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#### 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.

#### Empirically proven- detention issues destroy the domestic agenda

Klaidman 5/15/13 (Daniel, Author for Newsweek Magazine and the Daily BEast, "How Gitmo Imprisoned Obama" The Daily Beast)

But one of his very first tactical moves on Guantánamo backfired spectacularly. Obama’s plan to bring to the United States a handful of detainees—Chinese Uighurs who were cleared by the courts—caused a political furor. Obama pulled the plug on the plan, and Congress soon began passing measures to restrict transfers out of Gitmo. For Obama’s political advisers, the episode demonstrated that the toxic politics of terrorism could overwhelm the administration’s domestic agenda; for civil libertarians, it was an ominous sign that Obama lacked the political will to aggressively engage Congress on one of their core concerns. Even some of Obama’s top national-security aides were frustrated with the White House’s timid approach toward Congress. John Brennan—then Obama’s counterterrorism czar, now his CIA chief—believed the administration needed to show more backbone in its dealings with Congress, according to a source who spoke with him at the time. Brennan’s outrage was fueled by the knowledge that many detainees, who were still at Guantánamo after years of detention, had no record of terrorism.¶ Christoph Bangert/Laif/Redux¶ Former Gitmo detainee Abdul Salam Zaeef.¶ A few weeks after the Uighur debacle, Obama made his first attempt to save his faltering Guantánamo policy: in a sweeping address at the National Archives, he laid out a detailed plan for closing the prison. But in the end, however eloquent, it was only a speech. It did not, in any measurable way, push the policy forward.¶ Things only got worse from there. On Christmas Day 2009, the so-called underwear bomber attempted to bring down a plane over Detroit—a plot that was directed by al Qaeda’s Yemen affiliate. The frightening near miss took a powerful psychic toll on the White House, which was still dogged by the perception that Democrats were weak on national security. Obama became convinced that he could not send any of the nearly 100 Yemeni detainees at Gitmo back to their home country, for fear they would link up with extremists and begin plotting attacks against America. Suddenly, the fate of the Yemenis was another giant obstacle to closing the prison.¶ Ed Alcock/eyevine/Redux¶ Former Gitmo detainee Lakhdar Boumediene.¶ Then came the unraveling of Attorney General Eric Holder’s plans to try some Gitmo detainees, including 9/11 mastermind Khalid Sheikh Mohammed, in New York. Obama had initially backed Holder’s decision. But when it blew up in Congress, he seemed to equivocate. His own chief of staff, Rahm Emanuel, actually worked behind the scenes with Republican senators to undermine Holder’s initiative, according to multiple sources with knowledge of the episode. Once the plan cratered, lawmakers smelled blood. They began passing ever more restrictive legislation tying the administration’s hands on Guantánamo.¶ For much of the past few years, without any signal that Obama was going to fight on Gitmo, the policy drifted. Daniel Fried, the veteran State Department official in charge of resettling detainees, was transferred to a different position. Even the steps Obama took to move things forward were of a highly limited nature. One of those steps came in March 2011, when Obama issued an executive order designed to solve a thorny problem. Forty-eight of the detainees could not be prosecuted, either for lack of evidence or because they had been tortured—yet they were nonetheless considered too dangerous to release. This meant they had to be held in indefinite detention, a prospect that troubled Obama. His compromise, issued via executive order, was to set up Periodic Review Boards—administrative bodies that would allow such prisoners to challenge their incarceration, including by presenting new evidence.

#### \*\*\*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.

#### 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 1ac doesn't specify their agent- that's a voting issue especially on this topic- the core of debates depend on whether a restriction is statutory or judicial- destroys all topic ground and makes the affirmative a moving target

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#### The Counsel to the President of the United States should request to the Office of Legal Counsel for legal counsel and coordination on the President’s war powers authority. The Office of Legal Counsel should advise the President that he should grant Article III Courts exclusive jurisdiction over the United States’ indefinite detention policy as described in the 2001 Authorization for Use of Military Force.

#### CP is competitive and solves the case ---- Coordination with OLC can ensure executive action

BORRELLI et al 2000 - Professor of Government Chair of the Government and International Relations Department, Connecticut College (Maryanne Borrelli, Karen Hult, Nancy Kassop, “The White House Counsel’s Office”, http://whitehousetransitionproject.org/files/counsel/Counsel-OD.PDF)

The White House Counsel’s Office is at the hub of all presidential activity. Its mandate is to be watchful for and attentive to legal issues that may arise in policy and political contexts in which the president plays a role. To fulfill this responsibility, it monitors and coordinates the presidency’s interactions with other players in and out of government. Often called “the president’s lawyer,” the Counsel’s Office serves, more accurately, as the “presidency’s lawyer,” with tasks that extend well beyond exclusively legal ones. These have developed over time, depending on the needs of different presidents, on the relationship between a president and a Counsel, and on contemporary political conditions. The Office carries out many routine tasks, such as vetting all presidential appointments and advising on the application of ethics regulations to White House staff and executive branch officials, but it also operates as a “command center” when crises or scandals erupt. Thus, the more sharply polarized political atmosphere in recent years has led to greater responsibility and demands, as well as heightened political pressure and visibility, on the traditionally low-profile Counsel’s Office. The high-stakes quality of its work has led to a common sentiment among Counsels and their staff that there is “zero tolerance” for error in this office.

In sum, the Counsel’s Office might be characterized as a monitor, a coordinator, a negotiator, a recommender, and a translator: it monitors ethics matters, it coordinates the president’s message and agenda with other executive branch units, it negotiates with a whole host of actors on the president’s behalf (not the least of which is Congress), it recommends myriad actions to the president, and it translates or interprets the law (whether it is the Constitution, federal rules and regulations, treaties or legislation) for all executive branch officials. Past Counsels have lamented that there is no job description for this office, while the opening quote from Peter Wallison makes clear that even if there was, it would be all-consuming and all-inclusive of everything that goes in and out of the president’s office.

In simple terms, the Counsel’s Office performs five basic categories of functions: (1) advising on the exercise of presidential powers and defending the president’s constitutional prerogatives; (2) overseeing presidential nominations and appointments to the executive and judicial branches; (3) advising on presidential actions relating to the legislative process; (4) educating White House staffers about ethics rules and records management and monitoring adherence; and (5) handling department, agency and White House staff contacts with the Department of Justice (see Functions section). In undertaking these responsibilities, the Counsel’s Office interacts regularly with, among others, the president, the Chief of Staff, the White House Office of Personnel, the Press Secretary, the White House Office of Legislative Affairs, the Attorney General, the Office of Management and Budget (on the legislative process), the General Counsels of the departments and agencies, and most especially, the Office of Legal Counsel in the Department of Justice (see Relationships section). In addition to the Counsel, the Office usually consists of one or two Deputy Counsels, a varying number of Associate and Assistant Counsels, a Special Counsel when scandals arise, a Senior Counsel in some administrations, and support staff. Tasks are apportioned to these positions in various ways, depending on the Counsel’s choices, though most Counsels expect all Office members to share the ongoing vetting for presidential appointments (see Organization and Operations section).

