# 1NC

#### Short shutdown now- extension causes quick market collapse

**Reinhart et al 10-1**-13 [Vincent Reinhart, chief US economist, Morgan Stanley, Harm Bandholz, chief US economist, UniCredit, Aroop Chatterjee, FX strategist, Barclays, Vincent Chaigneau, rates strategist, Société Générale, Daniel Tenengauzer, US economist, Standard Chartered, Allan von Mehren, chief analyst at Danske, Trevor Greetham, director of asset allocation, Fidelity, “US shutdown reaction: ‘Odds favour a short event’,” <http://www.ft.com/cms/s/0/5bda1eb2-2a67-11e3-ade3-00144feab7de.html#axzz2gYttdnTn>]

The US government began shutting down a range of services on Tuesday after the Republican-controlled House of Representatives and the Democratic Senate failed to agree a short-term budget extension. The lack of an agreement by US politicians will lead to about 800,000 federal employees being placed on unpaid leave, a process known as furloughing. The following is a round-up of strategist and economist reaction:¶ Vincent Reinhart, chief US economist, Morgan Stanley:¶ The heat will build on politicians from constituents who were furloughed, inconvenienced, or fearful of market consequences. That is why we believe the odds favour a short event – over in one week.¶ Harm Bandholz, chief US economist, UniCredit:¶ I think it is only a matter of days, maybe hours, until the majority of Republicans will eventually free themselves from the pressure of the Tea Party minority and vote along with Congressional Democrats to reopen the government. But don’t forget, the government shutdown is merely the prelude to a much bigger issue, namely the forthcoming debt limit fight.¶ Aroop Chatterjee, FX strategist, Barclays:¶ In and of itself, the government shutdown appears to be a limited market event. The indirect effect, however, is on the other main risk scenario for markets – the deal on the debt ceiling. For example, a government shutdown could lead to a sharp increase in the public disapproval of Congress’s handling of fiscal matters and allow for a smoother agreement on the debt ceiling issue. Or on the flip side, it could embolden both sides to become more entrenched in their positions.¶ Vincent Chaigneau, rates strategist, Société Générale:¶ Keep calm and carry on. So it seems that is the message from the markets just now. The US government is going into partial shutdown for the first time in 17 years. This will hurt the economy, though not much if it’s short. Negotiations may keep us on tenterhooks for a couple more weeks, as we approach the debt ceiling. But there has been no sign of financial stress overnight.¶ Daniel Tenengauzer, US economist, Standard Chartered:¶ A shutdown lasting a few days would shave only a few decimal points off fourth-quarter economic growth. The hit to growth would come mainly from the impact of the furloughs on consumption – a similar event to the summer and the sequester-related furloughs of federal employees – and a potential hit to business confidence. The main risk to this expectation is that the shutdown continues for longer, potentially until or beyond the October 17 debt ceiling deadline.¶ Allan von Mehren, chief analyst at Danske:¶ The next FOMC [the monetary policy-setting Federal Open Market Committee] meeting is on 29-30 October. It is now more unlikely that tapering will start at this meeting as the Fed will probably wait to see the consequences of the increased uncertainty and effects of the shutdown. This strengthens our call that Fed tapering won’t start until December. If the shutdown drags out and has more negative effects on the economy the risk is tapering could start even later.¶ Given the increased uncertainty it also raises the odds of a further correction in stock markets. The reaction so far has been fairly muted. But given that markets have been technically overbought we think it’s likely we will see further declines in coming weeks. This should also add to downside pressure on bond yields. In the short term the risk is also that the dollar could weaken further.¶ Trevor Greetham, director of asset allocation, Fidelity:¶ We do not expect the fiscal stand-off in Washington to have a lasting impact and stock market weakness presents a buying opportunity.¶ The dispute has the power to depress economic activity temporarily and it will play havoc with the economic release calendar. But the US is four years into a steady, self-sustaining recovery and the Federal Reserve stands ready to offset any marginal fiscal tightening that may come out of the negotiations.

#### \*\*\*Capital is key to get a deal

CNN 10/1/13 (Interview with Rick Lazio, Former US Congressman, Transcript: Anderson Cooper 360 Degrees, "Government Shutdown; Views of Obamacare Shaped by Misinformation; Is Losing Good for Kids?"

LAZIO: Getting back to the earlier point about entitlements and out- year spending, here's -- Democrats will criticize Republicans on obsessing on Obamacare. Republicans will say why doesn't the president lead on the most pressing fiscal issue that faces the country over the next 20 or 30 years?  You have got an explosion of seniors, 10,000 seniors retiring every single day in America. The program Social Security was created, signed by FDR into law, average life expectancy was 64 years old, eligibility 65, pretty good deal. But now...  BLOW: But, Rick, you're pretending that they never tried to do that.   Last time we got close to the debt ceiling, they got very close to a global deal, and it fell apart at the last minute. It's not as if the president has never gone to Boehner and tried to figure out how to do this.   LAZIO: But the president has to provide cover for moderate Democrats who want to get a deal done. And that's what he's failed to do. He's got to engage.   He's got to lead. And he's got to address some of these big picture issues. That's when you get a win-win out of this thing. If you could get both sides to come together and say we're going to really try and solve at least part of this entitlement picture, we will create some momentum, some trust, and that's a way forward.   (CROSSTALK)  BROWN: ... what exactly Obama right now is supposed to really do? When we talk about him engaging and him doing -- what actually is he supposed to do? Who's he supposed to call? How does it work at this moment in this particular situation?   LAZIO: I think you start to go and you speak to individual senators. He's done this with Bob Corker and other people where he's tried to court them and bring them in.  I think you have got to have some agenda, you have got to be somewhat flexible. You have got to say, OK, what do you think is doable? This is an area where obviously I have got limited flexibility, but let's get something significant done and I will help provide some air cover.

#### The plan is a huge loss for Obama –Democrats cracking down on war powers makes Obama look weak

Paterno 6/23/2013 (Scott, Writer for Rock the Capital, “Selfish Obama” http://www.rockthecapital.com/06/23/selfish-obama/)

Now we have a Democratic president who wants to make war and does not want to abide by the War Powers Resolution. But rather than truly test the constitutionality of the measure, he is choosing to simply claim that THIS use of US military power is not applicable.¶ This is an extraordinarily selfish act, and one liberals especially should fear. POTUS is setting a precedent that subsequent presidents will be able to use – presidents that the left might not find so “enlightened.” Left as is, President Obama has set a standard where the president can essentially attack anywhere he wants without congressional approval for as long as he wants so long as he does not commit ground forces.¶ That is an extraordinarily selfish act. Why selfish? Because the president is avoiding congress because he fears a rebuke – from his own party, no less. The politically safe way to both claim to be decisive and to not face political defeat at the hands of Democrats – a defeat that would signal White House weakness – is to avoid congress all together. Precedent be damned, there is an election to win after all.

#### Economic collapse causes nuclear war

Merlini 11

[Cesare Merlini, nonresident senior fellow at the Center on the United States and Europe and chairman of the Board of Trustees of the Italian Institute for International Affairs (IAI) in Rome. He served as IAI president from 1979 to 2001. Until 2009, he also occupied the position of executive vice chairman of the Council for the United States and Italy, which he co-founded in 1983. His areas of expertise include transatlantic relations, European integration and nuclear non-proliferation, with particular focus on nuclear science and technology. A Post-Secular World? DOI: 10.1080/00396338.2011.571015 Article Requests: Order Reprints : Request Permissions Published in: journal Survival, Volume 53, Issue 2 April 2011 , pages 117 - 130 Publication Frequency: 6 issues per year Download PDF Download PDF (357 KB) View Related Articles To cite this Article: Merlini, Cesare 'A Post-Secular World?', Survival, 53:2, 117 – 130]

Two neatly opposed scenarios for the future of the world order illustrate the range of possibilities, albeit at the risk of oversimplification. The first scenario entails the premature crumbling of the post-Westphalian system. One or more of the acute tensions apparent today evolves into an open and traditional conflict between states, perhaps even involving the use of nuclear weapons. The crisis might be triggered by a collapse of the global economic and financial system, the vulnerability of which we have just experienced, and the prospect of a second Great Depression, with consequences for peace and democracy similar to those of the first. Whatever the trigger, the unlimited exercise of national sovereignty, exclusive self-interest and rejection of outside interference would likely be amplified, emptying, perhaps entirely, the half-full glass of multilateralism, including the UN and the European Union. Many of the more likely conflicts, such as between Israel and Iran or India and Pakistan, have potential religious dimensions. Short of war, tensions such as those related to immigration might become unbearable. Familiar issues of creed and identity could be exacerbated. One way or another, the secular rational approach would be sidestepped by a return to theocratic absolutes, competing or converging with secular absolutes such as unbridled nationalism.

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#### **The plan conditions executive use of force on meeting environmental standards- that’s ex-post review, not a restriction of power**

Jean Schiedler-Brown 12, Attorney, Jean Schiedler-Brown & Associates, Appellant Brief of Randall Kinchloe v. States Dept of Health, Washington, The Court of Appeals of the State of Washington, Division 1, http://www.courts.wa.gov/content/Briefs/A01/686429%20Appellant%20Randall%20Kincheloe%27s.pdf

3. The ordinary definition of the term "restrictions" also does not include the reporting and monitoring or supervising terms and conditions that are included in the 2001 Stipulation.

Black's Law Dictionary, 'fifth edition,(1979) defines "restriction" as;

A limitation often imposed in a deed or lease respecting the use to which the property may be put. The term "restrict' is also cross referenced with the term "restrain." Restrain is defined as; To limit, confine, abridge, narrow down, restrict, obstruct, impede, hinder, stay, destroy. To prohibit from action; to put compulsion on; to restrict; to hold or press back. To keep in check; to hold back from acting, proceeding, or advancing, either by physical or moral force, or by interposing obstacle, to repress or suppress, to curb.

In contrast, the terms "supervise" and "supervisor" are defined as; To have general oversight over, to superintend or to inspect. See Supervisor. A surveyor or overseer. . . In a broad sense, one having authority over others, to superintend and direct. The term "supervisor" means an individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but required the use of independent judgment.

Comparing the above definitions, it is clear that the definition of "restriction" is very different from the definition of "supervision"-very few of the same words are used to explain or define the different terms. In his 2001 stipulation, Mr. Kincheloe essentially agreed to some supervision conditions, but he did not agree to restrict his license.

#### C. Prefer our interpretation

#### Ground – the neg should be able to say Drone Strikes, Cyber ops, troop invasion and indefinite detention good/bad – This is core negative topic ground – they get to link turn any disadvantage based on topical action

#### Limits – they justify any aff that does transparency or requires a process before implementing a particular war power – this allows them to apply any oversight mechanism in international and/or domestic law- explodes the topic

# 1NC

#### Interpretation – the affirmative must specify which federal court rules on their aff

#### They don’t that’s a voter - the phrase “Federal Judiciary” is too vague and destroys legal precision – specification is good

Andrew Marsh (Official Reporter of the proceedings of the Constitutional Convention of the State of Nevada) 1866 “Declaration of Rights” in the ‘Official Report of the Debates and Proceedings in the Constitutional Convention of the State of Nevada” p. 781, <http://books.google.com/books?id=_xoWAAAAYAAJ&pg=PA781&lpg=PA781&dq=%22the+term+federal+judiciary%22&source=bl&ots=pvPibPxnnj&sig=cZT3Ug_Z4DUQljn2aRi-bSqZ0ro&hl=en&sa=X&ei=Id5HUrK1Ca7I4AOO-4DIBg&ved=0CFEQ6AEwBA#v=onepage&q=%22the%20term%20federal%20judiciary%22&f=false>

Mr BANKS There is one term made use of in the section last read, to which I have always been very much opposed and which I would like to have changed at this time. I refer to the phrase “as the same have been or may be defined by the Federal Judiciary.” It seems to me it would be much better to say “the Supreme Court of the United States.” That would be more direct, and plainer, and we know very well that the judiciary, and the courts, are not necessarily the same in all cases, for sometimes an act may be a judicial act without being an act of the court. I do not know that it would make any material difference in point of fact, but I nevertheless much prefer to use the direct term, “the Supreme Court;” and therefore, I move to make that change in Section 2, striking out the words “Federal Judiciary,” and inserting instead the words “Supreme Court of the United States.”

The PRESIDENT. The amendment proposed is certainly proper, because there are different United States courts; for instance, the District and Circuit Courts, which are distinctive parts of the Federal Judiciary.

Mr. COLLINS. I think that change should be made.

Mr. LOCKWOOD. If my memory serves me correctly, the same change has once been proposed, and rejected.

Mr. BANKS. No, sir. I had offered an amendment to this section, and accepted the amendment to my amendment suggested by the gentleman from Storey (Mr. Fitch,) which embraced this term “Federal Judiciary,” but it will be remembered that there was at that time some considerable feeling in regard to the doctrine or principle to be enunciated by the section, and especial attention was not called to the particular phraseology employed.

The PRESIDENT. My recollection coincides with that of the gentleman from Humboldt (Mr. Banks.) The words referred to were adopted by the convention as an amendment to the original section

Mr. LOCKWOOD. I think the gentleman from Humboldt concurs with me entirely, so far. The change of the term was subsequently proposed; I think the motion came from me, although I am not altogether certain of that; at all events the change was proposed, and rejected.

Mr. BANKS. The history of the matter was this: I had proposed an amendment to change the original section, but y amendment did not embrace the full extent of the change which was finally made. Then the gentlemen from Storey (Mr. Fitch) proposed his amendment, which covered more ground than mine, and although the terms of his amendment did not suit me altogether, yet as I approved generally of the object it had in view, and saw that it would meet with the approval of the majority, I accepted his amendment.

Mr. BROSNAN. My recollection is entirely in harmony with that of the gentleman from Humboldt We had some conversation on the subject matter, in regard to which, at the time, a good deal of feeling was manifested, and it was my understanding that although the gentleman from Humboldt accepted the amendment offered by my colleague, (Mr. Fitch) yet he did not prefer to use that particular language. I know that he did entertain and express the opinion at the time, that the term “Federal Judiciary” was to[o] indefinite, or at all events not the best term to use, perhaps, but in consequence, it may be, of the feeling existing relative to the general subject matter, an amendment was not proposed, though it was talked of.

The amendment proposed by Mr. Banks, was adopted by unanimous consent.

#### It also destroys ground and education – alternate court CPs are the heart of the most educational debates on the topic.

#### 2AC clarification is bad – sandbagging actors moots the strategic value of the 1nc and puts the negative structurally behind from the outset.

# 1NC

#### The President of the United States of America should issue an Executive Order requiring that environmental regulations apply to the introduction of Armed forces into hostilities.  This order will specify that citizens have the right to sue the military over environmental regulation violations. The Executive should also require that any damage done to bases should be cleaned up and that troops that violate domestic laws be prosecuted as per Status of Forces Agreements.

This solves your aff – Executive can create force of law and judicial precedent – avoids judicial capital

Paulsen 94 (Michael Stokes Paulsen, Assoc Prof of Law at Univ of Minnesota, 1994 Georgetown Law Journal, 83 Geo. L.J. 217, L/N)

This article is about executive branch authority to interpret the law. My thesis is one that, on first blush, may seem radical, but that I believe is thoroughly consistent with the vision of *The Federalist,* with the reasoning of *Marbury v. Madison,* with the Constitution's separation of powers, and with the well-reasoned constitutional views of some of the brightest and strongest chief executives in the first half of our nation's existence: The power to interpret law is not the sole province of the judiciary; rather, it is a divided, *shared* power not delegated to any one branch but ancillary to the functions of all of them within the spheres of their enumerated powers. The President's power to interpret the law is, within the sphere of his powers, precisely coordinate and coequal in authority to the Supreme Court's. In James Madison's words in *The Federalist* No. 49, "[t]he several departments being perfectly coordinate by the terms of their common commission, neither of them, it is evident, can pretend to an exclusive or superior right of settling the boundaries between their respective powers." n13 Thus, "[i]t is emphatically the province and duty" of the executive department, no less than the judiciary, "to say what the law is." n14 Moreover, as a consequence of our constitutional system of separation of powers, the executive's power to interpret the law may, and should, be exercised independently of the interpretations of other branches, including those of the federal courts. The Supreme Court's interpretations of treaties, federal statutes, or the Constitution do not bind the President any more than the President's or Congress's interpretations bind the courts. Rather, the President possesses the power of full "legal review" of the actions of the other branches -- the full power to review the lawfulness or correctness of their legal interpretations of the Constitution, of federal statutes, and of treaties -- in any matter that falls within the sphere of his governing powers as President. He may decline to execute acts of Congress  [\*222]  on constitutional grounds, even if it is those grounds have been rejected by the courts. In executing a statute he determines is constitutionally valid, he may use his own interpretation of the statute, even if it is contrary to the interpretation placed on it by the courts. And he may exercise such powers of legal review even in the specific case where courts have ruled against his position; that is, he may refuse to execute (or, where directed specifically to him, refuse to obey) judicial decrees that he concludes are contrary to law.

#### Plank 2 alone solves base kick out and the first advantage

Weyand 12 (Matt –Executive Online Editor, Indiana Journal of Global Legal Studies, “Department of Defense, Inc.: The DoD's Use of Corporate Strategies to Manage U.S. Overseas Military Bases”, 2012, 19 Ind. J. Global Leg. Stud. 391, lexis)

SOFAs allow the DoD to impose its will on host nations, to undermine the host nation's sovereignty, and to cause diplomatic strife. Thus, SOFAs inherently undermine the alliance between the United States and the host nation. In an ideal world, the United States would discontinue the use of SOFAs. However, this may not be possible or practical. Consequently, the United States must, at the very least, engage in a meaningful SOFA-bargaining process with host nations: it must form a true alliance with the host nation, an alliance based on mutual trust and assurances. As part of this bargaining process, burden sharing can be used as a bargaining chip. For example, a host nation may allow the United States to opt out of some liability for pollution if the United States pledges to minimize pollution and does not require the host nation to engage in burden sharing. Moreover, to ensure goodwill and continued cooperation, the DoD should forge bilateral SOFAs with all host nations, not just with countries that have the power to bargain for them. The United States must carefully guard its reputation abroad-if prospective host nations know that the United States has a history of polluting, it will be more difficult to enlist them as our allies.

If the United States is going to continue to demand immunity for its American troops overseas, at the very least, it must consistently prosecute troops who commit crimes in a host nation. U.S. troops must be held accountable for any criminal acts they commit in host nations, and the United States High Command should establish a top-down policy of instructing troops that they will be prosecuted for crimes they commit. By putting U.S. soldiers on notice, the United States will increase the likelihood that they will not commit crimes. Collaborating with the host nation's law enforcement, and transparently prosecuting U.S. troops will ensure that the host nation's citizens will feel that justice has been served. Because the DoD's new defense strategy is so dependent upon the cooperation of host nations, the United States must actively foster goodwill and trust. If the United States does not win the hearts and minds of the local populace, it will continue to risk being expulsed from host nations, as it was in Japan.

Although cleaning up overseas military bases will be expensive, not doing so will jeopardize relations with host nations. If the DoD pollutes, it must cleanup after itself. Prevention is often cheaper than remediation, so the DoD should establish procedures for the proper disposal of military and industrial waste. The DoD could design these procedures based on U.S. environmental law or the laws of the host nations. As a sign of good will, the DoD should follow the more stringent  [\*411]  of either its laws or the laws of the host nation. Countries will be more willing to allow the United States to build bases on their soil if the United States has a record of not polluting or, at the very least, a record of cleaning up after itself. [n145](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.712274.0952772804&target=results_DocumentContent&returnToKey=20_T18203921004&parent=docview&rand=1379819684525&reloadEntirePage=true" \l "n145)

# 1NC

#### Abortion restrictions will happen during next Supreme Court Session – Kennedy is the swing vote

Toobin 5/28 (“The Abortion Issue Returns”, <http://www.newyorker.com/online/blogs/comment/2013/05/abortion-returns-to-the-supreme-court.html>, Jeffrey, accessed 9/1)

As the Supreme Court’s term winds to a close this month, the Justices will be addressing a series of issues that reflect a changing agenda—the country’s and their own. There are two major [same-sex-marriage](http://www.scotusblog.com/case-files/cases/windsor-v-united-states-2/?wpmp_switcher=desktop) [cases](http://www.scotusblog.com/case-files/cases/hollingsworth-v-perry/?wpmp_switcher=desktop), a [challenge to the Voting Rights Act](http://www.scotusblog.com/case-files/cases/shelby-county-v-holder/?wpmp_switcher=desktop) based on the changing politics of the South, and even a futuristic dispute about[the patenting of human genes](http://www.scotusblog.com/case-files/cases/association-for-molecular-pathology-v-myriad-genetics-inc/?wpmp_switcher=desktop). But before too long—indeed, probably next fall—the Court will have to return to one of its most enduring controversies: abortion.¶ The Court may agree to hear one or more abortion cases in its next term. For the most part, these cases have their roots in the Republican landslides in the 2010 midterm elections. At the time, those electoral victories were largely portrayed as being based on economics; the Tea Party was often described as almost libertarian in orientation. But soon after new state legislators took office it became clear that social issues, and especially abortion, were among their highest priorities. In state after state, those Tea Party lawmakers passed new restrictions on abortion, and as the restrictions have taken effect challenges to them have started to work their way through the courts.¶ [According to the Guttmacher Institute](http://www.guttmacher.org/media/inthenews/2013/01/02/index.html), nineteen states passed forty-three new restrictions on abortion in 2012—on top of ninety-two restrictions passed in 2011. The most recent changes came in Arizona, Kansas, Louisiana, Oklahoma, South Dakota, and Wisconsin. A Guttmacher report states that the restrictions were in four general areas:¶ Mandating unnecessary medical procedures. The best known of these practices is requiring an ultrasound before any abortion, so that the woman is compelled to listen to a fetal heartbeat. Eight states now require these ultrasounds.¶ Increased regulation of abortion providers. These rules, notably strict in Michigan and Virginia, require abortion providers to have hospital-like facilities, while leaving other, similar outpatient institutions untouched.¶ Hospital privileges. Three states—Arizona, Mississippi, and Tennessee—recently added requirements that abortion providers have admitting privileges at local hospitals.¶ Limits on later abortions. Louisiana and Arizona have banned abortion after twenty weeks, and other states are weighing similar restrictions. In a law scheduled to go into effect this summer, North Dakota effectively banned abortions after six weeks.¶ The motivations behind these new laws are not difficult to discern. The ultrasounds are supposed to shock women into giving up their plans for abortion; the regulations are designed to raise costs for abortion clinics and drive them out of business; the hospital-privileges rules are intended to limit the number of doctors who can perform abortions, or eliminate them altogether, especially in states with very few clinics to begin with. (Mississippi has only one.) The rules on later abortions are intended to build on the pro-life movement’s earlier success in banning so-called partial-birth abortions.¶ The question now is whether the Supreme Court will uphold any or all of these rules. Two Supreme Court cases are critical to post-Roe v. Wade abortion-rights jurisprudence. In 1992, in[Planned Parenthood of Southeastern Pennsylvania v. Casey](http://www.law.cornell.edu/supct/html/historics/USSC_CR_0505_0833_ZS.html), a plurality opinion written jointly by Sandra Day O’Connor, Anthony Kennedy, and David Souter upheld the “central principle” of the 1973 decision in Roe. “It is a rule of law and a component of liberty we cannot renounce,” the three Justices wrote. Building on an idea that O’Connor had raised in earlier opinions, the trio said that abortion restrictions would be rejected “only where state regulation imposes an undue burden on a woman’s ability” to decide whether to have an abortion. What’s an “undue burden”? In 2007, in [Gonzales v. Carhart](http://www.law.cornell.edu/supremecourt/text/05-380#writing-ZO), Kennedy wrote an opinion upholding the federal law against late-term abortions. Reflecting a very different sensibility from his opinion in Casey, Kennedy appeared to give legislators broad latitude to regulate abortion. “The State may use its regulatory power to bar certain procedures and substitute others, all in furtherance of its legitimate interests in regulating the medical profession in order to promote respect for life, including life of the unborn,” he wrote. An “undue burden” in 1992 looked very different from an “undue burden” fifteen years later.¶ The lower courts have generally found that many of the new laws do indeed amount to undue burdens. Earlier this month, the Ninth Circuit Court of Appeals [struck down Arizona’s new, twenty-week limit](http://thehill.com/blogs/healthwatch/abortion/301029-appeals-court-strikes-down-arizona-abortion-law) on abortions on that ground. Similar legal challenges to the North Dakota law[began this month](http://news.yahoo.com/legal-challenges-begin-against-nd-abortion-laws-154919260.html). Last December, the Oklahoma Supreme Court [invalidated, as an undue burden](http://news.yahoo.com/okla-court-strikes-down-ultrasound-abortion-law-205615273.html), that state’s new ultrasound law, which requires placing the image in front of the woman.¶ But will the Supreme Court agree with the lower courts, or has the definition of an undue burden changed yet again? Kennedy is the only Justice from the team that wrote Casey left on the Court. It seems a safe assumption that Chief Justice John Roberts and Justices Antonin Scalia, Clarence Thomas, and Samuel Alito will approve all the new restrictions, while Ruth Bader Ginsburg, Stephen Breyer, Sonia Sotomayor, and Elena Kagan will reject them. As in 1992 and 2007, the decision will likely turn on Kennedy’s views.¶ Kennedy’s views on these specific issues seem difficult to predict, and thus the outcomes of the challenges to these laws are, too. The new cases will reveal whether his drift away from Casey continues, or whether he has a core commitment to abortion rights that the new restrictions will finally run up against. The only certainty is that abortion will soon return to a central place before the Justices, and in the political arena.

