200 It is worth noting, however, that very little of the commentary has focused on the specific relationship between the substantive nature of foreign affairs and the institutional authoritativeness of the courts.¶ Commentators have largely rejected the "institutional legitimacy" rationale even while acknowledging its explanatory power in certain political question doctrine cases. n201 In essence, most of these commentators argue that the basic fear of being ignored by the political branches cannot justify the abdication of the judicial function in "high stakes" or controversial cases. As explained by Professor Redish, "it is highly unlikely that the dangers of adherence to a decision would be so great as to justify the risk of political backlash that the government's disregard of a Supreme Court decision would entail." n202 If the courts' reluctance to adjudicate on foreign affairs issues were cast as a mere opportunistic retreat from a clash with the political branches, then Professor Redish's concerns would be justified. In the context of the judiciary's limitations in a system of separated powers, however, those concerns seem misplaced.¶ To critics of the political question doctrine, such as Professor Redish, the question is not so much whether the courts have the requisite institutional legitimacy to review foreign affairs matters, but whether they risk diminishing any legitimacy they already possess. n203 These commentators assume as given the judiciary's institutional authoritativeness to rule on any [\*988] legal matter that comes before it. n204 That assumption is wrong. Rather than presuppose the judiciary's legitimacy to exercise a particular function, the proper analysis should focus on the source of the courts' institutional legitimacy to engage in judicial review generally, and then to ask whether such institutional legitimacy extends to foreign affairs cases. As demonstrated below, one significant misgiving that the courts may have about reviewing cases involving foreign affairs is that they simply lack the requisite institutional legitimacy to address these foreign affairs issues.¶ For the past two decades, the Supreme Court and commentators have examined, in great detail, the basis of the institutional legitimacy of courts. Social scientists like Tom Tyler and Gregory Mitchell have drawn upon extensive empirical evidence to demonstrate that courts, like other political institutions, "[need] a mandate entitling [them] to undertake the resolution of a controversial public policy issue." n205 In the absence of such a mandate, these commentators conclude that the courts will lack the requisite authoritativeness that ensures public compliance with judicial decisions. n206 Walter Murphy and Joseph Tanenhaus have offered similar arguments, suggesting that public consensus is integral to the judiciary's legitimacy: "In a political system ostensibly based on consent, the Court's legitimacy ... must ultimately spring from public acceptance ... of its various roles." n207 In Planned Parenthood of Pennsylvania v. Casey, n208 a plurality of the Supreme Court explicitly endorsed this theory of its institutional legitimacy. "The Court's power lies ... in its legitimacy, a product of substance and perception that shows itself in the people's acceptance of the Judiciary as fit to determine what the Nation's law means and to declare what it demands." n209¶ In the context of domestic affairs, the Court draws its legitimacy largely from its mandate to resolve issues related to protecting constitutional rights of individuals and underrepresented groups. n210 The Casey plurality concluded that the courts are able to sustain this legitimacy by "making legally principled decisions under circumstances in which their principled character is sufficiently plausible to be accepted by the Nation." n211 In addition to general public support of the courts, the political branches also [\*989] have an incentive to acquiesce to the judiciary's institutional role of judicial review. Judicial review serves as an important legitimating function for the activities of the political branches. As Professor Choper explains, this legitimating function is "critically important for national unity; that public knowledge that an independent tribunal has approved political assumptions of authority adds dignity to the laws of the central government and inspires confidence that it is acting within its constitutional limited boundaries." n212 In any event, although the scope of such review may be subject to debate, the courts nonetheless enjoy a general presumption of legitimacy when they adjudicate on domestic constitutional questions. There is no reason to assume, however, that this presumption of legitimacy extends to foreign affairs cases.¶ In the context of foreign affairs, the political branches have little need for the judiciary's legitimating function. More importantly, the courts seem to understand their limited utility in constitutional foreign affairs disputes. One commentator has used the metaphor of a "faustian bargain" to describe this understanding between the courts and the political branches in foreign affairs. n213 In this bargain, the judiciary essentially ceded the power to review foreign affairs issues in return for an understanding that the political branches would consent to its authority to review domestic constitutional issues. n214 While the metaphor of a faustian bargain may seem like an overstatement, it nonetheless captures the underpinnings of the longstanding historical relationship between the political branches and the Supreme Court regarding the allocation of constitutional authority. n215 From an institutional perspective, the political branches do not seem to have much to gain by acquiescing to judicial oversight in foreign affairs. Unlike legal controversies in the domestic realm, the political branches do not seem to have any need for an impartial tribunal to dispense judgments regarding the scope of their foreign affairs activities. This observation is especially true when such activities take place in an international realm where nation states [\*990] do not always abide by the norms of international law and where there is no centralized decision-making authority. In that realm, the political branches may decide to act of a legal obligation in certain contexts, but not in others. Understandably, in many disputes involving foreign affairs issues, the government has usually asked the courts to abstain from reviewing any foreign affairs issue brought before them rather than request a particular outcome on the merits. n216¶ Unlike in domestic constitutional controversies, it is also doubtful that the judiciary can draw on the popular underpinnings of its legitimacy should the political branches ignore its foreign affairs determinations. As one commentator has explained, the public appetite for judicial involvement in international issues is not particularly strong. n217 The judiciary's lack of popular legitimacy in foreign affairs is particularly understandable when the relevant controversy touches on matters of national security. As demonstrated above, in matters involving the domestic operations of the government, the court plays an important role in legitimizing the activities of the other branches, as well as providing a reliable mechanism for the resolution of disputes between private individuals. When matters touch on the very existence of the state, however, such as when the state faces an external threat, the justifications for judicial involvement correspondingly diminish. n218 Thus, far from getting popular support in the event of a confrontation with the political branches, it is more likely that the courts will face public criticism for intervening improperly in foreign affairs or jeopardizing national security.¶ Interestingly, the judiciary's perceived lack of institutional authority to adjudicate foreign affairs controversies is not unique to the U.S. experience. As one commentator has observed, judicial timidity on foreign affairs issues is commonplace among other national legal systems. n219 This commentator correctly attributes this judicial apprehension to the fact that the political branches have no "incentive to bestow legitimacy on an international legal system, in which their state is only one actor among numerous actors, many of whom do not face judicial restrictions." n220

### 2NC Link / UQ

#### The SQ is goldilocks---it carves out enough room for judicial review of War Powers to solve Court influence, but doesn’t impose any meaningful checks on the Executive so it allows for flexibility---the plan sends a signal of judicial over-reach that causes political blowback

Neavl Devins 10, Goodrich Professor of Law and Professor of Government, College of William & Mary., Talk Loudly and Carry a Small Stick: The Supreme Court and Enemy Combatants, 12 U. Pa. J. Const. L. 491