Certain responsibilities within the Office are central at the very start of an administration (e.g., vetting for initial nominations and shepherding the appointment process through the Senate), while others have a cyclical nature to them (e.g., the annual budget, the State of the Union message), and still others follow an electoral cycle (e.g., determining whether presidential travel and other activities are partisan/electoral/campaign or governmental ones) (see Organization and Operations). There is, of course, the always unpredictable (but almost inevitable) flurry of scandals and crises, in which all eyes turn to the Counsel’s Office for guidance and answers. Watergate, Iran-contra, Whitewater, the Clinton impeachment, and the FBI files and White House Travel Office matters were all managed from the Counsel’s Office, in settings that usually separated scandal management from the routine work of the Office, so as to permit ongoing operations to continue with minimal distraction. Among the more regular tasks that occur throughout an administration are such jobs as directing the judicial nomination process, reviewing legislative proposals (the president’s, those from departments and agencies, and bills Congress has passed that need the Counsel’s recommendation for presidential signature or veto), editing and clearing presidential statements and speeches, writing executive orders, and determining the application of executive privilege (see both Relationships and Organization and Operations sections).

Perhaps, the most challenging task for the Counsel is being the one who has the duty to tell the president “no,” especially when it comes to defending the constitutional powers and prerogatives of the presidency. Lloyd Cutler, Counsel for both Presidents Carter and Clinton, noted that, in return for being “on the cutting edge of problems,” the Counsel needs to be someone who has his own established reputation…someone who is willing to stand up t o the President, to say, “No, Mr. President, you shouldn’t do that for these reasons.” There is a great tendency among all presidential staffs to be very sycophantic, very sycophantic. It’s almost impossible to avoid, “This man is the President of the United States and you want to stay in his good graces,” even when he is about to do something dumb; you don’t tell him that. You find some way to put it in a very diplomatic manner. (Cutler interview, pp. 3-4)

LAW, POLITICS AND POLICY

A helpful way to understand the Counsel’s Office is to see it as sitting at the intersection of law, politics and policy. Consequently, it confronts the difficult and delicate task of trying to reconcile all three of these without sacrificing too much of any one. It is the distinctive challenge of the Counsel’s Office to advise the president to take actions that are both legally sound and politically astute. A 1994 article in Legal Times warned of the pitfalls: Because a sound legal decision can be a political disaster, the presidential counsel constantly sacrifices legal ground for political advantage. (Bendavid, 1994, p. 13) For example, A.B. Culvahouse recalled his experience upon arriving at the White House as counsel and having to implement President Reagan’s earlier decision to turn over his personal diaries to investigators during the Iran-contra scandal.

Ronald Reagan’s decision to turn over his diary - that sits at the core of the presidency. …You’re setting up precedents and ceding a little power. But politically, President Reagan wanted to get it behind him. (Bendavid, 1994, p. 13)

Nonetheless, Culvahouse added, the Counsel is “the last and in some cases the only protector of the President’s constitutional privileges. Almost everyone else is willing to give those away in part inch by inch and bit by bit in order to win the issue of the day, to achieve compromise on today’s thorny issue. So a lot of what I did was stand in the way of that process...” (Culvahouse interview, p. 28)

Because of this blend of legal, political and policy elements, the most essential function a Counsel can perform for a president is to act as an “early warning system” for potential legal trouble spots before **(**and, ultimately, after) they erupt. For this role, a Counsel must keep his or her “antennae” constantly attuned. Being at the right meetings at the right time and knowing which people have information and/or the necessary technical knowledge and expertise in specific policy or legal areas are the keys to insuring the best service in this part of the position. C. Boyden Gray, Counsel for President Bush, commented: “As Culvahouse said -- I used to say that the meetings I was invited to, I shouldn’t go to. …It’s the meetings I wasn’t invited to that I’d go to.” (Gray interview, p. 26) Lloyd Cutler noted that

….the White House Counsel will learn by going to the staff meetings, et cetera, that something is about to be done that has buried within it a legal issue which the people who are advocating it either haven’t recognized or push under the rug. He says, “Wait a minute. We’ve got to check this out,” and goes to the Office of Legal Counsel and alerts them and gets their opinion. But for the existence of the White House Counsel, the Office of Legal Counsel would never have learned about the problem until it was too late. (Cutler interview, p. 4)

One other crucial part of the job where the legal overlaps with the policy and the political -- and which can spell disaster for Counsels who disregard this -- is knowing when to go to the Office of Legal Counsel for guidance on prevailing legal interpretations and opinions on the scope of presidential authority. It is then up to the White House Counsel to sift through these legal opinions, and to bring into play the operative policy and political considerations in order to offer the president his or her best recommendation on a course of presidential action. Lloyd Cutler described how this process works:

They [OLC staffers] are where the President has to go or the President’s counsel has to go to get an opinion on whether something may properly be done or not. For example, if you wish to invoke an executive privilege not to produce documents or something, the routine now is you go to the Office of Legal Counsel and you get their opinion that there is a valid basis for asserting executive privilege in this case. ...You’re able to say [to the judge who is going to examine these documents] the Office of Legal Counsel says we have a valid basis historically for asserting executive privilege here. (Cutler interview, p. 4)

C. Boyden Gray underscored the critical importance of OLC’s relationship to the Counsel’s Office: They [OLC] were the memory…We paid attention to what they did. [Vincent] Foster never conferred with them. When they [the Clinton Counsel’s Office] filed briefs on executive privilege, they had the criminal division, the civil division and some other division signing on the brief; OLC wasn’t on the brief… In some ways they [OLC] told us not to do things but that was helpful. They said no to us… I can give you a million examples. They would have said to Vince Foster, “Don’t go in and argue without thinking about it.” They would have prevented the whole healthcare debacle [referring to the Clinton Counsel’s Office’s position that Hillary Rodham Clinton was a government official for FACA purposes] …[T]he ripple effect of that one decision is hard to exaggerate: it’s hard to calculate. (Gray interview, pp. 18-19)

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#### Exec flexibility on detention powers now

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President Obama signed the NDAA "despite having serious reservations with certain provisions that regulate the detention, interrogation, and prosecution of suspected terrorists." n114 While the Administration voiced concerns throughout the legislative process, those concerns were addressed and ultimately resulted in a bill that preserves the flexibility needed to adapt to changing circumstances and upholds America's values. The President reiterated his support for language in Section 1021 making clear that the new legislation does not limit or expand the scope of Presidential authority under the AUMF or affect existing authorities "relating to the detention of United States citizens, lawful resident aliens of the United States, or any other persons who are captured or arrested in the United States." n115¶ The President underscored his Administration "will not authorize the indefinite military detention without trial of American citizens" and will ensure any authorized detention "complies with the Constitution, the laws of war, and all other applicable law." n116 Yet understanding fully the Administration's position requires recourse to its prior insistence that the Senate Armed Services Committee remove language in the original bill which provided that U.S. citizens and lawful resident aliens captured in the United States would not be subject to Section 1021. n117 There appears to be a balancing process at work here. On the one hand, the Administration is in lock-step with Congress that the NDAA should neither expand nor diminish the President's detention authority. On the other hand, policy considerations led the President to express an intention to narrowly exercise this detention authority over American citizens.¶ The overriding point is that the legislation preserves the full breadth and depth of detention authority existent in the AUMF, to include the detention of American citizens who join forces with Al Qaida. This is a dynamic and changing conflict. If a home-grown terrorist destroys a U.S. target, the FBI gathers the evidence, and a U.S. Attorney prosecutes, traditional civilian criminal laws govern, and the military detention authority resident in the NDAA need never come into play. This is a reasonable and expected outcome in many cases. The pending strike on rail targets posited in this paper's introduction, where intelligence sources reveal an inchoate attack involving American and foreign nationals operating overseas and at home, however, may be precisely the type of scenario where military detention is not only preferred but vital to thwarting the attack, conducting interrogations about known and hidden dangers, and preventing terrorists from continuing the fight.