#### Judicial decisions constraining the executive’s use of armed forces would massively drain judicial capital – executive backlash.

Druck, J.D. Candidate Cornell Law School, ‘12

[Judah, “DRONING ON: THE WAR POWERS RESOLUTION¶ AND THE NUMBING EFFECT OF¶ TECHNOLOGY-DRIVEN WARFARE”, Cornell Law Review, Vol. 98, 2012, RSR]

The suits arising out of possible WPR violations are well-documented53 and therefore only require a brief review. Generally, when¶ faced with a question concerning the legality of presidential military¶ action, courts have punted the issue using a number of procedural¶ tools to avoid ruling on the merits. For example, when twenty-nine¶ representatives filed suit after President Reagan’s possible WPR violation in El Salvador, the U.S. District Court for the District of Columbia¶ dismissed the suit on political question grounds.54 Similar suits were¶ dismissed for issues involving standing,55 mootness,56 ripeness,57 or¶ nonjusticiability because Congress could better handle fact-finding.58¶ Despite the varying grounds for dismissing WPR suits, a general theme¶ has emerged: absent action taken by Congress itself, the judiciary cannot be counted on to step in to check the President.¶ To be sure, the judiciary’s unwillingness to review cases arising¶ from WPR disputes arguably carries some merit. Two examples illustrate this point. First, although a serviceperson ordered into combat¶ might have standing to sue, congressional standing is less clear.59 Indeed, debates rage throughout war powers literature concerning¶ whether congressional suits should even be heard on their merits.60¶ And though some courts have held that a member of Congress can¶ have standing when a President acts unilaterally, holding that such¶ unauthorized actions amount to “disenfranchisement,”61 subsequent¶ decisions and commentators have thrown the entire realm of legislative standing into doubt.62 Though the merits of this debate are beyond the scope of this Note, it is sufficient to emphasize that a¶ member of Congress arguably suffers an injury when a President violates the WPR because the presidential action prevents the congressperson from being able to vote (namely, on whether to authorize¶ hostilities),63 thereby amounting to disenfranchisement by¶ “preclu[ding] . . . a specific vote . . . by a presidential violation of¶ law . . . .”64 As such, under the right circumstances, perhaps the standing doctrine should not be as problematic as history seems to indicate¶ when a congressperson attempting to have a say on military action¶ brings a WPR suit.¶ Secondly, and perhaps more importantly, it is arguably unclear¶ what, if any, remedy is available to potential litigants. Unlike a private¶ lawsuit, where a court can impose a simple fine or jail sentence, suits¶ against the executive branch carry a myriad of practical issues. For¶ example, if the remedy is an injunction, issues concerning enforcement arise: Who enforces it and how?65 Or, if a court makes a declaratory judgment stating that the President has acted illegally, it might¶ invite open defiance, thereby creating unprecedented strife among¶ branches. Yet, a number of possible remedies are indeed available.¶ For one, courts could simply start the WPR clock, requiring a President to either seek congressional approval or cease all actions within¶ the time remaining (depending on whether the court starts the clock¶ from the beginning or applies it retroactively).66 In doing so, a court¶ would trigger the WPR in the same way that Congress would have had¶ it acted alone. On a similar note, a court could declare the relevant¶ military conflict illegal under the WPR, thereby inviting Congress to¶ begin impeachment proceedings.67 Although both cases require¶ some level of congressional involvement, a court could at least begin¶ the process of providing a suitable remedy. Thus, the more questionable issues of standing and remedies should not (under the right circumstances) prevent a WPR suit from moving forward. What about the pragmatic issues associated with involving the judiciary in foreign affairs? After all, we might not want our judiciary¶ entering the world of realpolitik by forcing a President’s hand; doing¶ so would require a large political (and administrative) undertaking¶ that might take us beyond the bounds of the judiciary’s institutional¶ role. And as previously mentioned, courts do not, and perhaps should¶ not, want to be in the business of telling the President when or how to¶ act, especially when such conflict might result in presidential defiance. This position might make sense in a system where we could rely¶ on congressional action to prevent unilateral action. But given the¶ dysfunction that overwhelms the legislative branch whenever a President violates the WPR,68 the entire premise of a system emphasizing¶ no unilateral military action is inverted when the onus is placed¶ squarely on Congress. If Congress could not go to the courts in order¶ to prevent further presidential WPR violations, it would be required to¶ turn to its legislative powers. But doing so would require the approval¶ of at least a majority of Congress, though two-thirds would seem more¶ reasonable given the likelihood of a presidential veto. Requiring such¶ an overwhelming level of congressional support and unity to act is¶ irrational and unreasonable, especially after considering the ways in¶ which most Congresses have failed to act on prior occasions.69 Given¶ this high burden placed on any Congress, even one with majority control, the judiciary must play some role when a President violates the¶ WPR. Though the pragmatic issues around judicial intervention require some recognition, they are, in some respect, the lesser of two¶ evils.¶ B

#### Abortion is a KEY LITMUS test for states rights – Supreme Court actions shape the lanscape

Maharrey 11 (Roe v Wade a Nullification Issue, Mike, 7/11, Mike Maharrey is a writer/staff member of the 10th Amendment Center, <http://tenthamendmentcenter.com/2011/07/11/roe-v-wade-a-nullification-issue/#.UiO0HdJwrgc>)

“Abortion is murder.”¶ “A woman has a right to choose.”¶ Few issues divide a room, a city or a country faster than abortion.¶ The abortion issue creates a political and philosophical quagmire, pressing itself into the realm of science and religion, the right to life and of personal sovereignty.¶ In 1973, the U.S. Supreme Court interjected the federal government into the issue, ruling that a Constitutional right to privacy enforced through the due process clause of the 14th Amendment grants women the right to an abortion.¶ The decision makes mincemeat out of the Constitution. An enumerated right to privacy exists nowhere. One could argue that individuals possess a natural right to privacy, and further assert that the federal government has no authority to abridge that right under the Ninth Amendment. But the Bill of Rights was never intended to bind the states, and the Tenth Amendment leaves all power not delegated to the United States to the states and the people.¶ Abortion should never have become a federal issue.¶ Justice Byron White alluded to this in a blistering dissent.¶ I find nothing in the language or history of the Constitution to support the Court’s judgment. The Court simply fashions and announces a new constitutional right for pregnant mothers and, with scarcely any reason or authority for its action, invests that right with sufficient substance to override most existing state abortion statutes. The upshot is that the people and the legislatures of the 50 States are constitutionally disentitled to weigh the relative importance of the continued existence and development of the fetus, on the one hand, against a spectrum of possible impacts on the mother, on the other hand. As an exercise of raw judicial power, the Court perhaps has authority to do what it does today; but, in my view, its judgment is an improvident and extravagant exercise of the power of judicial review that the Constitution extends to this Court.¶ One would expect those who support abortion rights to cling tenaciously to the Court’s decision. It enforces their view on every state and individual. But more surprisingly, many in the anti-abortion camp also prefer to fight the battle at the national level, resisting any proposal to throw the issue back to the states where it belongs.¶ A Tenth Amendment Center supporter sent a letter to Steven Ertelt, the editor Life News, a major pro-life publication. The TAC supporter suggested state nullification of the Supreme Court decision was the best way to fight the abortion battle.¶ “Work must shift to the individual States legislatures and their citizenry because we now know they have the authority to overrule unconstitutional laws and court decisions as protectors of the Constitution as intended by our Founding Fathers.”¶ Ertelt’s response illustrates a centralized, federal government oriented, mindset.¶ “We live in a Supreme Court dominated political culture now. That kind of vote won’t happen. So the goal is electing a pro-life president and getting the 5th justice we need to overturn the decision.”¶ How’s that approach working for you, 38 years later, Mr. Ertelt?¶ He apparently hasn’t really thought through the actual realities. The Supreme Court has no power to outlaw abortion. The federal government has no authority over life and death matters. That’s why federal laws against murder don’t exist – except in a few specific cases involving federally controlled lands, the military and other legitimate spheres of federal jurisdiction. It is a state issue. So at best, Ertelt and pro-life advocates can only hope for a decision overturning the ridiculous assertions of Roe, throwing the issue back to the states.¶ So here’s a question for pro-life advocates: why waste the time and energy battling at the federal level when the states rightfully hold the keys? Court rulings carry no weight when they defy the Constitution, and states should simply refuse to enforce them.¶ In fact, some states have already started to flex their muscles.¶ Last week, the Ohio House passed bill would that would make abortion illegal after the fetus has a detectable heartbeat. [HB 125](http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_125) passed 54-44.¶ The law would not punish the woman who had the abortion, but instead targets abortion providers.¶ The Ohio bill does not rest on a constitutional argument, but instead asserts the “viability” of a fetus after the heart begins beating. Even many in the pro-life community oppose the bill, fearing the courts won’t buy the argument, and that it will simply strengthen Roe.¶ “Unfortunately, the court has ruled that states can place limitations on post-viability abortions, but pre-viability there can be zero restrictions,” executive director of Ohio Right to Life Mike Gonidakis told the Columbus Dispatch. “We certainly don’t want the courts to reaffirm Roe with a decision in Ohio.”¶ The fundamental question remains, why should five black-robed demi-Gods have the right to decide for the people of Ohio how they choose to define viability?¶ Answer: they shouldn’t.¶ And federal courts have no authority to do so under the Constitution.¶ Georgia Rep. Bobby Franklin (R – Marietta) filed [a bill](http://www.legis.ga.gov/legislation/en-US/display.aspx?BillType=HB&Legislation=1) during the 2011 legislative session that got more to the point. The legislation declared life begins at conception and went on to assert the state’s right and responsibility to protect the lives of its citizens.¶ (6) The United States Congress has reserved to itself ‘all legislative powers herein vested’ according to Article I, Section I of the Constitution of the United States;¶ (7) ‘Herein vested’ to the United States Congress applies to only five crimes: (1) counterfeiting, (2) piracy, (3) felonies on the high seas, (4) offenses against the law of nations, and (5) treason; according to Article I, Section VIII and Article III, Section III of the Constitution of the United States;¶ (8) Murder is not counterfeiting, piracy, felony on the high seas, an offense against the law of nations, or treason;¶ (9) Georgia has, therefore, reserved to itself exclusive jurisdiction over the definition and punishment of murder under Amendment X of the Constitution of the United States.¶ A [similar bill](http://www.scstatehouse.gov/cgi-bin/web_bh10.exe?bill1=245&session=119) was considered in the South Carolina legislature. [Proposed legislation](http://www.in.gov/apps/lsa/session/billwatch/billinfo?year=2011&session=1&request=getBill&doctype=SB&docno=0290) in Indiana would make abortion illegal in that state, “unless a physician determines, based on sound medical practice, that the abortion is necessary to save the life of a pregnant woman.”¶ Ultimately, abortion comes down to an individual’s views on life, morality and sovereignty. No law, made at any level, will ever really end abortion, nor will it change the minds of those convinced it is a life issue. But at the very least, lawmaking should devolve to the lowest level of power possible. Let the people of each state battle it out and decide for themselves what restrictions, if any, they choose to place on abortion.¶ The issue properly falls within the states’ sphere of power. SCOTUS had no authority to rule one way or another on abortion. But since the federal government insists on overreaching and sticking its supersized nose into areas it has no business, it’s up to the states to reach out and smack that nose and keep it in its proper place.

#### Federalism solves heg

Nivola 10 (Pietro, The American Interest, “Rebalancing American Federalism”, March/April, http://www.the-american-interest.com/article-bd.cfm?piece=787)

Thinking along those lines warrants renewed emphasis today. America’s national government has had its hands full coping with a deep and lingering economic crisis and onerous security challenges around the world. It cannot, or at any rate ought not, keep piling on top of those daunting tasks a second-tier agenda that injudiciously dabbles in too many decisions and duties best consigned to local entities. Turning every imaginable issue into a Federal case, so to speak, diverts and polarizes political leaders at the national level, and erodes recognition of local responsibilities. A kind of attention deficit disorder besets anybody who attempts to do a little of everything rather than a few important things well. Although not a root cause of catastrophes like the submersion of a historic American city by a hurricane in 2005, the terrorist attacks of September 11, 2001, the great financial bust of 2008 or the successful resurgence of the Taliban in Central Asia, an overstretched and distracted government stands less chance of mitigating such tragedies.

#### US primacy is key to solve great power wars

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Over the past two decades, no other state has had the ability to seriously challenge the US military. Under these circumstances, motivated by both opportunity and fear, many actors have bandwagoned with US hegemony and accepted a subordinate role. Canada, most of Western Europe, India, Japan, South Korea, Australia, Singapore and the Philippines have all joined the US, creating a status quo that has tended to mute great power conflicts.

However, as the hegemony that drew these powers together withers, so will the pulling power behind the US alliance. The result will be an international order where power is more diffuse, American interests and influence can be more readily challenged, and conflicts or wars may be harder to avoid.

As history attests, power decline and redistribution result in military confrontation. For example, in the late 19th century America’s emergence as a regional power saw it launch its first overseas war of conquest towards Spain. By the turn of the 20th century, accompanying the increase in US power and waning of British power, the American Navy had begun to challenge the notion that Britain ‘rules the waves.’ Such a notion would eventually see the US attain the status of sole guardians of the Western Hemisphere’s security to become the order-creating Leviathan shaping the international system with democracy and rule of law.

Defining this US-centred system are three key characteristics: enforcement of property rights, constraints on the actions of powerful individuals and groups and some degree of equal opportunities for broad segments of society. As a result of such political stability, free markets, liberal trade and flexible financial mechanisms have appeared. And, with this, many countries have sought opportunities to enter this system, proliferating stable and cooperative relations.

However, what will happen to these advances as America’s influence declines? Given that America’s authority, although sullied at times, has benefited people across much of Latin America, Central and Eastern Europe, the Balkans, as well as parts of Africa and, quite extensively, Asia, the answer to this question could affect global society in a profoundly detrimental way.

Public imagination and academia have anticipated that a post-hegemonic world would return to the problems of the 1930s: regional blocs, trade conflicts and strategic rivalry. Furthermore, multilateral institutions such as the IMF, the World Bank or the WTO might give way to regional organisations.

For example, Europe and East Asia would each step forward to fill the vacuum left by Washington’s withering leadership to pursue their own visions of regional political and economic orders. Free markets would become more politicised — and, well, less free — and major powers would compete for supremacy.

Additionally, such power plays have historically possessed a zero-sum element. In the late 1960s and 1970s, US economic power declined relative to the rise of the Japanese and Western European economies, with the US dollar also becoming less attractive. And, as American power eroded, so did international regimes (such as the Bretton Woods System in 1973).

A world without American hegemony is one where great power wars re-emerge, the liberal international system is supplanted by an authoritarian one, and trade protectionism devolves into restrictive, anti-globalisation barriers. This, at least, is one possibility we can forecast in a future that will inevitably be devoid of unrivalled US primacy.

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#### Judicial deference to executive war powers high now

McCormack 13, Professor of Law at Utah

(8/20, Wayne, U.S. Judicial Independence: Victim in the “War on Terror”, today.law.utah.edu/projects/u-s-judicial-independence-victim-in-the-war-on-terror/

One of the principal victims in the U.S. so-called “war on terror” has been the independence of the U.S. Judiciary. Time and again, challenges to assertedly illegal conduct on the part of government officials have been turned aside, either because of overt deference to the Government or because of special doctrines such as state secrets and standing requirements. The judiciary has virtually relinquished its valuable role in the U.S. system of judicial review. In the face of governmental claims of crisis and national security needs, the courts have refused to examine, or have examined with undue deference, the actions of government officials.

#### Plan perceived as weakening of obama’s war power- the standard snowballs into total limitations, causing alliance failure and nuclear conflict

WAXMAN 2013 - law professor at Columbia Law School, co-chairs the Roger Hertog Program on Law and National Security (Matthew Waxman, “The Constitutional Power to Threaten War,” August 27, 2013, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2316777)

As a prescriptive matter, Part II also shows that examination of threatened force and the credibility requirements for its effectiveness calls into question many orthodoxies of the policy advantages and risks attendant to various allocations of legal war powers, including the existing one and proposed reforms.23 Most functional arguments about war powers focus on fighting wars or hostile engagements, but that is not all – or even predominantly – what the United States does with its military power. Much of the time it seeks to avert such clashes while achieving its foreign policy objectives: to bargain, coerce, deter.24 The President’s flexibility to use force in turn affects decision-making about threatening it, with major implications for securing peace or dragging the United States into conflicts. Moreover, constitutional war power allocations affect potential conflicts not only because they may constrain U.S. actions but because they may send signals and shape other states’ (including adversaries’) expectations of U.S. actions.25 That is, most analysis of war-powers law is inward-looking, focused on audiences internal to the U.S. government and polity, but thinking about threatened force prompts us to look outward, at how war-powers law affects external perceptions among adversaries and allies. Here, extant political science and strategic studies offer few clear conclusions, but they point the way toward more sophisticated and realistic policy assessment of legal doctrine and proposed reform. More generally, as explained in Part III, analysis of threatened force and war powers exposes an under-appreciated relationship between constitutional doctrine and grand strategy. Instead of proposing a functionally optimal allocation of legal powers, as legal scholars are often tempted to do, this Article in the end denies the tenability of any such claim. Having identified new spaces of war and peace powers that legal scholars need to take account of in understanding how those powers are really exercised, this Article also highlights the extent to which any normative account of the proper distribution of authority over this area depends on many matters that cannot be predicted in advance or expected to remain constant.26 Instead of proposing a policy-optimal solution, this Article concludes that the allocation of constitutional war powers is – and should be –geopolitically and strategically contingent; the actual and effective balance between presidential and congressional powers over war and peace in practice necessarily depends on fundamental assumptions and shifting policy choices about how best to secure U.S. interests against potential threats.27 I. Constitutional War Powers and Threats of Force Decisions to go to war or to send military forces into hostilities are immensely consequential, so it is no surprise that debates about constitutional war powers occupy so much space. But one of the most common and important ways that the United States uses its military power is by threatening war or force – and the constitutional dimensions of that activity receive almost no scrutiny or even theoretical investigation. A. War Powers Doctrine and Debates The Constitution grants Congress the powers to create military forces and to “declare war,”28 which the Supreme Court early on made clear includes the power to authorize limited uses of force short of full-blown war.29 The Constitution then vests the President with executive power and designates him commander in chief of the armed forces,30 and it has been well-accepted since the Founding that these powers include unilateral authority to repel invasions if the United States is attacked.31 Although there is nearly universal acceptance of these basic starting points, there is little legal agreement about how the Constitution allocates responsibility for the vast bulk of cases in which the United States has actually resorted to force. The United States has declared war or been invaded only a handful of times in its history, but it has used force – sometimes large-scale force – hundreds of other times.32 Views split over questions like when, if ever, the President may use force to deal with aggression against third parties and how much unilateral discretion the President has to use limited force short of full-blown war. For many lawyers and legal scholars, at least one important methodological tool for resolving such questions is to look at historical practice, and especially the extent to which the political branches acquiesced in common practices.33 Interpretation of that historical practice for constitutional purposes again divides legal scholars, but most would agree at least descriptively on some basic parts of that history. In particular, most scholars assess that from the Founding era through World War II, Presidents and Congresses alike recognized through their behavior and statements that except in certain narrow types of contingencies, congressional authorization was required for large-scale military operations against other states and international actors, even as many Presidents pushed and sometimes crossed those boundaries.34 Whatever constitutional constraints on presidential use of force existed prior to World War II, however, most scholars also note that the President asserted much more extensive unilateral powers to use force during and after the Cold War, and many trace the turning point to the 1950 Korean War.35 Congress did not declare war in that instance, nor did it expressly authorize U.S. participation.36 From that point forward, presidents have asserted broad unilateral authority to use force to address threats to U.S. interests, including threats to U.S. allies, and that neither Congress nor courts pushed back much against this expanding power.37 Concerns about expansive presidential war-making authority spiked during the Vietnam War. In the wind-down of that conflict, Congress passed – over President Nixon’s veto – the War Powers Resolution,38 which stated its purpose as to ensure the constitutional Founders’ original vision that the “collective judgment of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and to the continued use of such forces in hostilities or in such situations.”39 Since then, presidentialists have argued that the President still retains expansive authority to use force abroad to protect American interests,40 and congressionalists argue that this authority is tightly circumscribed.41 These constitutional debates have continued through the first decade of the 21st century. Constitutional scholars split, for example, over President Obama’s power to participate in coalition operations against Libya without congressional authorization in 2011, especially after the War Powers Resolution’s 60-day clock expired.42 Some argue that President Obama’s use of military force without specific congressional authorization in that case reflects the broad constitutional discretion presidents now have to protect American interests, at least short of full-blown “war”, while others argue that it is the latest in a long record of presidential violations of the Constitution and the War Powers Resolution.43 B. Threats of Force and Constitutional Powers These days it is usually taken for granted that – whether or not he can make war unilaterally – the President is constitutionally empowered to threaten the use of force, implicitly or explicitly, through diplomatic means or shows of force. It is never seriously contested whether the President may declare that United States is contemplating military options in response to a crisis, or whether the President may move substantial U.S. military forces to a crisis region or engage in military exercises there. To take the Libya example just mentioned, is there any constitutional limitation on the President’s authority to move U.S. military forces to the Mediterranean region and prepare them very visibly to strike?44 Or his authority to issue an ultimatum to Libyan leaders that they cease their brutal conduct or else face military action? Would it matter whether such threats were explicit versus implicit, whether they were open and public versus secret, or whether they were just a bluff? If not a constitutional obstacle, could it be argued that the War Powers Resolution’s reporting requirements and limits on operations were triggered by a President’s mere ultimatum or threatening military demonstration, insofar as those moves might constitute a “situation where imminent involvement in hostilities is clearly indicated by the circumstances”? These questions simply are not asked (at least not anymore).45 If anything, most lawyers would probably conclude that the President’s constitutional powers to threaten war are not just expansive but largely beyond Congress’s authority to regulate directly. From a constitutional standpoint, to the extent it is considered at all, the President’s power to threaten force is probably regarded to be at least as broad as his power to use it. One way to look at it is that the power to threaten force is a lesser included element of presidential war powers; the power to threaten to use force is simply a secondary question, the answer to which is bounded by the primary issue of the scope of presidential power to actually use it. If one interprets the President’s defensive war powers very broadly, to include dealing with aggression not only directed against U.S. territories but also against third parties,46 then it might seem easy to conclude that the President can also therefore take steps that stop short of actual armed intervention to deter or prevent such aggression. If, however, one interprets the President’s powers narrowly, for example, to include only limited unilateral authority to repel attacks against U.S. territory,47 then one might expect objections to arguably excessive presidential power to include his unilateral threats of armed intervention. Another way of looking at it is that in many cases, threats of war or force might fall within even quite narrow interpretations of the President’s inherent foreign relations powers to conduct diplomacy or his express commander in chief power to control U.S. military forces – or some combination of the two – depending on how a particular threat is communicated. A President’s verbal warning, ultimatum, or declared intention to use military force, for instance, could be seen as merely exercising his role as the “sole organ” of U.S. foreign diplomacy, conveying externally information about U.S. capabilities and intentions.48 A president’s movement of U.S. troops or warships to a crisis region or elevation of their alert level could be seen as merely exercising his dayto- day tactical control over forces under his command.49 Generally it is not seriously contested whether the exercise of these powers alone could so affect the likelihood of hostilities or war as to intrude on Congress’s powers over war and peace.50 We know from historical examples that such unilateral military moves, even those that are ostensibly pure defensive ones, can provoke wars – take, for example, President Polk’s movement of U.S. forces to the contested border with Mexico in 1846, and the resulting skirmishes that led Congress to declare war.51 Coming at the issue from Congress’s Article I powers rather than the President’s Article II powers, the very phrasing of the power “To declare War” puts most naturally all the emphasis on the present tense of U.S. military action, rather than its potentiality. Even as congressionalists advance interpretations of the clause to include not merely declarative authority but primary decision-making authority as to whether or not to wage war or use force abroad, their modern-day interpretations do not include a power to threaten war (except perhaps through the specific act of declaring it). None seriously argues – at least not any more – that the Declare War Clause precludes presidential threats of war. This was not always the case. During the early period of the Republic, there was a powerful view that beyond outright initiation of armed hostilities or declaration of war, more broadly the President also could not unilaterally take actions (putting aside actual military attacks) that would likely or directly risk war,52 provoke a war with another state,53 or change the condition of affairs or relations with another state along the continuum from peace to war.54 To do so, it was often argued, would usurp Congress’s prerogative to control the nation’s state of peace or war.55 During the Quasi-War with France at the end of the 18th century, for example, some members of Congress questioned whether the President, absent congressional authorization, could take actions that visibly signaled an intention to retaliate against French maritime harassment,56 and even some members of President Adams’ cabinet shared doubts.57 Some questions over the President’s power to threaten force arose (eventually) in relation to the Monroe Doctrine, announced in an 1823 presidential address to Congress and which in effect declared to European powers that the United States would oppose any efforts to colonize or reassert control in the Western Hemisphere.58 “Virtually no one questioned [Monroe’s proclamation] at the time. Yet it posed a constitutional difficulty of the first importance.”59 Of course, Monroe did not actually initiate any military hostilities, but his implied threat – without congressional action – risked provoking rather than deterring European aggression and by putting U.S. prestige and credibility on the line it limited Congress’s practical freedom of action if European powers chose to intervene.60 The United States would have had at the time to rely on British naval power to make good on that tacit threat, though a more assertive role for the President in wielding the potential for war or intervention during this period went hand in hand with a more sustained projection of U.S. power beyond its borders, especially in dealing with dangers emanating from Spanish-held Florida territory.61 Monroe’s successor, John Quincy Adams, faced complaints from opposition members of Congress that Monroe’s proclamation had exceeded his constitutional authority and had usurped Congress’s by committing the United States – even in a non-binding way – to resisting European meddling in the hemisphere.62 The question whether the President could unilaterally send militarily-threatening signals was in some respects a mirror image of the issues raised soon after the Constitution was ratified during the 1793 Neutrality Controversy: could President Washington unilaterally declare the United States to be neutral as to the war among European powers. Washington’s politically controversial proclamation declaring the nation “friendly and impartial” in the conflict between France and Great Britain (along with other European states) famously prompted a back-and-forth contest of public letters by Alexander Hamilton and James Madison, writing pseudonymously as “Pacificus” and “Helvidius”, about whether the President had such unilateral power or whether it belonged to Congress.63 Legal historian David Currie points out the irony that the neutrality proclamation was met with stronger and more immediate constitutional scrutiny and criticism than was Monroe’s threat. After all, Washington’s action accorded with the principle that only Congress, representing popular will, should be able to take the country from the baseline state of peace to war, whereas Monroe’s action seemed (at least superficially) to commit it to a war that Congress had not approved.64 Curiously (though for reasons offered below, perhaps not surprisingly) this issue – whether there are constitutional limits on the President’s power to threaten war – has almost vanished completely from legal discussion, and that evaporation occurred even before the dramatic post-war expansion in asserted presidential power to make war. Just prior to World War II, political scientist and presidential powers theorist Edward Corwin remarked that “[o]f course, it may be argued, and has in fact been argued many times, that the President is under constitutional obligation not to incur the risk of war in the prosecution of a diplomatic policy without first consulting Congress and getting its consent.”65 “Nevertheless,” he continued,66 “the supposed principle is clearly a maxim of policy rather than a generalization from consistent practice.” In his 1945 study World Policing and the Constitution, James Grafton Rogers noted: [E]xamples of demonstrations on land and sea made for a variety of purposes and under Presidents of varied temper and in different political climates will suffice to make the point. The Commander-in-Chief under the Constitution can display our military resources and threaten their use whenever he thinks best. The weakness in the diplomatic weapon is the possibility of dissidence at home which may cast doubt on our serious intent. The danger of the weapon is war.67 At least since then, however, the importance to U.S. foreign policy of threatened force has increased dramatically, while legal questions about it have receded further from discussion. In recent decades a few prominent legal scholars have addressed the President’s power to threaten force, though in only brief terms.