In Part III of this Essay, I will argue that the Court's actions in the first year of the Obama administration are cut from the same cloth as its decision to intervene in Bush-era disputes. As this section has suggested, the Court has never risked national security or executive branch non-acquiescence in its enemy combatant decision making. Moreover, as I argued in Part I, Court decision making in this area has largely tracked social and political forces. For reasons I will now detail, the Court's decisions both to steer clear of this issue in the spring and summer of 2009 and its fall 2009 decision to hear the Uighur petition match past Court practices. Throughout the enemy combatant dispute, the Court has found ways to expand its authority without risking an institutionally costly backlash.¶ III. Conclusion: The Past Is Prologue¶ Supreme Court interventions in the enemy combatant disputes never pushed the limits of what was acceptable to the political [\*523] branches of government. The Court, instead, maximized its authority by moving incrementally and expanding judicial power in ways generally acceptable to the political branches. This was true of Bush-era decision making and there is no reason to think that the Court will depart from past practices during the Obama administration.¶ Consider, for example, the Court's March 2009 decision to back away from a case involving Bush administration efforts to detain a legal resident without charges. After agreeing - in December 2008 - to hear a challenge to the Bush administration's detention of Ali Saleh Kahlah al-Marri at a South Carolina Navy brig, the Court sided with the Obama administration and removed the case from its docket. n170 The administration had claimed the case was moot because - in February 2009 - it formally filed federal criminal charges against al-Marri (so that he would be tried in federal court and not held indefinitely at a military base). n171 Mr. Marri's lawyers objected, arguing (unsuccessfully) that the administration could subsequently relocate him to a military base and, consequently, the Court should still resolve his legal challenge. n172¶ The Court's decisions to hear and then moot al-Marri are readily understandable. The Fourth Circuit had upheld the Bush administration in al-Marri and - when agreeing to hear the case - the Justices had good reason to slap down the Bush administration for their continuing efforts to sidestep federal court review over enemy combatant policy-making. Not only had the Court taken a strong stand in favor of judicial review in Boumediene and other decisions, but the November 2008 election of Barack Obama and the Democratic Congress further solidified the Court's position with elected officials and the American people. And, with none of the eighteen amicus briefs in the case supporting the Bush administration, n173 a Court ruling against [\*524] Bush administration actions would have further buoyed the Court's status with academics and other interest groups. By March 2009, however, there was no good reason to ask the new administration to sort out its views on the al-Marri detention. Candidate Obama had campaigned against the Bush administration efforts to fence out federal courts from war-on-terror litigation. Indeed, when asking the Court to moot the case, the Obama administration told the Justices that it was willing to have the Fourth Circuit ruling vacated (showing "that the government is not attempting to preserve its victory while evading review"). n174 Against this backdrop, there was simply no reason for the Justices to force the Obama administration to formally disavow or embrace Bush administration legal arguments. An Obama administration decision disavowing Bush administration arguments would not strengthen the Court's position vis-a-vis the executive (as the Obama Justice Department had already conceded the Court's authority to vacate the lower court ruling); an administration decision supporting Bush administration arguments would set the stage for a costly battle between the Court and the new administration. A decision on the merits, moreover, would have opened the Court up to charges of judicial over-reaching. In its brief seeking to moot al-Marri, the government argued that keeping the case alive "would lead only to an advisory opinion with no real-world impact on any individual" and that the Court should not reach out to decide "in a hypothetical posture" "complex constitutional questions" about the line where "national security policy and the Constitution intersect." n175¶ The Court's participation in Kiyemba likewise displays the Court's sensitivity to its status vis-a-vis the other branches and to the risks of unnecessarily interjecting itself in national security policy. This was true of both the June 2009 decision to hold over the appeal of the Uighur petitioners and the October 2009 decision to hear the case (but to schedule oral arguments so as to delay any decision until the summer of 2010). n176¶ June 2009 was too early for the Court to enter this dispute. Even though petitioners cast the case as an opportunity for the Court to defend its turf (suggesting that Boumediene had become an empty shell and it was up to the Court to give meaning to the decision), n177 [\*525] the Court well understood the costs of entering this dispute. At that time, the Obama administration and Democratic Congress were sorting out their policy priorities on Guantanamo, Bagram detainees, and much more. Correspondingly, the Court had reason to think that a ruling demanding the relocation of Uighur detainees to the United States would not sit well with either the administration or Congress. Not only did the Obama administration oppose the relocation of the Uighurs to the United States, n178 Congress enacted legislation in June 2009 that severely limited the President's power to move Guantanamo detainees to the United States or resettle them in another country. n179¶ By holding the issue over, however, the Court gave the Obama administration time both to sort out its policy priorities and to relocate the Uighur detainees (and, in so doing, to try to moot the case). n180 In its brief opposing certiorari, the Obama administration made clear that it was trying both to close Guantanamo and to relocate the Uighur petitioners and asked the Court to respect the "efforts of the political Branches to resolve issues relating to petitioners and other individuals located at Guantanamo Bay." n181 Furthermore, the decision to hold the case over bought the Court time to see how the enemy combatant issue would play out among politicians, interest groups, the media, and the American people. As Part I reveals, Court enemy combatant decisions track social and political forces. As Part II reveals, the Court has moved incrementally - advancing its authority to say "what the law is" without risking backlash or national security.¶ The Court's October 2009 decision to hear Kiyemba does not break from this pattern. By scheduling oral arguments for spring 2009, the Court both provided elected government with additional time to settle this issue and provided itself with an opportunity to calibrate its decision making against the backdrop of elected government action and other subsequent developments. n182 More than that, [\*526] since Boumediene only decided the threshold issue that enemy combatants were entitled to habeas corpus relief, Kiyemba is a good vehicle for the Court to provide some details on how habeas proceedings should be conducted. In particular, there is little prospect that the decision will impact the rights on many Guantanamo detainees. By the summer of 2010, Guantanamo may be closed; if not, most detainees who prevail in habeas proceedings are likely to have been relocated to another country. Moreover, Kiyemba raises a quite narrow issue, namely, whether federal courts can mandate that Guantanamo detainees be relocated to the United States if no foreign nation will take them. n183 In other words, there is next to no prospect that Kiyemba will result in the type of scrutinizing judicial review that might raise national security risks (assuming, of course, that the Court will rule against the administration). Instead, Kiyemba seems likely to further tighten judicial control over the executive - but only in a very modest way.¶ Throughout the course of its enemy combatant decision making, the Court has moved incrementally. In so doing, the Court has expanded its authority vis-a-vis the President. Obama administration efforts to moot al-Marri and to relocate Uighur detainees (thereby mooting that litigation) speak to the administration's desire to avoid Supreme Court rulings that might limit the scope of presidential power. Unlike the Bush administration (whose politically tone deaf arguments paved the way for anti-administration rulings), n184 the Obama administration understands that the Court has become a player in the enemy combatant issue.¶ What is striking here, is that the Court never took more than it could get - it carved out space for itself without risking the nation's security or political backlash. Its 2004 and 2006 rulings provided ample opportunity for the President to pursue his enemy combatant initiative. Its 2008 ruling in Boumediene, while clearly constraining the political branches, reflected the views of the new Democratic majority in Congress and (to a lesser extent) the views of presidential candidates Obama and McCain. n185 Its decision to steer clear of early Obama-era [\*527] disputes likewise avoids the risks of a costly backlash while creating incentives for the Obama administration to take judicial authority into account (by settling these cases outside of court). n186 Put another way, by taking prevailing social and political forces into account, the Court was able to flex its muscles without meaningfully undermining the policy preferences of the President and Congress.¶ I, of course, recognize that the Court's willingness to engage the executive and, in so doing, to nullify a signature campaign of the Bush administration, is a significant break from the judiciary's recent practice of steering clear of disputes tied to unilateral presidential war making. n187 At the same time, I see the Court's willingness to challenge, and not defer, as not at all surprising. The Bush administration made arguments that backed the Court into a corner. The Court could either bow at the altar of presidential power, or it could find a way to slap the President down. It is to be expected that the Court chose to find a way to preserve its authority to "say what the law is." n188 The Justices, after all, have incentives to preserve the Court's role in our system of checks and balances - especially when their decisions enhance their reputations with media and academic elites. n189 This is true of the Supreme Court in general, and arguably more true of the current Court - given its penchant to claim judicial supremacy and given the importance of these institutional concerns to the Court's so-called swing Justices. n190 It is also noteworthy that the enemy combatant cases were at the very core of the judicial function. At oral arguments in Hamdan, Justice Kennedy emphasized the importance of habeas corpus relief, n191 suggesting that limitations on habeas relief would "threaten[] the status of the judiciary as a co-equal partner of the legislature and the executive." n192¶ [\*528] One final comment on the nature of the dialogue that took and is taking place between the three branches on the enemy combatant issue: Throughout the Bush-era, these cases were anything but a constitutional dialogue. The executive persisted in making the same argument, and, as its political fortunes diminished, the Court carved over more and more issue space for itself. For its part, the Bush-era Congress played no meaningful role - it simultaneously backed the executive while signaling to the Court that it would support judicial invalidation of executive initiatives. With a new administration in place, there is reason to think that the inter-branch dynamic will change. The Obama administration has advanced its policies while pursuing a less confrontational course; avoiding absolutist arguments and trying to steer clear of an adverse Supreme Court ruling. In so doing, the administration has yet to launch the type of broadsides that challenge the foundations of judicial authority. Up until now, the Court has responded in kind, leaving the administration breathing room to pursue its policies without a Supreme Court pronouncement on the scope of presidential power. It is a matter of pure speculation whether this pattern will continue. At the same time, there is good reason to think that the Court will follow the path it has laid down in Bush-era cases, taking social and political forces into account so as to protect its turf without risking national security or elected government backlash.

#### The Court’s only pursuing minimalist War on Terror Rulings now that are in line with the dominant political consensus---only the plan forces a change in executive policy that risks tangible backlash

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What a difference a year makes. In the summer of 2008, the Bush administration campaign to defend its enemy combatant policies lay in shreds. The Supreme Court had ruled against the administration's initiative in 2004, 2006, and 2008 - decisions that had been characterized as "the most important decisions on presidential power and the rule of law ever," n1 (Walter Dellinger), "a disaster for the war effort," n2 (Robert H. Bork and David B. Rivkin, Jr.), and "a historic rebuke to the Bush administration," n3 (The Washington Post). The 2004 and 2006 rulings declared that Guantanamo Bay detentions were subject to federal court review and that the administration could not unilaterally pursue its enemy combatant policies. In 2008, the Court ruled in Boumediene v. Bush that neither Congress nor the President could strip the federal courts of jurisdiction to hear Guantanamo habeas petitions. n4 Making matters worse, with presidential candidates Barack Obama and John McCain both agreeing that Guantanamo should be closed, the Bush administration's initiative seemed a political as well as a legal casualty. n5¶ [\*492] One year later, the landmark billing of these rulings seems suspect. Next-to-no detainees had been released from Guantanamo. Even though thirty detainees have prevailed in habeas proceedings, n6 the Obama administration argued that these individuals do not have a "constitutional right to enter the United States." n7 Instead, these individuals were to remain in Guantanamo "in a non-enemy combatant status" until they or the administration could locate a country for them to return to. n8 Further ensuring that Guantanamo detainees would remain at Guantanamo, the Democratic Congress enacted spending legislation blocking the closing of the facility. n9 And, in a related development, the Obama administration backed Bush administration efforts to end-run Boumediene by bringing captured detainees to Bagram, Afghanistan - claiming that, unlike combatants held at the United States base on Guantanamo Bay, "military detainees [held] in Afghanistan have no legal right to challenge their imprisonment there." n10¶ Responding to these developments, lawyers for Guantanamo detainees went back to the well - returning to the Supreme Court to challenge both Obama administration practices and the federal spending law. n11 Having prevailed both before the Supreme Court in [\*493] Boumediene and in subsequent habeas hearings, these litigants declared: "Something has gone awry... ." n12 "The Judicial Branch may hold hearings; it may even issue vague and unenforceable exhortations to diplomacy. But that is all. It has become the hortatory branch." n13 Initially, the Court did not bite. Notwithstanding the urgency of petitioners' request, the Court held the case over for its 2009-2010 term.¶ In October 2009, the Court granted certiorari in the case Kiyemba v. Obama. n14 By this time, however, the Court's action received comparatively little attention - both in the mainstream press and in legal blogs. n15 Unlike Bush-era cases (where the Court was seen as invalidating critically important presidential initiatives), Kiyemba was depicted as a low stakes gambit by the Court. In part, no one thought the case would meaningfully alter administration policies. The Obama administration remains committed to closing Guantanamo n16 and, in September 2009, the administration reversed court on Bagram detainees - allowing detainees to see evidence, call witnesses, and much more. n17 Furthermore, as several news stories noted, the case would [\*494] directly impact few, if any, detainees. n18 By waiting until October to grant certiorari in the case, the Court deferred oral arguments (and a decision) until the end of its 2009-2010 term. By that time, the administration may seek to moot the case by either shutting down Guantanamo or relocating all petitioners. n19¶ Without question, there are very real differences between the factual contexts of Kiyemba and Bush-era cases. These differences, however, do not account for the striking gap between accounts of Kiyemba as likely inconsequential and Bush-era cases as "the most important decisions" on presidential power "ever." n20 In the pages that follow, I will argue that Kiyemba is cut from the same cloth as Bush-era enemy combatant decision making. Just as Kiyemba will be of limited reach (at most signaling the Court's willingness to impose further limits on the government without forcing the government to meaningfully adjust its policymaking), Bush-era enemy combatant cases were modest incremental rulings. Notwithstanding claims by academics, opinion leaders, and the media, Supreme Court enemy combatant decision making did not impose significant rule of law limits on the President and Congress. Bush-era cases were certainly consequential, but they never occupied the blockbuster status that so many (on both the left and the right) attributed to them. Throughout the course of the enemy combatant dispute, the Court has never risked its institutional capital either by issuing a decision that the political branches would ignore, or by compelling the executive branch to pursue policies that created meaningful risks to national security. The Court, instead, took limited risks to protect its turf and assert its power to "say what the law is." That was the Court's practice during the Bush years, and it is the Court's practice today.¶ [\*495] My argument will proceed in three parts. First, I will argue that Bush-era enemy combatant decisions were anything but counter-majoritarian. These decisions tracked larger social and political forces. These decisions, moreover, were hugely popular with newspapers, academics, and other elite audiences (audiences that matter a great deal to centrist Justices). Second, contrary to media and academic portrayals of these cases as bold, decisive, and consequential, Bush-era decisions were truly incremental. The 2004 and 2006 decisions placed few meaningful demands on the administration; Boumediene was decided at a moment in time when the Court had good reason to think that the political process was well on its way to closing Guantanamo (so that constitutionally mandated habeas hearings would be symbolically consequential but of little practical import). Third, I will extend my analysis of Bush-era cases to the Obama era. In particular, I will explain why today's Court has no institutional incentive to place meaningful limits on Obama administration policymaking. Even though the Court may rule against the government in Kiyemba, there is no reason to think that it will check the President in ways that will severely constrain elected branch priorities (priorities, incidentally, that include the closing of Guantanamo and the imposition of some rule of law norms in detainee cases). n21 In making this point, I will draw a fairly obvious connection between Bush administration missteps in advancing an overly aggressive view of inherent presidential war-making power and the Court's efforts to expand power by speaking loudly but, ultimately, asking for very little.