#### Restrictions on detention kill exec flex—key to warfighting

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

#### That would uniquely decimate Obama and the military’s ability to calm alliances and deter enemies ---- makes terrorism and global nuclear war more likely

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.

# Solvency

#### Double bind – either the immediacy of fiat rushes the judicial decision-making process, which turns the aff or the court takes too long and won’t be able to enforce precedent fast enough

Darren Wheeler (Assistant Professor of Political Science and Public Administration at the University of North Florida, USA) December 2009 “Checking Presidential Detention Power in the War on Terror: What Should We Expect from the Judiciary?” Presidential Studies Quarterly¶ Volume 39, Issue 4, pages 677–700, Wiley Online Library

The first argument against the Supreme Court serving as an effective check on presidential detention power in the war on terror is that the judiciary simply takes too much time to make decisions (Rehnquist 1998). This does not mean that it takes longer to resolve detainee cases than other types of cases in the federal judicial system, but rather that the entire judicial decision-making process itself is one that simply takes a lot of time. The workload of the federal court system has consistently risen over the past several decades (Carp and Stidham 2001). Both civil and criminal cases usually take years to wind their way through the federal judicial system and reach the Supreme Court. Even then, the Supreme Court may decide not to hear a case, or it may simply remand the case back to the lower courts for further proceedings. Some cases travel up and down the federal judicial system multiple times, with decisions at each level often taking months or even years. This lengthy process can be referred to as “judicial time,” and it is a recognition that courts often take longer to make decisions than many other political actors. The concept of “judicial time” is similar in some respects to Stephen Skowronek's (1993) idea of thinking about a president's ability to impact policy in terms of cyclical “political time,” as it also highlights the importance of looking at policy making in a temporal context. The time it takes for courts to make decisions—especially relative to other actors—is the key. While the judiciary contemplates cases before it, other actors may not be inclined to wait for judicial resolution of policy issues, opting instead to take action on their own terms and timetables (Moe and Howell 1999a, 1999b). It is fair to say that lengthy deliberation is an institutional feature of the judicial system and, indeed, even a reflection that the judiciary is functioning in the manner in which it was intended (Hamilton, Madison, and Jay 1961). The courts are supposed to be deliberative and sort through often complicated legal arguments. This phenomenon of judicial time is not inherently good or bad, but it can influence the policy-making process and the decision-making calculus of other political actors (Rehnquist 1998).¶ When the Supreme Court is pressured to act quickly, institutional procedures and norms can break down and the Court can respond poorly. The World War II case of Ex Parte Quirin (1942) involving the use of military tribunals to try suspected Nazi saboteurs is a prime example. Upon capturing eight Nazi saboteurs who had landed on the shores of the eastern United States, President Franklin D. Roosevelt quickly devised a special military tribunal to try the suspects instead of prosecuting them in civilian courts. The Supreme Court hastily convened a special session (after the tribunal hearings had already commenced), heard oral arguments, and issued a decision against the defendants in a period of only a few days. The saboteurs were eventually found guilty and several were executed. It wasn't until three months later that the Supreme Court issued an opinion justifying its hurried decision, an opinion that Justice Felix Frankfurter later remarked was “not a happy precedent” (Fisher 2003). A more contemporary example, Bush v. Gore (2000), engenders similar criticism. In a decision that effectively handed the presidency to George W. Bush, the Court's involvement from start to finish could be measured in a mere handful of days. The opinions that resulted from this case, many critics contend, reflected the hurried nature of the Court's judgment (Correspondents of the New York Times 2001; Greenhouse 2001).¶ On the other hand, the ability to make decisions with dispatch has been trumpeted as a strength of the executive branch since the founding. This is especially true when it comes to war powers. One of the primary arguments that Alexander Hamilton made in the Federalist Papers for placing the commander-in-chief authority in the executive branch lay in the belief that presidents have the ability to act quickly and decisively in military matters needed to protect the nation. President Bush responded proactively to policy questions in the war on terror in cases involving detainees. The president quickly put detainee policies into place, and reactive efforts on the part of the courts and Congress to modify those policies have proven especially difficult (Ball 2007; Schwarz and Huq 2007; Wheeler 2008). It can truly be said that the executive and the judiciary often operate at very different speeds. This can complicate judicial efforts to check executive power (Koh 1990; Moe and Howell 1999a, 1999b; Wheeler 2008).

#### Executive will circumvent judicial review on the merits – will force sua sponte decision

Darren Wheeler (Assistant Professor of Political Science and Public Administration at the University of North Florida, USA) December 2009 “Checking Presidential Detention Power in the War on Terror: What Should We Expect from the Judiciary?” Presidential Studies Quarterly¶ Volume 39, Issue 4, pages 677–700, Wiley Online Library

A second example, the case of alleged “dirty bomber” José Padilla, also illustrates the difficulties that courts may have in checking the actions of other political actors when they are acting in judicial time. José Padilla was originally arrested in May 2002 on a material witness warrant related to a criminal investigation into the events of 9/11. Rather than release Padilla when the warrant expired, President Bush designated him an enemy combatant and transferred him to a naval brig in South Carolina. Padilla's counsel filed a habeas corpus challenge in New York District Court (where Padilla had originally been held) arguing for his release. Padilla's challenge proceeded from the district court to the Second Circuit Court of Appeals and eventually to the Supreme Court, where, in 2004, the Court decided that Padilla had filed his habeas petition in the wrong district.4 If he wanted to challenge his detention, he would have to re-file his case in South Carolina, where he was being held. Padilla did just this and the case made its way up the federal court system again, this time via the Fourth Circuit Court of Appeals. However, as Padilla's new legal challenge was poised to reach the Supreme Court again (it was now 2006), the Bush administration suddenly decided to transfer Padilla to civilian custody and file federal criminal charges.5 This effectively short-circuited Padilla's attempt to have the Supreme Court review the merits of his case. Padilla's legal odyssey through the federal court system had lasted more than five years, without the Supreme Court ever ruling on the merits of Padilla's legal arguments. Padilla was first held in the criminal justice system, designated an enemy combatant when it became convenient for the administration to do so, and then transferred back to civilian custody in an apparent attempt to avoid judicial review of his constitutional claims (Ball 2007). The judiciary moved slowly, while the president moved quickly in order to achieve his desired outcomes.