Taylor Reveley noted in his volume on war powers the importance of allocating constitutional responsibility not only for the actual use of force but also “[v]erbal or written threats or assurances about the circumstances in which the United States will take military action …, whether delivered by declarations of American policy, through formal agreements with foreign entities, by the demeanor or words of American officials, or by some other sign of national intent.”68 Beyond recognizing the critical importance of threats and other non-military actions in affecting war and peace, however, Reveley made little effort to address the issue in any detail. Among the few legal scholars attempting to define the limiting doctrinal contours of presidentially threatened force, Louis Henkin wrote in his monumental Foreign Affairs and the Constitution that: Unfortunately, the line between war and lesser uses of force is often elusive, sometimes illusory, and the use of force for foreign policy purposes can almost imperceptibly become a national commitment to war. Even when he does not use military force, the President can incite other nations or otherwise plunge or stumble this country into war, or force the hand of Congress to declare or to acquiesce and cooperate in war. As a matter of constitutional doctrine, however, one can declare with confidence that a President begins to exceed his authority if he willfully or recklessly moves the nation towards war…69 The implication seems to be that the President may not unilaterally threaten force in ways that are dramatically escalatory and could likely lead to war, or perhaps that the President may not unilaterally threaten the use of force that he does not have the authority to initiate unilaterally.70 Jefferson Powell, who generally takes a more expansive view than Henkin of the President’s war powers, argues by contrast that “[t]he ability to warn of, or threaten, the use of military force is an ordinary and essential element in the toolbox of that branch of government empowered to formulate and implement foreign policy.”71 For Powell, the President is constantly taking actions as part of everyday international relations that carry a risk of military escalation, and these are well-accepted as part of the President’s broader authority to manage, if not set, foreign policy. Such brief mentions are in recent times among the rare exceptions to otherwise barren constitutional discussion of presidential powers to threaten force. That the President’s authority to threaten force is so well-accepted these days as to seem self-evident is not just an academic phenomenon. It is also reflected in the legal debates among and inside all three branches of government. In 1989, Michael Reisman observed: Military maneuvers designed to convey commitment to allies or contingent threats to adversaries … are matters of presidential competence. Congress does not appear to view as within its bailiwick many low-profile contemporaneous expressions of gunboat diplomacy, i.e., the physical interposition of some U.S. war-making capacity as communication to an adversary of United States’ intentions and capacities to oppose it.72 This was and remains a correct description but understates the pattern of practice, insofar as even major and high-profile expressions of coercive diplomacy are regarded among all three branches of government as within presidential competence. In Dellums v. Bush – perhaps the most assertive judicial scrutiny of presidential power to use large-scale force abroad since the end of the Cold War – the district court dismissed on ripeness grounds congressmembers’ suit challenging President George H. W. Bush’s intended military operations against Iraq in 1991 and seeking to prevent him from initiating an offensive attack against Iraq without first securing explicit congressional authorization for such action.73 That at the time of the suit the President had openly threatened war – through ultimatums and deployment of several hundred thousand U.S. troops – but had not yet “committed to a definitive course of action” to carry out the threat meant there was no justiciable legal issue, held the court.74 The President’s threat of war did not seem to give the district court legal pause at all; quite the contrary, the mere threat of war was treated by the court as a non-issue entirely.75 There are several reasons why constitutional questions about threatened force have dropped out of legal discussions. First, the more politically salient debate about the President’s unilateral power to use force has probably swallowed up this seemingly secondary issue. As explained below, it is a mistake to view threats as secondary in importance to uses of force, but they do not command the same political attention and their impacts are harder to measure.76 Second, the expansion of American power after World War II, combined with the growth of peacetime military forces and a set of defense alliance commitments (developments that are elaborated below) make at least some threat of force much more common – in the case of defensive alliances and some deterrent policies, virtually constant – and difficult to distinguish from other forms of everyday diplomacy and security policy.77 Besides, for political and diplomatic reasons, presidents rarely threaten war or intervention without at least a little deliberate ambiguity. As historian Marc Trachtenberg puts it: “It often makes sense … to muddy the waters a bit and avoid direct threats.”78 Any legal lines one might try to draw (recall early attempts to restrict the President’s unilateral authority to alter the state of affairs along the peacetime-wartime continuum) have become blurrier and blurrier. In sum, if the constitutional power to threaten war ever posed a serious legal controversy, it does so no more. As the following section explains, however, threats of war and armed force have during most of our history become a greater and greater part of American grand strategy, defined here as long-term policies for using the country’s military and non-military power to achieve national goals. The prominent role of threatened force in U.S. strategy has become the focus of political scientists and other students of security strategy, crises, and responses – but constitutional study has not adjusted accordingly.79 C. Threats of Force and U.S. Grand Strategy While the Korean and Vietnam Wars were generating intense study among lawyers and legal scholars about constitutional authority to wage military actions abroad, during that same period many political scientists and strategists – economists, historians, statesmen, and others who studied international conflict – turned their focus to the role of threatened force as an instrument of foreign policy. The United States was building and sustaining a massive war-fighting apparatus, but its security policy was not oriented primarily around waging or winning wars but around deterring them and using the threat of war – including demonstrative military actions – to advance U.S. security interests. It was the potential of U.S. military might, not its direct application or engagement with the enemy, that would do much of the heavy lifting. U.S. military power would be used to deter the Soviet Union and other hostile states from taking aggressive action. It would be unsheathed to prompt them to back down over disputes. It would reassure allies that they could depend on U.S. help in defending themselves. All this required that U.S. willingness to go to war be credible in the eyes of adversaries and allies alike. Much of the early Cold War study of threatened force concerned nuclear strategy, and especially deterrence or escalation of nuclear war. Works by Albert Wohlstetter, Herman Kahn, and others not only studied but shaped the strategy of nuclear threats, as well as how to use limited applications of force or threats of force to pursue strategic interests in remote parts of the globe without sparking massive conflagrations.80 As the strategic analyst Bernard Brodie wrote in 1946, “Thus far the chief purpose of our military establishment has been to win wars. From now on its chief purpose must be to avert them.”81 Toward that end, U.S. government security and defense planners during this time focused heavily on preserving and improving the credibility of U.S. military threats – while the Soviet Union was doing likewise.82 The Truman administration developed a militarized version of containment strategy against the Soviet empire, emphasizing that stronger military capabilities were necessary to prevent the Soviets from seizing the initiative and to resist its aggressive probes: “it is clear,” according to NSC-68, the government document which encapsulated that strategy, “that a substantial and rapid building up of strength in the free world is necessary to support a firm policy intended to check and to roll back the Kremlin's drive for world domination.”83 The Eisenhower administration’s “New Look” policy and doctrine of “massive retaliation” emphasized making Western collective security both more effective and less costly by placing greater reliance on deterrent threats – including threatened escalation to general or nuclear war. As his Secretary of State John Foster Dulles explained, “[t]here is no local defense which alone will contain the mighty landpower of the Communist world. Local defenses must be reinforced by the further deterrent of massive retaliatory power.”84 As described in Evan Thomas’s recent book, Ike’s Bluff, Eisenhower managed to convince Soviet leaders that he was ready to use nuclear weapons to check their advance in Europe and elsewhere. In part due to concerns that threats of massive retaliation might be insufficiently credible in Soviet eyes (especially with respect to U.S. interests perceived as peripheral), the Kennedy administration in 1961 shifted toward a strategy of “flexible response,” which relied on the development of a wider spectrum of military options that could quickly and efficiently deliver varying degrees of force in response to foreign aggression.85 Throughout these periods, the President often resorted to discrete, limited uses of force to demonstrate U.S. willingness to escalate. For example, in 1961 the Kennedy administration (mostly successfully in the short-run) deployed intervention-ready military force immediately off the coast of the Dominican Republic to compel its government's ouster,86 and that same year it used military exercises and shows of force in ending the Berlin crisis;87 in 1964, the Johnson administration unsuccessfully used air strikes on North Vietnamese targets following the Tonkin Gulf incidents, failing to deter what it viewed as further North Vietnamese aggression.88 The point here is not the shifting details of U.S. strategy after World War II – during this era of dramatic expansion in asserted presidential war powers – but the central role of credible threats of war in it, as well as the interrelationship of plans for using force and credible threats to do so. Also during this period, the United States abandoned its long-standing aversion to “entangling alliances,”89 and committed to a network of mutual defense treaties with dependent allies. Besides the global collective security arrangement enshrined in the UN Charter, the United States committed soon after World War II to mutual defense pacts with, for example, groups of states in Western Europe (the North Atlantic Treaty Organization)90 and Asia (the Southeast Asia Treaty Organization,91 as well as a bilateral defense agreement with the Republic of Korea,92 Japan,93 and the Republic of China,94 among others). These alliance commitments were part of a U.S. effort to “extend” deterrence of Communist bloc aggression far beyond its own borders.95 “Extended deterrence” was also critical to reassuring these U.S. allies that their security needs would be met, in some instances to head off their own dangerous rearmament.96 Among the leading academic works on strategy of the 1960s and 70s were those of Thomas Schelling, who developed the theoretical structure of coercion theory, arguing that rational states routinely use the threat of military force – the manipulation of an adversary’s perceptions of future risks and costs with military threats – as a significant component of their diplomacy.97 Schelling distinguished between deterrence (the use of threats to dissuade an adversary from taking undesired action) and compellence (the use of threats to persuade an adversary to behave a certain way), and he distinguished both forms of coercion from brute force: “[B]rute force succeeds when it is used, whereas the power to hurt is most successful when held in reserve. It is the threat of damage to come that can make someone yield of comply. It is latent violence that can influence someone’s choice.”98 Alexander George, David Hall, and William Simons then led the way in taking a more empirical approach, reviewing case studies to draw insights about the success and failure of U.S. coercive threats, analyzing contextual variables and their effects on parties’ reactions to threats during crises. Among their goals was to generate lessons informed by history for successful strategies that combine diplomatic efforts with threats or demonstrations of force, recognizing that the United States was relying heavily on threatened force in addressing security crises. Coercive diplomacy – if successful – offered ways to do so with minimal actual application of military force.99 One of the most influential studies that followed was Force Without War: U.S. Armed Forces as a Political Instrument, a Brookings Institution study led by Barry Blechman and Stephen Kaplan and published in 1977.100 They studied “political uses of force”, defined as actions by U.S. military forces “as part of a deliberate attempt by the national authorities to influence, or to be prepared to influence, specific behavior of individuals in another nation without engaging in a continued contest of violence.”101 Blechman and Kaplan’s work, including their large data set and collected case studies, was important for showing the many ways that threatened force could support U.S. security policy. Besides deterrence and compellence, threats of force were used to assure allies (thereby, for example, avoiding their own drive toward militarization of policies or crises) and to induce third parties to behave certain ways (such as contributing to diplomatic resolution of crises). The record of success in relying on threatened force has been quite mixed, they showed. Blechman and Kaplan’s work, and that of others who built upon it through the end of the Cold War and the period that has followed,102 helped understand the factors that correlated with successful threats or demonstrations of force without resort or escalation to war, especially the importance of credible signals.103 After the Cold War, the United States continued to rely on coercive force – threatened force to deter or compel behavior by other actors – as a central pillar of its grand strategy. During the 1990s, the United States wielded coercive power with varied results against rogue actors in many cases that, without the overlay of superpower enmities, were considered secondary or peripheral, not vital, interests: Iraq, Somalia, Haiti, Bosnia, and elsewhere. For analysts of U.S. national security policy, a major puzzle was reconciling the fact that the United States possessed overwhelming military superiority in raw terms over any rivals with its difficult time during this era in compelling changes in their behavior.104 As Daniel Byman and I wrote about that decade in our study of threats of force and American foreign policy: U.S. conventional and nuclear forces dwarf those of any adversaries, and the U.S. economy remains the largest and most robust in the world. Because of these overwhelming advantages, the United States can threaten any conceivable adversary with little danger of a major defeat or even significant retaliation. Yet coercion remains difficult. Despite the United States’ lopsided edge in raw strength, regional foes persist in defying the threats and ultimatums brought by the United States and its allies. In confrontations with Somali militants, Serb nationalists, and an Iraqi dictator, the U.S. and allied record or coercion has been mixed over recent years…. Despite its mixed record of success, however, coercion will remain a critical element of U.S. foreign policy.105 One important factor that seemed to undermine the effectiveness of U.S. coercive threats during this period was that many adversaries perceived the United States as still afflicted with “Vietnam Syndrome,” unwilling to make good on its military threats and see military operations through.106 Since the turn of the 21st Century, major U.S. security challenges have included non-state terrorist threats, the proliferation of nuclear and other weapons of mass destruction (WMD), and rapidly changing power balances in East Asia, and the United States has accordingly been reorienting but retaining its strategic reliance on threatened force. The Bush Administration’s “preemption doctrine” was premised on the idea that some dangerous actors – including terrorist organizations and some states seeking WMD arsenals – are undeterrable, so the United States might have to strike them first rather than waiting to be struck.107 On one hand, this was a move away from reliance on threatened force: “[t]he inability to deter a potential attacker, the immediacy of today’s threats, and the magnitude of potential harm that could be caused by our adversaries’ choice of weapons, do not permit” a reactive posture.108 Yet the very enunciation of such a policy – that “[t]o forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act preemptively”109 – was intended to persuade those adversaries to alter their policies that the United States regarded as destabilizing and threatening. Although the Obama administration pulled back from this rhetoric and placed greater emphasis on international institutions, it has continued to rely on threatened force as a key pillar of its strategy with regard to deterring threats (such as aggressive Iranian moves), intervening in humanitarian crises (as in Libya), and reassuring allies.110 With regard to East Asia, for example, the credible threat of U.S. military force is a significant element of U.S. strategy for deterring Chinese and North Korean aggression as well as reassuring other Asian powers of U.S. protection, to avert a destabilizing arms race.111 D. The Disconnect Between Constitutional Discourse and Strategy There is a major disconnect between the decades of work by strategists and many political scientists on American security policy and practice since the Second World War and legal analysis and scholarship of constitutional war powers during that period. Lawyers and strategists have been relying on not only distinct languages but distinct logics of military force – in short, when it comes to using U.S. military power, lawyers think in terms of “going to war” while strategists focus on potential war and processes leading to it. These framings manifest in differing theoretical starting points for considering how exercises of U.S. military might affect war and peace, and they skew the empirical insights and normative prescriptions about Presidential power often drawn from their analyses. 1. Lawyers’ Misframing Lawyers’ focus on actual uses of force – especially engagements with enemy military forces – as constitutionally salient, rather than including threats of force in their understanding of modern presidential powers tilts analysis toward a one-dimensional strategic logic, rather than a more complex and multi-dimensional and dynamic logic in which the credible will to use force is as important as the capacity to do so. As discussed above, early American constitutional thinkers and practitioners generally wanted to slow down with institutional checks decisions to go to war, because they thought that would make war less likely. “To invoke a more contemporary image,” wrote John Hart Ely of their vision, “it takes more than one key to launch a missile: It should take quite a number to start a war.”112 They also viewed the exercise of military power as generally a ratchet of hostilities, whereby as the intensity of authorized or deployed force increased, so generally did the state of hostilities between the United States and other parties move along a continuum from peace to war.113 Echoes of this logic still reverberate in modern congressionalist legal scholarship: the more flexibly the President can use military force, the more likely it is that the United States will find itself in wars; better, therefore, to clog decisions to make war with legislative checks.114 Modern presidentialist legal scholars usually respond that rapid action is a virtue, not a vice, in exercising military force.115 Especially as a superpower with global interests and facing global threats, presidential discretion to take rapid military action – endowed with what Alexander Hamilton called “[d]ecision, activity, secrecy, and dispatch”116 – best protects American interests. In either case the emphasis tends overwhelmingly to be placed on actual military engagements with adversaries. Strategists and many political scientists, by contrast, view some of the most significant use of military power as starting well before armed forces clash – and including important cases in which they never actually do. Coercive diplomacy and strategies of threatened force, they recognize, often involve a set of moves and countermoves by opposing sides and third parties before or even without the violent engagement of opposing forces. It is often the parties’ perceptions of anticipated actions and costs, not the actual carrying through of violence, that have the greatest impact on the course of events and resolution or escalation of crises. Instead of a ratchet of escalating hostilities, the flexing of military muscle can increase as well as decrease actual hostilities, inflame as well as stabilize relations with rivals or enemies. Moreover, those effects are determined not just by U.S. moves but by the responses of other parties to them – or even to anticipated U.S. moves and countermoves.117 Indeed, as Schelling observed, strategies of brinkmanship sometimes operate by “the deliberate creation of a recognizable risk of war, a risk that one does not completely control.”118 This insight – that effective strategies of threatened force involve not only great uncertainty about the adversary’s responses but also sometimes involve intentionally creating risk of inadvertent escalation119 – poses a difficult challenge for any effort to cabin legally the President’s power to threaten force in terms of likelihood of war or some due standard of care.120 2. Lawyers’ Selection Problems Methodologically, a lawyerly focus on actual uses of force – a list of which would then commonly be used to consider which ones were or were not authorized by Congress – vastly undercounts the instances in which presidents wield U.S. military might. It is already recognized by some legal scholars that studying actual uses of force risks ignoring instances in which President contemplated force but refrained from using it, whether because of political, congressional, or other constraints.121 The point here is a different one: that some of the most significant (and, in many instances, successful) presidential decisions to threaten force do not show up in legal studies of presidential war powers that consider actual deployment or engagement of U.S. military forces as the relevant data set. Moreover, some actual uses of force, whether authorized by Congress or not, were preceded by threats of force; in some cases these threats may have failed on their own to resolve the crisis, and in other cases they may have precipitated escalation. To the extent that lawyers are interested in understanding from historical practice what war powers the political branches thought they had and how well that understanding worked, they are excluding important cases. Consider, as an illustration of this difference in methodological starting point, that for the period of 1946-1975 (during which the exercise of unilateral Presidential war powers had its most rapid expansion), the Congressional Research Service compilation of instances in which the United States has utilized military forces abroad in situations of military conflict or potential conflict to protect U.S. citizens or promote U.S. interests – which is often relied upon by legal scholars studying war powers – lists only about two dozen incidents.122 For the same time period, the Blechman and Kaplan study of political uses of force (usually threats) – which is often relied upon by political scientists studying U.S. security strategy – includes dozens more data-point incidents, because they divide up many military crises into several discrete policy decisions, because many crises were resolved with threat-backed diplomacy, and because many uses of force were preceded by overt or implicit threats of force.123 Among the most significant incidents studied by Blechman and Kaplan but not included in the Congressional Research Service compilation at all are the 1958-59 and 1961 crises over Berlin and the 1973 Middle East War, during which U.S. Presidents signaled threats of superpower war, and in the latter case signaled particularly a willingness to resort to nuclear weapons.124 Because the presidents did not in the end carry out these threats, these cases lack the sort of authoritative legal justifications or reactions that accompany actual uses of force. It is therefore difficult to assess how the executive branch and congress understood the scope of the President’s war powers in these cases, but historical inquiry would probably show the executive branch’s interpretation to be very broad, even to include full-scale war and even where the main U.S. interest at stake was the very credibility of U.S. defense commitments undergirding its grand strategy, not simply the interests specific to divided Germany and the Middle East region.