### CMR

#### No impact – empirics prove

Feaver and Kohn 5 - Peter Feaver, professor of Political Science and Public Policy and the director of the Triangle Institute for Security Studies at Duke University, and Richard H. Kohn, Professor of History at the University of North Carolina, 2005, “The Gap: Soldiers, Civilians, and Their Mutual Misunderstanding,” in American Defense Policy, 2005 edition, ed. Paul J. Bolt, Damon V. Coletta, Collins G. Shackelford, p. 339

Concerns about a troublesome divide between the armed forces and the society they serve are hardly new and in fact go back to the beginning of the Republic. Writing in the 1950s, Samuel Huntington argued that the divide could best be bridged by civilian society tolerating, if not embracing, the conservative values that animate military culture. Huntington also suggested that politicians allow the armed forces a substantial degree of cultural autonomy. Countering this argument, the sociologist Morris Janowitz argued that in a democracy, military culture necessarily adapts to changes in civilian society, adjusting to the needs and dictates of its civilian masters.2 The end of the Cold War and the extraordinary changes in American foreign and defense policy that resulted have revived the debate. The contemporary heirs of Janowitz see the all volunteer military as drifting too far away from the norms of American society, thereby posing problems for civilian control. They make tour principal assertions. First, the military has grown out of step ideologically with the public, showing itself to be inordinately right-wing politically, and much more religious (and fundamentalist) than America as a whole, having a strong and almost exclusive identification with the Republican Party. Second, the military has become increasingly alienated from, disgusted with, and sometimes even explicitly hostile to, civilian culture. Third, the armed forces have resisted change, particularly the integration of women and homosexuals into their ranks, and have generally proved reluctant to carry out constabulary missions. Fourth, civilian control and military effectiveness will both suffer as the military—seeking ways to operate without effective civilian oversight and alienated from the society around it—loses the respect and support of that society. By contrast, the heirs of Huntington argue that a degenerate civilian culture has strayed so far from traditional values that it intends to eradicate healthy and functional civil-military differences, particularly in the areas of gender, sexual orientation, and discipline. This camp, too, makes four key claims. First, its members assert that the military is divorced in values from a political and cultural elite that is itself alienated from the general public. Second, it believes this civilian elite to be ignorant of, and even hostile to, the armed forces—eager to employ the military as a laboratory for social change, even at the cost of crippling its warfighting capacity. Third, it discounts the specter of eroding civilian control because it sees a military so thoroughly inculcated with an ethos of subordination that there is now too much civilian control, the effect of which has been to stifle the military's ability to function effectively Fourth, because support for the military among the general public remains sturdy, any gap in values is inconsequential. The problem, if anything, is with the civilian elite. The debate has been lively (and inside the Beltway, sometimes quite vicious), but it has rested on very thin evidence—(tunneling anecdotes and claims and counterclaims about the nature of civilian and military attitudes. Absent has been a body of systematic data exploring opinions, values, perspectives, and attitudes inside the military compared with those held by civilian elites and the general public. Our project provides some answers.

### Bioweapons

#### Attack would fail

Mueller 6 - John Mueller, Professor of Political Science and International Relations at Ohio State, 06, Overblown p. 20-22

Properly developed and deployed, biological weapons could indeed, if thus far only in theory, kill hundreds of thousands, perhaps even mil­lions of people. The discussion remains theoretical because biological weapons have scarcely ever been used. **Belligerents have eschewed such weapons with good reason: they are extremely difficult to deploy and to control.** Terrorist groups or rogue states may be able to solve such problems in the future with advances in technology and knowledge, but, notes scientist Russell **Seitz**, while bioterrorism may look easy on paper, ''the learning curve is lethally steep in practice." The record so far is unlikely to be very encouraging. For example, Japan reportedly infected wells in Manchuria and bombed several Chinese cities with plague-infested fleas before and during World War II. These ventures (by a state, not a terrorist group) may have killed thousands of Chinese, but they apparently also caused considerable unintended casualties among Japanese troops and seem to have had little military impact.20

For the most destructive results, biological weapons need to be dis­persed in very low-altitude aerosol clouds. Because aerosols do not appreciably settle, pathogens like anthrax (which is not easy to spread or catch and is not contagious) would probably have to be sprayed near nose level. Moreover, 90 percent of the microorganisms are likely to die during the process of aerosolization, and their effectiveness could be reduced still further by sunlight, smog, humidity, and temperature changes. Explosive methods of dispersion may destroy the organisms, and, except for anthrax spores, long-term storage of lethal organisms in bombs or warheads is difficult: even if refrigerated, most of the organ­isms have a **limited lifetime**. The effects of such weapons can take days or weeks to have full effect, during which time they can be countered with medical and civil defense measures. And their impact is very diffi­cult to predict; in combat situations they may spread back onto the attacker. In the judgment of two careful analysts, delivering microbes and toxins over a wide area in the form most suitable for inflicting mass casualties—as an aerosol that can be inhaled—-requires a delivery system whose development "would outstrip the technical capabilities of all but the most sophisticated terrorist." Even then effective dispersal could easily be disrupted by unfavorable environmental and meteoro­logical conditions.21

After assessing, and stressing, the difficulties a nonstate entity would find in obtaining, handling, growing, storing, processing, and dispersing lethal pathogens effectively, biological weapons expert Milton Leiten-berg compares Ms conclusions with glib pronouncements in the press about how biological attacks can be pulled off by anyone with "a little training and a few glass jars," or how it would be "about as difficult as producing beer." He sardonically concludes, ''The less the commenta­tor seems to know about biological warfare the easier he seems to think the task is."

#### They don’t cause mass destruction

O’Neill 4O’Neill 8/19/2004 [Brendan, “Weapons of Minimum Destruction” http://www.spiked-online.com/Articles/0000000CA694.htm]

David C Rapoport, professor of political science at University of California, Los Angeles and editor of the Journal of Terrorism and Political Violence, has examined what he calls 'easily available evidence' relating to the historic use of chemical and biological weapons. He found something surprising - such weapons do not cause mass destruction. Indeed, whether used by states, terror groups or dispersed in industrial accidents, they tend to be far less destructive than conventional weapons. 'If we stopped speculating about things that might happen in the future and looked instead at what has happened in the past, we'd see that our fears about WMD are misplaced', he says. Yet such fears remain widespread. Post-9/11, American and British leaders have issued dire warnings about terrorists getting hold of WMD and causing mass murder and mayhem. President George W Bush has spoken of terrorists who, 'if they ever gained weapons of mass destruction', would 'kill hundreds of thousands, without hesitation and without mercy' (1). The British government has spent £28million on stockpiling millions of smallpox vaccines, even though there's no evidence that terrorists have got access to smallpox, which was eradicated as a natural disease in the 1970s and now exists only in two high-security labs in America and Russia (2). In 2002, British nurses became the first in the world to get training in how to deal with the victims of bioterrorism (3). The UK Home Office's 22-page pamphlet on how to survive a terror attack, published last month, included tips on what to do in the event of a 'chemical, biological or radiological attack' ('Move away from the immediate source of danger', it usefully advised). Spine-chilling books such as Plague Wars: A True Story of Biological Warfare, The New Face of Terrorism: Threats From Weapons of Mass Destruction and The Survival Guide: What to Do in a Biological, Chemical or Nuclear Emergency speculate over what kind of horrors WMD might wreak. TV docudramas, meanwhile, explore how Britain might cope with a smallpox assault and what would happen if London were 'dirty nuked' (4). The term 'weapons of mass destruction' refers to three types of weapons: nuclear, chemical and biological. A chemical weapon is any weapon that uses a manufactured chemical, such as sarin, mustard gas or hydrogen cyanide, to kill or injure. A biological weapon uses bacteria or viruses, such as smallpox or anthrax, to cause destruction - inducing sickness and disease as a means of undermining enemy forces or inflicting civilian casualties. We find such weapons repulsive, because of the horrible way in which the victims convulse and die - but they appear to be less 'destructive' than conventional weapons. 'We know that nukes are massively destructive, there is a lot of evidence for that', says Rapoport. But when it comes to chemical and biological weapons, 'the evidence suggests that we should call them "weapons of minimum destruction", not mass destruction', he says. Chemical weapons have most commonly been used by states, in military warfare. Rapoport explored various state uses of chemicals over the past hundred years: both sides used them in the First World War; Italy deployed chemicals against the Ethiopians in the 1930s; the Japanese used chemicals against the Chinese in the 1930s and again in the Second World War; Egypt and Libya used them in the Yemen and Chad in the postwar period; most recently, Saddam Hussein's Iraq used chemical weapons, first in the war against Iran (1980-1988) and then against its own Kurdish population at the tail-end of the Iran-Iraq war. In each instance, says Rapoport, chemical weapons were used more in desperation than from a position of strength or a desire to cause mass destruction. 'The evidence is that states rarely use them even when they have them', he has written. 'Only when a military stalemate has developed, which belligerents who have become desperate want to break, are they used.' (5) As to whether such use of chemicals was effective, Rapoport says that at best it blunted an offensive - but this very rarely, if ever, translated into a decisive strategic shift in the war, because the original stalemate continued after the chemical weapons had been deployed. He points to the example of Iraq. The Baathists used chemicals against Iran when that nasty trench-fought war had reached yet another stalemate. As Efraim Karsh argues in his paper 'The Iran-Iraq War: A Military Analysis': 'Iraq employed [chemical weapons] only in vital segments of the front and only when it saw no other way to check Iranian offensives. Chemical weapons had a negligible impact on the war, limited to tactical rather than strategic [effects].' (6) According to Rapoport, this 'negligible' impact of chemical weapons on the direction of a war is reflected in the disparity between the numbers of casualties caused by chemicals and the numbers caused by conventional weapons. It is estimated that the use of gas in the Iran-Iraq war killed 5,000 - but the Iranian side suffered around 600,000 dead in total, meaning that gas killed less than one per cent. The deadliest use of gas occurred in the First World War but, as Rapoport points out, it still only accounted for five per cent of casualties. Studying the amount of gas used by both sides from1914-1918 relative to the number of fatalities gas caused, Rapoport has written: 'It took a ton of gas in that war to achieve a single enemy fatality. Wind and sun regularly dissipated the lethality of the gases. Furthermore, those gassed were 10 to 12 times as likely to recover than those casualties produced by traditional weapons.' (7) Indeed, Rapoport discovered that some earlier documenters of the First World War had a vastly different assessment of chemical weapons than we have today - they considered the use of such weapons to be preferable to bombs and guns, because chemicals caused fewer fatalities. One wrote: 'Instead of being the most horrible form of warfare, it is the most humane, because it disables far more than it kills, ie, it has a low fatality ratio.' (8) 'Imagine that', says Rapoport, 'WMD being referred to as more humane'. He says that the contrast between such assessments and today's fears shows that actually looking at the evidence has benefits, allowing 'you to see things more rationally'. According to Rapoport, even Saddam's use of gas against the Kurds of Halabja in 1988 - the most recent use by a state of chemical weapons and the most commonly cited as evidence of the dangers of 'rogue states' getting their hands on WMD - does not show that unconventional weapons are more destructive than conventional ones. Of course the attack on Halabja was horrific, but he points out that the circumstances surrounding the assault remain unclear. 'The estimates of how many were killed vary greatly', he tells me. 'Some say 400, others say 5,000, others say more than 5,000. The fighter planes that attacked the civilians used conventional as well as unconventional weapons; I have seen no study which explores how many were killed by chemicals and how many were killed by firepower. We all find these attacks repulsive, but the death toll may actually have been greater if conventional bombs only were used. We know that conventional weapons can be more destructive.' Rapoport says that terrorist use of chemical and biological weapons is similar to state use - in that it is rare and, in terms of causing mass destruction, not very effective. He cites the work of journalist and author John Parachini, who says that over the past 25 years only four significant attempts by terrorists to use WMD have been recorded. The most effective WMD-attack by a non-state group, from a military perspective, was carried out by the Tamil Tigers of Sri Lanka in 1990. They used chlorine gas against Sri Lankan soldiers guarding a fort, injuring over 60 soldiers but killing none. The Tamil Tigers' use of chemicals angered their support base, when some of the chlorine drifted back into Tamil territory - confirming Rapoport's view that one problem with using unpredictable and unwieldy chemical and biological weapons over conventional weapons is that the cost can be as great 'to the attacker as to the attacked'. The Tigers have not used WMD since.