# Democratic Modelling

#### US legal modeling fails- can’t shape norms

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The appeal of American constitutionalism as a model for other countries appears to be waning in more ways than one. Scholarly¶ attention has thus far focused on global judicial practice: There is a¶ growing sense, backed by more than purely anecdotal observation,¶ that foreign courts cite the constitutional jurisprudence of the U.S.¶ Supreme Court less frequently than before.247 But the behavior of¶ those who draft and revise actual constitutions exhibits a similar pattern.¶ Our empirical analysis shows that the content of the U.S.¶ Constitution is becoming increasingly atypical by global standards.¶ Over the last three decades, other countries have become less likely to¶ model the rights-related provisions of their own constitutions upon¶ those found in the U.S. Constitution. Meanwhile, global adoption of key structural features of the Constitution, such as federalism, presidentialism, and a decentralized model of judicial review, is at best¶ stable and at worst declining. In sum, rather than leading the way for¶ global constitutionalism, the U.S. Constitution appears instead to be losing its appeal as a model for constitutional drafters elsewhere. The¶ idea of adopting a constitution may still trace its inspiration to the¶ United States, but the manner in which constitutions are written¶ increasingly does not.¶ If the U.S. Constitution is indeed losing popularity as a model for¶ other countries, what—or who—is to blame? At this point, one can¶ only speculate as to the actual causes of this decline, but five possible hypotheses suggest themselves: (1) the advent of a superior or more¶ attractive competitor; (2) a general decline in American hegemony;¶ (3) judicial parochialism; (4) constitutional obsolescence; and (5) a creed of American exceptionalism.¶ With respect to the first hypothesis, there is little indication that¶ the U.S. Constitution has been displaced by any specific competitor.¶ Instead, the notion that a particular constitution can serve as a dominant¶ model for other countries may itself be obsolete. There is an¶ increasingly clear and broad consensus on the types of rights that a¶ constitution should include, to the point that one can articulate the¶ content of a generic bill of rights with considerable precision.248 Yet it is difficult to pinpoint a specific constitution—or regional or international¶ human rights instrument—that is clearly the driving force¶ behind this emerging paradigm. We find only limited evidence that global constitutionalism is following the lead of either newer national¶ constitutions that are often cited as influential, such as those of¶ Canada and South Africa, or leading international and regional¶ human rights instruments such as the Universal Declaration of¶ Human Rights and the European Convention on Human Rights.¶ Although Canada in particular does appear to exercise a quantifiable¶ degree of constitutional influence or leadership, that influence is not¶ uniform and global, but more likely reflects the emergence and evolution¶ of a shared practice of constitutionalism among common law¶ countries.249 Our findings suggest, instead, that the development of¶ global constitutionalism is a polycentric and multipolar process that is¶ not dominated by any particular country.250 The result might be likened¶ to a global language of constitutional rights, but one that has¶ been collectively forged rather than modeled upon a specific¶ constitution.¶ Another possibility is that America’s capacity for constitutional¶ leadership is at least partly a function of American “soft power” more¶ generally.251 It is reasonable to suspect that the overall influence and appeal of the United States and its institutions have a powerful spillover¶ effect into the constitutional arena. The popularity of American¶ culture, the prestige of American universities, and the efficacy of¶ American diplomacy can all be expected to affect the appeal of¶ American constitutionalism, and vice versa. All are elements of an¶ overall American brand, and the strength of that brand helps to determine¶ the strength of each of its elements. Thus, any erosion of the¶ American brand may also diminish the appeal of the Constitution for¶ reasons that have little or nothing to do with the Constitution itself.¶ Likewise, a decline in American constitutional influence of the type¶ documented in this Article is potentially indicative of a broader decline in American soft power.¶ There are also factors specific to American constitutionalism that¶ may be reducing its appeal to foreign audiences. Critics suggest that¶ the Supreme Court has undermined the global appeal of its own jurisprudence¶ by failing to acknowledge the relevant intellectual contributions of foreign courts on questions of common concern252 and by¶ pursuing interpretive approaches that lack acceptance elsewhere.253¶ On this view, the Court may bear some responsibility for the declining¶ influence of not only its own jurisprudence, but also the actual U.S.¶ Constitution: One might argue that the Court’s approach to constitutional¶ issues has undermined the appeal of American constitutionalism¶ more generally, to the point that other countries have become¶ unwilling to look either to American constitutional jurisprudence or¶ to the U.S. Constitution itself for inspiration.254¶ It is equally plausible, however, that responsibility for the¶ declining appeal of American constitutionalism lies with the idiosyncrasies¶ of the Constitution itself rather than the proclivities of the¶ Supreme Court. As the oldest formal constitution still in force and one of the most rarely amended constitutions in the world,255 the U.S.¶ Constitution contains relatively few of the rights that have become¶ popular in recent decades.256 At the same time, some of the provisions¶ that it does contain may appear increasingly problematic, unnecessary,¶ or even undesirable with the benefit of two hundred years of¶ hindsight.257 It should therefore come as little surprise if the U.S.¶ Constitution strikes those in other countries—or, indeed, members of¶ the U.S. Supreme Court258—as out of date and out of line with global¶ practice.259 Moreover, even if the Court were committed to interpreting¶ the Constitution in tune with global approaches, it would still¶ lack the power to update the actual text of the document. Indeed,¶ efforts by the Court to update the Constitution via interpretation may¶ actually reduce the likelihood of formal amendment by rendering such¶ amendment unnecessary as a practical matter.260 As a result, there is¶ only so much that the U.S. Supreme Court can do to make the U.S.¶ Constitution an attractive formal template for other countries. The¶ obsolescence of the Constitution, in turn, may undermine the appeal¶ of American constitutional jurisprudence. Foreign courts have little¶ reason to follow the Supreme Court’s lead on constitutional issues if¶ the Supreme Court is saddled with the interpretation of an unusual¶ and obsolete constitution.261 No amount of ingenuity or solicitude for¶ foreign law on the part of the Court can entirely divert attention from¶ the fact that the Constitution itself is an increasingly atypical¶ document. One way to put a more positive spin on the U.S. Constitution’s¶ status as a global outlier is to emphasize its role in articulating and¶ defining what is unique about American national identity. Many¶ scholars have opined that formal constitutions serve an expressive¶ function as statements of national identity.262 This view finds little¶ support in our own empirical findings, which suggest instead that constitutions¶ tend to contain relatively standardized packages of rights.263¶ Nevertheless, to the extent that constitutions do serve such a function,¶ the distinctiveness of the U.S. Constitution may reflect the uniqueness¶ of America’s national identity. In this vein, various scholars have¶ argued that the U.S. Constitution lies at the very heart of an¶ “American creed of exceptionalism,” which combines a belief that the¶ United States occupies a unique position in the world with a commitment¶ to the qualities that set the United States apart from other countries.¶ 264 From this perspective, the Supreme Court’s reluctance to¶ make use of foreign and international law in constitutional cases¶ amounts not to parochialism, but rather to respect for the exceptional¶ character of the nation and its constitution.265¶ Unfortunately, it is clear that the reasons for the declining influence¶ of American constitutionalism cannot be reduced to anything as¶ simple or attractive as a longstanding American creed of exceptionalism.¶ Historically, American exceptionalism has not prevented other¶ countries from following the example set by American constitutionalism.¶ The global turn away from the American model is a relatively recent development that postdates the Cold War. If the U.S.¶ Constitution does in fact capture something profoundly unique about¶ the United States, it has surely been doing so for longer than the last¶ thirty years.¶ A complete explanation of the declining influence of American¶ constitutionalism in other countries must instead be sought in more¶ recent history, such as the wave of constitution making that followed¶ the end of the Cold War.266 During this period, America’s newfound¶ position as lone superpower might have been expected to create¶ opportunities for the spread of American constitutionalism. But this¶ did not come to pass.¶ Once global constitutionalism is understood as the product of a¶ polycentric evolutionary process, it is not difficult to see why the U.S.¶ Constitution is playing an increasingly peripheral role in that process.¶ No evolutionary process favors a species that is frozen in time. At¶ least some of the responsibility for the declining global appeal of¶ American constitutionalism lies not with the Supreme Court, or with a¶ broader penchant for exceptionalism, but rather with the static character¶ of the Constitution itself. If the United States were to revise the¶ Bill of Rights today—with the benefit of over two centuries of experience,¶ and in a manner that addresses contemporary challenges while¶ remaining faithful to the nation’s best traditions—there is no guarantee¶ that other countries would follow its lead. But the world would¶ surely pay close attention.