Of course, one might argue that because the threatened military actions were never carried out in these cases, it is impossible to know if the President would have sought congressional authorization or how Congress would have reacted to the use of force; nonetheless, it is easy to see that in crises like these a threat by the President to use force, having put U.S. credibility on the line in addition to whatever other foreign policy stakes were at issues, would have put Congress in a bind. 3. Lawyers’ Mis-Assessment Empirically, analysis of and insights gleaned from any particular incident – which might then be used to evaluate the functional merits of presidential powers – looks very different if one focuses predominantly on the actual use of force instead of considering also the role of threatened force. Take for example, the Cuban Missile Crisis – perhaps the Cold War’s most dangerous event. To the rare extent that they consider domestic legal issues of this crisis at all, lawyers interested in the constitutionality of President Kennedy’s actions generally ask only whether he was empowered to initiate the naval quarantine of Cuba, because that is the concrete military action Kennedy took that was readily observable and that resulted in actual engagement with Soviet forces or vessels – as it happens, very minimal engagement.125 To strategists who study the crisis, however, the naval quarantine is not in itself the key presidential action; after all, as Kennedy and his advisers realized, a quarantine alone could not remove the missiles that were already in Cuba. The most consequential presidential actions were threats of military or even nuclear escalation, signaled through various means including putting U.S. strategic bombers on highest alert.126 The quarantine itself was significant not for its direct military effects but because of its communicative impact in showing U.S. resolve. If one is focused, as lawyers often are, on presidential military action that actually engaged the enemy in combat or nearly did, it is easy to dismiss this case as not very constitutionally significant. If one focuses on it, as strategists and political scientists often do, on nuclear brinkmanship, it is arguably the most significant historical exercise of unilateral presidential powers to affect war and peace.127 Considering again the 1991 Gulf War, most legal scholars would dismiss this instance as constitutionally a pretty uninteresting military conflict: the President claimed unilateral authority to use force, but he eventually sought and obtained congressional authorization for what was ultimately – at least in the short-run – a quite successful war. For the most part this case is therefore neither celebrated nor decried much by either side of legal war powers debates,128 though some congressionalist scholars highlight the correlation of congressional authorization for this war and a successful outcome.129 Political scientists look at the case differently, though. They often study this event not as a successful war but as failed coercive diplomacy, in that the United States first threatened war through a set of dramatically escalating steps that ultimately failed to persuade Saddam Hussein to withdraw from Kuwait.130 Some political scientists even see U.S. legal debate about military actions as an important part of this story, assessing that adversaries pay attention to congressional arguments and moves in evaluating U.S. resolve (an issue taken up in greater detail below) and that congressional opposition to Bush’s initial unilateralism in this case undermined the credibility of U.S. threats.131 Whether one sees the Gulf War as a case of (successful) war, as lawyers usually do, or (unsuccessful) threatened war, as political scientists usually do, colors how one evaluates the outcome and the credit one might attach to some factors such as vocal congressional opposition to initially-unilateral presidential moves. Notice also that legal analysis of Presidential authority to use force is sometimes thought to turn partly on the U.S. security interests at stake, as though those interests are purely contextual and exogenous to U.S. decision-making and grand strategy. In justifying President Obama’s 2011 use of force against the Libyan government, for example, the Justice Department’s Office of Legal Counsel concluded that the President had such legal authority “because he could reasonably determine that such use of force was in the national interest,” and it then went on to detail the U.S. security and foreign policy interests.132 The interests at stake in crises like these, however, are altered dramatically if the President threatens force: doing so puts the credibility of U.S. threats at stake, which is important not only with respect to resolving the crisis at hand but with respect to other potential adversaries watching U.S. actions.133 The President’s power to threaten force means that he may unilaterally alter the costs and benefits of actually using force through his prior actions.134 The U.S. security interests in carrying through on threats are partly endogenous to the strategy embarked upon to address crises (consider, for example, that once President George H.W. Bush placed hundred of thousands of U.S. troops in the Persian Gulf region and issued an ultimatum to Saddam Hussein in 1990, the credibility of U.S. threats and assurances to regional allies were put on the line).135 Moreover, interests at stake in any one crisis cannot simply be disaggregated from broader U.S. grand strategy: if the United States generally relies heavily on threats of force to shape the behavior of other actors, then its demonstrated willingness or unwillingness to carry out a threat and the outcomes of that action affect its credibility in the eyes of other adversaries and allies, too.136 It is remarkable, though in the end not surprising, that the executive branch does not generally cite these credibility interests in justifying its unilateral uses of force. It does cite when relevant the U.S. interest in sustaining the credibility of its formal alliance commitments or U.N. Security Council resolutions, as reasons supporting the President’s constitutional authority to use force.137 The executive branch generally refrains from citing the similar interests in sustaining the credibility of the President’s own threats of force, however, probably in part because doing so would so nakedly expose the degree to which the President’s prior unilateral strategic decisions would tie Congress’s hands on the matter. \* \* \* In sum, lawyers’ focus on actual uses of force – usually in terms of armed clashes with an enemy or the placement of troops into hostile environments – does not account for much vaster ways that President’s wield U.S. military power and it skews the claims legal scholars make about the allocation of war powers between the political branches. A more complete account of constitutional war powers should recognize the significant role of threatened force in American foreign policy. II. Democratic Checks on Threatened Force The previous Parts of this Article showed that, especially since the end of World War II, the United States has relied heavily on strategies of threatened force in wielding its military might – for which credible signals are a necessary element – and that the President is not very constrained legally in any formal sense in threatening war. Drawing on recent political science scholarship, this Part takes some of the major questions often asked by students of constitutional war powers with respect to the actual use of force and reframes them in terms of threatened force. First, as a descriptive matter, in the absence of formal legal checks on the President’s power to threaten war, is the President nevertheless informally but significantly constrained by democratic institutions and processes, and what role does Congress play in that constraint? Second, as a normative matter, what are the strategic merits and drawbacks of this arrangement of democratic institutions and constraints with regard to strategies of threatened force? Third, as a prescriptive matter, although it is not really plausible that Congress or courts would ever erect direct legal barriers to the President’s power to threaten war, how might legal reform proposals to more strongly and formally constrain the President’s power to use force indirectly impact his power to threaten it effectively? For reasons discussed below, I do not consider whether Congress could legislatively restrict directly the President’s power to threaten force or war; in short, I set that issue aside because assuming that were constitutionally permissible, even ardent congressionalists have exhibited no interest in doing so, and instead have focused on legally controlling the actual use of force. Political science insights that bear on these questions emerge from several directions. One is from studies of Congress’ influence on use of force decisions, which usually assume that Congress’s formal legislative powers play only a limited role in this area, and the effects of this influence on presidential decision-making about threatened force. Another is international relations literature on international bargaining138 as well as literature on the theory of democratic peace, the notion that democracies rarely, if ever, go to war with one another.139 In attempting to explain the near-absence of military conflicts between democracies, political scientists have examined how particular features of democratic governments – electoral accountability, the institutionalized mobilization of political opponents, and the diffusion of decision-making authority regarding the use of force among executive and legislative branches – affect decision-making about war.140 These and other studies, in turn, have led some political scientists (especially those with a rational choice theory orientation) to focus on how those features affect the credibility of signals about force that governments send to adversaries in crises.141 My purpose in addressing these questions is to begin painting a more complete and detailed picture of the way war powers operate, or could operate, than one sees when looking only at actual wars and use of force. This is not intended to be a comprehensive account but an effort to synthesize some strands of scholarship from other fields regarding threatened force to inform legal discourse about how war powers function in practice and the strategic implications of reform. The answers to these questions also bear on raging debates among legal scholars on the nature of American executive power and its constraint by law. Initially they seem to support the views of those legal scholars who have long believed that in practice law no longer seriously binds the President with respect to war-making.142 That view has been taken even further recently by Eric Posner and Adrian Vermeule, who argue that “[l]aw does little constraint the modern executive” at all, but also observe that “politics and public opinion” operate effectively to cabin executive powers.143 The arguments offered here, however, do more to support the position of those legal scholars who describe a more complex relationship between law and politics, including that law is constitutive of the processes of political struggle.144 That law helps constitute the processes of political struggles is true of any area of public policy, though, and what is special here is the added importance of foreign audiences – including adversaries and allies, alike – observing and reacting to those politics, too. Democratic Constraints on the Power to the Threaten Force Whereas most lawyers usually begin their analysis of the President’s and Congress’s war powers by focusing on their formal legal authorities, political scientists usually take for granted these days that the President is – in practice – the dominant branch with respect to military crises and that Congress wields its formal legislative powers in this area rarely or in only very limited ways. A major school of thought, however, is that congressional members nevertheless wield significant influence over decisions about force, and that this influence extends to threatened force, so that Presidents generally refrain from threats that would provoke strong congressional opposition. Even without any serious prospect for legislatively blocking the President’s threatened actions, Congress under certain conditions can loom large enough to force Presidents to adjust their policies; even when it cannot, congressional members can oblige the President expend lots of political capital. As Jon Pevehouse and William Howell explain: When members of Congress vocally oppose a use of force, they undermine the president’s ability to convince foreign states that he will see a fight through to the end. Sensing hesitation on the part of the United States, allies may be reluctant to contribute to a military campaign, and adversaries are likely to fight harder and longer when conflict erupts— thereby raising the costs of the military campaign, decreasing the president’s ability to negotiate a satisfactory resolution, and increasing the probability that American lives are lost along the way. Facing a limited band of allies willing to participate in a military venture and an enemy emboldened by domestic critics, presidents may choose to curtail, and even abandon, those military operations that do not involve vital strategic interests. 145 This statement also highlights the important point, alluded to earlier, that force and threatened force are not neatly separable categories. Often limited uses of force are intended as signals of resolve to escalate, and most conflicts involve bargaining in which the threat of future violence – rather than what Schelling calls “brute force”146 – is used to try to extract concessions. The formal participation of political opponents in legislative bodies provides them with a forum for registering dissent to presidential policies of force through such mechanisms floor statements, committee oversight hearings, resolution votes, and funding decisions.147 These official actions prevent the President “from monopolizing the nation’s political discourse” on decisions regarding military actions can thereby make it difficult for the President to depart too far from congressional preferences.148 Members of the political opposition in Congress also have access to resources for gathering policy relevant information from the government that informs their policy preferences. Their active participation in specialized legislative committees similarly gives opponent party members access to fact-finding resources and forums for registering informed dissent from decisions within the committee’s purview.149 As a result, legislative institutions within democracies can enable political opponents to have a more immediate and informed impact on executive’s decisions regarding force than can opponents among the general public. Moreover, studies suggest that Congress can actively shape media coverage and public support for a president’s foreign policy engagements.150 In short, these findings among political scientists suggest that, even without having to pass legislation or formally approve of actions, Congress often operates as an important check on threatened force by providing the president’s political opponents with a forum for registering dissent from the executive’s decisions regarding force in ways that attach domestic political costs to contemplated military actions or even the threats to use force. Under this logic, Presidents, anticipating dissent, will be more selective in issuing¶ threats in the first place, making only those commitments that would not incite¶ widespread political opposition should the threat be carried through.151 Political¶ opponents within a legislature also have few electoral incentives to collude in an¶ executive’s bluff, and they are capable of expressing opposition to a threatened use of¶ force in ways that could expose the bluff to a threatened adversary.152 This again narrows¶ the President’s range of viable policy options for brandishing military force. Counter-intuitively, given the President’s seemingly unlimited and unchallenged¶ constitutional power to threaten war, it may in some cases be easier for members of¶ Congress to influence presidential decisions to threaten military action than presidential¶ war decisions once U.S. forces are already engaged in hostilities. It is widely believed¶ that once U.S. armed forces are fighting, congress members’ hands are often tied: policy¶ opposition at that stage risks being portrayed as undermining our troops in the field.153¶ Perhaps, it could be argued, the President takes this phenomenon into account and¶ therefore discounts political opposition to threatened force; he can assume that such¶ opposition will dissipate if he carries it through. Even if that is true, before that point¶ occurs, however, members of Congress may have communicated messages domestically¶ and communicated signals abroad that the President will find difficult to counter.154 The bottom line is that a body of recent political science, while confirming the¶ President’s dominant position in setting policy in this area, also reveals that policymaking¶ with respect to threats of force is significantly shaped by domestic politics and¶ that Congress is institutionally positioned to play a powerful role in influencing those¶ politics, even without exercising its formal legislative powers. Given the centrality of¶ threatened force to U.S. foreign policy strategy and security crises, this suggests that the¶ practical war powers situation is not so imbalanced toward the President as many assume. B. Democratic Institutions and the Credibility of Threats A central question among constitutional war powers scholars is whether robust¶ checks – especially congressional ones – on presidential use of force lead to “sound”¶ policy decision-making. Congressionalists typically argue that legislative control over¶ war decisions promotes more thorough deliberation, including more accurate weighing of¶ consequences and gauging of political support of military action.155 Presidentialists¶ usually counter that the executive branch has better information and therefore better¶ ability to discern the dangers of action or inaction, and that quick and decisive military¶ moves are often required to deal with security crises.156 If we are interested in these sorts of functional arguments, then reframing the¶ inquiry to include threatened force prompts critical questions whether such checks also¶ contribute to or detract from effective deterrence and coercive diplomacy and therefore¶ positively or negatively affect the likelihood of achieving aims without resort to war.¶ Here, recent political science provides some reason for optimism, though the scholarship¶ in this area is neither yet well developed nor conclusive. To be sure, “soundness” of policy with respect to force is heavily laden with¶ normative assumptions about war and the appropriate role for the United States in the¶ broader international security system, so it is difficult to assess the merits and¶ disadvantages of constitutional allocations in the abstract. That said, whatever their¶ specific assumptions about appropriate uses of force in mind, constitutional war powers¶ scholars usually evaluate the policy advantages and dangers of decision-making¶ allocations narrowly in terms of the costs and outcomes of actual military engagements¶ with adversaries. The importance of credibility to strategies of threatened force adds important new¶ dimensions to this debate. On the one hand, one might intuitively expect that robust democratic checks would generally be ill-suited for coercive threats and negotiations –¶ that institutional centralization and secrecy of decision-making might better equip nondemocracies¶ to wield threats of force. As Quincy Wright speculated in 1944, autocracies¶ “can use war efficiently and threats of war even more efficiently” than democracies,157¶ especially the American democracy in which vocal public and congressional opposition¶ may undermine threats.158 Moreover, proponents of democratic checks on war powers¶ usually assume that careful deliberation is a virtue in preventing unnecessary wars, but¶ strategists of deterrence and coercion observe that perceived irrationality is sometimes¶ important in conveying threats: “don’t test me, because I might just be crazy enough to¶ do it!”159 On the other hand, some political scientists have recently called into question this¶ view and concluded that the institutionalization of political contestation and some¶ diffusion of decision-making power in democracies of the kind described in the previous¶ section make threats to use force rare but especially credible and effective in resolving¶ international crises without actual resort to armed conflict. In other words, recent¶ arguments in effect turn some old claims about the strategic disabilities of democracies¶ on their heads: whereas it used to be generally thought that democracies were ineffective¶ in wielding threats because they are poor at keeping secrets and their decision-making is¶ constrained by internal political pressures, a current wave of political science accepts this¶ basic description but argues that these democratic features are really strategic virtues.160 Rationalist models of crisis bargaining between states assume that because war is¶ risky and costly, states will be better off if they can resolve their disputes through¶ bargaining rather than by enduring the costs and uncertainties of armed conflict.161¶ Effective bargaining during such disputes – that which resolves the crisis without a resort¶ to force – depends largely on states’ perceptions of their adversary’s capacity to wage an¶ effective military campaign and its willingness to resort to force to obtain a favorable¶ outcome. A state targeted with a threat of force, for example, will be less willing to resist¶ the adversary’s demands if it believes that the adversary intends to wage and is capable of¶ waging an effective military campaign to achieve its ends. In other words, if a state¶ perceives that the threat from the adversary is credible, that state has less incentive to¶ resist such demands if doing so will escalate into armed conflict. The accuracy of such perceptions, however, is often compromised by¶ informational asymmetries that arise from private information about an adversary’s¶ relative military capabilities and resolve that prevents other states from correctly¶ assessing another states’ intentions, as well as by the incentives states have to¶ misrepresent their willingness to fight – that is, to bluff.162 Informational asymmetries¶ increase the potential for misperception and thereby make war more likely; war,¶ consequentially, can be thought of in these cases as a “bargaining failure.”163 Some political scientists have argued in recent decades – contrary to previously common wisdom – that features and constraints of democracies make them better suited than non-democracies to credibly signal their resolve when they threaten force. To bolster their bargaining position, states will seek to generate credible signals of their resolve by taking actions that can enhance the credibility of such threats, such as mobilizing military forces or making “hand-tying” commitments from which leaders cannot back down without suffering considerable political costs domestically.164 These domestic audience costs, according to some political scientists, are especially high for leaders in democratic states, where they may bear these costs at the polls.165 Given the potentially high domestic political and electoral repercussions democratic leaders face from backing down from a public threat, they have considerable incentives to refrain from bluffing. An adversary that understands these political vulnerabilities is thereby more likely to perceive the threats a democratic leader does issue as highly credible, in turn making it more likely that the adversary will yield.166 Other scholars have recently pointed to the special role of legislative bodies in signaling with regard to threatened force. This is especially interesting from the perspective of constitutional powers debates, because it posits a distinct role for Congress – and, again, one that does not necessarily rely on Congress’s ability to pass binding legislation that formally confines the President. Kenneth Schultz, for instance, argues that the open nature of competition within democratic societies ensures that the interplay of opposing parties in legislative bodies over the use of force is observable not just to their domestic publics but to foreign actors; this inherent transparency within democracies – magnified by legislative processes – provides more information to adversaries regarding the unity of domestic opponents around a government’s military and foreign policy decisions.167 Political opposition parties can undermine the credibility of some threats by the President to use force if they publicly voice their opposition in committee hearings, public statements, or through other institutional mechanisms. Furthermore, legislative processes – such as debates and hearings – make it difficult to conceal or misrepresent preferences about war and peace. Faced with such institutional constraints, Presidents will incline to be more selective about making such threats and avoid being undermined in that way.168 This restraining effect on the ability of governments to issue threats simultaneously makes those threats that the government issues more credible, if an observer assumes that the President would not be issuing it if he anticipated strong political opposition. Especially when members of the opposition party publicly support an executive’s threat to use force during a crisis, their visible support lends additional credibility to the government’s threat by demonstrating that political conditions domestically favor the use of force should it be necessary.169 In some cases, Congress may communicate greater willingness than the president to use force, for instance through non-binding resolutions.170 Such powerful signals of resolve should in theory make adversaries more likely to back down. The credibility-enhancing effects of legislative constraints on threats are subject to dispute. Some studies question the assumptions underpinning theories of audience costs – specifically the idea that democratic leaders suffer domestic political costs to failing to make good on their threats, and therefore that their threats are especially credible171 – and others question whether the empirical data supports claims that democracies have credibility advantages in making threats.172 Other scholars dispute the likelihood that leaders will really be punished politically for backing down, especially if the threat was not explicit and unambiguous or if they have good policy reasons for doing so.173 Additionally, even if transparency in democratic institutions allows domestic dissent from threats of force to be visible to foreign audiences, it is not clear that adversaries would interpret these mechanisms as political scientists expect in their models of strategic interaction, in light of various common problems of misperception in international relations.174 These disputes are not just between competing theoretical models but also over the links between any of the models and real-world political behavior by states. At this point there remains a dearth of good historical evidence as to how foreign leaders interpret political maneuvers within Congress regarding threatened force. Nevertheless, at the very least, strands of recent political science scholarship cast significant doubt on the intuition that democratic checks are inherently disadvantageous to strategies of threatened force. Quite the contrary, they suggest that legislative checks – or, indeed, even the signaling functions that Congress is institutionally situated to play with respect to foreign audiences interpreting U.S. government moves – can be harnessed in some circumstances to support such strategies. C. Legal Reform and Strategies of Threatened Force Among legal scholars of war powers, the ultimate prescriptive question is whether the President should be constrained more formally and strongly than he currently is by legislative checks, especially a more robust and effective mandatory requirement of congressional authorization to use force. Calls for reform usually take the form of narrowing and better enforcement (by all three branches of government) of purported constitutional requirements for congressional authorization of presidential uses of force or revising and enforcing the War Powers Resolutions or other framework legislation requiring express congressional authorization for such actions.175

As applied to strategies of threatened force, generally under these proposals the President would lack authority to make good on them unilaterally (except in whatever narrow circumstances for which he retains his own unilateral authority, such as deterring imminent attacks on the United States). Whereas legal scholars are consumed with the internal effects of war powers law, such as whether and when it constrains U.S. government decision-making, the analysis contained in the previous section shifts attention externally to whether and when U.S. law might influence decision-making by adversaries, allies, and other international actors. In prescriptive terms, if the President’s power to use force is linked to his ability to threaten it effectively, then any consideration of war powers reform on policy outcomes and longterm interests should include the important secondary effects on deterrent and coercive strategies – and how U.S. legal doctrine is perceived and understood abroad.176 Would stronger requirements for congressional authorization to use force reduce a president’s opportunities for bluffing, and if so would this improve U.S. coercive diplomacy by making ensuing threats more credible? Or would it undermine diplomacy by taking some threats off the table as viable policy options? Would stronger formal legislative powers with respect to force have significant marginal effects on the signaling effects of dissent within Congress, beyond those effects already resulting from open political discourse? These are difficult questions, but the analysis and evidence above helps generate some initial hypotheses and avenues for further research and analysis. One might ask at this point why, though, having exposed as a hole in war powers legal discourse the tendency to overlook threatened force, this Article does not take up whether Congress should assert some direct legislative control of threats – perhaps statutorily limiting the President’s authority to make them or establishing procedural conditions like presidential reporting requirements to Congress. This Article puts such a notion aside for several reasons. First, for reasons alluded to briefly above, such limits would be very constitutionally suspect and difficult to enforce.177 Second, even the most ardent war-power congressionalists do not contemplate such direct limits on the President’s power to threaten; they are not a realistic option for reform. Instead, this Article focuses on the more plausible – and much more discussed – possibility of strengthening Congress’s power over the ultimate decision whether to use force, but augments the usual debate over that question with appreciation for the importance of credible threats. A claim previously advanced from a presidentialist perspective is that stronger legislative checks on war powers is harmful to coercive and deterrent strategies, because it establishes easily-visible impediments to the President’s authority to follow through on threats. This was a common policy argument during the War Powers Resolution debates in the early 1970s. Eugene Rostow, an advocate inside and outside the government for executive primacy, remarked during consideration of legislative drafts that any serious restrictions on presidential use of force would mean in practice that “no President could make a credible threat to use force as an instrument of deterrent diplomacy, even to head off explosive confrontations.”178 He continued: In the tense and cautious diplomacy of our present relations with the Soviet Union, as they have developed over the last twenty-five years, the authority of the President to set clear and silent limits in advance is perhaps the *most* important of all the powers in our constitutional armory to prevent confrontations that could carry nuclear implications. … [I]t is the diplomatic power the President needs most under the circumstance of modern life—the power to make a credible threat to use force in order to prevent a confrontation which might escalate.179 In his veto statement on the War Powers Resolution, President Nixon echoed these concerns, arguing that the law would undermine the credibility of U.S. deterrent and coercive threats in the eyes of both adversaries and allies – they would know that presidential authority to use force would expire after 60 days, so absent strong congressional support they could assume U.S. withdrawal at that point.180 In short, those who oppose tying the president’s hands with mandatory congressional authorization requirements to use force sometimes argue that doing so incidentally and dangerously ties his hands in threatening it. A critical assumption here is that presidential flexibility, preserved in legal doctrine, enhances the credibility of presidential threats to escalate.

# environment

#### 1 – KICK OUT DOESNT MAKE SENSE

#### ALT CAUSES Noise, Crime, Rape, threat of attack from enemies – environment is not the main reason people are mad\_ their Scoville Evidence different highlighting –

Scoville 6 (Ryan M. – Stanford Law School, “A Sociological Approach to the Negotiation of Military Base Agreements” 2006, 14 U. Miami Int'l and Comp. L. Rev. 1, lexis)

Despite the United States's continuing reliance on foreign military bases, it cannot set up new installations abroad or maintain its current installations without imposing substantial burdens on receiving states.[n12](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.371433.4887450318&target=results_DocumentContent&returnToKey=20_T18203889249&parent=docview&rand=1379818698051&reloadEntirePage=true" \l "n12) Noisy military aircraft, base-related crime, environmental degradation, and the threat of attack from enemies of the United States are all significant drawbacks to housing U.S. forces, and these problems have consistently generated discontent in host nations. Residents of Okinawa, for example, have opposed the presence of U.S. forces in their prefecture since the early post-World War II period, [n13](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.371433.4887450318&target=results_DocumentContent&returnToKey=20_T18203889249&parent=docview&rand=1379818698051&reloadEntirePage=true" \l "n13) and citizens of the Philippines did similarly until the removal of U.S. bases in 1991. [n14](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.371433.4887450318&target=results_DocumentContent&returnToKey=20_T18203889249&parent=docview&rand=1379818698051&reloadEntirePage=true" \l "n14) Antibase protests have also become increasingly strident among South Korean citizens in recent years. [n15](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.371433.4887450318&target=results_DocumentContent&returnToKey=20_T18203889249&parent=docview&rand=1379818698051&reloadEntirePage=true" \l "n15) In each of these countries and several others, angry citizens have coalesced to form social movements. These citizens have picketed, petitioned, held referenda, and demanded reform.¶ These social movements should matter to the United States. Anti-U.S. military base movements reflect the legitimate grievances of foreign citizens who host U.S. forces, and they affect the United States's ability to station its troops abroad. Organized opposition to bases in the Philippines required the Philippine government to alter its negotiating strategy with the United States on base-related issues and eventually led to the expiration of the two countries' military base agreement. [n16](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.371433.4887450318&target=results_DocumentContent&returnToKey=20_T18203889249&parent=docview&rand=1379818698051&reloadEntirePage=true" \l "n16) Anti-American sentiment in Saudi Arabia during the U.S. war in Afghanistan [\*5] prevented Saudi officials from allowing the United States to fly sorties from their territory. [n17](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.371433.4887450318&target=results_DocumentContent&returnToKey=20_T18203889249&parent=docview&rand=1379818698051&reloadEntirePage=true" \l "n17) Today, the United States is repositioning its forces in South Korea in part because of widespread Korean discontent. [n18](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.371433.4887450318&target=results_DocumentContent&returnToKey=20_T18203889249&parent=docview&rand=1379818698051&reloadEntirePage=true" \l "n18)¶ Given that bases are and will likely remain an important component of U.S. foreign policy, and given that anti-base movements have constrained the United States's ability to operate bases overseas, it is important to consider the conditions that enable anti-base movements to achieve their aims. Clearly, not all movements are successful. For example, while opposition to U.S. military bases in the Philippines precipitated U.S. force withdrawal in 1991, bases remain in Okinawa, even though citizens there have protested the U.S. presence for decades.¶ Being able to explain why some anti-base movements fail while others succeed would help the United States to proactively adapt base agreements to the political contexts of receiving states--an outcome that could both increase the sustainability of the U.S. forward deployment strategy and reduce the burden that that strategy places on host nations. Being able to anticipate effective anti-base movements would also allow the United States to manage its configuration of bases more efficiently by reducing the need for diplomatically costly, post hoc amendments to base agreements, and by helping to identify proactively local populations that will most require appeasement.