### ILaw

#### Prefer our evidence---all their scholarship rests on unproven assertions about the capacity and willingness of the Courts to restrain the Executive

Daniel Abebe & Eric A. Posner 11, Assistant Professor and Kirkland & Ellis Professor, University of Chicago Law School, The Flaws of Foreign Affairs Legalism, 51 Va. J. Int'l L. 507

Scholarship on foreign affairs law - the body of law, mainly constitutional, that governs the foreign affairs of the United States - reflects a striking divide between the courts and the academy. In the courts, the dominant judicial approach to foreign affairs law is "executive primacy" - the view that judges should defer to the executive's judgments about foreign affairs. n1 In the academy, the dominant approach is what we will call "foreign affairs legalism." Foreign affairs legalism holds that courts should impose more restrictions on the executive than they have in the past or that Congress should play a greater role in foreign affairs. This normative argument rests on two usually implicit descriptive premises: that courts and Congress have the capacity and motivation to restrain the executive, and that the courts and Congress will do so for the sake of promoting international law.

This disjunction between academic and judicial thought matters today more than it ever did in the past. The conflict with al Qaeda has generated an enormous quantity of jurisprudence, including some cases that reflect a new legalist sensibility in tension with the old commitment to executive primacy. n2 Globalization has produced more cross-border conflicts involving trade, migration, human rights, and investment - and the debate between executive primacy and foreign affairs legalism will help determine how courts handle these conflicts.

[\*509] Despite its prominence in the academy, there is no official school of foreign affairs legalism; no single scholar explicitly defends it. Much of the foreign affairs scholarship of the last twenty years advances this account, however; but the problem is that the argument is mostly implicit. In this Article, our minimal goal is to tease out the distinctive empirical and normative assumptions of foreign affairs legalism. We also argue, more ambitiously, that foreign affairs legalism rests on unproven and inaccurate assumptions about the capacities and motivations of courts and the executive, and it reflects confusion about the nature of international law. Of particular importance, foreign affairs legalists falsely assume that the judiciary seeks to advance international law while the executive seeks to limit it.

#### No chance the Courts enforce I-Law

Daniel Abebe & Eric A. Posner 11, Assistant Professor and Kirkland & Ellis Professor, University of Chicago Law School, The Flaws of Foreign Affairs Legalism, 51 Va. J. Int'l L. 507

Foreign affairs legalists make sweeping claims about the American judiciary's promotion of international law, but the support for these claims is weak. In this section, we discuss some examples of contributions to international law by Congress, the courts and the executive. We then evaluate the institutional capacities and incentives of the different branches to promote international law. As we will show, the evidence points to the executive, not the judiciary, as the branch most responsible for advancing international law.

[\*528]

1. The American Judiciary's Contribution to International Law

Foreign affairs legalists celebrate the American judiciary's contributions to international law, but they can only point to a few concrete accomplishments. A handful of judge-made doctrines put limited pressure on the political branches to comply with international law. For example, the Charming Betsy canon makes it more difficult for Congress to pass a statute that violates international law by requiring Congress to be clearer than it would otherwise be. n101 International comity rules, in limited circumstances, avoid violations of international jurisdictional law that suggest that certain types of disputes are best resolved in the state with the most contacts to the litigation. n102 The federal courts' admiralty jurisprudence has developed in tandem with admiralty cases in other states, and in this way it could be considered a contribution to international law. One could also point to the willingness of the federal courts to suspend federalism constraints in order to enforce treaties in cases like Missouri v. Holland, n103 but these cases are weak and inconsistent. n104

Moreover, the empirical literature regarding the judiciary's support of international law is thin. Benvenisti cites a handful of cases that suggest that national courts - mainly in developing countries - have used international law in an effort to constrain their executives. n105 Koh also cites a very small number of cases n106 - his best examples are American ATS cases, which we discuss below. n107 Slaughter rests much of her argument on the rise of international judicial conferences, where judges from different countries meet and exchange ideas. n108 She does not provide evidence that these conferences have affected judicial outcomes. Another possibility is that judges enjoy meeting each other and learning about foreign judicial decisions, but they do not, as a matter of pragmatics or principle, allow what they learn to affect the way that they decide cases. n109

In contrast, many court decisions and judge-made doctrines cut against the claims of foreign affairs legalism. The early decision in Foster [\*529] v. Neilson n110 to distinguish between self-executing and non-self-executing treaties, n111 recently reaffirmed in Medellin v. Texas, n112 ensures that many treaties cannot be judicially enforced. These rules have been reinforced by the reluctance to find judicially enforceable rights even in treaties that are self-executing. The tradition of executive deference also limits the judiciary's ability to contribute to international law. The judiciary generally follows the executive's lead instead of pushing the executive toward greater international engagement. In treaty interpretation cases, courts frequently defer to the executive. n113

On questions of international law - the area most important to foreign affairs legalists - the judiciary's record is poor. In the notable federal common law case The Paquete Habana, n114 the Supreme Court made clear that the executive could unilaterally decide that the United States would not comply with CIL, in which case the victims of the legal violation would have had no remedy. n115 Courts have held that both the executive and Congress have the authority to violate international law n116 and that violations of international law cannot be a basis for federal-question jurisdiction. n117 For example, the Supreme Court found that an illegal, extrajudicial abduction that circumvented the terms of an international extradition treaty did not preclude a U.S. trial court's jurisdiction over the abductee. n118

The Supreme Court's treatment of international law in Medellin v. Texas n119 is also instructive. Here, the Court held that the Vienna Convention [\*530] on Consular Relations n120 was not self-executing or judicially enforceable in U.S. courts. n121 That case involved a Mexican national who had been deprived of his right to consular notification under the Convention after he was arrested. He was later sentenced to death. n122 The International Court of Justice held that the United States violated international law by failing to provide the Mexican national with access to his consulate. n123 What is striking in the Medellin context is that not only did the Supreme Court refuse to intervene in order to vindicate rights under international law (earlier, it had held that the ICJ judgment was not binding on U.S. courts), n124 but it also prevented President Bush from vindicating those rights. n125 Bush had tried to order state courts to take account of the ICJ ruling, but the Supreme Court held that he did not have the power to do so. n126

#### Ilaw fails --- states will either inevitably cooperate, or ilaw can’t convince them to

Eric A. Posner 9, Kirkland and Ellis Professor of Law at the University of Chicago Law School. The Perils of Global Legalism, 34-6

34 ¶ Most global legalists acknowledge that international law is created and enforced by states. They believe that states are willing to expand international law along legalistic lines because states’ long-term interests lie in solving global collective action problems. In the absence of a world govern- ment or other forms of integration, international law seems like the only way for states to solve these problems. The great difﬁculty for the global legalist is explaining why, if states create and maintain international law, they will also not break it when they prefer to free ride. In the absence of an enforcement mechanism, what ensures that states that create law and legal institutions that are supposed to solve global collective action prob- lems will not ignore them? ¶ For the rational choice theorist, the answer is plain: states cannot solve global collective action problems by creating institutions that themselves depend on global collective action. This is not to say that international law is not possible at all. Certainly, states can cooperate by threatening to retaliate against cheaters, and where international problems are matters of coordination rather than conﬂ ict, international law can go far, indeed.7 But if states (or the individuals who control states) cannot create a global government or q uasi-g overnment institutions, then it seems unlikely that they can solve, in spontaneous fashion, the types of problems that, at the national level, require the action of governments. ¶ Global legalists are not enthusiasts for rational choice theory and have ¶ 35¶ grappled with this problem in other ways.8 I will criticize their attempts in chapter 3. Here I want to focus on one approach, which is to insist that just as individuals can be loyal to government, so too can individuals (and their governments) be loyal to international law and be willing to defer to its requirements even when self-i nterest does not strictly demand that they do so. International law has force because (or to the extent that) it is legitimate.9 ¶ What makes governance or law legitimate? This is a complicated ques- tion best left to philosophers, but a simple and adequate point for present purposes is that no system of law will be perceived as legitimate unless those governed by that law believe that the law does good — serves their interests or respects and enforces their values. Perhaps more is required than this — such as political participation, for example — but we can treat the ﬁ rst condition as necessary if not sufﬁ cient. If individuals believe that a system of law does not advance their interests and respect their values, that instead it advances the interests of others or is dysfunctional and helps no one at all, they will not believe that the law is legitimate and will not voluntarily submit to its authority. ¶ Unfortunately, international law does not satisfy this condition, mainly because of its institutional weaknesses; but of course, its institutional weaknesses stem from the state system — states are not willing to tolerate powerful international agencies. In classic international law, states enjoy sovereign equality, which means that international law cannot be created unless all agree, and that international law binds all states equally. What this means is that if nearly everyone in the world agrees that some global legal instrument would be beneﬁ cial (a climate treaty, the UN charter), it can be blocked by a tiny country like Iceland (population 300,000) or a dictatorship like North Korea. What is the attraction of a system that puts a tiny country like Iceland on equal footing with China? When then at- torney general Robert Jackson tried to justify American aid for Britain at the onset of World War II on the grounds that the Nazi Germany was the aggressor, international lawyers complained that the United States could not claim neutrality while providing aid to a belligerent — there was no such thing as an aggressor in international law.10 Nazi Germany had not agreed to such a rule of international law; therefore, such a rule could not exist. Only through the destruction of Nazi Germany could international law be changed; East and West Germany could reenter international so-¶ 36¶ ciety only on other people’s terms. How could such a system be perceived to be legitimate? ¶ There is, of course, a reason why international law works in this fash- ion. Because no world government can compel states to comply with inter- national law, states will comply with international law only when doing so is in their interest. In this way, international law always depends on state consent. So international law must take states as they are, which means that little states, big states, good states, and bad states, all exist on a plane of equality. ¶