#### No US judicial modeling- EU model outweighs

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It is perhaps ironic that the most popular innovation of American¶ constitutionalism has been judicial review,64 given that this celebrated¶ institution is nowhere mentioned in the U.S. Constitution itself.¶ Today, the majority of the world’s constitutions mandate judicial¶ review in some form, as shown in Figure 9.65 In 1946, only 25% of all¶ constitutions explicitly provided for judicial review; by 2006, that proportion¶ had increased to 82%. The particular form of judicial review that has proven most popular,¶ however, is not the form that was pioneered by the United¶ States.66 Under the American model, the power of judicial review is¶ vested in courts of general jurisdiction, which rule upon the constitutionality¶ of government action as the need arises in the course of ordinary¶ litigation.67 Under the European model, by contrast, the power¶ to decide constitutional questions is exercised exclusively by a¶ specialized constitutional court that stands apart from the regular judiciary.68 The prototypical examples of this model are the constitutional¶ courts that Hans Kelsen devised for Austria.69 A further distinction¶ is routinely drawn between concrete review, which characterizes¶ the American model, and abstract review, which typifies the¶ European model. In a system of concrete review, courts decide constitutional¶ questions in the course of ordinary litigation, as part of what¶ Americans would call a case or controversy,70 whereas in a system of¶ abstract review, the constitutionality of a law can be decided in the¶ absence of a concrete, adversarial dispute and, indeed, before the law¶ has even gone into effect.71¶ Over the last six decades, a growing proportion of constitutions¶ have adopted the European model of abstract review by specialized¶ courts, as opposed to the American model of concrete review by ordinary courts. At the close of World War II, the American model¶ enjoyed a commanding lead over the European model as the choice of¶ over 80% of constitution makers, but its popularity began to erode in¶ the 1970s. By the mid-1990s, the European model had overtaken the¶ American model as the choice of over half the world’s constitutions.¶ Figure 10 illustrates these global trends. The creation of specialized¶ constitutional courts of the European variety has proven especially¶ popular among newly democratic states, where distrust of existing¶ judicial institutions associated with the old regime is often widespread.¶ 72 Thus, although the U.S. Constitution may have pioneered¶ the idea of binding judicial enforcement of individual rights—an idea¶ that now enjoys nearly universal acceptance—it is no longer the¶ leading source of inspiration for how such enforcement is to be institutionalized.¶ America’s long and successful experience with judicial¶ review may be responsible for encouraging other countries to adopt¶ the practice, but the form of judicial review that other countries actually¶ choose to adopt has a more European than American flavor.

#### None of your uighurs evidence actually mentions detention as a policy the Chinese will use to crack down

#### Uighur crackdown inevitable- Chinese policy since the fifties- at best the plan just means they’d crack down in other ways that aren’t detention

#### No Asian war- economic and regional cooperation

**Bitzinger & Desker 8** – senior fellow and dean of S. Rajaratnam School of International Studies respectively (Richard A. Bitzinger, Barry Desker, “Why East Asian War is Unlikely,” Survival, December 2008, http://pdfserve.informaworld.com-/678328\_731200556\_906256449.pdf)

The Asia-Pacific region can be regarded as a zone of both relative insecurity and strategic stability. It contains some of the world’s most significant flashpoints – the Korean peninsula, the Taiwan Strait, the Siachen Glacier – where tensions between nations could escalate to the point of major war. It is replete with unresolved border issues; is a breeding ground for transnationa terrorism and the site of many terrorist activities (the Bali bombings, the Manila superferry bombing); and contains overlapping claims for maritime territories (the Spratly Islands, the Senkaku/Diaoyu Islands) with considerable actual or potential wealth in resources such as oil, gas and fisheries. Finally, the Asia-Pacific is an area of strategic significance with many key sea lines of communication and important chokepoints. Yet despite all these potential crucibles of conflict, the Asia-Pacific, if not an area of serenity and calm, is certainly more stable than one might expect. To be sure, there are separatist movements and internal struggles, particularly with insurgencies, as in Thailand, the Philippines and Tibet. Since the resolution of the East Timor crisis, however, the region has been relatively free of open armed warfare. Separatism remains a challenge, but the break-up of states is unlikely. Terrorism is a nuisance, but its impact is contained. The North Korean nuclear issue, while not fully resolved, is at least moving toward a conclusion with the likely denuclearisation of the peninsula. Tensions between China and Taiwan, while always just beneath the surface, seem unlikely to erupt in open conflict any time soon, especially given recent Kuomintang Party victories in Taiwan and efforts by Taiwan and China to re-open informal channels of consultation as well as institutional relationships between organisations responsible for cross-strait relations. And while in Asia there is no strong supranational political entity like the European Union, there are many multilateral organisations and international initiatives dedicated to enhancing peace and stability, including the Asia-Pacific Economic Cooperation (APEC) forum, the Proliferation Security Initiative and the Shanghai Co-operation Organisation. In Southeast Asia, countries are united in a common eopolitical and economic organisation – the Association of Southeast Asian Nations (ASEAN) – which is dedicated to peaceful economic, social and cultural development, and to the promotion of regional peace and stability. ASEAN has played a key role in conceiving and establishing broader regional institutions such as the East Asian Summit, ASEAN+3 (China, Japan and South Korea) and the ASEAN Regional Forum. All this suggests that war in Asia – while not inconceivable – is unlikely.