#### EMPIRICALLY DENIED – they cannot identify A SINGLE BASE that the US has had to leave due to environmental catastrophe

#### 2 – DOUBLE TURN – they say we should be nice to the environment on military bases so we can cause destruction across the world – they have to kick one of their advantages NOW or they auto-lose

#### Squo solves- base drawdown inev- means less environmental destruction

Fillingham 12 (U.S. military bases: a global footprint¶ Zachary Fillingham - Dec 09, 09¶ Geopoliticalmonitor.com April 14, 2012)

In the words of the U.S. Overseas Basing Commission, [U.S. military bases](http://www.geopoliticalmonitor.com/us-military-bases-in-okinawa-1/) are, “the skeleton upon which the flesh and muscle of operational capability [can be] molded [1].”¶ ¶ 2012 US Military Bases Update¶ The Obama administration’s attempts to grapple with the fallout from the 2008 global economic crisis have had a fundamental impact on the US military’s role in the world. First there was former Defense Secretary Gate’s procurement reforms, program cuts, and troop reduction plan, a process that witnessed that gutted golden calves such as the [Future Combat System](http://www.geopoliticalmonitor.com/analysis-gates-defense-cuts-4111/) and the [F-22 Raptor](http://www.geopoliticalmonitor.com/analysis-gates-defense-cuts-4111/). Now, policy planners in the United States are looking towards a future where decreasing defense budgets are no longer a hypothetical, but a given.¶ ¶ Defense reform and budget reductions have had the following impacts on the global network of US military bases: ¶ President Obama has ‘pivoted’ US defense planning towards the Asia Pacific region and away from the Europe and the Middle East. This will translate into less of an onus on permanent bases in the Middle East, which was manifest in the administration’s decision not to push for permanent bases in Iraq, in order to contain China’s growing military presence in Asia.¶ Defense spending cuts are overwhelmingly targeted at the US Army, and in a particularly telling part of the policy statement in question, ‘US forces will no longer be sized to conduct large-scale, prolonged stability operations” [21]. This ironically could give rise to new kinds of [us military bases](http://www.geopoliticalmonitor.com/philippines-the-next-us-military-base-4664/), such as the small-scale, lightning response orientation of new bases in Australia.¶ ¶ What the future may hold for the global network of US military bases:¶ The potential exists for a new round of base re-alignment; an extension of the Base Realignment and Closure (BRAC) policy of 2005. Whether or not to launch a new round of BRAC in 2013 and 2015 is the topic of much legislative skirmishing in the US Congress of late. Supporters see new BRAC rounds as the only way to achieve cuts in defense spending, while detractors tend to frame their argument using the negative impact on local economies that results from domestic base closure. Regardless, it seems fairly certain that a decision on this politically incendiary issue won’t be coming until after the 2012 presidential elections. ¶ There have been rumblings of a new [us military base](http://www.geopoliticalmonitor.com/philippines-the-next-us-military-base-4664/) in the Philippines in the wake of a series of assertive moves by China in the South China Sea.¶ The permanent US military presence in Europe will continue to be drawn down as increasingly restricted resources are re-deployed towards the Asia Pacific.

#### Double bind- either the environment is resilient or its destruction is inevitable

Lazarus ‘10 (Richard J. Lazarus, prof of law at Georgetown University Law Center, “Human Nature, the Laws of Nature, and the Nature of Environmental Law” 24 VA. ENVTL. L.J. 231-261, January 2010)

Some environmental pollution is, of course, unavoidable. Basic human life requires the consumption of the surrounding natural environment. While the First Law of Thermodynamics provides for the conservation of energy (and classical physics for the conservation Of mass),16 the Second Law provides for the inevitable increases in entropy that result from human activity. The term "entropy" refers to the degree of disorder in a system. For instance, as energy is transformed from one form to another, some energy is lost as heat; as the energy decreases, the disorder in the system, and hence the entropy, increases. IS Natural resource destruction and environmental contamination is a form of entropy. Disorder in the ecosystem is increased when common resources such as air and water are polluted. Disorder is likewise increased whenever complex natural resources are broken down into smaller parts. In consuming natural resources to provide the basic necessities of energy, food, shelter, and clothing, humankind necessarily increases entropy in parts of the ecosystem in the form of polluted global resources and destroyed natural resources. Fundamental human biological processes compel it. Human life depends, as life does in many animals, on a series of chemical reactions within the cells of the human body capable of breaking down complex chemical compounds such as glucose into its component parts of carbon dioxide and water.19 The technical name of the necessary biochemical process for the breakdown of glucose is carbohydrate catabolism, which itself consists of three major stages: glycosis, citric acid cycle (known as the "Krebs cycle") and phosphorylation.20 For the purposes of this essay, however, what is important for the nonscientific reader to understand is how these many biochemical processes ultimately depend on the breaking down of more complex and ordered chemical compounds into less complex and more disordered chemical elements. Some natural resource destruction and environmental pollution are necessarily implicated by such processes. As energy is transformed from one form to another, natural resources are consumed and contamination of existing natural resources results. To the extent, moreover, that it is human nature to seek to survive, it is human nature to undertake activities that cause such natural resource destruction and environmental pollution. That central threshold proposition should be noncontroversial. What is no doubt more controversial is whether it is similarly human nature to consume the natural environment in a nonsustainable fashion. Garrett Hardin's classic article "The Tragedy of the Commons," published in Science in 1968,21 offers a disturbing answer to that question. Although Hardin's central thesis is well-known, it is worth emphasis here by repetition: The tragedy of the commons develops in this way. Picture a pasture open to all. It is to be expected that each herdsman will try to keep as many cattle as possible on the commons. Such an arrangement may work reasonably satisfactorily for centuries because tribal wars, poaching, and disease keep the numbers of both man and beast well below the carrying capacity of the land. Finally, however, comes the day of reckoning, that is, the day when the long-desired goal of social stability becomes a reality. At this point, the inherent logic of the commons remorselessly generates tragedy. As a rational being, each herdsman seeks to maximize his gain. Explicitly or implicitly, more or less consciously, he asks, "What is the utility to me of adding one more animal to my herd?" . .. [T]he rational herdsman concludes that the only sensible course for him to pursue is to add another animal to his herd. And another. .. But this is the conclusion reached by each and every rational herdsman sharing a commons. Therein is the tragedy. Each man is locked into a system that compels him to increase his herd without limit-in a world that is limited. Ruin is the destination toward which all men rush, each pursuing his own best interest in a society that believes in the freedom of the commons. Freedom in a commons brings ruin to all.22 Hardin describes his thesis in the limited context of human nature faced with a pasture for animal grazing, but it all too easily extends with potentially catastrophic results to many contemporary environmental settings. The expansive reach of modern technology has turned the once seemingly infinite into the finite. Populations of ocean fisheries can be irreversibly destroyed. Underground aquifers of drinking water supplies can be forever lost. And, of course, potentially destructive global climate change may occur from increased loadings of carbon to the atmosphere from anywhere in the globe. Modern technology also has its limits, as the nation was tragically reminded in the aftermath of Hurricane Katrina this past year. Modern technology allowed for the development of a major metropolitan area where nature, standing alone, would have precluded any such possibility. New Orleans was largely below sea level and existed only by grace of a complex series of levees designed to keep water from flowing along its natural course. Even when properly constructed, such levees are no match, however, for the enormous force of hurricanes like Katrina, especially when thousands of acres of surrounding wetlands, which might have otherwise provided some natural protection from flood waters, are filled to satisfy ever-rising demands for residential, commercial, and industrial development. The upshot: the devastation of a city, the loss of human life, and the destruction of an invaluable aquatic ecosystem by floodwaters laden with toxic contaminants.23 Hardin's central insight regarding the implications of human nature for the natural environment extends much further, however, than to just the potential tragic destruction of resource commons. Each of the individual actors in Hardin's proffered tragedy cause ruin to all because of their inability to look beyond the here and now. They perceive well their own, present short-term needs. They are unable to apprehend and take into account the longerterm implications for individual persons at other times or in other places. Even if presented by information detailing those broader spatial and temporal impacts, they would be unable on their own to temper their own immediate actions as necessary to avoid the resource common's tragic destruction. The risks facing New Orleans have been well-known for decades. Yet, short-term needs always trumped government's willingness and ability to expend the massive resources necessary to guard against long-term, low-risk events, even if of potentially catastrophic consequences.z4 More recent research into behavioral psychology and human cognitive biases offers contemporary confirmation of Hardin's basic thesis. Experimental research shows that humans strongly favor avoidance of immediate costs over less immediate, longerterm, and distant risks. Dubbed by some a "myopia" bias, scientists argue that a strong basic desire to avoid immediate costs is present throughout nature and is deeply rooted in evolutionary biology.25 Others similarly argue that human genetic evolution has systematically favored consumerism and materialism, *i.e.,* the so-called "selfish gene. "26 When, over thousands of years ago, human beings relied on hunting and gathering to get their next meal, long-term planning was of little value. After all, without a means of preserving food, there was little reason to plan. It was better to consume what one found when one found it, especially when there was no assurance that more would be found tomorrow. "Our brains were built for a world in which the currency of the day did lose value over time. Put simply: food rotS."27 "[N]ature created within us a short-sighted set of moral instincts."28 Selfish shortsightedness and materialism became dominant tendencies in the competition with other species for survival. "Rather than leave some precious energy lying around to mold or be stolen, put it in your stomach and have your body convert the food into an energy savings account. "29 The drive for survival arguably extended to the production of heirs-survival by the passing of genes to one's children-and the accumulation of material wealth often seen as a necessary prerequisite for successful reproduction. *3D* And, "even though wealth may not relate to babies in an industrialized world, our instincts come from a time when concerns over material possessions were crucial."31 One commentator has gone so far as to suggest, provocatively, that "[h]uman failings, such as those that some call the Seven Deadly Sins, may all derive from our evolutionary traps. "32

No iran impact

Waltz 12 – Senior Research Scholar at the Saltzman Institute of War and Peace Studies and Adjunct Professor of Political Science at Columbia University (Kenneth N., Jul/Aug, “Why Iran Should Get the Bomb,” EBSCO)

UNFOUNDED FEARS One reason the danger of a nuclear Iran has been grossly exaggerated is that the debate surrounding it has been distorted by misplaced worries and fundamental misunderstandings of how states generally behave in the international system. The first prominent concern, which undergirds many others, is that the Iranian regime is innately irrational. Despite a widespread belief to the contrary, Iranian policy is made not by "mad mullahs" but by perfectly sane ayatollahs who want to survive just like any other leaders. Although Iran's leaders indulge in inflammatory and hateful rhetoric, they show no propensity for self-destruction. It would be a grave error for policymakers in the United States and Israel to assume otherwise. Yet that is precisely what many U.S. and Israeli officials and analysts have done. Portraying Iran as irrational has allowed them to argue that the logic of nuclear deterrence does not apply to the Islamic Republic. If Iran acquired a nuclear weapon, they warn, it would not hesitate to use it in a first strike against Israel, even though doing so would invite massive retaliation and risk destroying everything the Iranian regime holds dear. Although it is impossible to be certain of Iranian intentions, it is far more likely that if Iran desires nuclear weapons, it is for the purpose of providing for its own security, not to improve its offensive capabilities (or destroy itself). Iran may be intransigent at the negotiating table and defiant in the face of sanctions, but it still acts to secure its own preservation. Iran's leaders did not, for example, attempt to close the Strait of Hormuz despite issuing blustery warnings that they might do so after the EU announced its planned oil embargo in January. The Iranian regime clearly concluded that it did not want to provoke what would surely have been a swift and devastating American response to such a move. Nevertheless, even some observers and policymakers who accept that the Iranian regime is rational still worry that a nuclear weapon would embolden it, providing Tehran with a shield that would allow it to act more aggressively and increase its support for terrorism. Some analysts even fear that Iran would directly provide terrorists with nuclear arms. The problem with these concerns is that they contradict the record of every other nuclear weapons state going back to 1945. History shows that when countries acquire the bomb, they feel increasingly vulnerable and become acutely aware that their nuclear weapons make them a potential target in the eyes of major powers. This awareness discourages nuclear states from bold and aggressive action. Maoist China, for example, became much less bellicose after acquiring nuclear weapons in 1964, and India and Pakistan have both become more cautious since going nuclear. There is little reason to believe Iran would break this mold.

#### No asia arms race

Carlson ’13 (Allen Carlson is an Associate Professor in Cornell University’s Government Department. He was granted his PhD from Yale University’s Political Science Department. His undergraduate degree is from Colby College. In 2005 his Unifying China, Integrating with the World: Securing Chinese Sovereignty in the Reform Era was published by Stanford University Press. He has also written articles that appeared in the Journal of Contemporary China, Pacific Affairs, Asia Policy, and Nations and Nationalism. In addition, he has published monographs for the National Committee on U.S.-China Relations and the East-West Center Washington. Carlson was a Fulbright-Hays scholar at Peking University during the 2004-2005 academic year. In 2005 he was chosen to participate in the National Committee’s Public Intellectuals Program, and he currently serves as an adviser to Cornell’s China Asia Pacific Studies program and its East Asia Program. Carlson is currently working on a project exploring the issue of nontraditional security in China’s emerging relationship with the rest of the international system. His most recent publications are the co-edited Contemporary Chinese Politics: New Sources, Methods and Field Strategies (Cambridge University Press, 2010) and New Frontiers in China’s Foreign Relations (Lexington, 2011). China Keeps the Peace at Sea China Keeps the Peace at Sea Why the Dragon Doesn't Want War Allen Carlson February 21, 2013)

At times in the past few months, China and Japan have appeared almost ready to do battle over the Senkaku (Diaoyu) Islands --which are administered by Tokyo but claimed by both countries -- and to ignite a war that could be bigger than any since World War II. Although Tokyo and Beijing have been shadowboxing over the territory for years, the standoff reached a new low in the fall, when the Japanese government nationalized some of the islands by purchasing them from a private owner. The decision set off a wave of violent anti-Japanese demonstrations across China. In the wake of these events, the conflict quickly reached what political scientists call a state of equivalent retaliation -- a situation in which both countries believe that it is imperative to respond in kind to any and all perceived slights. As a result, it may have seemed that armed engagement was imminent. Yet, months later, nothing has happened. And despite their aggressive posturing in the disputed territory, both sides now show glimmers of willingness to dial down hostilities and to reestablish stability. Some analysts have cited North Korea's recent nuclear test as a factor in the countries' reluctance to engage in military conflict. They argue that the detonation, and Kim Jong Un's belligerence, brought China and Japan together, unsettling them and placing their differences in a scarier context. Rory Medcalf, a senior fellow at the Brookings Institution, explained that "the nuclear test gives the leadership in both Beijing and Tokyo a chance to focus on a foreign and security policy challenge where their interests are not diametrically at odds." The nuclear test, though, is a red herring in terms of the conflict over the disputed islands. In truth, the roots of the conflict -- and the reasons it has not yet exploded -- are much deeper. Put simply, China cannot afford military conflict with any of its Asian neighbors. It is not that China believes it would lose such a spat; the country increasingly enjoys strategic superiority over the entire region, and it is difficult to imagine that its forces would be beaten in a direct engagement over the islands, in the South China Sea or in the disputed regions along the Sino-Indian border. However, Chinese officials see that even the most pronounced victory would be outweighed by the collateral damage that such a use of force would cause to Beijing's two most fundamental national interests -- economic growth and preventing the escalation of radical nationalist sentiment at home. These constraints, rather than any external deterrent, will keep Xi Jinping, China's new leader, from authorizing the use of deadly force in the Diaoyu Islands theater. For over three decades, Beijing has promoted peace and stability in Asia to facilitate conditions amenable to China's economic development. The origins of the policy can be traced back to the late 1970s, when Deng Xiaoping repeatedly contended that to move beyond the economically debilitating Maoist period, China would have to seek a common ground with its neighbors. Promoting cooperation in the region would allow China to spend less on military preparedness, focus on making the country a more welcoming destination for foreign investment, and foster better trade relations. All of this would strengthen the Chinese economy. Deng was right. Today, China's economy is second only to that of the United States. The fundamentals of Deng's grand economic strategy are still revered in Beijing. But any war in the region would erode the hard-won, and precariously held, political capital that China has gained in the last several decades. It would also disrupt trade relations, complicate efforts to promote the yuan as an international currency, and send shock waves through the country's economic system at a time when it can ill afford them. There is thus little reason to think that China is readying for war with Japan. At the same time, the specter of rising Chinese nationalism, although often seen as a promoter of conflict, further limits the prospects for armed engagement. This is because Beijing will try to discourage nationalism if it fears it may lose control or be forced by popular sentiment to take an action it deems unwise. Ever since the Tiananmen Square massacre put questions about the Chinese Communist Party's right to govern before the population, successive generations of Chinese leaders have carefully negotiated a balance between promoting nationalist sentiment and preventing it from boiling over. In the process, they cemented the legitimacy of their rule. A war with Japan could easily upset that balance by inflaming nationalism that could blow back against China's leaders. Consider a hypothetical scenario in which a uniformed Chinese military member is killed during a firefight with Japanese soldiers. Regardless of the specific circumstances, the casualty would create a new martyr in China and, almost as quickly, catalyze popular protests against Japan. Demonstrators would call for blood, and if the government (fearing economic instability) did not extract enough, citizens would agitate against Beijing itself. Those in Zhongnanhai, the Chinese leadership compound in Beijing, would find themselves between a rock and a hard place. It is possible that Xi lost track of these basic facts during the fanfare of his rise to power and in the face of renewed Japanese assertiveness. It is also possible that the Chinese state is more rotten at the core than is understood. That is, party elites believe that a diversionary war is the only way to hold on to power -- damn the economic and social consequences. But Xi does not seem blind to the principles that have served Beijing so well over the last few decades. Indeed, although he recently warned unnamed others about infringing upon China's "national core interests" during a foreign policy speech to members of the Politburo, he also underscored China's commitment to "never pursue development at the cost of sacrificing other country's interests" and to never "benefit ourselves at others' expense or do harm to any neighbor." Of course, wars do happen -- and still could in the East China Sea. Should either side draw first blood through accident or an unexpected move, Sino-Japanese relations would be pushed into terrain that has not been charted since the middle of the last century. However, understanding that war would be a no-win situation, China has avoided rushing over the brink. This relative restraint seems to have surprised everyone. But it shouldn't. Beijing will continue to disagree with Tokyo over the sovereign status of the islands, and will not budge in its negotiating position over disputed territory. However, it cannot take the risk of going to war over a few rocks in the sea. On the contrary, in the coming months it will quietly seek a way to shelve the dispute in return for securing regional stability, facilitating economic development, and keeping a lid on the Pandora's box of rising nationalist sentiment. The ensuing peace, while unlikely to be deep, or especially conducive to improving Sino-Japanese relations, will be enduring.

# climate

#### Their Modeling evidence is highlighted to the point of laughabilility

#### LONG EVIDENCE \_ Their author concludes the courts need to EXPLICITLY cite International law in order to have a global signal – We have the paragraphs before and after their evidence

Long 8 – Professor of Law @ Florida Coastal School of Law Andrew Long, “International Consensus and U.S. Climate Change Litigation,” 33 Wm. and Mary Envtl. L. and Pol'y Rev. 177, Volume 33 | Issue 1 Article 4 (2008)