## Advantage 2

### 1NC/2NC Deference Now

#### We overwhelmingly control uniqueness---all federal courts are either siding with the executive’s terror policies through narrow rulings or declining to even hear the cases---past rulings are being distinguished

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

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

# 1NR

### 2NC O/V

#### The net-benefit outweighs the case---

#### 1. Magnitude

#### A) Extinction is inevitable---Orwellian thought control authorizes the termination of the planet---juridical violence starts with linguistic violence---atrocity only becomes routinized when supported by the Thought Police---that’s Mann

#### B) No value to life---any risk that the plan affirms a sanitized tyranny negates human aspiration---undercuts the terminal impact to the case---that’s Petro

#### 2. Turns the case---prisons are justified and sustained by the bullshit sanitized descriptions we give them---Orwellian language is dangerous because it chokes off criticism of injustice---its what legitimizes detention in the first place---that’s Sullivan

#### 3. Only voting neg articulates a role for the ballot---the preeminent task for intellectuals is to expose the linguistic violence that accompanies the war on terror---voting aff is an empty exercise in policy simulation---that’s Herman

### AT: Perm---both

#### 1. Doesn’t avoid the link---the mere use of the term ‘detention’ forecloses responsibility---we get riled up at the treatment of ‘prisoners,’ but then are CALMED by the comforting administrative efficiency of detention---that’s National Forum

#### 2. Evaluate this perm from a offense/defense perspective---ANY RISK of a link means you vote neg

#### A) No such thing as zero risk---there is always a chance that the inclusion of ‘detention’ will paper over practices of imprisonment---when there is a CP that solves the whole case, you defer to accepting even low probability disads—key to good policy-making

#### B) Presumption---the aff must generate a positive net-benefit to the perm---if the CP solves as well as the perm, the aff has failed its burden---vote on presumption

#### 3. Doublespeak---the thought police THRIVE upon multiple contradictory descriptions---it is both a prison AND a detention center, both terrible AND sanitary---it is THIS ability to hold multiple contradictory positions that constitutes unconditional surrender to Big Brother---war is peace, freedom is slavery, and the perm is WORSE than the plan---that’s Louise

#### 4. Clarity D/A---

#### A) Euphemistic manipulation relies precisely on watering down ethical clarity and confusing the terms of the debate---allows the state to consistently alter and fluctuate between terminology

Robert **Bohm**, Campaign Coordinator for Deleware Green Party, 3/19/**03**

(<http://www.gp.org/articles/bohm_03_19_03.shtml>)

The idea that scorching sections of the world with napalm is a pro-peace activity is the type of linguistic reversal of meaning that George Orwell depicted in his novel, 1984, in which the Ministry of Truth was the agency in charge of disseminating propaganda and lies, and the word "joycamp" meant forced labor camp. Orwell would have understood exactly what Fries meant when the poet wrote with melancholy sarcasm, "Peace is tons of napalm falling." According to Orwell, the purpose of mainstream language in a society run by an over-powerful state isn¹t to facilitate communication but to reinforce the state¹s world-view and "to make all other modes of thought impossible." In such an environment of corrupted significations, previously stable meanings transform into each other in unpredictable ways. Consequently, moral incoherence reigns e.g., peace equals mass destruction.

The status quo's assault on what Orwell called non-desirable modes of thought doesn't necessarily mean outright censorship. For the status quo's purposes, it is sufficient that there be a gradual narrowing down of meanings so that language's capacity to undermine authoritarianism, alienation and oppression is weakened in an evolutionary way over time. When language's power shrinks in this way, society's subgroups often seek out non-verbal languages that they believe express their frustrations and aspirations better than the dominant language does. Such non-verbal languages inevitably begin as outlaw vocabularies multiple tattoos, body piercings, spiked hair, baggy pants, overly extravagant gold chains, slam dancing, mass gatherings of dissenters, etc. that are screams against the falsity of existing language, wisdom, and political morality.

#### B) Absolute clarity is crucial to combat the routinization of murder and the sovereign control of language

D.G. **Kehl** **and** Howard **Livingston**, English at Arizona State University and Pace University, July **1999**

(*English Journal* 88.6)

On the other hand, though, the present climate reveals some disturbing differences over the past several decades—even beyond Orwell’s “intensified form.” Not only does doublespeak “make lies sound truthful and murder respectable [giving] an appearance of solidity to pure wind,” but also the duplicity has become even more widespread and subtle. Regardless of one’s political affiliation, who can deny that the linguistic duplicity of just about anyone trying to persuade—whether to buy a certain product or vote for a certain politician—has become fashionable, even assumed, expected, accepted, and hence justifiable. Orwell’s plea to make pretentiousness unfashionable has sadly gone unheeded. If, as he noted in “Why I Write,” “good prose is like a windowpane,”the panes today are not only murky but almost opaque. Even more disturbing at present is the assumption that, just to win elections, politicians must, and therefore may justifiably, doublethink, doublespeak, and doubledo. There is the further sense that what is at stake, what we feel, is so crucial, so deep, so complex that it can be expressed only by leaving behind quaint notions of ethics, abandoning clarity and simplicity, and giving up even trying to be truthful. The argument was made recently that because everyone knows advertisements are not factual, why should anyone expect them to be? An equally disturbing corollary attitude is the growing distrust of and cynicism about language itself. E. J. Dionne Jr., in his book Why Americans Hate Politics, argues that there is a growing “distrust of language, distrust of the correct, distrust of practicality itself.” Students should be taught a healthy skepticism about the use and potential abuse of language but duly warned about the dangers of an unhealthy cynicism. (A teacher might well begin with a discussion of the distinctions—both denotations and connotations— between cynicism and skepticism; for example, cynicism involves a contemptuous, pessimistic, disparaging—often bitter—disbelief with no implication of further investigation; skepticism, on the other hand, involves the doubting and questioning of the validity or authenticity of something that purports to be truthful—but with the implication of ongoing probing and testing of evidence.)

#### 5. Any residual link is enough---must reject doublethink in EVERY instance

D.G. **Kehl** **and** Howard **Livingston**, English at Arizona State University and Pace University, July **1999**

(*English Journal* 88.6)

Doublespeak is not a frivolous game about humorous euphemisms, such as “sanitation engineer” for one who collects garbage, or “sanitarians” (who “deroach” buildings) for pest exterminators, or “automotive technicians” for car mechanics, or “field service technicians” for repair people. Rather, doublespeak in all too many cases is an insidious practice whereby the powerful abuse language to deceive and manipulate for the purpose of controlling public behavior—the public as consumer, as voter, as student—by depriving us of our right to make informed choices. Before teachers of English at any level are permitted to “practice” in the classroom, we should subscribe to a linguistic equivalent of the Hippocratic Oath, an Orwellian Oath perhaps, whereby we commit to (1) use language clearly and responsibly ourselves; (2)combat doublespeak wherever we find it; and (3)seek effective pedagogical ways of making students sensitive to language and aware of linguistic vulnerability in all forms.

### Rp

#### Our framework accesses your offense---voting negative does not abandon the state or all coercive state policies---only a rigorous interrogation of the plan’s rhetorical choices and a rejection of euphemistic deception can enable a realistic and nuanced policy analysis

Brigitte **Mral**, professor of Rhetoric at Department of Humanities, Örebro University, May **2004** (http://www.krisberedskapsmyndigheten.se/4453.epibrw)

Big events sometimes call for big words. In times of crisis, Swedish politicians are also expected to become skillful rhetoricians, to describe events so that we can understand them and lead us into the future. But Swedes are suspicious of passionate, emotional rhetoric, and sceptical of big words. We are not used to politicians coming out at all odd times of the day to speak to the people. The Prime Minister rarely appears as the interpreter of the Swedish Parliament, or the Swedish people for that matter. We usually¶ judge the American way of handling public language as excessive, emotional and full of religious terms. And this is also why we tend to underestimate the significance of what is said. We do not take it seriously; we consider it ‘mere rhetoric’, or empty content – and usually miss the real meaning and implications. Our unfamiliarity with linguistic analyses means that we often underestimate the power of images and concepts, especially when they are vague and ambiguous. A cornerstone of this study is that the speeches, no matter how twisted they sometimes seem to us, express exactly what is meant; they are not ‘mere rhetoric’, they are a description of the reality that will determine how politics will be conducted and should be understood. For if we see the speeches as mere wordy desktop products, we are underestimating the power of constantly repeated assertions and vague but powerful terms and phrases.¶ This ‘war on terrorism’ has seen an accumulation of ambiguous but strong value words. There are plenty of ‘God’s terms’ and ‘Devil’s terms’, according to Richard M. Weaver’s modern rhetorical theory.5 He refers to positively and negatively charged words, usually arranged in pairs of opposites: freedom – fear; civilisation – barbarism; war – peace. This ongoing war has generated an¶ abundance of big words and emotionally charged images. Events have been interpreted in value words and metaphors that sometimes remind us of what George Orwell in his gloomy utopia, Nineteen Eighty-Four, refers to as ‘Newspeak’, where war becomes peace,¶ attacks becomes ‘pre-emptive defence’, military invasion becomes ‘change of regime’, occupation becomes ‘humanitarian¶ intervention’. This distortion of language is by no means a new phenomenon. Manipulation and lies¶ have always constituted a basic ingredient in warfare. And those in power have always endeavoured to explain and defend complex and controversial decisions with cosmetic euphemisms.¶ The question today, however, should be how democratic communities ought to relate to this deliberate misdirection of public opinion and openly manipulative impact. One response would be to develop our sensitivity to deceptive rhetorical gimmicks and verbal tricks. We do not necessarily need to oppose¶ military action in order to demand straightforward and honest language in a crisis situation. A democratic society is based on rational dialogue. When democratic countries go to war, we should be able to demand an open account of why the war is legitimate, instead of settling for what is referred to in English literature as ‘perception management’6, i.e. persuasion or indoctrination with any available means, including deception, to create and recreate our feelings, motives and objective reasoning. Of course the war has been debated, in the media and on the streets. But as in any other historically comparable period, political leaders have conducted a one-sided, black and white, opinion-forming campaign that should be unacceptable in democratic communities.

### AT: Perm---do CP

#### 1. Severs---

#### A) Severs the use of the word ‘detention---this fundamentally changes the political and ethical character of the plan---our Herman and Mral evidence indicates that you MUST hold them accountable for the metaphors they use

#### B) Voting Issue---severance allows the aff to kick whatever part of the plan makes CPs and kritiks competitive---kills neg ground

#### 2. Even if the perm is theoretically legitimate, you vote negative

#### a) we have de-justified the resolution---we have proved that the resolutional call to endorse ‘detentions’ is bankrupt---you are jurisdictionally bound to vote negative

#### b) linguicide---their use of the term ‘detentions’ in the plan has committed an act of linguistic violence---their attempt to permute now is just a semantic game that continues to debase our collective consciousness

Douglas **Kellner**, philosophy at UCLA, **1992** (http://www.gseis.ucla.edu/faculty/kellner/papers/gulfwar6.htm)

Euphemisms for killing emerged, such as "eliminate," "degrade," "hurt," and, the favorite of many, "atrit," though General Powell and General Schwarzkopf preferred "kill." Many of the euphemisms used in Vietnam such as "friendly fire" (i.e., bombing your own troops) and "kill boxes" (i.e., areas subject to systematic bombing and destruction) reappeared, while the nastier terminology of Vietnam was redefined or defined away: "body bags" became "human remains pouches" and Schwarzkopf denied that his troops were engaging in "carpet-bombing" Iraq, claiming that the term was inaccurate for the precise coalition bombing, though he did admit that such massive bombing was being used on Iraqi troops in the desert. In fact, the term "carpet-bombing" itself connotes a gentle, laying on of a carpet, a friendly domestic term, rather than destructive killing by a field of viciously lethal bombs.