#### Other countries fill in and solve demopromo

Mandelbaum 7 (Michael, Christian Herter Professor of American Foreign Policy at the Johns Hopkins School of Advanced International Studies, “Democracy Without American Subtitle: The Spontaneous Spread of Freedom,” Foreign Affairs, September/October)

Yet the failure of Washington's democracy promotion has not meant the failure of democracy itself. To the contrary, in the last quarter of the twentieth century this form of government enjoyed a remarkable rise. Once confined to a handful of wealthy countries, it became, in a short period of time, the most popular political system in the world. In 1900, only ten countries were democracies; by midcentury, the number had increased to 30, and 25 years later the count remained the same. By 2005, fully 119 of the world's 190 countries had become democracies. The seemingly paradoxical combination of the failure of U.S. democracy promotion and the successful expansion of democracy raises several questions: Why have the deliberate efforts of the world's most powerful country to export its form of government proved ineffective? Why and how has democracy enjoyed such extraordinary worldwide success despite the failure of these efforts? And what are the prospects for democracy in other key areas -- the Arab countries, Russia, and China -- where it is still not present? Answering these questions requires a proper understanding of the concept of democracy itself. DEMOCRATIC GENEALOGY What the world of the twenty-first century calls democracy is in fact the fusion of two distinct political traditions. One is liberty -- that is, individual freedom. The other is popular sovereignty: rule by the people. Popular sovereignty made its debut on the world stage with the French Revolution, whose architects asserted that the right to govern belonged not to hereditary monarchs, who had ruled in most places at most times since the beginning of recorded history, but rather to the people they governed. Liberty has a much longer pedigree, dating back to ancient Greece and Rome. It consists of a series of political zoning ordinances that fence off and thus protect sectors of social, political, and economic life from government interference. The oldest form of liberty is the inviolability of private property, which was part of the life of the Roman Republic. Religious liberty arose from the split in Christendom provoked by the Protestant Reformation of the sixteenth century. Political liberty emerged later than the other two forms but is the one to which twenty-first-century uses of the word "freedom" usually refer. It connotes the absence of government control of speech, assembly, and political participation. Well into the nineteenth century, the term "democracy" commonly referred to popular sovereignty alone, and a regime based on popular sovereignty was considered certain to suppress liberty. The rule of the people, it was believed, would lead to corruption, disorder, mob violence, and ultimately tyranny. In particular, it was widely thought that those without property would, out of greed and envy, move to seize it from its owners if the public took control of the government. At the end of the nineteenth century and the beginning of the twentieth, liberty and popular sovereignty were successfully merged in a few countries in western Europe and North America. This fusion succeeded in no small part due to the expansion of the welfare state in the wake of the Great Depression and World War II, which broadened the commitment to private property by giving everyone in society a form of it and prevented mass poverty by providing a minimum standard of living to all. Even then, however, the democratic form of government did not spread either far or wide. Popular sovereignty, or at least a form of it, became all but universal by the second half of the twentieth century. The procedure for implementing this political principle -- holding an election -- was and remains easy. In the first three-quarters of the twentieth century, most countries did not choose their governments through free and fair elections. However, most governments could claim to be democratic at least in the sense that they differed from the traditional forms of governance -- monarchy and empire. The leaders did not inherit their positions, and they came from the same national groups as the people they governed. These governments embodied popular sovereignty in that the people controlling them were neither hereditary monarchs nor foreigners. If popular sovereignty is relatively easy to establish, the other component of democracy, liberty, is far more difficult to secure. This accounts for both the delay in democracy's spread around the world in the twentieth century and the continuing difficulties in establishing it in the twenty-first. Putting the principle of liberty into practice requires institutions: functioning legislatures, government bureaucracies, and full-fledged legal systems with police, lawyers, prosecutors, and impartial judges. Operating such institutions requires skills, some of them highly specialized. And the relevant institutions must be firmly anchored in values: people must believe in the importance of protecting these zones of social and civic life from state interference. The institutions, skills, and values that liberty requires cannot be called into existence by fiat any more than it is possible for an individual to master the techniques of basketball or ballet without extensive training. The relevant unit of time for creating the social conditions conducive to liberty is, at a minimum, a generation. Not only does the apparatus of liberty take time to develop, it must be developed independently and domestically; it cannot be sent from elsewhere and implanted, ready-made. The requisite skills and values can be neither imported nor outsourced. While the British Empire did export liberty to India, the British governed the Indian subcontinent directly for almost a century. In many other places where the British ruled, democracy failed to take hold. In the twenty-first century, moreover, the age of empire has ended. Nowhere are people eager, or even willing, to be ruled by foreigners, a point the U.S. encounter with Iraq has illustrated all too vividly. Seen in this light, the spread of democracy in the last quarter of the twentieth century seems not only remarkable but almost inexplicable. For if the institutions of liberty, which are integral to democratic governance, take at least a generation to build, and since nondemocratic governments try, in order to preserve their own power, to ensure that the institutions and practices of liberty never take root, how can democracy be established at all? THE MAGIC OF THE MARKET The worldwide demand for democratic government in the modern era arose due to the success of the countries practicing it. The United Kingdom in the nineteenth century and the United States in the twentieth became militarily the most powerful and economically the most prosperous sovereign states. The two belonged to the winning coalition in each of the three global conflicts of the twentieth century: the two world wars and the Cold War. Their success made an impression on others. Countries, like individuals, learn from what they observe. For countries, as for individuals, success inspires imitation. The course of modern history made democracy seem well worth emulating. The desire for a democratic political system does not by itself create the capacity for establishing one. The key to establishing a working democracy, and in particular the institutions of liberty, has been the free-market economy. The institutions, skills, and values needed to operate a free-market economy are those that, in the political sphere, constitute democracy. Democracy spreads through the workings of the market when people apply the habits and procedures they are already carrying out in one sector of social life (the economy) to another one (the political arena). The market is to democracy what a grain of sand is to an oyster's pearl: the core around which it forms. The free market fosters democracy because private property, which is central to any market economy, is itself a form of liberty. Moreover, a successfully functioning market economy makes the citizens of the society in which it is established wealthier, and wealth implants democracy by, among other things, subsidizing the kind of political participation that genuine democracy requires. Many studies have found that the higher a country's per capita output, the more likely that country is to protect liberty and choose its government through free and fair elections. Perhaps most important, the free market generates the organizations and groups independent of the government -- businesses, trade unions, professional associations, clubs, and the like -- that are known collectively as civil society, which is itself indispensable to a democratic political system. Private associations offer places of refuge from the state in which individuals can pursue their interests free of government control. Civil society also helps to preserve liberty by serving as a counterweight to the machinery of government. Popular sovereignty, the other half of modern democratic government, also depends on elements of civil society that the free market makes possible, notably political parties and interest groups. Finally, the experience of participating in a free-market economy cultivates two habits that are central to democratic government: trust and compromise. For a government to operate peacefully, citizens must trust it not to act against their most important interests and, above all, to respect their political and economic rights. For governments to be chosen regularly in free elections, the losers must trust the winners not to abuse the power they have won. Likewise, trust is an essential element of markets that extend beyond direct local exchange. When a product is shipped over great distances and payment for it comes in installments that extend over time, buyers and sellers must trust in each other's good faith and reliability. To be sure, in a successfully functioning market economy, the government stands ready to enforce contracts that have been breached. But in such economies, so many transactions take place that the government can intervene in only a tiny fraction of them. Market activity depends far more on trust in others to fulfill their commitments than on reliance on the government to punish them if they fail to do so. The other democratic habit that comes from participating in a market economy is compromise. Compromise inhibits violence that could threaten democracy. Different preferences concerning issues of public policy, often deeply felt, are inevitable in any political system. What distinguishes democracy from other forms of government is the peaceful resolution of the conflicts to which these differences give rise. Usually this occurs when each party gets some but not all of what it wants. Compromise is also essential to the operation of a market economy. In every transaction, after all, the buyer would like to pay less and the seller would like to receive more than the price on which they ultimately agree. They agree because the alternative to agreement is no transaction at all. Participants in a free market learn that the best can be the enemy of the good, and acting on that principle in the political arena is essential for democratic government. PROMOTING MARKETS, PROMOTING DEMOCRACY From this analysis it follows that the best way to foster democracy is to encourage the spread of free markets. Market promotion is, to be sure, an indirect method of democracy promotion and one that will not yield immediate results. Still, the rapid spread of democracy over the past three decades did exhibit a distinct association with free markets. Democracy came to the countries of southern Europe and Asia and to almost every country in Latin America after all of them had gained