The remainder of this Article poses straightforward, narrow, nor-mtive questions: Should domestic courts explicitly use norms derived from international treaties and customary law in deciding climate change cases? If so, in what ways? The answers to these questions turn partially on the legitimacy-derived from U.S. legal tradition and constitutional principles-of using international sources in domestic decisions, and partially on a more functionalist assessment of the value or effect of such use.¶ A. Legitimacy of Invoking International Environmental Law in Domestic Climate Change Cases¶ The legitimacy of U.S. court decisions depends, first and foremost, upon fidelity to the constitution. As noted above, the constitutional text is [\*209] not clearly dualist and, indeed, early Supreme Court opinions viewed international and domestic law as "deeply intertwined." [n182](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.327990.730538573&target=results_DocumentContent&returnToKey=20_T18204002057&parent=docview&rand=1379822287768&reloadEntirePage=true" \l "n182) Although the extent of dualism in the United States is hotly contested, [n183](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.327990.730538573&target=results_DocumentContent&returnToKey=20_T18204002057&parent=docview&rand=1379822287768&reloadEntirePage=true" \l "n183) even a strictly dualistic conception of the constitution is not a complete bar from judicial cognizance of certain elements of international law. [n184](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.327990.730538573&target=results_DocumentContent&returnToKey=20_T18204002057&parent=docview&rand=1379822287768&reloadEntirePage=true" \l "n184) In any event, movement toward "a more monistic approach [to consideration of international sources in domestic cases] can be reconciled with the constitutional text" [n185](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.327990.730538573&target=results_DocumentContent&returnToKey=20_T18204002057&parent=docview&rand=1379822287768&reloadEntirePage=true" \l "n185) and has deeper historical support than willed judicial ignorance of international law. [n186](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.327990.730538573&target=results_DocumentContent&returnToKey=20_T18204002057&parent=docview&rand=1379822287768&reloadEntirePage=true" \l "n186)¶ To the extent certain traditions weigh against incorporation, we must consider that legitimacy depends as much on our narrative of what the constitution requires as it does on fidelity to doctrine. [n187](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.327990.730538573&target=results_DocumentContent&returnToKey=20_T18204002057&parent=docview&rand=1379822287768&reloadEntirePage=true" \l "n187) "[A] constitutional culture that is open to law made elsewhere will find the doctrine to render transnational norms acceptable." [n188](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.327990.730538573&target=results_DocumentContent&returnToKey=20_T18204002057&parent=docview&rand=1379822287768&reloadEntirePage=true" \l "n188)¶ Even in the current doctrinal landscape, use of climate change norms to buttress, rather than trump, domestic law decisions is constitutionally acceptable. In climate change cases as elsewhere, courts should proceed cautiously, "taking care to anchor their use of international sources in a firm commitment to view their roles as, first and foremost, domestic actors." [n189](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.327990.730538573&target=results_DocumentContent&returnToKey=20_T18204002057&parent=docview&rand=1379822287768&reloadEntirePage=true" \l "n189) For climate change cases, the over fifteen year existence of the UNFCCC without contrary legislation supports construing domestic law as consistent with the international norm requiring state action. [n190](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.327990.730538573&target=results_DocumentContent&returnToKey=20_T18204002057&parent=docview&rand=1379822287768&reloadEntirePage=true" \l "n190) [\*210] ¶ Legitimacy of using international norms is enhanced by clear U.S. accession to them. [n191](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.327990.730538573&target=results_DocumentContent&returnToKey=20_T18204002057&parent=docview&rand=1379822287768&reloadEntirePage=true" \l "n191) U.S. accession to basic climate change norms is evi-dent in the UNFCCC and, to a lesser extent, domestic climate-related le- gislation. [n192](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.327990.730538573&target=results_DocumentContent&returnToKey=20_T18204002057&parent=docview&rand=1379822287768&reloadEntirePage=true" \l "n192) In addition, continuing participation in, and proclaimed support for, international negotiations toward a post-2012 climate regime support a conclusion that the U.S. accepts the consensus on climate change. [n193](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.327990.730538573&target=results_DocumentContent&returnToKey=20_T18204002057&parent=docview&rand=1379822287768&reloadEntirePage=true" \l "n193)¶ A preliminary requirement for incorporating international norms is definitional. [n194](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.327990.730538573&target=results_DocumentContent&returnToKey=20_T18204002057&parent=docview&rand=1379822287768&reloadEntirePage=true" \l "n194) Just as human rights treaties provide clear evidence of international human rights norms, so evidence must exist to support definition of climate change norms before they can be legitimately incorporated into U.S. decisions. Once identified, however, a major function of international environmental norms is "providing a framework for interpretation and application of domestic environmental laws and policies." [n195](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.327990.730538573&target=results_DocumentContent&returnToKey=20_T18204002057&parent=docview&rand=1379822287768&reloadEntirePage=true" \l "n195) In the case of climate change, the norms necessary for domestic administrative law litigation are rather easy to identify and define.¶ Kyoto was effectively rejected by both the legislature and the executive and, therefore, has limited value for U.S. courts. [n196](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.327990.730538573&target=results_DocumentContent&returnToKey=20_T18204002057&parent=docview&rand=1379822287768&reloadEntirePage=true" \l "n196) However, the UNFCCC states a key norm for understanding the U.S. commitment to ad-dress climate change. [n197](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.327990.730538573&target=results_DocumentContent&returnToKey=20_T18204002057&parent=docview&rand=1379822287768&reloadEntirePage=true" \l "n197) The norm against transboundary environmental harm may also be relevant. To a lesser extent, more recent U.S. actions in working toward a post-2012 regime may be helpful in understanding the U.S. commitment and translating it to proper interpretation of domestic law.¶ From these sources, we can roughly state the following general consensus norms and principles. First, the problem: anthropocentric climate change is occurring as a result of greenhouse gas emissions. This [\*211] factual statement reflecting a global consensus was accepted by the Supreme Court in Massachusetts in a manner approaching recognition of **international consensus.** The normative element of problem definition was also employed by the Court: this change presents a grave threat that should be addressed. The second element of the consensus on climate change is the more pressing and le-gally significant norm: states have an obligation to take mitigation measures. [n198](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.327990.730538573&target=results_DocumentContent&returnToKey=20_T18204002057&parent=docview&rand=1379822287768&reloadEntirePage=true" \l "n198) The Vermont District Court essentially recognized this norm in Green Mountain, but the Court skirted discussing it in Massachusetts.[n199](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.327990.730538573&target=results_DocumentContent&returnToKey=20_T18204002057&parent=docview&rand=1379822287768&reloadEntirePage=true" \l "n199)¶ In some contexts, invoking **international consensus** may give rise to an "international countermajoritarian difficulty." [n200](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.327990.730538573&target=results_DocumentContent&returnToKey=20_T18204002057&parent=docview&rand=1379822287768&reloadEntirePage=true" \l "n200) However, several considerations undermine this concern in the context of the climate change cases. First, even at its most substantive, international law would be primarily for the interpretation of domestic statutes. [n201](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.327990.730538573&target=results_DocumentContent&returnToKey=20_T18204002057&parent=docview&rand=1379822287768&reloadEntirePage=true" \l "n201) Thus, potential countermajoritarian concerns are undermined by the direct consideration of legislative intent, which should not be overridden by consideration of international sources. Second, to the extent that Congress disagrees with a court's construction of a statute, the statute may be amended.¶ In short, there is no compelling reason that courts cannot look to in- ternational sources in climate change cases. The question, then, is whether making international norms explicitly relevant to domestic law adds value.¶ B. Advantages of Bringing International Norms into Domestic Climate Change Cases¶ Although domestic U.S. climate change cases to date have an important role in the international dialogue concerning climate change action, a more explicit and direct discussion of the relationship would be beneficial in several ways. In particular, such discussion would enhance the United States' leadership position in the international community, promote the effectiveness of the international climate regime, encourage [\*212] consistency in domestic climate change law, and enable additional checks on agency actions at the domestic-global interface. [n202](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.327990.730538573&target=results_DocumentContent&returnToKey=20_T18204002057&parent=docview&rand=1379822287768&reloadEntirePage=true" \l "n202)¶ 1. Enhancing U.S. International Leadership¶ In a time of unfavorable global opinion toward the United States, explicit judicial involvement with international norms will move the United States closer to the international community by acknowledging the relevance of international environmental norms for our legal system. As in other contexts, explicit judicial internalization of climate change norms would "build[] U.S. 'soft power,' [enhance] its moral authority, and strengthen[] U.S. capacity for global leadership" [n203](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.327990.730538573&target=results_DocumentContent&returnToKey=20_T18204002057&parent=docview&rand=1379822287768&reloadEntirePage=true" \l "n203) on climate change, and other global issues. More specifically, domestic judicial consideration of the global climate regime would reaffirm that although the United States has rejected Kyoto, we take the obligation to respect the global commons seri-ously by recognizing that obligation as a facet of the domestic legal system.¶ U.S. courts' overall failure to interact with the international climate regime, as in other issue areas, has "serious consequences for their roles in international norm creation." [n204](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.327990.730538573&target=results_DocumentContent&returnToKey=20_T18204002057&parent=docview&rand=1379822287768&reloadEntirePage=true" \l "n204) As judicial understandings of climate change law converge, the early and consistent contributors to the transnational judicial dialogue will likely play the strongest role in shaping the emerging international normative consensus. [n205](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.327990.730538573&target=results_DocumentContent&returnToKey=20_T18204002057&parent=docview&rand=1379822287768&reloadEntirePage=true" \l "n205) As Justice L'Heureux-Dube of the Canadian Supreme Court noted in an article describing the decline of the U.S. Supreme Court's global influence, "[d]ecisions which look only inward . . . have less relevance to those outside that jurisdiction." [n206](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.327990.730538573&target=results_DocumentContent&returnToKey=20_T18204002057&parent=docview&rand=1379822287768&reloadEntirePage=true" \l "n206) [\*213] Thus, if U.S. courts hope to participate in shaping the normative position on climate change adopted by judiciaries throughout the world, explicit recognition of the relationship between domestic and international law is vital.¶ With climate change in particular, norm development through domestic application should be an important aspect of global learning. The problem requires a global solution beyond the scope of any prior multi-lateral environmental agreements. This provides a situation in which U.S. judicial reasoning in applying aspects of climate regime thinking to concrete problems will fall into fertile international policy soil.¶ Accordingly, the recognition of international norms in domestic climate change litigation may play a strengthening role in the perception of U.S. leadership, encourage U.S. development and exportation of effective domestic climate strategies, and promote international agreements that will enhance consistency with such approaches. In short, explicit judicial discussion of international climate change norms as harmonious with U.S. law can enhance U.S. ability to regain a global leadership position on the issue and, thereby, more significantly shape the future of the international climate regime.¶ **2.** . Promoting the Effectiveness of the International Response¶ Along with promoting U.S. interests and standing in the international community, climate change litigation has a direct role to play in developing the international regime if courts directly engage that regime. [n207](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.327990.730538573&target=results_DocumentContent&returnToKey=20_T18204002057&parent=docview&rand=1379822287768&reloadEntirePage=true" \l "n207)Just as the United States as an actor may benefit from acknowledging and applying international norms, the regime in which the actions occur will benefit through application and acceptance. Indeed, a case such as Massachusetts v. EPA that directly engages only domestic law can nonetheless be understood to impact international lawmaking by considering its actors. [n208](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.327990.730538573&target=results_DocumentContent&returnToKey=20_T18204002057&parent=docview&rand=1379822287768&reloadEntirePage=true" \l "n208) More important, however, will be cases in which the domestic judiciary gives life to international agreements through direct engagement-a "role [that] is particularly important as a check on the delegitimization of international legal rules that are not enforced."[n209](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.327990.730538573&target=results_DocumentContent&returnToKey=20_T18204002057&parent=docview&rand=1379822287768&reloadEntirePage=true" \l "n209) [\*214] ¶ Assuming, as we must in the arena of climate change, that international law can only effect significant changes in behavior through penetration of the domestic sphere, domestic litigation that employs international law not only provides an instance in which the international appears ef-fective but, more importantly, molds it into a shape that will enable further use in domestic cases or suggest necessary changes internationally.¶ By engaging the international, domestic cases can also provide articulation for the norms that have emerged. The precise meaning of the UNFCCC obligation that nations take measures must be hammered out on the ground. In the United States, if Congress has not acted, it is appropriate for the courts to begin this process by measuring particular actions against the standard.

#### B) Their second piece of modeling evidence assumes CAPS ON EMISSIONS – they have ZERO evidence that is politically feasible

Khosla 9 A new President for the United States: We have a dream¶ 27 January 2009 | News story [13 Comments](http://www.iucn.org/news_homepage/?2595/new-President-for-the-United-States-We-have-a-dream#comments) | [Write a comment](http://www.iucn.org/news_homepage/?2595/new-President-for-the-United-States-We-have-a-dream#cform)¶ by Ashok Khosla, IUCN President

The logjam in international negotiations on climate change should not be difficult to break if the US were to lead the industrialized countries to agree that much of their wealth has been acquired at the expense of the environment (in this case greenhouse gases emitted over the past two hundred years) and that with the some of the benefits that this wealth has brought, comes the obligation to deal with the problems that have resulted as side-effects. With equitable entitlement to the common resources of the planet, an agreement that is fair and acceptable to all nations should be easy enough to achieve. Caps on emissions and sharing of energy efficient technologies are simply in the interest of everyone, rich or poor. And both rich and poor must now be ready to adopt less destructive technologies – based on renewables, efficiency and sustainability – both as a goal with intrinsic merit and also as an example to others. But climate is not the only critical global environmental issue that this new administration will have to deal with. Conservation of biodiversity, a crucial prerequisite for the wellbeing of all humanity, no less America, needs as much attention, and just as urgently. The United States’ self-interest in conserving living natural resources strongly converges with the global common good in every sphere: in the oceans, by arresting the precipitate decline of fish stocks and the alarming rise of acidification; on land, by regenerating the health of our soils, forests and rivers; and in the atmosphere by reducing the massive emission of pollutants from our wasteful industries, construction, agriculture and transport systems.

#### Not rapid

McGrath ’13 (Matt McGrath, Environment correspondent, BBC News, “Climate slowdown means extreme rates of warming 'not as likely'”, http://www.bbc.co.uk/news/science-environment-22567023, May 19, 2013)

Scientists say the recent downturn in the rate of global warming will lead to lower temperature rises in the short-term. Since 1998, there has been an unexplained "standstill" in the heating of the Earth's atmosphere. Writing in Nature Geoscience, the researchers say this will reduce predicted warming in the coming decades. But long-term, the expected temperature rises will not alter significantly. “Start Quote The most extreme projections are looking less likely than before” Dr Alexander Otto University of Oxford The slowdown in the expected rate of global warming has been studied for several years now. Earlier this year, the UK Met Office lowered their five-year temperature forecast. But this new paper gives the clearest picture yet of how any slowdown is likely to affect temperatures in both the short-term and long-term. An international team of researchers looked at how the last decade would impact long-term, equilibrium climate sensitivity and the shorter term climate response. Transient nature Climate sensitivity looks to see what would happen if we doubled concentrations of CO2 in the atmosphere and let the Earth's oceans and ice sheets respond to it over several thousand years. Transient climate response is much shorter term calculation again based on a doubling of CO2. The Intergovernmental Panel on Climate Change reported in 2007 that the short-term temperature rise would most likely be 1-3C (1.8-5.4F). But in this new analysis, by only including the temperatures from the last decade, the projected range would be 0.9-2.0C. Ice The report suggests that warming in the near term will be less than forecast "The hottest of the models in the medium-term, they are actually looking less likely or inconsistent with the data from the last decade alone," said Dr Alexander Otto from the University of Oxford. "The most extreme projections are looking less likely than before."

#### We adapt

Mendelsohn ‘9 – Robert O. Mendelsohn 9, the Edwin Weyerhaeuser Davis Professor, Yale School of Forestry and Environmental Studies, Yale University, June 2009, “Climate Change and Economic Growth,” online: <http://www.growthcommission.org/storage/cgdev/documents/gcwp060web.pdf>

These statements arelargely alarmist and misleading. Although climate change is a serious problem that deserves attention, society’s immediate behavior has an extremely low probability of leading to catastrophic consequences**.** The science and economicsof climate change is quite clear that emissions over the next few decades will lead to onlymild consequences. The severe impacts predicted by alarmists require a century (or two in the case of Stern 2006) of no mitigation. Many of the predicted impacts assume there will be no or little adaptation. The net economic impacts from climate change over the next 50 years will be small regardless. Most of the more severe impacts will take more than a century or even a millennium to unfold and many of these **“**potential” impacts will never occur because people will adapt. It is not at all apparent that immediate and dramatic policies need to be developed to thwart long‐range climate risks. What is needed are long‐run balanced responses.

#### United States not key to solve warming and inevitable

Grose ‘13 (Thomas K., National Geographic News Writer, “As U.S. Cleans Its Energy Mix, It Ships Coal Problems Abroad”, March 15, 2013)

Ready for some good news about the environment? Emissions of carbon dioxide in the United States are declining. But don't celebrate just yet. A major side effect of that cleaner air in the U.S. has been the further darkening of skies over Europe and Asia. The United States essentially is exporting a share of its greenhouse gas emissions in the form of coal, data show. If the trend continues, the dramatic changes in energy use in the United States—in particular, the switch from coal to newly abundant natural gas for generating electricity—will have only a modest impact on global warming, observers warn. The Earth's atmosphere will continue to absorb heat-trapping CO2, with a similar contribution from U.S. coal. It will simply be burned overseas instead of at home. "Switching from coal to gas only saves carbon if the coal stays in the ground," said John Broderick, lead author of a study on the issue by the Tyndall Center for Climate Change Research at England's Manchester University. The U.S. Energy Information Administration (EIA) released data this week showing that United States coal exports hit a record 126 million short tons in 2012, a 17 percent increase over the previous year. Overseas shipments surpassed the previous high mark set in 1981 by 12 percent. The United States clearly is using less coal: Domestic consumption fell by about 114 million tons, or 11 percent, largely due to a decline in the use of coal for electricity. But U.S. coal production fell just 7 percent. The United States, with the world's largest coal reserves, continued to churn out the most carbon-intensive fuel, producing 1 billion tons of coal from its mines in 2012. Emissions Sink The EIA estimates that due largely to the drop in coal-fired electricity, U.S. carbon emissions from burning fossil fuel declined 3.4 percent in 2012. If the numbers hold up, it will extend the downward trend that the U.S. Environmental Protection Agency (EPA) outlined last month in its annual greenhouse gas inventory, which found greenhouse gas emissions in 2011 had fallen 8 percent from their 2007 peak to 6,703 million metric tons of CO2 equivalent (a number that includes sources other than energy, like methane emissions from agriculture). In fact, if you don't count the recession year of 2009, U.S. emissions in 2011 dropped to their lowest level since 1995. President Barack Obama counted the trend among his environmental accomplishments in his State of the Union address last month: "Over the last four years, our emissions of the dangerous carbon pollution that threatens our planet have actually fallen." The reason is clear: Coal, which in 2005 generated 50 percent of U.S. electricity, saw its share erode to 37.4 percent in 2012, according to EIA's new short-term energy outlook. An increase in U.S. renewable energy certainly played a role; renewables climbed in those seven years from 8.7 percent to 13 percent of the energy mix, about half of it hydropower. But the big gain came from natural gas, which climbed from 19 percent to 30.4 percent of U.S. electricity during that time frame, primarily because of abundant supply and low prices made possible by hydraulic fracturing, or fracking. The trend appears on track to continue, with U.S. coal-fired plants being retired at a record pace. But U.S. coal producers haven't been standing still as their domestic market has evaporated. They've been shipping their fuel to energy-hungry markets overseas, from the ports of Norfolk, Baltimore, and New Orleans. Although demand is growing rapidly in Asia—U.S. coal exports to China were on track to double last year—Europe was the biggest customer, importing more U.S. coal last year than all other countries combined. The Netherlands, with Europe's largest port, Rotterdam, accepted the most shipments, on pace for a 24 jump in U.S. coal imports in 2012. The United Kingdom, the second largest customer, saw its U.S. coal imports jump more than 70 percent. The hike in European coal consumption would appear to run counter to big government initiatives across the Continent to cut CO2 emissions. But in the European Union, where fracking has made only its initial forays and natural gas is still expensive, American coal is, well, dirt cheap. European utilities are now finding that generating power from coal is a profitable gambit. In the power industry, the profit margin for generating electricity from coal is called the "clean dark spread"; at the end of December in Great Britain, it was going for about $39 per megawatt-hour, according to Argus. By contrast, the profit margin for gas-fired plants—the "clean spark spread"—was about $3. Tomas Wyns, director of the Center for Clean Air Policy-Europe, a nonprofit organization in Brussels, Belgium, said those kinds of spreads are typical across Europe right now. The EU has a cap-and-trade carbon market, the $148 billion, eight-year-old Emissions Trading System (ETS). But it's in the doldrums because of a huge oversupply of permits. That's caused the price of carbon to fall to about 4 euros ($5.23). A plan called "backloading" that would temporarily extract allowances from the market to shore up the price has faltered so far in the European Parliament. "A better carbon price could make a difference" and even out the coal and gas spreads, Wyns said. He estimates a price of between 20 and 40 euros would do the trick. "But a structural change to the Emissions Trading System is not something that will happen very quickly. A solution is years off." The Tyndall Center study estimates that the burning of all that exported coal could erase fully half the gains the United States has made in reducing carbon emissions. For huge reserves of shale gas to help cut CO2 emissions, "displaced fuels must be reduced globally and remain suppressed indefinitely," the report said. Future Emissions It is not clear that the surge in U.S. coal exports will continue. One reason for the uptick in coal-fired generation in Europe has been the looming deadline for the EU's Large Combustion Plant Directive, which will require older coal plants to meet lower emission levels by the end of 2015 or be mothballed. Before that phaseout begins, Wyns says, "there is a bit of a binge going on." Also, economic factors are at work. Tyndall's Broderick said American coal companies have been essentially selling surplus fuel overseas at low profit margins, so there is a likelihood that U.S. coal production will decrease further. The U.S. government forecasters at EIA expect that U.S. coal exports will fall back to about 110 million tons per year over the next two years, due to economic weakness in Europe, falling international prices, and competition from other coal-exporting countries. The Paris-based International Energy Agency (IEA) calls Europe's "coal renaissance" a temporary phenomenon; it forecasts an increasing use of renewables, shuttering of coal plants, and a better balance between gas and coal prices in the coming years. But IEA does not expect that the global appetite for coal will slacken appreciably. The agency projects that, by 2017, coal will rival oil as the world's primary energy source, mainly because of skyrocketing demand in Asia. U.S. coal producers have made clear that they aim to tap into that growing market.

# 2nc JSPEC

#### Our interpretation is a pre-requisite to meaningful education on the topic – Clear definitions and specification are key

DPLF (Due Process of Law Foundation) 2007 “A Guide to Rapid Assessment and Policy-making for the Control of Corruption in Latin American Justice Systems” http://www.dplf.org/uploads/1188586969.pdf

As a prerequisite to an assessment of corruption in any area of government, and in the judiciary in particular, we must clearly define what we want to learn and understand the obstacles to obtaining that information imposed by circumstances. This means that we must determine the scope of our study, in other words, those aspects or elements of judicial activity that will be the focus of our research and hypotheses. In the case at hand, the term “judiciary” comprises countless units and we must define those for which we want to elicit information. Our definition may include the judiciary as a whole, a particular jurisdictional venue(civil, commercial, criminal, labor, administrative, etc.)or level (first instance courts, investigative courts, courts of appeals, and Supreme Courts). We must also specify the time frame: during what period will we observe judicial activity? Historical factors and practical constraints will determine the time period covered by the research. The important thing is to establish a clear definition and adhere to it‘

#### Here is more evidence in the context of the U.S. Constitution writ large

William Popkin (Walter W. Foskett Professor Emeritus of Law at Indiana University Maurer School of Law) 2007 “Evolution of the Judicial Opinion: Institutional and Individual Styles” p. 54-5, http://books.google.com/books?id=BZ4e78mr5-4C&pg=PA53&lpg=PA53&dq=%22the+word+judiciary%22&source=bl&ots=QZnHoWxKFq&sig=DQuyLkZkwZX9vk8H3sXD\_6L0hsA&hl=en&sa=X&ei=fu9HUrnrA5Ko4AOc1YDwCw&ved=0CJ8BEOgBMA8#v=onepage&q=%22the%20word%20judiciary%22&f=false

Arguably, we should not make too much of the use of the term “judiciary” as an institutional reference, because the term might have referred to a judicial power, rather than a government institution. Theconvention debates referred to judging not only as an attribute of a government department but also as the exercise of “judicial power,” and the word “judiciary” may have been a synonym for judicial power. Forexample, the word “judiciary,” which had appeared in the resolutionsproposed by Randolph, was replaced by “judicial power” when the draft Constitution was presented to the Convention on August 6; Article II stated: “The Government shall consist of supreme legislative, executive; [sic] and judicial powers”; and Article Xl stated that the “judicial power of the United States shall he vested in one Supreme Court”(M,385,393). Similarly, the word “judiciary” was often used in the phrase “judiciary powers” —as in the Declaration of Independence,48in post-Revolutionary pre-Founding state constitutions,49 and in Randolph’s resolutions in the Convention requiring state “judiciary powers” to be bound by oath to support the Constitution (M ,33,I 17,1 51,384). This suggests that the use of the word “judiciary” by itself might have been understood to mean “judiciary powers,” which may in turn have been a synonym for “judicial power,” rather than a reference to a government institution.Uncertainty about institutional references to judging is consistent with a lack of uniformity in the language used during the debates. Morris referred to the “separation of the departments” and, in the nextsentence, to the ‘three powers” (M,34ij. In Randolph’s resolutions, afederal “judiciary” is created but “judicial powers” take an oath of allegiance to the federal government; and Randolph then changes a reference to “judicial powers” to “judicial officers” in the draft constitution(M,395). Different notetakers also seem to have heard different words:Yates refer to “judicial” (F,I,i z6—June 5) where Madison refers to“judges” (M,67); Yates refers to “judges” (F,l,zo7—June ii) whereMadison refers to “judiciary” (M,ioç). This linguistic uncertainty may have simply carried over into the Convention an uncertainty that existed in the provisions of several pre-Founding state constitutions, which referred variously to a judicial department and judicial powers.5°

#### Precision is vital—turns solvency and research quality

Resnick 1 [Evan Resnick, Journal of International Affairs, 0022197X, Spring 2001, Vol. 54, Issue 2, “Defining Engagement”]

In matters of national security, establishing a clear definition of terms is a precondition for effective policymaking. Decisionmakers who invoke critical terms in an erratic, ad hoc fashion risk alienating their constituencies. They also risk exacerbating misperceptions and hostility among those the policies target. Scholars who commit the same error undercut their ability to conduct valuable empirical research. Hence, if scholars and policymakers fail rigorously to define "engagement," they undermine the ability to build an effective foreign policy.

#### This is especially true in the context of the federal courts

Michael Gerhardt (Samuel Ashe Distinguished Professor of Constitutional Law & Director of the UNC Center on Law and Government, UNC at Chapel Hill Law) 2009 “TEACHING FEDERAL COURTS: FEDERAL JUDGES AS PROBLEM SOLVERS”

The second challenge is mastering the complexity of the materials. There

is no getting around the fact that Federal Courts is hard. Students need to be diligent, patient, thorough, and thoughtful in analyzing issues of federal jurisdiction. Many students find the materials to be too dry, and many students have not had much, if any, meaningful experience in statutory construction. Nor, for that matter, have they had the opportunity beforehand to integrate or coordinate what they have learned in other classes. A major way that I have tried to meet the challenge of the subject matter being too dry or complex is to emphasize as a theme of the class the importance and utility of functioning from the perspective of the courts themselves. I ask students time and again how a particular issue (or subject) might seem to a federal district judge (o r to a state district judge). At the beginning of the class, students are unli kely to have any idea how to construct this perspective; it is likely to be completely unfamiliar to them. So, I often begin the course by talking about how people become federal judges and asking students about the essential attributes of federal judges. It is important for students to understand as well precisely what litigation in a district or appellate court looks like. I therefore ask students to read the local rules of our state and federal courts and often share wi th the students the motions and briefs submitted in trial courts. I further ask whether—and why—they might brief issues differently to different courts. Nevertheless, the perspective, or world-view if you will, of a federal court is not one that comes naturally to law students or is easily or naturally constructed. As those of us who have taught this class know, it is hard work to put together a comprehensive framework of legal analysis; and the work is hard not just because it requires pullin g seemingly disparate subjects together but also because of another significant challenge to teaching Federal Courts— students come into the classroom with many preconceptions about federal courts. In fact, there are at least three preconceptions that students—and those of us who teach classes on federal courts —must be prepared to guard against. First, many if not most students will, by the time they take a class on federal courts, still think that only one particular federal court matters and is therefore worth their time to study—the United States Supreme Court. They might arrive at this preconception for any numbe r of reasons, not the least of which is the (mistaken) belief that every legal question of consequence gets decided by the Supreme Court. Of course, this is no t true, and a class on federal courts is as good a place as any to disabuse students of this misconception. Second, many students might believe that federal judges, particularly Justices, decide cases in one of two ways—either they directly vote their policy preferences or manipulate the law to ma ximize their political preferences. A Federal Courts class need not be devoted to verifying or falsifying this view, but I do devote an early class to the so cial science literature on judging and particularly on the problems with many social science models of judging. My aim is therefore to show students that the law is a lot more complicated than what they have presupposed and that if students want to litigate matters in federal courts, there is a lot of law they need to learn—not just federal constitutional law, but also federal statutes and regulations and the interplay between federal and state law. The perspective of federal courts requires knowing its language, practices, traditions, and thought processes. There are several ways that I have used to help students to try not to be hindered by their preconceptions of judging, and each of these has worked. First, I ask students how they would decide cases as a state or federal district judge. I literally ask them this question, meaning that I assign students to come into class prepared to act as a federal or state district judge. Second, I ask students to act together as judicial panels. This assignment is extremely useful, since it helps students to think about the ramifications of collegial courts and to perceive how the need to maintain collegiality might influence what they do. I also ask students about the kinds of claims they would make if they were the lawyers for the plaintiffs or defendants. The initial, practical effects of these exercises have been to prompt the students to recognize that (1) their arguments must be grounded in legal materials in order to have any persuasive force at all and (2) they need to know something about the courts (particularly the judges or Justices) before whom they are making their arguments. The third preconception with which many students enter into Federal Courts classes is the belief that federal judges are superior to their state counterparts. Even apart from whether this is empirically valid (and I have never been sure that it is), students in a course on federal courts must learn that state judges often deal with questions of federal law. Moreover, they must figure out whether they or their clients will be better off in a federal court as opposed to a state court. It is not readily apparent why (or how often), as a matter of fact (as opposed to theory), this must be so. Consequently, I make sure, besides asking students to act as state or federal trial courts, to consider how their perspective might differ fro m that of federal judges. Not surprisingly, students will begin the exercise by insisting that their status as a judge should not make a difference to their analysis, but I remind them to consider throughout the semester the ramifications, if any, of how people become (and remain) state judges. Moreover, a persistent theme of th e class is to consider litigation strategy—why might plaintiffs prefer to file their cases in state rather than federal court and vice versa. Here, I press students to consider the size of the dockets, the personalities and backgrounds of their local (state and federal) judges, appellate options (i.e., how they assess the relative quality of the state and federal appellate courts in their state or region), and the relative advantages and disadvantages of litigating in state courts of last resort or federal appellate courts (in which the possibility of Supr eme Court review is greater), and of course the law itself. Students are often primed to think about the pertinent federal law, but in more than a few cases their clients might fare better under state law. There are numerous ways to teach students about federal courts, but I have found that the perspective that works best at cutting through the misconceptions (and prejudices) about federal courts and at enabling students to manage the challenge of bringing toge ther what they have learned elsewhere (and may yet learn) into this one class is to conceive of federal courts as problem solvers. For me, it has been especially rewarding (and challenging) to introduce students to the perspective of federal judges as problem solvers. Indeed, all judges are really problem solvers; they are literally asked to solve particular legal problems. This perspective helps students to move past their preconceptions of federal and state judges, and to consider (1) the nature of the problem(s) the court is being asked to so lve, (2) the constraints on the court’s authority or discretion to decide the problem(s), (3) the options that are available to the court for resolving the problem(s), (4) which option(s) courts might prefer and why, and (5) the possible problem(s) with the options they have chosen. Of course, it is imperative for students to appreciate that federal judges are special kinds of problem solvers. Students know that federal courts do not have the authority to reach out to decide any kind of problem that they want to address. But, they need to know more. They need to learn about the statutory and other constraints on the discretion (or freedom) of the courts to decide particular issues. They need to learn, in other words, about the problems that confront courts when they are being asked to act as problem solvers.