Media critic Norman Solomon described the routine destruction of common meanings of language as "linguicide." "When the slaughter of civilians is called 'collateral damage,' that's linguicide. When a dictatorship in Saudi Arabia, routinely torturing political dissenters, is called a 'moderate' government, that's linguicide. When a few missiles fired at Tel Aviv are called weapons of terrorism while thousands of missiles fired at Baghdad and Basra are called technological marvels, that's linguicide" (mideast.media, March 11, 1991). The degradation of meaning and language is not harmless for it is language that we use to make sense of the world, communicate with others, and create collective meanings, and if our language is debased or degraded, so is our consciousness, our communication, and our social interactions.

### PICs Good

#### 1. PICs are crucial to NARROW the debate so that every word is tested----Only PICs reduce the size of the debate and focus it on each word that the aff includes in its plan---disads do NOT solve, because they would just outweigh it with the rest of their case

#### 2. Our impact outweighs yours---

#### A) We have framework evidence---proves that it is uniquely predictable---our Mral evidence indicates that you must privilege a focus on terminology and euphemisms---this is DIFFERENT from other lit checks arguments---the methodological nature of our evidence provides unique defense against your predictability claims

#### B) Education---our internal link is bigger and more unique than yours---questions of Orwellian terminology get pushed aside---this is what sustains the genocidal American project---our Mral evidence indicates that the CORE question of your ballot is to REFOCUS the debate---AND

#### YES this is a defense of PICs--- you should be prepared to focus in on EVERY SINGLE WORD in your plan

D.G. **Kehl** **and** Howard **Livingston**, English at Arizona State University and Pace University, July **1999**

(*English Journal* 88.6)

Second, students’ own linguistic vulnerability should be demonstrated in a meaningful and convincing way. How would they react, for example, if while shopping they encounter “vegetarian leather” for plain, cheap vinyl; or “synthetic glass” for plastic; or, in place of down payment, they get “customer capital cost reduction”?

Third, they should be made more sensitive to language and how it works, not just denotation but connotation, concrete versus abstract terms, specific versus general, adjectives as evaluative projections of a speaker or writer, slanted language, and much more. For example, they can be asked to consider how many times in a year they buy something simply on the persuasive appeal of words rather than on the genuine merits of the product, whether that product is sunglasses, clothes, vehicles, or food. Especially illuminating in developing sensitivity to language are exercises that ask students to distinguish differences in connotation among lists of so-called synonyms. For example, which of the following would they like to be called—and why: boy/girl, lad/lassie, kid, young person, youngster, tyke, juvenile, future citizen, Generation X-er, member of the rising generation? Lively discussions can be conducted on the connotative effects of the language of advertising. For example, why are certain words taboo in advertising, requiring the substitution of euphemisms: not “fat” but “full figured,” not “cheap” but “inexpensive,” not “used car” but “preowned automobile,” not “smell” but “aroma.” (A recent example of doublespeak for “stink” is “exceed the olfactory threshold.”)

Fourth, students should be taught not only to read critically but also to speak and write re responsibility Wasn't’it Sir Arthur Quiller-Couch who noted that a writer should be prepared to stand cross-examination on every word? And as for reading critically, perhaps Thomas Carlyle said it best: “If we think of it, all that a university or final highest school can do for us is still but what the first school began doing—teach us to read.” Isn’t that at least a significant part of the English teacher’s job description?

Finally, students should be taught how to “talk back” by disarming and defusing doublespeak through what Judith Butler calls “counter-appropriation” (or what Hugh Rank has called “intensifying” and “downplaying” in his Doublespeak Schema). Recent communication theory offers further direction for discussing doublespeak in the classroom. For example, even a brilliant, well-organized, and illustrated lecture on language manipulation may have limited success (the doublespeaker would call it “counterproductive”).

#### \*\*3 CI—textually competitive PICs are uniquely good---the aff only has to be ready to defend the WORDS in their plan---if they didn’t want ‘detention’ to be discussed, then they shouldn’t have put it in their plan

#### 4. CP is non-topical---doesn’t ever prohibit “detentions”---makes it uniquely predictable and de-justifies the resolution---proves your are jurisdictionally bound to vote neg

#### 5. No vagueness---smart teams will react to PICs by writing better plans, not by being vague---vagueness undermines team credibility and forces the aff to deal with theory arguments---writing better plan texts is the best way to beat PICs

#### 6. PICs crucial to neg ground---best way for the aff to guard against unpredictable 2AC add-ons and best aff advantages---provide us a way to access big advantages and get back in the game against good affs.

#### 7. PICs crucial to offset inherent aff biases---they get to pick the ground of the debate and the persuasive effect of the 2AR outweighs the time advantage of the block---must have PICs to equalize ground

#### 8. Turn---best policy-making---debate is the search for the best policy---PICs crucial to find that and ensure good policy education.

#### 9. All CPs are PICs---all CPs involve similarities like the same agent or the same regulatory structure---they eliminate CPs---these are crucial to neg ground, only way to offset the fiat capability of the aff

### AT CTP

#### Broadening the scope of politics is key to effective engagement

Grondin 4 [David, master of pol sci and PHD of political studies @ U of Ottowa “(Re)Writing the “National Security State”: How and Why Realists (Re)Built the(ir) Cold War,” <http://www.er.uqam.ca/nobel/ieim/IMG/pdf/rewriting_national_security_state.pdf>]

**[YELLOW]**

A poststructuralist approach to international relations reassesses the nature of the political. Indeed, it calls for the **repoliticization** of practices of world politics that have been treated as if they were not political. For instance, limiting the ontological elements in one’s inquiry to states or great powers is a political choice. As Jenny Edkins puts it, we need to “bring the political back in” (Edkins, 1998: xii). For most analysts of International Relations, the conception of the “political” is **narrowly restricted** to politics as practiced by politicians. However, from a poststructuralist viewpoint, the “political” acquires a **broader meaning,** especially since practice is not what most theorists are describing as practice. Poststructuralism sees theoretical discourse not only as discourse, but also as political practice. **Theory therefore becomes practice**. The political space of poststructuralism is not that of exclusion; it is the political space of postmodernity, a dichotomous one, where one thing always signifies at least one thing and another (Finlayson and Valentine, 2002: 14). **Poststructuralism thus gives primacy to the political**, since it acts on us, while we act in its name, and leads us to identify and differentiate ourselves from others. This political act is never complete and celebrates undecidability, whereas decisions, when taken, express the political moment. It is a critical attitude which encourages dissidence from traditional approaches (Ashley and Walker, 1990a and 1990b). It does not represent one single philosophical approach or perspective, nor is it an alternative paradigm (Tvathail, 1996: 172). It is a nonplace, a border line falling between international and domestic politics (Ashley, 1989). The poststructuralist analyst questions the borderlines and dichotomies of modernist discourses, such as inside/outside, the constitution of the Self/Other, and so on. In the act of definition, difference – thereby the discourse of otherness – is highlighted, since one always defines an object with regard to what it is not (Knafo, 2004). As Simon Dalby asserts, “It involves the social construction of some other person, group, culture, race, nationality or political system as different from ‘our’ person, group, etc. Specifying difference is a linguistic, epistemological and, most importantly, a political act; it constructs a space for the other distanced and inferior from the vantage point of the person specifying the difference” (Dalby, cited in Tvathail, 1996: 179). Indeed, poststructuralism offers no definitive answers, but leads to new questions and new unexplored grounds. This makes the commitment to the incomplete nature of the political and of political analysis so central to poststructuralism (Finlayson and Valentine, 2002: 15). As Jim George writes, “It is postmodern resistance in the sense that while it is directly (and sometimes violently) engaged with modernity, it seeks to go beyond the repressive, closed aspects of modernist global existence. It is, therefore, not a resistance of traditional grand-scale emancipation or conventional radicalism imbued with authority of one or another sovereign presence. Rather, in opposing the large-scale brutality and inequity in human society, it is a resistance active also at the everyday, com- munity, neighbourhood, and interpersonal levels, where it confronts those processes that **systematically exclude people from making decisions about who they are and what they can be**” (George, 1994: 215, emphasis in original). In this light, poststructural practices are used critically to investigate how the subject of international relations is constituted in and through the discourses and texts of global politics. Treating theory as discourse opens up the possibility of historicizing it. It is a myth that theory can be abstracted from its socio-historical context, from reality, so to speak, as neorealists and neoclassical realists believe. It is a political practice which needs to be contextualized and stripped of its purportedly neutral status. It must be understood with respect to its role in **preserving and reproducing the structures and power relations present in all language forms.** Dominant theories are, in this view, dominant discourses that shape our view of the world (the “subject”) and our ways of understanding it.

### 2NC Specific Link

#### 1. Referring to ‘detention’ is an exercise in Orwellian newspeak---two 1NC warrants that are better than their LACK OF EVIDENCE

#### A) Depersonalization---‘detention’ is an exercise in cold efficiency---‘detainees’ are processed, not imprisoned---this renders them devoid of particularity or humanity---that’s National Forum

#### B) Newspeak---‘detention’ is a less startling---it makes the process seem benign and friendly---DETENTION is what \_\_\_\_\_\_\_ goes to after he’s caught looking at porn during class, NOT what happens when people are thrown in PRISON---our Shirazi evidence is in the context of executive authority in the war on terror

#### 2. Detention is a euphemism---sanitizes the horror of prison

Arnold **Zable**, Melbourne PEN Centre Newsletter, August **2004** (*The Age*, http://www.safecom.org.au/another-country.htm)

Detention is a euphemism. The camps are jails, complete with isolation cells and higher security blocks. Iranian, Rahman Shiri, depicts his solitary confinement in Port Hedland's infamous 'Camp Juliet'. He guides the reader into a Kafkaesque nightmare. He observes the graffiti etched into the cell walls by those who had come before him, the cigarette butts eagerly seized upon by those who cannot afford to buy them. Shiri was eventually deported and his whereabouts are now unknown.

There are moments of hope. The writers acknowledge the kindness of Australians who correspond, or drive many miles to visit them. Ivory Coast journalist Cheikh Kone was eventually released after 32 months of incarceration in Port Hedland, partly through the representations of International PEN and friends who adopted his case. Kone now writes of the plight of fellow inmates who are still detained.