at least a generation's worth of experience, sometimes more, in operating market economies. Viewed in this light, however, promoting democracy indirectly by encouraging the spread of free markets might seem unnecessary. Countries generally need no urging to recast their economies along free-market lines. Today, virtually all countries have done so, for the sake of their own economic growth. So important and so widespread had the goal of economic growth become in the second half of the twentieth century that the capacity to foster it had emerged as a key test of the political legitimacy of all governments. And the history of the twentieth century seemed to demonstrate conclusively that the market system of economic organization -- and it alone -- can deliver economic growth. The free market, in this account, acts as a kind of Trojan horse. Dictatorships embrace it to enhance their own power and legitimacy, but its workings ultimately undermine their rule. Indeed, this line of analysis would seem to suggest not only that a foreign policy of deliberate market promotion is superfluous but that the ultimate triumph of democracy everywhere is assured through the universal voluntary adoption of free-market economic institutions and policies. That, however, is not the case. The continued spread of democracy in the twenty-first century is no more inevitable than it is impossible, as is demonstrated by the decidedly varying prospects for this form of government in three important places where it does not exist: the Arab world, Russia, and China. THE FUTURE OF FREDOM The prospects for democracy in the Arab countries are poor. A number of features of Arab society and political life work against it. None is exclusive to the Middle East, but nowhere else are all of them present in such strength. One of them is oil. The largest reserves of readily accessible oil on the planet are located in the region. Countries that become wealthy through the extraction and sale of oil, often called petro-states, rarely conform to the political standards of modern democracy. These countries do not need the social institutions and individual skills that, transferred to the realm of politics, promote democracy. All that is required for them to become rich is the extraction and sale of oil, and a small number of people can do this. They do not even have to be citizens of the country itself. Furthermore, because the governments own the oil fields and collect all the petroleum export revenues, they tend to be large and powerful. In petro-states, the incentives for rulers to maintain control of the government are therefore unusually strong, as are the disincentives to relinquish power voluntarily. In these countries, the private economies, which elsewhere counterbalance state power, tend to be small and weak, and civil society is underdeveloped. Finally, the nondemocratic governments of petro-states, particularly the monarchies of the Middle East, where oil is plentiful and populations are relatively small, use the wealth at their disposal to resist pressures for more democratic governance. In effect, they bribe the people they rule, persuading these citizens to forgo political liberty and the right to decide who governs them. Arab countries are also unlikely candidates for democracy because their populations are often sharply divided along tribal, ethnic, or religious lines. Where more than one tribal, ethnic, or religious group inhabits a sovereign state in appreciable numbers, democracy has proved difficult to establish. In a stable democracy, people must be willing to be part of the minority. But people will accept minority status only if they feel confident that the majority will respect their liberty. In countries composed of several groups, such confidence is not always present, and there is little reason to believe it exists in Arab countries. The evidence of its absence in Iraq is all too clear. For the purpose of developing democratic governments, Arab countries labor under yet another handicap. For much of their history, Arab Muslims saw themselves as engaged in an epic battle for global supremacy against the Christian West. The historical memory of that rivalry still resonates in the Arab Middle East today and fuels popular resentment of the West. This, in turn, casts a shadow over anything of Western origin, including the West's dominant form of government. For this reason, liberty and free elections have less favorable reputations in the Arab Middle East than elsewhere. In view of all these obstacles, whatever else may be said about the Bush administration, in aiming its democracy promotion efforts at the Arab world it cannot be accused of picking an easy target. The prospects for democracy in Russia over the next two to three decades are brighter. Russia today has a government that does not respect liberty and was not chosen through free and fair elections. The absence of democracy is due to the fact that seven decades of communist rule left the country without the social, political, and economic foundations on which democratic government rests. But Russia today does not confront the obstacles that barred its path to democracy in the past. The communist political and economic systems have disappeared in Russia and will not be restored. Russia is also largely free of the historically powerful sense that the country had a cultural and political destiny different from those of other countries. Russia's population no longer consists, as it did until the industrialization and urbanization of the communist era, largely of illiterate peasants and landless agricultural workers. Today, the average Russian is literate, educated, and lives in a city -- the kind of person who is eventually likely to find democracy appealing and dictatorship unacceptable. The revolutions in transportation and communication have made it far more difficult for Russia's rulers to close the country off from the outside world. In particular, Russians today are far more aware of the ideas and institutions of the democracies of the world than they were during the centuries when absolute monarchs ruled the country and during the communist period. Finally, Russia in the twenty-first century faces far less danger of attack by its neighbors than ever before. Monarchs and commissars from the sixteenth century through most of the twentieth justified gathering and exercising unlimited power on the grounds that it was necessary to protect the country from its enemies. That rationale has now lost much of its force. A countervailing force must be set against these harbingers of a more democratic future for Russia, however. The country's large reserves of energy resources threaten to tilt Russia in the direction of autocratic government. Post-Soviet Russia has the unhappy potential to become a petro-state. Russia's democratic prospects may therefore be said, with only modest exaggeration, to be inversely related to the price of oil. Of all the nondemocratic countries in the world, the one where democracy's prospects matter most is China -- the world's most populous country and one that is on course to have, at some point in the twenty-first century, the world's largest economy. The outlook for democracy in China is uncertain. Beginning in the last years of the 1970s, a series of reforms that brought many of the features of the free market to what had been a communist-style economy set in motion a remarkable quarter-century-long burst of double-digit annual economic growth. Although the core institution of a free-market economy, private property, has not been fully established in China, the galloping pace of economic growth has created a middle class. As a proportion of China's huge population it is small, but its numbers are increasing rapidly. More and more Chinese live in cities, are well educated, and earn a living in ways that provide them with both a degree of independence on the job and sufficient income and leisure time for pursuits away from work. Along with the growth of the economy, the sorts of independent groups that make up civil society have proliferated in China. In 2005, 285,000 nongovernmental groups were officially registered with the government -- a tiny number for a country with a population of 1.3 billion -- but estimates of the number of unofficial groups ran as high as eight million. Furthermore, twenty-first-century China emphatically fulfills one of the historical conditions for democracy: it is open to the world. Communist China's founding leader, Mao Zedong, sought to wall China off from other countries. His successors have opened the country's doors and welcomed what Mao tried to keep out. The dizzying change that a quarter century of economic reform and its consequences have brought to China has therefore installed, in a relatively short period of time, many of the building blocks of political democracy. As Chinese economic growth proceeds, as the ranks of the country's middle class expand and civil society spreads, the pressure for democratic change is sure to increase. As it does, however, democracy advocates are just as certain to encounter formidable resistance from the ruling Chinese Communist Party (CCP). Although it has abandoned the Maoist project of exerting control over every aspect of social and political life, the party remains determined to retain its monopoly on political power. It squelches any sign of organized political opposition to its rule and practices selective censorship. Explicit expressions of political dissent and any questioning of the role of the CCP are prohibited. Its efforts to retain power are not necessarily doomed to fail. The CCP has greater staying power than the ruling communist parties of Europe and the Soviet Union enjoyed before they were swept away in 1989 and 1991. Because it has presided over a far more successful economy than did its European and Soviet counterparts, the CCP can count on the tacit support of many Chinese who have no particular fondness for it and who do not necessarily believe it has the right to govern China in perpetuity without limits on its authority. Popular indulgence of communist rule in China has another source: the fear of something worse. Recurrent periods of violence scar China's twentieth-century history. The Chinese people certainly wish to avoid further bouts of large-scale murder and destruction, and if the price of stability is the continuation of the dictatorial rule of the CCP, they may reckon that this is a price worth paying. The millions who have done particularly well in the quarter century of reform -- many of them educated, cosmopolitan, and living in the cities of the country's coastal provinces -- have reason to be wary of the resentment of the many more, mainly rural, residents of inland China whose well-being the economic boom has failed to enhance. The beneficiaries may calculate that CCP rule protects them and their gains. Finally, the regime can tap a widespread and potent popular sentiment to reinforce its position: nationalism. For example, it assiduously publicizes its claim to control Taiwan, a claim that seems to enjoy wide popularity on the mainland. Whether, when, and how China will become a democracy are all questions to which only the history of the twenty-first century can supply the answers. Nonetheless, two predictions may be hazarded with some confidence. One is that if and when democracy does come to China -- as well as to the Arab world and Russia -- it will not be because of the deliberate and direct efforts at democracy promotion by the United States. The other is that pressure for democratic governance will grow in the twenty-first century whatever the United States does or does not do. It will grow wherever nondemocratic governments adopt the free-market system of economic organization. Such regimes will adopt this system as part of their own efforts to promote economic growth, a goal that governments all over the world will be pursuing for as far into the future as the eye can see.