### 2NC Limits

#### This includes over 100 different courts

The Baltimore Sun March 31, 1999 “Keep courts out of census tangle, Rehnquist asks” http://articles.baltimoresun.com/1999-03-31/news/9903310216\_1\_federal-judiciary-courts-of-appeals-rehnquist

The federal judiciary includes the Supreme Court, the 13 U.S. circuit courts of appeals, the Court of International Trade and 94 district courts and their bankruptcy-court units. More than 49,000 cases were filed last fiscal year in the courts of appeals, more than 282,000 criminal and civil cases were brought in district courts and more than 1 million individuals and businesses filed for bankruptcy, the Administrative Office of the U.S. Courts reported yesterday.

#### They could be one of 1,700 different actors – radically expands affirmative conditionality

Steve Harmon Wilson (Assistant Professor of. History at Prairie View A&M University) 2012 “The US Justice System: An Encyclopedia” p. 96, http://books.google.com/books?id=Snia9Kt7rokC&pg=PA96&lpg=PA96&dq=%22federal+judiciary+encompasses%22&source=bl&ots=ahv3iMoh6R&sig=6nx9mznRitzSOr\_joggtnkc-YVM&hl=en&sa=X&ei=TuVHUt2eH8fb4APk4oC4Dg&ved=0CC4Q6AEwAA#v=onepage&q=%22federal%20judiciary%20encompasses%22&f=false

Alongside and within the main hierarchy of The Supreme Court, courts of appeal,and district courts, Congress has established several other Article III or constitutional courts with special jurisdiction. These constitutional courts include the U.S.Court of International Trade and the Foreign Intelligence Surveillance Court. Inaddition, Congress has created Article I or legislative courts (o exercise limitedjudicial or administrative jurisdiction. The legislative courts include the U.S. bankruptcy courts and the U.S. Court of Federal Claims (i.e., claims against the UnitedStates). These and other specialized federal courts are described below. Congress has also provided for tribunals for government agencies under Article J that are ledby administrative law judges, some of which are described in Chapter 6. When Article I and Article Ill courts with various jurisdictions are included, the federal judiciary encompasses some 1 .700 judgeships.

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# 2nc Cred DA

#### DA o/w and turns the affirmative

#### (A) Instability inevitable—nuclear taboo breakdown, allied prolif, econ collapse, and deterrence collapse

DUNN 2007 – PhD, former Assistant Director of the U.S. Arms Control and Disarmament Agency and Ambassador to the 1985 Nuclear Non- Proliferation Treaty Review Conference (Lewis Dunn, Proliferation Papers, “Deterrence Today: Roles, Challenges, and Responses.”)

On the one hand, among many U.S. defense experts and officials it has become almost a cliché to state that an alleged *asymmetry of stakes* between the United States (and/or other outsiders) and a regional nuclear power would make it much more difficult to provide credible nuclear security assurances along the lines suggested above. That purported asymmetry of stakes also is widely seen by those same experts and officials as putting the United States (or other outsiders) at a fundamental disadvantage in any crisis with a regional power and shifting the deterrence balance in its favor. Emphasis on the impact of a perceived asymmetry of stakes partly reflects a view that the intensity of the stakes in any given crisis or confrontation is dependent most on what has been called “the proximity effect”: stakes’ intensity is a function of geography. Concern about an asymmetry of stakes also gains support from the fact that a desire to deter the United States or other outsiders probably is one incentive motivating some new or aspiring nuclear . This line of argument should not be accepted at face value. To the contrary, in two different ways, the stakes for the United States (and other outsiders) in a crisis or confrontation with a regional nuclear adversary would be extremely high. To start, what is at stake is the likelihood of cascades of proliferation in Asia and the Middle East. Such proliferation cascades almost certainly would bring greater regional instability, global political and economic disruption, a heightened risk of nuclear conflict, and a jump in the risk of terrorist access to nuclear weapons. Equally important, nuclear blackmail let alone **nuclear use against U.S.** and other outsiders’ forces, those of U.S. regional allies and friends, or any of their homelands would greatly heighten the stakes for the United States and other outsiders. **Perceptions of** American **resolve** and credibility **around the globe**, the likelihood that an initial nuclear use would be followed by a virtual **collapse of a** six-decades’ plus **nuclear taboo**, and the danger of runaway proliferation all would be at issue. So viewed, **how** the United States and others respond is likely to have a far-reaching impact on their own security as well as longer term global security and stability.

#### (B) DA comes faster than the aff solves --- the plan collapses perceptions of deterrence which makes attack on the US more likely

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

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

### Uniqueness – Courts 2NC

#### Exec power is broad now – Obama’s war powers authority is most it can ever be since the Cold War --- consensus of lawyers agree with this --- that’s 1NC Waxman

#### Reject short-term snapshots --- different snapshots in inter-branch relations revolve around constitutional trends

### A2 Syria Thumper [1/2]

#### Syria was a strategic ploy ---- only risk of a link

WSJ 9/5/13 (“Obama's Curbs on Executive Power Draw Fire”, September 5, 2013, http://online.wsj.com/article/SB10001424127887323893004579057463262293446.html)

The president's moves on national-security issues reflect a mix of political pragmatism as well as personal principles, and exactly how much power Mr. Obama actually has given up is the subject of debate. He has walked a fine line on Syria, for example, saying he wasn't required to seek sign-off from lawmakers for a military strike but asking for their approval anyway.

A senior administration official said that while the new drone-strike policy does rein in executive authority, the NSA and Syria proposals weren't a reduction of power but an effort to increase transparency and build public confidence.

Still, the president, who was criticized for seizing too much power through recess appointments and other steps that some said circumvented Congress, now is being criticized by veterans of past Republican administrations for weakening the presidency.

John Yoo, a Justice Department official in the George W. Bush administration, said Mr. Obama had unnecessarily limited his own authority. He noted that it is rare to see a president restrict his powers.

Mr. Obama "has been trying to reduce the discretion of the president when it comes to national security and foreign affairs," said Mr. Yoo, now a law professor at the University of California at Berkeley. "These proposals that President Obama is making really run counter to why we have a president and a constitution."

Others, though, said the president had given up a modicum of authority in an effort to protect presidential power and guard against congressional action.

The question of the extent of executive power has been long debated in Washington. President Lyndon Johnson was accused of using a narrow congressional resolution to vastly and illegally expand the Vietnam War, for example, and President Richard Nixon was accused of creating an "imperial presidency" before his resignation.

More recently, Mr. Obama's predecessor, Mr. Bush, was accused by Democrats of having inappropriately expanded executive powers in combating terrorism.

Jack Quinn, who served as White House counsel for President Bill Clinton, said Mr. Obama's recent moves amount to threading a needle to reach agreements and avoid larger setbacks for executive power. "Sometimes, it's important to show tolerance for others in order to preserve the power that you have," he said. "I don't think anyone can say that he is a shrinking violet when it comes to his use of power as president."

A.B. Culvahouse, White House counsel under Ronald Reagan, agreed that the president imposing constraints on executive authority is the preferable course if it helps dissuade Congress from stepping in to impose the same or more onerous limitations. Lawmakers retain the power of the purse, he noted, and also could codify restrictions in statute.

### Link – Court 2NC

#### Courts make it too difficult for the president

POSNER 2011 - Kirkland & Ellis Professor, University of Chicago Law School (Eric A. Posner, “Deference To The Executive In The United States After September 11: Congress, The Courts, And The Office Of Legal Counsel”, <http://www.harvard-jlpp.com/wp-content/uploads/2012/01/PosnerFinal.pdf>)

Second, the problem might lie in the nature of foreign relations and national security. These areas of action have been notoriously difficult to bring under legal control. Courts have frequently have been asked to adjudicate national security disputes between Congress and the President. Generally speaking, courts have resisted these requests, treating these issues as political questions or nonjusticiable for other reasons.71 The usual explanation for this resistance is that courts are not experts on these issues; that the highly fluid, frequently changing nature of foreign relations and national security makes them unsuitable for slow, rule‐bound, public, and decentralized resolution; and that, accordingly, courts fear that if they intervene, the executive branch will ignore their rulings, provoking a constitutional crisis.72

### Warfighting Link

#### Training and killing terrorists requires environmental damage – court deference to the military now

Dorfman 4 (Copyright (c) 2004 Trustees of the University of Pennsylvania University of Pennsylvania Journal of Constitutional Law¶ March, 2004¶ 6 U. Pa. J. Const. L. 604¶ LENGTH: 10035 words COMMENT: PERMISSION TO POLLUTE: THE UNITED STATES MILITARY, ENVIRONMENTAL DAMAGE, AND CITIZENS' CONSTITUTIONAL CLAIMS NAME: Bridget Dorfman\*)

This Comment examines how and why federal constitutional claims fail when asserted by citizens in lawsuits against the United [\*605] States military establishment. This Comment is broad in scope, surveying federal cases in which citizens raise constitutional claims regarding various military actions. While not all of these plaintiffs were motivated by their concern for the environment, environmental damage was the result of military action in all of these cases and environmental statutes provided the legal tools to stop the damage. Some cases reach back thirty years, to the beginning of the modern environmental movement. The scope is limited, however, to cases in American courts over military activities occurring inside the territorial United States. Therefore, the scope excludes the environmental pollution that results from actual warfare. [n4](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.341054.3963120002&target=results_DocumentContent&returnToKey=20_T18203950310&parent=docview&rand=1379820643219&reloadEntirePage=true" \l "n4)¶ Three factors make the potential conflicts between the military and the environment increasingly relevant today. First, the current Bush administration has been criticized by congressional Democrats, nonprofit organizations, and other commentators not only for failing to enforce our environmental laws, [n5](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.341054.3963120002&target=results_DocumentContent&returnToKey=20_T18203950310&parent=docview&rand=1379820643219&reloadEntirePage=true" \l "n5) but also for rolling them back. [n6](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.341054.3963120002&target=results_DocumentContent&returnToKey=20_T18203950310&parent=docview&rand=1379820643219&reloadEntirePage=true" \l "n6)¶ Second, America's war on terrorism and the war with Iraq [n7](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.341054.3963120002&target=results_DocumentContent&returnToKey=20_T18203950310&parent=docview&rand=1379820643219&reloadEntirePage=true" \l "n7) have created a more militarized world, with more training, troop movement, and weapons testing, all of which increase environmental degradation. Today's weapons are more destructive and more countries have them. National security has been at the forefront of the nation's consciousness since September 11, 2001, and conventional wisdom dictates that national security must clash with environmental protection goals

# 2nc environment

#### No extinction – tech has decoupled humanity for the environment

Science Daily ‘10 (Science Daily, reprinted from materials provided by American Institute of Biological Sciences, "Human Well-Being Is Improving Even as Ecosystem Services Decline: Why?", http://www.sciencedaily.com/releases/2010/09/100901072908.htm, September 1, 2010)

Global degradation of ecosystems is widely believed to threaten human welfare, yet accepted measures of well-being show that it is on average improving globally, both in poor countries and rich ones. A team of authors writing in the September issue of BioScience dissects explanations for this "environmentalist's paradox." Noting that understanding the paradox is "critical to guiding future management of ecosystem services," Ciara Raudsepp-Hearne and her colleagues confirm that improvements in aggregate well-being are real, despite convincing evidence of ecosystem decline. Three likely reasons they identify -- past increases in food production, technological innovations that decouple people from ecosystems, and time lags before well-being is affected -- provide few grounds for complacency, however. Raudsepp-Hearne and her coauthors accept the findings of the influential Millennium Ecosystem Assessment that the capacity of ecosystems to produce many services for humans is now low. Yet they uncover no fault with the composite Human Development Index, a widely used metric that incorporates measures of literacy, life expectancy, and income, and has improved markedly since the mid-1970s. Although some measures of personal security buck the upward trend, the overall improvement in well-being seems robust. The researchers resolve the paradox partly by pointing to evidence that food production (which has increased globally over past decades) is more important for human well-being than are other ecosystem services. They also establish support for two other explanations: that technology and innovation have decoupled human well-being from ecosystem degradation, and that there is a time lag after ecosystem service degradation before human well-being will be affected.

# 2nc climate

#### Soft power is a gimmick- only based on GDP not credibility

Doctorow ’13 (Gilbert Doctorow, Research Fellow of the American University in Moscow, “Soft power is largely an American PR gimmick”, May 20, 2013)

The recent nose-thumbing at Russia and China by Professor Joseph Nye in Foreign Policy magazine over the inability of those countries to marshal soft power is flawed in a number of ways that go beyond the methodological weaknesses of his scholarly writings that I have described at length elsewhere.¹ This article is part of Voice of Russia Experts’ Panel Discussion It is curious that Nye insists soft power is purely the work of a free society and cannot be formed or directed by governments like the Chinese or the Russians, when in his own 2004 master work on the concept he bemoaned the cutbacks in US government-financed image projection by the USIA going back to the end of the Cold War. And in the same work he listed steps that Washington should do to promote soft power, including educational and military exchanges, liberalization of visas and the like. I have long agreed with Nye that the Kremlin’s efforts at exercising soft power have often been inept. For example, the Valdai Discussion Club meetings have only flattered fat-cat American academics who, after their photo opportunity with Vladimir Putin, returned home and laid into Russia with even greater vigor from their university and think-tank perches. At the same time, Russia’s cultural icons are genuinely very popular abroad. The Hermitage Amsterdam is a world-class calling card that carries weight greater than the humbler British Council or Alliance Française installations. The Mariinsky Theater, newly launched into a Lincoln Center type complex with the opening of its second stage, enjoys worldwide respect both on tour and at home during the White Nights Festival. Friends in the travel industry assure me that the coming summer season bookings of upper middle-class American tourists to Moscow, St Petersburg and the Golden Triangle are at a multi-year high. There is not much in all of this for the Kremlin to use in furtherance of its foreign policy objectives. But then the fact that Hilary Clinton chose Nye as the State Department’s house philosopher during her tenure did not change the substance of Obama’s foreign policy even if it may have influenced the sound bites. And it could not be otherwise, because soft power is largely a public relations gimmick. Since Nye is an idealist rather than a realist, he systematically fails to understand that soft power is above all a by-product of wealth and success. America’s undisputed power of attraction to peoples around the world (when it is not invading hapless countries) has more to do with its per capita GDP than with any other factor. This explains the passion of ambitious people everywhere to send their children to American colleges, whatever their ratings. It explains the popularity of Hollywood and pop culture and much more. There is nothing wrong with this; it is all understandable in human terms. But it has relatively little to do with vibrant civil society or any beacon of human rights radiating from Washington, D.C. In this respect, the best thing that Russia or China can do to further their soft power is to get richer quick. In the meantime, Beijing and Moscow would be wise to keep their eyes on the ball, that is on their hard power. If you can’t be loved, it is quite sufficient to be respected. 1. The underlying notion of soft power can be sufficiently explained in a sentence or two. Nye has written volumes. However, his “research” is utterly indiscriminating and he is enthralled by new media. See my critique in Great Post-Cold War American Thinkers on International Relations (2010)

#### Alt causes to the terminal impact outweigh

Guterl ’13 (Fred Guterl is an award-winning journalist and executive editor of Scientific American. He worked for ten years at Newsweek, most recently as deputy editor, covering the most important trends in science, technology, and international affairs. He lives in the New York City area with his wife and two children, “Animal Forecast Could Humans Go Extinct?”, http://mobile.slate.com/articles/health\_and\_science/animal\_forecast/2013/02/human\_extinction\_could\_a\_mass\_extinction\_kill\_homo\_sapiens.html, February 22, 2013)

If a mass extinction is happening, climate change would not have had much time to factor into it. Most of the species loss has so far has had little to do with pumping carbon into the atmosphere. Humans as a species have ravaged the Earth in many other ways. Fishing the waters with factory trawlers, clearing forests for wood and palm oil plantations, carrying strange flora and fauna in the bilge of ships from port to port—all these things, and more, have contributed.

#### Warming won’t cause extinction

Barrett ‘7 (Scott, Professor of natural resource economics @ Columbia University, “Why Cooperate? The Incentive to Supply Global Public Goods, introduction”, 2007)

First, climate change does not threaten the survival of the human species.5 If unchecked, it will cause other species to become extinction (though biodiversity is being depleted now due to other reasons). It will alter critical ecosystems (though this is also happening now, and for reasons unrelated to climate change). It will reduce land area as the seas rise, and in the process displace human populations. “Catastrophic” climate change is possible, but not certain. Moreover, and unlike an asteroid collision, large changes (such as sea level rise of, say, ten meters) will likely take centuries to unfold, giving societies time to adjust. “Abrupt” climate change is also possible, and will occur more rapidly, perhaps over a decade or two. However, abrupt climate change (such as a weakening in the North Atlantic circulation), though potentially very serious, is unlikely to be ruinous. Human-induced climate change is an experiment of planetary proportions, and we cannot be sur of its consequences. Even in a worse case scenario, however, global climate change is not the equivalent of the Earth being hit by mega-asteroid. Indeed, if it were as damaging as this, and if we were sure that it would be this harmful, then our incentive to address this threat would be overwhelming. The challenge would still be more difficult than asteroid defense, but we would have done much more about it by now.

# 1nr

### at: addons

#### No impact to disease

Posner ‘5 (Richard A, judge on the U.S. Court of Appeals, Seventh Circuit, and senior lecturer at the University of Chicago Law School, Winter. “Catastrophe: the dozen most significant catastrophic risks and what we can do about them.” http://findarticles.com/p/articles/mi\_kmske/is\_3\_11/ai\_n29167514/pg\_2?tag=content;col1, March 11, 2005)

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

#### Food shortages won’t cause war

Allouche 11, research Fellow – water supply and sanitation @ Institute for Development Studies, frmr professor – MIT

(Jeremy, “The sustainability and resilience of global water and food systems: Political analysis of the interplay between security, resource scarcity, political systems and global trade,” Food Policy, Vol. 36 Supplement 1, p. S3-S8, January)

The question of resource scarcity has led to many debates on whether scarcity (whether of food or water) will lead to conflict and war. The underlining reasoning behind most of these discourses over food and water wars comes from the Malthusian belief that there is an imbalance between the economic availability of natural resources and population growth since while food production grows linearly, population increases exponentially. Following this reasoning, neo-Malthusians claim that finite natural resources place a strict limit on the growth of human population and aggregate consumption; if these limits are exceeded, social breakdown, conflict and wars result. Nonetheless, it seems that most empirical studies do not support any of these neo-Malthusian arguments. Technological change and greater inputs of capital have dramatically increased labour productivity in agriculture. More generally, the neo-Malthusian view has suffered because during the last two centuries humankind has breached many resource barriers that seemed unchallengeable. Lessons from history: alarmist scenarios, resource wars and international relations In a so-called age of uncertainty, a number of alarmist scenarios have linked the increasing use of water resources and food insecurity with wars. The idea of water wars (perhaps more than food wars) is a dominant discourse in the media (see for example Smith, 2009), NGOs (International Alert, 2007) and within international organizations (UNEP, 2007). In 2007, UN Secretary General Ban Ki-moon declared that ‘water scarcity threatens economic and social gains and is a potent fuel for wars and conflict’ (Lewis, 2007). Of course, this type of discourse has an instrumental purpose; security and conflict are here used for raising water/food as key policy priorities at the international level. In the Middle East, presidents, prime ministers and foreign ministers have also used this bellicose rhetoric. Boutrous Boutros-Gali said; ‘the next war in the Middle East will be over water, not politics’ (Boutros Boutros-Gali in Butts, 1997, p. 65). The question is not whether the sharing of transboundary water sparks political tension and alarmist declaration, but rather to what extent water has been a principal factor in international conflicts. The evidence seems quite weak. Whether by president Sadat in Egypt or King Hussein in Jordan, none of these declarations have been followed up by military action. The governance of transboundary water has gained increased attention these last decades. This has a direct impact on the global food system as water allocation agreements determine the amount of water that can used for irrigated agriculture. The likelihood of conflicts over water is an important parameter to consider in assessing the stability, sustainability and resilience of global food systems. None of the various and extensive databases on the causes of war show water as a casus belli. Using the International Crisis Behavior (ICB) data set and supplementary data from the University of Alabama on water conflicts, Hewitt, Wolf and Hammer found only seven disputes where water seems to have been at least a partial cause for conflict (Wolf, 1998, p. 251). In fact, about 80% of the incidents relating to water were limited purely to governmental rhetoric intended for the electorate (Otchet, 2001, p. 18). As shown in The Basins At Risk (BAR) water event database, more than two-thirds of over 1800 water-related ‘events’ fall on the ‘cooperative’ scale (Yoffe et al., 2003). Indeed, if one takes into account a much longer period, the following figures clearly demonstrate this argument. According to studies by the United Nations Food and Agriculture Organization (FAO), organized political bodies signed between the year 805 and 1984 more than 3600 water-related treaties, and approximately 300 treaties dealing with water management or allocations in international basins have been negotiated since 1945 (FAO, 1978 and FAO, 1984). The fear around water wars have been driven by a Malthusian outlook which equates scarcity with violence, conflict and war. There is however no direct correlation between water scarcity and transboundary conflict. Most specialists now tend to agree that the major issue is not scarcity per se but rather the allocation of water resources between the different riparian states (see for example Allouche, 2005, Allouche, 2007 and [Rouyer, 2000] ). Water rich countries have been involved in a number of disputes with other relatively water rich countries (see for example India/Pakistan or Brazil/Argentina). The perception of each state’s estimated water needs really constitutes the core issue in transboundary water relations. Indeed, whether this scarcity exists or not in reality, perceptions of the amount of available water shapes people’s attitude towards the environment (Ohlsson, 1999). In fact, some water experts have argued that scarcity drives the process of co-operation among riparians (Dinar and Dinar, 2005 and Brochmann and Gleditsch, 2006). In terms of international relations, the threat of water wars due to increasing scarcity does not make much sense in the light of the recent historical record. Overall, the water war rationale expects conflict to occur over water, and appears to suggest that violence is a viable means of securing national water supplies, an argument which is highly contestable. The debates over the likely impacts of climate change have again popularised the idea of water wars. The argument runs that climate change will precipitate worsening ecological conditions contributing to resource scarcities, social breakdown, institutional failure, mass migrations and in turn cause greater political instability and conflict (Brauch, 2002 and Pervis and Busby, 2004). In a report for the US Department of Defense, Schwartz and Randall (2003) speculate about the consequences of a worst-case climate change scenario arguing that water shortages will lead to aggressive wars (Schwartz and Randall, 2003, p. 15). Despite growing concern that climate change will lead to instability and violent conflict, the evidence base to substantiate the connections is thin ( [Barnett and Adger, 2007] and Kevane and Gray, 2008).