In Villawood, Hassan Sabbagh begins to turn over the ground in front of his window with his only available tool, a kitchen knife. From four square metres of ground that had not been touched in years, and encouraged by Australian visitors, the garden grows to 150 square metres, crammed with flowers, bushes, and vegetables. Sabbagh tended it until his release in March this year, after five years in detention.

The trauma continues after release. Dr Aamer Sultan remains haunted by what he calls 'The Curse'. He is tormented by thoughts of 'kids growing traumatised with indisputably serious personality disorders and retarded emotional development'. Sultan, who famously bore witness to their plight while inside Villawood, now writes of his 'total disillusionment' with that 'western world humanitarian utopia I used to believe in. It has changed to a suffocating overwhelming sense of injustice I can no longer breathe in'.

This collection encapsulates our collective shame. Australia's detention centres are inhumane, brutal and soul destroying. The 'Other Country' is a cancer festering within the body of the host country. Iraqi soccer player, Khalid Al Sharifi sums up the plight of its inmates: 'Rain falls and the sun lights the earth/We didn't come from another planet/We have our own deserved place on earth/We didn't cross the ocean to live in prison'.

**3. This** actively assuages **our guilt over the imprisonment of others**

**Council for Civil Liberties**, 3/6/**05** (http://www.users.bigpond.com/burnside/marsden.htm)

Australia has no reason to be complacent.  In Canberra, ‘City Hall’ is behaving badly.  It is now generally understood that we imprison asylum seekers who come here without prior permission.  (To call it detention is a euphemism to calm the conscience.)  At Baxter, detainees are held in a high-tech prison, behind a 9000 volt electric fence (or, in the official jargon of the Department, ‘energised fence’).

#### 4. Our link claim is backed up by qualified experts----

#### A) The Chief Justice has made our argument in other contexts

Justice **Rehnquist**, June **1984** (http://www.law.cornell.edu/supct/html/historics/USSC\_CR\_0467\_0253\_ZO.html)

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Finally, the court concluded that preventive detention is merely a euphemism for punishment imposed without an adjudication of guilt. The alleged purpose of the detention -- to protect society from the juvenile's criminal conduct -- is indistinguishable from the purpose of post-trial detention. And given "the inability of trial judges to predict which juveniles will commit crimes," there is no rational connection between the decision to detain and the alleged purpose, even if that purpose were legitimate. Id. at 716.

#### B) Law professors only reluctantly use the term---admit detention is a government-created euphemism

David **Anderson**, law at University of Texas, Winter **2006** (77 U. Colo. L. Rev. 49)

I use terms like "detention centers," "detainees," and "abuse" reluctantly. Those are government-issued euphemisms for prisons, prisoners, and atrocities, but the press has adopted them so thoroughly that to describe them non-euphemistically has come to sound tendentious.

### AT: Solvency Deficit

#### 1. The CP does the same thing as the plan---the phrase “detention” only legally refers to official custody by the Attorney General---you don’t apply to other instances

SAVVAS **DIACOSAVVAS**, JD NYU Law School 2k1, **2000** (57 N.Y.U. Ann. Surv. Am. L. 207)

Relying on the language of the Bail Reform Act of 1984, which authorizes a court to deny bail and issue a "detention order" remanding the defendant to the custody of the Attorney General (through the Bureau of Prisons), the Supreme Court deduced the meaning of the term "detention:" "[A] defendant suffers 'detention' only when committed to the custody of the Attorney General; a defendant admitted to bail on restrictive conditions, as respondent was, is 'released.'" [107](https://www.lexis.com/research/retrieve?_m=99ebfcd2041396f148ce7200736426c7&docnum=14&_fmtstr=FULL&_startdoc=11&wchp=dGLbVtz-zSkAV&_md5=759c4427edf6ddf53277ca8ae4ad0675&focBudTerms=%28term%20detention%29%20or%20%28term%20detain%29%20or%20word%20detention%20or%20word%20detain&focBudSel=all" \l "n107#n107" \t "_self) Accordingly, the Supreme Court held  [\*230]  that presentence detention at a community treatment center does not constitute "detention" and cannot be credited toward a prisoner's federal sentence. [108](https://www.lexis.com/research/retrieve?_m=99ebfcd2041396f148ce7200736426c7&docnum=14&_fmtstr=FULL&_startdoc=11&wchp=dGLbVtz-zSkAV&_md5=759c4427edf6ddf53277ca8ae4ad0675&focBudTerms=%28term%20detention%29%20or%20%28term%20detain%29%20or%20word%20detention%20or%20word%20detain&focBudSel=all" \l "n108#n108" \t "_self) Similarly, circuit courts have held that pretrial confinement by a prisoner to his parent's house while released on bail cannot be credited toward a subsequently imposed federal sentence. [109](https://www.lexis.com/research/retrieve?_m=99ebfcd2041396f148ce7200736426c7&docnum=14&_fmtstr=FULL&_startdoc=11&wchp=dGLbVtz-zSkAV&_md5=759c4427edf6ddf53277ca8ae4ad0675&focBudTerms=%28term%20detention%29%20or%20%28term%20detain%29%20or%20word%20detention%20or%20word%20detain&focBudSel=all" \l "n109#n109" \t "_self) The same holds true for bonded confinement at the defendant's own home, both presentence [110](https://www.lexis.com/research/retrieve?_m=99ebfcd2041396f148ce7200736426c7&docnum=14&_fmtstr=FULL&_startdoc=11&wchp=dGLbVtz-zSkAV&_md5=759c4427edf6ddf53277ca8ae4ad0675&focBudTerms=%28term%20detention%29%20or%20%28term%20detain%29%20or%20word%20detention%20or%20word%20detain&focBudSel=all" \l "n110#n110" \t "_self) and post-conviction while awaiting appeal. [111](https://www.lexis.com/research/retrieve?_m=99ebfcd2041396f148ce7200736426c7&docnum=14&_fmtstr=FULL&_startdoc=11&wchp=dGLbVtz-zSkAV&_md5=759c4427edf6ddf53277ca8ae4ad0675&focBudTerms=%28term%20detention%29%20or%20%28term%20detain%29%20or%20word%20detention%20or%20word%20detain&focBudSel=all" \l "n111#n111" \t "_self) Even bonded release under conditions of home confinement and electronic monitoring is not considered "detention" for purposes of time crediting.

#### 2. Large body of statutory and legal confusion over the definition of the word detention---law enforcement officials manipulate its meaning

Major Matthew J. **Gilligan**, Judge Advocate General's Corps, United States Army, September **1999** (161 Mil. L. Rev. 1)

Some military legal advisors add to the confusion with the term "detention." Because military law enforcement officials do not have statutory arrest power over civilians, see infra Section II.A, these advisors are careful to avoid the assertion that military officials may "arrest" civilians. For example, the Air Force Judge Advocate General states that Air Force security police may not "apprehend (in the sense of making an arrest) a civilian . . . who commits a state crime on an Air Force installation." Military Detention of Civilians for Certain Offenses Committed Within an Air Force Installation, Op. JAG, Air Force, No. 60 (3 Oct. 1991). The Air Force then states that military authorities may "detain civilians for alleged violations of law on the installation if they have probable cause." Id. (emphasis added). Such civilians may be detained for a "reasonable period of time to carry out administrative action or until appropriate civil officials arrive, . . . or until they can be delivered into the custody of the appropriate civilian authority." Id. The Air Force chooses the term "detention" to avoid the appearance of claiming a right to conduct arrests. But the actions described are nonetheless within the meaning of "arrest" in Fourth Amendment terms: based on "probable cause," detained for a "reasonable period," held until "delivered to civil authorities," etc. Furthermore, the term "detention" is actually intended to be a far less intrusive exertion of authority than the Air Force describes. Generally, detention may be made on less than probable cause, and involves merely a short period of custody, long enough to determine if criminal activity has occurred. MCM, supra note 2, R.C.M. 302 discussion.

#### 3. The word “detention” is not necessary to constrain Executive authority---precedent proves that the more explicit wording of the CP solves better

Jared **Perkins**, *BYU Journal of Public Law*, **2005** (19 BYU J. Pub. L. 437)

Under strict construction, Justice Souter found that the AUMF did not authorize Hamdi's detention because "it never so much as uses the word detention," and there would be no reason for Congress to imply more power than was explicitly granted by the resolution "given the well-stocked statutory arsenal of defined criminal offenses covering the gamut of actions that a citizen sympathetic to terrorists might commit." [101](https://www.lexis.com/research/retrieve?_m=0f46022d0dd770c6a4a746bffbfba5a7&docnum=23&_fmtstr=FULL&_startdoc=21&wchp=dGLbVtz-zSkAV&_md5=d2060df91ee645be39cb31497a8a5d75&focBudTerms=%28term%20detention%29%20or%20%28term%20detain%29%20or%20word%20detention%20or%20word%20detain&focBudSel=all" \l "n101#n101" \t "_self) Justice Souter concluded that Congress intended to preclude any detention not explicitly sanctioned by a congressional act, fearing that it "might leave citizens subject to arbitrary executive action, with no clear demarcation of the limits of executive authority." [102](https://www.lexis.com/research/retrieve?_m=0f46022d0dd770c6a4a746bffbfba5a7&docnum=23&_fmtstr=FULL&_startdoc=21&wchp=dGLbVtz-zSkAV&_md5=d2060df91ee645be39cb31497a8a5d75&focBudTerms=%28term%20detention%29%20or%20%28term%20detain%29%20or%20word%20detention%20or%20word%20detain&focBudSel=all" \l "n102#n102" \t "_self) Because Congress's precise intent was "to preclude reliance on vague congressional authority ... as authority for detention or imprisonment at the discretion of the Executive," the AUMF fails to satisfy the clarity and  [\*452]  explicitness requirements of the Non-Detention Act. [103](https://www.lexis.com/research/retrieve?_m=0f46022d0dd770c6a4a746bffbfba5a7&docnum=23&_fmtstr=FULL&_startdoc=21&wchp=dGLbVtz-zSkAV&_md5=d2060df91ee645be39cb31497a8a5d75&focBudTerms=%28term%20detention%29%20or%20%28term%20detain%29%20or%20word%20detention%20or%20word%20detain&focBudSel=all" \l "n103#n103" \t "_self) Unless Congress clearly authorized detention or imprisonment, the executive has no power to detain citizens on American territory. [104](https://www.lexis.com/research/retrieve?_m=0f46022d0dd770c6a4a746bffbfba5a7&docnum=23&_fmtstr=FULL&_startdoc=21&wchp=dGLbVtz-zSkAV&_md5=d2060df91ee645be39cb31497a8a5d75&focBudTerms=%28term%20detention%29%20or%20%28term%20detain%29%20or%20word%20detention%20or%20word%20detain&focBudSel=all" \l "n104#n104" \t "_self)

### CP Solves Intl Law Adv

#### This turns your international law advantage---the use of euphemisms to mask practices of arrest is forbidden by international conventions

**American Society of International Law**, 1/6/**06** (http://law.utoledo.edu/faculty/BDavis/ASILPreliminaryDraftResolution162006.htm)

The use of obfuscation through euphemisms such as failed states, aggressive techniques, coercive interrogation, humaneness etc to frame policy as regards persons in custody or control is deplored. All branches of the United States Federal Government and non-governmental actors are required to adhere to the standards enumerated in international law that forbid torture, and cruel, inhumane and degrading treatment of people without exception. In determination of interrogation techniques, rather than improvising, great attention should be paid to determinations of prior international tribunals as to what constitutes torture such as the International Military Tribunal at Tokyo.