#### No impact oil shocks

Jaffe ‘8 (Amy Myers Jaffe is the Wallace S. Wilson Fellow for Energy Studies at the James A. Baker III Institute for Public Policy at Rice University, “ Opportunity, not War,” Survival | vol. 50 no. 4 | August–September 2008 | pp. 61–82)

We’ve heard the argument before: scarcity of future oil supplies is a danger to the global international system and will create international conflict, death and destruction. In 1982, noted historian and oil-policy guru Daniel Yergin wrote that the energy question was ‘a question about the future of Western society’, noting that ‘stagnation and unemployment and depression tested democratic systems in the years between World War I and World War II’ and asserting that if there wasn’t sufficient oil to drive economic growth, the ‘possibilities are unpleasant to contemplate’.1 His words proved typical prose foreboding the top of a commodity cycle. A year later, oil prices began a four-year collapse to $12 a barrel. That oil is a cyclical industry is not in question. Since 1861, oil markets have experienced more than eight boom-and-bust cycles. In 1939, the US Department of the Interior announced that only 13 years of oil reserves remained in the United States. In more recent history, Middle East wars or revolutions produced oil price booms in 1956, 1973, 1979, 1990 and 2003. Each time, analysts rushed to warn of doomsday scenarios but markets responded and oil use was curtailedboth by market forces and government intervention rather than by war and massive global instability. The question Nader Elhefnawy raises in ‘The Impending Oil Shock’ is whether this time will be different.

### 2NC OV

#### War turns biod

Econ short circuits us leverage on intl norms- means no warming modelling

#### Decline makes warming inevitable

Jerry W. **Sanders 90**, Prof. Peace and Conflict Studies, UC, Berkeley [“Global Ecology and World Economy: Collision Course or Sustainable Future” Bulletin of Peace Proposals Vol. 21 (4) p. 395-401]

What will be the likely impact of economic stagnation and increasing competition on the environment? Prospects of slower growth might be greeted as good news — all other things being equal. But other things are seldom equal, the factors critical to environmental balance being no exception. Whatever ecological respite that might be expected to accrue from the overall decrease of industrial activity will be more than offset by the impact of increasingly desperate efforts to remain competitive. This will be true for rich and poor alike, Among the United States, Japan, Germany, and others in the top industrial tier of nations, the race will be on to develop the breakthrough technologies that can accelerate productivity and spur a new era of growth — micro-electronics, biotechnology, telecommunications, new sources of energy including nuclear power, and other potentially high-payoff sectors yet to be discovered. The more intense the competition and the greater the conflict, the less likely potential environmental risks will be accurately assessed and given proper weight in strategic planning and investment decision. Meanwhile, slower growth will lower the costs of fossil fuels, removing economic incentives for conservation. To make matters worse, heightened competition will make cheaper and dirtier forms of energy like soft coal that much more attractive. Thus, the hoped-for benefits of limited growth will be canceled out by less environmentally sensitive paths of production. Among the poorest countries, particularly those burdened by debt, we can expect that a shrinking world market and declining terms of trade will serve to accelerate deforestation and soil exhaustion as nations seek to maximize agricultural, mining, and other commodity exports in a losing effort to stay even. Paradoxically, therefore, stagnant growth very likely will produce increases in carbon dioxide and other trace gases that trigger global warming, acid rain, and toxic waste that poison ground water, and desertification that makes the spread of fallow land a growing danger in many regions of the Third World.

### 2NC U

#### Shutdown will be short-lived now –

Noble and Davies 10/1/13 (Josh and Paul, Financil Times, Hong Kong, "US Shutdown Reaction: "Odds Favour A Short Event")

¶ The heat will build on politicians from constituents who were furloughed, inconvenienced, or fearful of market consequences. That is why we believe the odds favour a short event – over in one week.¶ **Harm Bandholz, chief US economist, UniCredit:**¶ I think it is only a matter of days, maybe hours, until the majority of Republicans will eventually free themselves from the pressure of the Tea Party minority and vote along with Congressional Democrats to reopen the government. But don’t forget, the government shutdown is merely the prelude to a much bigger issue, namely the forthcoming debt limit fight.

#### The republicans have the votes to get it done

Cillizza 10/3/13 (Chris, Washington Post, "The Government Shutdown Could End Today. All it would cost is John Boehern's Speakership")

[There are currently 19 House Republicans on the record in support of a “clean” continuing resolution](http://www.washingtonpost.com/blogs/the-fix/wp/2013/10/02/the-fixs-clean-cr-whip-count/), meaning one without any other extraneous measures — like the defunding or delaying of Obamcare — attached. Combine those nineteen with the 200 Democrats who would almost certainly vote as a bloc in support of such a clean CR and you get 219 votes — a majority of the House. The bill has already been passed by the Democratic-controlled Senate, so it would go to straight to President Obama who would sign it. Shutdown over. Easy.

#### Meeting Proves -

The New York Times 10/2/13 (Jackie Calmes and Jonathan Weisman, "Obama Sets Conditions for Talks: Pass Funding and Raise Debt Ceiling")

In a meeting with Wall Street executives to enlist their help, and then in [an interview with CNBC](http://www.nytimes.com/video/2013/10/02/us/100000002479228/obama-on-the-government-shutdown.html) before his White House meeting with Congressional leaders, Mr. Obama said he needed to draw a firm line “to break that fever” in the House among hard-line conservatives who repeatedly issued fiscal ultimatums, resulting in government by crisis.¶ “As soon as we get a clean piece of legislation that reopens the government — and there is a majority for that right now in the House of Representatives — until we get that done, until we make sure that Congress allows Treasury to pay for things that Congress itself already authorized, we are not going to engage in a series of negotiations,” Mr. Obama told CNBC, a cable business-news channel.¶ Mr. Boehner, under pressure from Republican conservatives and outside Tea Party groups, has declined to bring a so-called clean continuing resolution to the House for a vote because it would pass mostly with Democrats’ votes and probably prompt a conservative backlash that could cost him his leadership office.¶ Mr. Obama, in the interview, said he must resist the Republican demands this time because a precedent is at stake. “If we get in the habit where a few folks, an extremist wing of one party, whether it’s Democrat or Republican, are allowed to extort concessions based on a threat of undermining the full faith and credit of the United States, then any president who comes after me — not just me — will find themselves unable to govern effectively,” he said.¶ Many Republicans concede that Mr. Obama has the political advantage in the current confrontation, so some in the House reacted hopefully to the president’s summons to Congressional leaders to meet late in the day. Representative Michael G. Grimm, Republican of New York, called the White House meeting “the beginning of the end of the government shutdown,” although others in Congress and the administration were less optimistic.

### AT: XO

#### Evidence is speculative- doesn’t conclusively

#### Obama wont unilaterally raise the ceiling – and it would fail anyway

Robb 9/30/13 (Greg Market Watch Writer, Citing Jay Carney White House Spokesman, "Obama Cannot Raise the Debt Ceiling Alone: Carney")

WASHINGTON (MarketWatch) - President [Barack Obama](http://www.marketwatch.com/people/Barack_Obama?lc=int_mb_1001) does not believe he has the authority to raise the debt ceiling unilaterally, putting the onus on Congress to act, White House spokesman Jay Carney said Monday. "Congress has to vote to raise the debt ceiling, the president can't raise it by himself," Carney said at the daily White House briefing. Some law professors and politicians, including former President [Bill Clinton](http://www.marketwatch.com/people/Bill_Clinton?lc=int_mb_1001), have argued that the constitution gives the president power to raise the debt ceiling in order to avoid a default on government debt. Carney said White House lawyers don't think the constitution gives the president such power. In addition, any unilateral action would just create a cloud of controversy and might not be taken seriously by the global economy and markets, he added.Treasury Secretary Jacob Lew has said emergency measures that have delayed the debt ceiling since May will expire on Oct. 17.

#### His legal office has ruled it out

Reuters 9/30/13 ("Update 1 - Raising US Debt cap Unilaterally Would be Suspect - White House")

Reuters) - The White House on Monday sought to quash any possibility that President [Barack Obama](http://www.reuters.com/people/barack-obama?lc=int_mb_1001) would raise the U.S. debt ceiling by himself should Congress fail to do so before a mid-October deadline, as some have suggested he should.¶ The U.S. Treasury Department has said it will exhaust the nation's $16.7 trillion borrowing limit in less than three weeks. Unless Congress raises the cap, the government would go into default, which the administration and most analysts say would deal a disastrous blow to the U.S. and the global [economy](http://www.reuters.com/finance/economy?lc=int_mb_1001), where the value of U.S. government debt is sacrosanct.¶ "Even if the president could ignore the debt ceiling, the fact that there is significant controversy around the president's authority to act unilaterally means that it would not be a credible alternative to Congress raising the debt ceiling and would not be taken seriously by the global [economy](http://www.reuters.com/finance/economy?lc=int_mb_1001) and [markets](http://www.reuters.com/finance/markets?lc=int_mb_1001)," White House spokesman Jay Carney told reporters.

### Link

### AT: Debt Ceiling can’t solve econ

#### Short shutdown is an economic hiccup -

Reuters 10/1/13 (Angela Moon, "Wall Street Rebounds As Government Shutdown Seen Short-Lived")

AS [stocks](http://www.reuters.com/finance/stocks?lc=int_mb_1001) kicked off a new month and a new quarter with gains on Tuesday as investors, for now, appeared confident that the first partial government shutdown in nearly two decades would be short-lived.¶ After declining seven out of the past eight sessions on concerns about a possible shutdown, Wall Street rebounded on Tuesday as investors viewed the pullback as a buying opportunity in the absence of an extended shutdown.¶ Trading volume totaled about 6 billion shares on the New York Stock Exchange, the [Nasdaq](http://www.reuters.com/finance/markets/index?symbol=us!comp) and the NYSE MKT, lower than the average daily closing volume of about 6.3 billion this year.¶ Congress missed a midnight deadline to agree on a spending bill, resulting in up to 1 million workers being put on unpaid leave. A fight over President [Barack Obama's](http://www.reuters.com/people/barack-obama?lc=int_mb_1001) healthcare law was at the center of the impasse.¶ The Democratic-led U.S. Senate on Tuesday voted to kill Republicans' latest attempts to modify an emergency government funding bill, stripping proposed amendments from the spending bill and sending back to the House a "clean" bill that would fund government agencies until November 15.¶ "This time around, the [markets](http://www.reuters.com/finance/markets?lc=int_mb_1001) have been so blissfully unconcerned that this hasn't been a problem. It could start to bite now, of course. But for me, the main story is the number of people not receiving paychecks or producing output," said Eric Lascelles, chief economist at RBC Global Asset Management in Toronto.¶ Lascelles said he estimates that each week the shutdown persists will shave about 0.1 percentage point from fourth-quarter GDP.

#### The longer it goes the worst –

#### - Debt ceiling has a multiplier effect

Kaplan 10/1/13 (Rebecca, CBS Interactive News, "Government Shutdown: What's the Cost")

The proximity of a coming fight over the U.S. debt ceiling - borrowing authority will run out on Oct. 17, [according to the Treasury Department](http://www.treasury.gov/connect/blog/Pages/Secretary-Lew-Sends-Debt-Limit-Letter-To-Congress-9-25.aspx) - could exacerbate the market's reaction to a shutdown as financial institutions lose confidence in the federal government. In the past, the effects have been limited: Bank of America-Merrill Lynch research showed that the the median change for the S&P 500 is a gain of 0.1 percent in the last 11 cases of a federal shutdown. That is followed by [a median increase of 2.8 percent](http://news.yahoo.com/factbox-history-shows-stocks-shake-off-government-shutdowns-172023750--sector.html) in the following month. ¶ But the threat of a default tends to scare the markets more. "Once you move financial markets you hit the whole economy," Holtz-Eakin said. "That's a different set of issues, much bigger than the shutdown. But they're close together in time this year, conflated together in minds." The markets all [posted a loss](http://www.usatoday.com/story/money/markets/2013/09/30/stocks-monday/2894365/) at the end of the day.

### AT: Sopo Solves Econ

#### Causality goes the other way

Lieberthal and O'Hanlon 12 (Kenneth G. and Michael E., July 10th 2012 "The Real National Security Threat: America's Debt")

Lastly, American economic weakness undercuts U.S. leadership abroad. Other countries sense our weakness and wonder about our purported decline. If this perception becomes more widespread, and the case that we are in decline becomes more persuasive, countries will begin to take actions that reflect their skepticism about America's future. Allies and friends will doubt our commitment and may pursue nuclear weapons for their own security, for example; adversaries will sense opportunity and be less restrained in throwing around their weight in their own neighborhoods. The crucial Persian Gulf and Western Pacific regions will likely become less stable. Major war will become more likely.¶ When running for president last time, Obama eloquently articulated big foreign policy visions: healing America's breach with the Muslim world, controlling global climate change, dramatically curbing global poverty through development aid, moving toward a world free of nuclear weapons. These were, and remain, worthy if elusive goals. However, for Obama or his successor, there is now a much more urgent big-picture issue: restoring U.S. economic strength. Nothing else is really possible if that fundamental prerequisite to effective foreign policy is not reestablished.

#### Economic collapse turns all of their impacts

Duncan ’12 (Richard Duncan, Former IMF consultant, Financial sector specialist for the World Bank, Chief Economist Blackhorse Asset Management, The New Depression: The Breakdown of the Paper Money Economy, Page 12, Ebooks, 2012)

The political battle over America’s future would be bitter, and quite possibly bloody. It cannot be guaranteed that the U.S. Constitution would survive. Foreign affairs would also confront the United States with enormous challenges. During the Great Depression, the United States did not have a global empire. Now it does. The United States maintains hundreds of military bases across dozens of countries around the world. Added to this is a fleet of 11 aircraft carriers and 18 nuclear-armed submarines. The countryspends more than $650 billion a year on its military. If the U.S. economy collapsesinto a New Great Depression,the United States could not afford to maintain its worldwide military presence or to continue in its role as global peacekeeper.Or, at least, it could not finance its military in the same way it does at present. Therefore, either the United States would have to find an alternative funding method for its global military presence or else it would have to radically scale it back. Historically, empires were financed with plunder and territorial expropriation. The estates of the vanquished ruling classes were given to the conquering generals, while the rest of the population was forced to pay imperial taxes. The U.S. model of empire has been unique. It has financed its global military presence by issuing government debt, thereby taxing future generations of Americans to pay for this generation’s global supremacy. That would no longer be possible if the economy collapsed. Cost–benefit analysis would quickly reveal that much of America’s global presence was simply no longer affordable. Many—or even most—of the outposts that did not pay for themselves would have to be abandoned. Priority would be given to those places that were of vital economic interests to the United States. The Middle East oil fields would be at the top of that list. The United States would have to maintain control over them whatever the price**.** In this global depression scenario, the price of oil could collapse to $3 per barrel**.** Oil consumption would fall by half and there would be no speculators left to manipulate prices higher. Oil at that level would impoverish the oil-producing nations, with extremely destabilizing political consequences**.** Maintaining control over the Middle East oil fields would become much more difficult for the United States. It would require a much larger military presence than it does now. On the one hand, it might become necessary for the United States to reinstate the draft (which would possibly meet with violent resistance from draftees, as it did during the Vietnam War). On the other hand, America’s all-volunteer army might find it had more than enough volunteers with the national unemployment rate in excess of 20 percent. The army might have to be employed to keep order at home, given that mass unemployment would inevitably lead to a sharp spike in crime. Only after the Middle East oil was secured would the country know how much more of its global military presence it could afford to maintain. If international trade had broken down, would there be any reason for the United States to keep a military presence in Asia when there was no obvious way to finance that presence?In a global depression, the United States’ allies in Asia would most likely be unwilling or unable to finance America’s military bases there or to pay for the upkeep of the U.S. Pacific fleet**.** Norwould the United States have the strength to force them to pay for U.S. protection**.** Retreat from Asia might become unavoidable. And Europe?What would a cost–benefit analysis conclude about the wisdom of the United States maintaining military bases there? What valued added does Europe provide to the United States? Necessity may mean Europe will have to defend itself**.** Should a New Great Depression put an end to the Pax Americana, the world would become a much more dangerous place**.** When the Great Depression began, Japan was the rising industrial power in Asia. It invaded Manchuria in 1931 and conquered much of the rest of Asia in the early 1940s. Would China, Asia’s new rising power, behave the same way in the event of a new global economic collapse? Possibly. China is the only nuclear power in Asia east of India (other than North Korea, which is largely a Chinese satellite state). However**,** in this disaster scenario, it is not certain that China would survive in its current configuration.Its economy would be in ruins. Most of its factories and banks would be closed. Unemployment could exceed 30 percent**.** There would most likely be starvation both in the cities and in the countryside. The Communist Party could lose its grip on power, in which case the country could break apart**,** as it has numerous times in the past. It was less than 100 years ago that China’s provinces, ruled by warlords, were at war with one another.United or divided, China’s nuclear arsenal would make it Asia’s undisputed superpower if the United States were to withdrawfrom the region. From Korea and Japan in the North to New Zealand in the South to Burma in the West,all of Asia would be at China’s mercy**.** And hunger among China’s population of 1.3 billion people could necessitate territorial expansion into Southeast Asia. In fact, the central government might not be able to prevent mass migration southward, even if it wanted to. In Europe, severe economic hardship would revive the centuries-old struggle between the left and the right**.** During the 1930s, the Fascists movement arose and imposed a police state on most of Western Europe. In the East, the Soviet Union had become a communist police state even earlier. The far right and the far left of the political spectrum converge in totalitarianism**.** It is difficult to judge whether Europe’s democratic institutions would hold up better this time that they did last time. England had an empire during the Great Depression. Now it only has banks. In a severe worldwide depression, the country—or, at least London—could become ungovernable. Frustration over poverty and a lack of jobs would erupt into anti-immigration riots not only in the United Kingdom but also across most of Europe. The extent to which Russia would menace its European neighbors is unclear. On the one hand,Russia would be impoverished by the collapse in oil prices and might be too preoccupied with internal unrest to threaten anyone. On the other hand, it could provoke a war with the goal of maintaining internal order through emergency wartime powers**.** Germany is very nearly demilitarized today when compared with the late 1930s. Lacking a nuclear deterrent of its own, it could be subject to Russian intimidation. While Germany could appeal for protection from England and France, who do have nuclear capabilities, it is uncertain that would buy Germany enough time to remilitarize before it became a victim of Eastern aggression. As for the rest of the world, its prospects in this disaster scenario can be summed up in only a couple of sentences. Global economic output could fall by as much as half, from $60 trillion to $30 trillion.Not all of the world’s seven billion people would survive in a $30 trillion global economy. Starvation would be widespread. Food riots would provoke political upheaval and myriad big and small conflicts around the world. It would be a humanitarian catastrophe so extreme as to be unimaginablefor the current generation, who, at least in the industrialized world, has known only prosperity**.** Nor would there be reason to hope that theNew GreatDepression would end quickly**.** The Great Depression was only ended by an even more calamitous global war that killed approximately 60 million people.

#### **Decline causes isolationism- makes promoting norms impossible**

Ferguson 9 (Niall, Laurence A. Tisch Professor of History at Harvard University, “The Axis of Upheaval,” Foreign Policy, February 16th, http://www.foreignpolicy.com/articles/2009/02/16/the\_axis\_of\_upheaval)

The Bush years have of course revealed the perils of drawing facile parallels between the challenges of the present day and the great catastrophes of the 20th century. Nevertheless, there is reason to fear that the biggest financial crisis since the Great Depression could have comparable consequences for the international system. For more than a decade, I pondered the question of why the 20th century was characterized by so much brutal upheaval. I pored over primary and secondary literature. I wrote more than 800 pages on the subject. And ultimately I concluded, in The War of the World, that three factors made the location and timing of lethal organized violence more or less predictable in the last century. The first factor was ethnic disintegration: Violence was worst in areas of mounting ethnic tension. The second factor was economic volatility: The greater the magnitude of economic shocks, the more likely conflict was. And the third factor was empires in decline: When structures of imperial rule crumbled, battles for political power were most bloody. In at least one of the world’s regions—the greater Middle East—two of these three factors have been present for some time: Ethnic conflict has been rife there for decades, and following the difficulties and disappointments in Iraq and Afghanistan, the United States already seems likely to begin winding down its quasi-imperial presence in the region. It likely still will. Now the third variable, economic volatility, has returned with a vengeance. U.S. Federal Reserve Chairman Ben Bernanke’s “Great Moderation”—the supposed decline of economic volatility that he hailed in a 2004 lecture—has been obliterated by a financial chain reaction, beginning in the U.S. subprime mortgage market, spreading through the banking system, reaching into the “shadow” system of credit based on securitization, and now triggering collapses in asset prices and economic activity around the world. After nearly a decade of unprecedented growth, the global economy will almost certainly sputter along in 2009, though probably not as much as it did in the early 1930s, because governments worldwide are frantically trying to repress this new depression. But no matter how low interest rates go or how high deficits rise, there will be a substantial increase in unemployment in most economies this year and a painful decline in incomes. Such economic pain nearly always has geopolitical consequences. Indeed, we can already see the first symptoms of the coming upheaval. In the essays that follow, Jeffrey Gettleman describes Somalia’s endless anarchy, Arkady Ostrovsky analyzes Russia’s new brand of aggression, and Sam Quinones explores Mexico’s drug-war-fueled misery. These, however, are just three case studies out of a possible nine or more. In Gaza, Israel has engaged in a bloody effort to weaken Hamas. But whatever was achieved militarily must be set against the damage Israel did to its international image by killing innocent civilians that Hamas fighters use as human shields. Perhaps more importantly, social and economic conditions in Gaza, which were already bad enough, are now abysmal. This situation is hardly likely to strengthen the forces of moderation among Palestinians. Worst of all, events in Gaza have fanned the flames of Islamist radicalism throughout the region—not least in Egypt. From Cairo to Riyadh, governments will now think twice before committing themselves to any new Middle East peace initiative. Iran, meanwhile, continues to support both Hamas and its Shiite counterpart in Lebanon, Hezbollah, and to pursue an alleged nuclear weapons program that Israelis legitimately see as a threat to their very existence. No one can say for sure what will happen next within Tehran’s complex political system, but it is likely that the radical faction around President Mahmoud Ahmadinejad will be strengthened by the Israeli onslaught in Gaza. Economically, however, Iran is in a hole that will only deepen as oil prices fall further. Strategically, the country risks disaster by proceeding with its nuclear program, because even a purely Israeli air offensive would be hugely disruptive. All this risk ought to point in the direction of conciliation, even accommodation, with the United States. But with presidential elections in June, Ahmadinejad has little incentive to be moderate. On Iran’s eastern border, in Afghanistan, upheaval remains the disorder of the day. Fresh from the success of the “surge” in Iraq, Gen. David Petraeus, the new head of U.S. Central Command, is now grappling with the much more difficult problem of pacifying Afghanistan. The task is made especially difficult by the anarchy that prevails in neighboring Pakistan. India, meanwhile, accuses some in Pakistan of having had a hand in the Mumbai terrorist attacks of last November, spurring yet another South Asian war scare. Remember: The sabers they are rattling have nuclear tips. The democratic governments in Kabul and Islamabad are two of the weakest anywhere. Among the biggest risks the world faces this year is that one or both will break down amid escalating violence. Once again, the economic crisis is playing a crucial role. Pakistan’s small but politically powerful middle class has been slammed by the collapse of the country’s stock market. Meanwhile, a rising proportion of the country’s huge population of young men are staring unemployment in the face. It is not a recipe for political stability. This club is anything but exclusive. Candidate members include Indonesia, Thailand, and Turkey, where there are already signs that the economic crisis is exacerbating domestic political conflicts. And let us not forget the plague of piracy in Somalia, the renewed civil war in the Democratic Republic of the Congo, the continuing violence in Sudan’s Darfur region, and the heart of darkness that is Zimbabwe under President Robert Mugabe. The axis of upheaval has many members. And it’s a fairly safe bet that the roster will grow even longer this year. The problem is that, as in the 1930s, most countries are looking inward, grappling with the domestic consequences of the economic crisis and paying little attention to the wider world crisis. This is true even of the United States, which is now so preoccupied with its own economic problems that countering global upheaval looks like an expensive luxury. With the U.S. rate of GDP growth set to contract between 2 and 3 percentage points this year, and with the official unemployment rate likely to approach 10 percent, all attention in Washington will remain focused on a nearly $1 trillion stimulus package. Caution has been thrown to the wind by both the Federal Reserve and the Treasury. The projected deficit for 2009 is already soaring above the trillion-dollar mark, more than 8 percent of GDP. Few commentators are asking what all this means for U.S. foreign policy. The answer is obvious: The resources available for policing the world are certain to be reduced for the foreseeable future. That will be especially true if foreign investors start demanding higher yields on the bonds they buy from the United States or simply begin dumping dollars in exchange for other currencies. Economic volatility, plus ethnic disintegration, plus an empire in decline: That combination is about the most lethal in geopolitics. We now have all three. The age of upheaval starts now.