### CP Solves Court/SOP Advantages

#### Turns the case---euphemistic sanitization of language is what legitimizes unconditional presidential power and erodes US checks and balances

Susan **Herman**, law at Brooklyn, **2003** (http://jurist.law.pitt.edu/forum/forumnew40.htm)

My general level of trust in the government is conditioned on the existence of the Constitution’s elaborate structure of checks and balances: the hydraulic pressures among the three branches of the federal government, the dialectic of federalism, and the ultimate political power of an informed electorate. Now, there increasingly often seems to be only one locus of power. Increasingly often, the other two branches, the other axis of government (the states), and the electorate, including me, are asked not to know, but just to trust.

I have found myself thinking often lately about the world of George Orwell’s 1984, and not only because Orwell’s “Big Brother” has become such a pervasive metaphor for expansive governmental surveillance. The people in Orwell’s totalitarian state, Oceania (Orwell’s prescient amalgam of Britain and America?), knew that their state was engaged in a murky foreign war, against some enemy or other – either Eastasia or Eurasia. The war had become wallpaper, and there wasn’t much point in trying to understand what the war was about, or evaluating the government’s claims of victory. Information about the war was no more specific and no more reliable than the Newspeak about domestic affairs.

I don’t know whether we have lost our balance, but I do know that power is careening in one direction. That, combined with the extent of what I don’t know, is reason enough to worry

#### Euphemisms commit linguicide---eviscerate the basis for democratic consciousness

Douglas **Kellner**, philosophy at UCLA, **1992** (http://www.gseis.ucla.edu/faculty/kellner/papers/gulfwar10.htm)

The Bush administration and Pentagon mobilized support for the war through their discourses and images of a precision, high-tech bombing that was minimizing civilian casualties while systematically destroying the Iraqi military machine. I analyzed the mobilization of video images of the high-tech war in earlier sections (see 3.3, 4.3, and Chapter 5) and here will analyze the militarization of language. War tends to debase and destroy language as much as humans and their social and natural environment. In the novel 1984, George Orwell developed the term "Doublespeak" to connote language that makes the bad seem good, the negative appear positive, and the unpleasant appear attractive, or at least tolerable.[5] Orwellian "Newspeak" described the production of neologisms and language to sanitize unpleasant realities. The Gulf war saw a proliferation of Orwellian language that I call "Warspeak." Instead of dropping bombs or firing weapons, planes "dropped ordnance." If the bombs missed their targets, "incontinent ordnance delivery" resulted, which produced "collateral damage," a neologism used to sanitize the destruction of civilian targets and civilian deaths as accidental damage. Targets were referred to as "assets" and warplanes were described as "force packages." Targets were not destroyed, but "visited," "acquired," "taken out," "serviced," or "suppressed." Instead of descriptive terms like "bombing targets," the military and the media therefore spoke of "servicing the target," "neutralizing targets," "suppressing assets," or "visiting enemy."

Euphemisms for killing emerged, such as "eliminate," "degrade," "hurt," and, the favorite of many, "atrit," though General Powell and General Schwarzkopf preferred "kill." Many of the euphemisms used in Vietnam such as "friendly fire" (i.e., bombing your own troops) and "kill boxes" (i.e., areas subject to systematic bombing and destruction) reappeared, while the nastier terminology of Vietnam was redefined or defined away: "body bags" became "human remains pouches" and Schwarzkopf denied that his troops were engaging in "carpet-bombing" Iraq, claiming that the term was inaccurate for the precise coalition bombing, though he did admit that such massive bombing was being used on Iraqi troops in the desert. In fact, the term "carpet-bombing" itself connotes a gentle, laying on of a carpet, a friendly domestic term, rather than destructive killing by a field of viciously lethal bombs.

Media critic Norman Solomon described the routine destruction of common meanings of language as "linguicide." "When the slaughter of civilians is called 'collateral damage,' that's linguicide. When a dictatorship in Saudi Arabia, routinely torturing political dissenters, is called a 'moderate' government, that's linguicide. When a few missiles fired at Tel Aviv are called weapons of terrorism while thousands of missiles fired at Baghdad and Basra are called technological marvels, that's linguicide" (mideast.media, March 11, 1991). The degradation of meaning and language is not harmless for it is language that we use to make sense of the world, communicate with others, and create collective meanings, and if our language is debased or degraded, so is our consciousness, our communication, and our social interactions.

### AT: We BAN Detentions

#### 1. This is the link---

#### Political thought control is so dangerous precisely because of its insidious nature---euphemisms effectively regulate the consciousness ONLY when they are not easily detectable

Geoffrey **Nunberg**, linguist at Stanford, 6/25/**03** (http://www.netcharles.com/orwell/articles/col-iforw.htm)

Which of those terms are deceptive packaging and which are merely effective branding is a matter of debate. But there's something troubling in the easy use of the label "Orwellian," as if these phrases committed the same sorts of linguistic abuses that led to the gulags and the death camps.  
The specters that "Orwellian" conjures aren't really the ones we have to worry about. Newspeak may have been a plausible invention in 1948, when totalitarian thought control still seemed an imminent possibility. But the collapse of communism revealed the bankruptcy not just of the Stalinist social experiment, but of its linguistic experiments as well. After 75 years of incessant propaganda, "socialist man" turned out to be a cynic who didn't even believe the train schedules.  
Political language is still something to be wary of, but it doesn't work as Orwell feared. In fact the modern language of control is more effective than Soviet Newspeak precisely because it's less bleak and intimidating.  
Think of the way business has been re-engineering the language of ordinary interaction in the interest of creating "high-performance corporate cultures." To a reanimated Winston Smith, there would be something wholly familiar in being told that he had to file an annual vision statement or that he should henceforth eliminate "problems" from his vocabulary in favor of "issues."  
But the hero of "1984" would find the whole exercise much more convivial than the Two Minute Hate at the Ministry of Truth. And he'd be astonished that management allowed employees to post "Dilbert" strips on the walls of their cubicles.  
For Orwell, the success of political jargon and euphemism required an uncritical or even unthinking audience: a "reduced state of consciousness," as he put it, was "favorable to political conformity." As things turned out, though, the political manipulation of language seems to thrive on the critical skepticism that Orwell encouraged.  
In fact, there has never been an age that was so well-schooled in the perils of deceptive language or in decoding political and commercial messages, as seen in the official canonization of Orwell himself. Thanks to the schools, "1984" is probably the best-selling political novel of modern times, and "Politics and the English Language" is the most widely read essay about the English language and very likely in it as well.  
But as advertisers have known for a long time, no audience is easier to beguile than one that is smugly confident of its own sophistication. The word "Orwellian" contributes to that impression. Like "propaganda," it implies an aesthetic judgment more than a moral one. Calling an expression Orwellian means not that it's deceptive but that it's crudely deceptive. Today, the real damage isn't done by the euphemisms and circumlocutions that we're likely to describe as Orwellian. "Ethnic cleansing," "revenue enhancement," "voluntary regulation," "tree-density reduction," "faith-based initiatives," "extra affirmative action," "single-payer plans" - these terms may be oblique, but at least they wear their obliquity on their sleeves.  
Rather, the words that do the most political work are simple ones - "jobs and growth," "family values" and "color-blind" not to mention "life" and "choice." But concrete words like these are the hardest ones to see through. They're opaque when you hold them up to the light.

#### 2. Doublespeak---linguistic mind control functions precisely when you are persuaded to use words in combination with contradictory mindsets---that even progressive forces now speak in the Administration’s terms is the ultimate Orwellian victory

John **Stauber and** Sheldon **Rampton**, executive editors of PR Watch, 7/28/**03** (http://www.alternet.org/story/16497/)

"In our time, political speech and writing are largely the defense of the indefensible," George Orwell wrote in 1946. "Things like the continuance of British rule in India, the Russian purges and deportations, the dropping of the atom bombs on Japan, can indeed be defended, but only by arguments which are too brutal for most people to face, and which do not square with the professed aims of the political parties. Thus political language has to consist largely of euphemism, question-begging and sheer cloudy vagueness."

Orwell was a shrewd observer of the relationship between politics and language. He did not actually invent the term "doublespeak," but he popularized the concept, which is an amalgam of two terms that he coined in "1984," his greatest novel. Orwell used the term "doublethink" to describe a contradictory way of thinking that lets people say things that mean the opposite of what they actually think. He used the term "newspeak" to describe words "deliberately constructed for political purposes: words, that is to say, which not only had in every case a political implication, but were intended to impose a desirable mental attitude upon the person using them."

Hail the Noble Warriors

Doublespeak has accompanied war for thousands of years. English professor William Lutz has found examples as early as Julius Caesar, who described his brutal and bloody conquest of Gaul as "pacification." "The military is acutely aware that the reason for its existence is to wage war, and war means killing people and the deaths of American soldiers as well," he states. "Because the reality of war and its consequences are so harsh, the military almost instinctively turns to doublespeak when discussing war."

Doublespeak often suggests a noble cause to justify the death and destruction. Practically speaking, a democratic country cannot wage war without the popular support of its citizens. A well-constructed myth, broadcast through mass media, can deliver that support even when the noble cause itself seems dubious to the rest of the world.

### Petro

#### Euphemisms are central to the capacity to wage an unregulated war on terror---the plan legitimizes the abuse of civil liberties and the mistreatment of prisoners

Andrew **Sullivan**, political journalist for New York Times Magazine, 11/12/**05** (http://www.andrewsullivan.com/index.php?dish\_inc=archives/2005\_11\_06\_dish\_archive.html)

EXEMPTING THE CIA: A former general counsel for the agency [argues](http://www.washingtonpost.com/wp-dyn/content/article/2005/11/08/AR2005110801108.html?nav=hcmodule) against Dick Cheney's case for legally codifying torture as a lawful activity for the CIA. Meanwhile, new evidence [emerges](http://www.nytimes.com/2005/11/09/politics/09detain.html) that individuals within the CIA have warned that illegality was occurring. Here's one question I hope the press asks the president some time soon: does he believe that "waterboarding" constitutes torture and has he ever authorized it himself? Since we know that the CIA has been granted permission to water-board detainees, this doesn't violate anything classified. And since no specific case is mentioned, it doesn't tell us anything but general policy. So why not ask the question? An important element of this debate has been euphemism. The terms "coercive interrogation" or "aggressive interrogation" or even "abuse" can obscure as much as they reveal. These techniques need to be described as Orwell would have demanded. What is actually done to another human being? Exactly? And who specifically authorized which techniques? There's a reason that politicians use Orwellian formulations as Bush does and Clinton did: to obscure reality. Except Clinton used them to cover up sexual embarrassment and perjury. Bush has used them to cover up rape, murder, near-drowning and torture of defenseless detainees.