**Democracy doesn’t prevent war**

**Goldstein, ’11** (Joshua, is professor emeritus of international relations at American University and author of Winning the War on War: The Decline of Armed

Conflict Worldwide, Sept/Oct 2011, “Think Again: War. World peace could be closer than you think”, *Foreign Policy*)

"A More Democratic World Will Be a More Peaceful One." Not necessarily. The well-worn observation that real democracies almost never fight each other is historically correct, but it's also true that democracies have always been perfectly willing to fight nondemocracies. In fact, democracy can heighten conflict by amplifying ethnic and nationalist forces, pushing leaders to appease belligerent sentiment in order to stay in power. Thomas Paine and Immanuel Kant both believed that selfish autocrats caused wars, whereas the common people, who bear the costs, would be loath to fight. But try telling that to the leaders of authoritarian China, who are struggling to hold in check, not inflame, a popular undercurrent of nationalism against Japanese and American historical enemies. Public opinion in tentatively democratic Egypt is far more hostile toward Israel than the authoritarian government of Hosni Mubarak ever was (though being hostile and actually going to war are quite different things). Why then do democracies limit their wars to non-democracies rather than fight each other? Nobody really knows As the University of Chicago's Charles Lipson once quipped about the notion of a democratic peace, "We know it works in practice. Now we have to see if it works in theory!" The best explanation is that of political scientists 9/29/2011 Think Again: War - By Joshua S. Goldst… foreignpolicy.com/…/think\_again\_war?… 6/9Bruce Russett and John Oneal, who argue that three elements -- democracy, economic interdependence (especially trade), and the growth of international organizations -- are mutually supportive of each other and of peace within the community of democratic countries. Democratic leaders, then, see themselves as having less to lose in going to war with autocracies.

# Legitimacy

#### There are no cred silver bullets- takes years to escape legacies

**Gray ’11** [Colin S, Professor of International Politics and Strategic Studies at the University of Reading, England, and Founder of the National Institute for Public Policy, “Hard Power And Soft Power: The Utility Of Military Force as An Instrument Of Policy In The 21st Century,” April, <http://www.strategicstudiesinstitute.army.mil/pubs/display.cfm?pubID=1059>]

It bears repeating because it passes unnoticed that culture, and indeed civilization itself, are dynamic, not static phenomena. They are what they are for good and sufficient local geographical and historical reasons, and cannot easily be adapted to fit changing political and strategic needs. For an obvious example, the dominant American strategic culture, though allowing exceptions, still retains its principal features, the exploitation of technology and mass.45 These features can be pathological when circumstances are not narrowly conducive to their exploitation. Much as it was feared only a very few years ago that, in reaction to the neglect of culture for decades previously, the cultural turn in strategic studies was too sharp, so today there is a danger that the critique of strategic culturalism is proceeding too far.46 The error lies in the search for, and inevitable finding of, “golden keys” and “silver bullets” to resolve current versions of enduring problems. Soft-power salesmen have a potent product-mix to sell, but they fail to appreciate the reality that American soft power is a product essentially unalterable over a short span of years. As a country with a cultural or civilizational brand that is unique and mainly rooted in deep historical, geographical, and ideational roots, America is not at liberty to emulate a major car manufacturer and advertise an extensive and varied model range of persuasive soft-power profiles. Of course, some elements of soft power can be emphasized purposefully in tailored word and deed. However, foreign perceptions of the United States are no more developed from a blank page than the American past can be retooled and fine-tuned for contemporary advantage. Frustrating though it may be, a country cannot easily escape legacies from its past.

#### Alt causes to cred-

#### Shutdown

**Alexaner 10-1**-13 [David, Reuters, “Pentagon chief says shutdown hurts U.S. credibility with allies,” <http://www.reuters.com/article/2013/10/01/us-usa-fiscal-pentagon-idUSBRE9900FB20131001>]

The U.S. government shutdown will undermine American credibility abroad and lead allies to question its commitment to treaty obligations, the U.S. defense chief warned on Tuesday as he prepared to put 400,000 civilian workers on unpaid leave.¶ Defense Secretary Chuck Hagel, who was visiting South Korea to celebrate the two nations' 60-year-old mutual defense treaty, said Pentagon lawyers were analyzing a new law passed by Congress to see if additional civilian workers could be spared unpaid leave.¶ But for the moment, when the department's 800,000 civilians report to work on Tuesday, approximately half will be told they are not exempted by law from the government shutdown and asked to go home, Hagel told reporters.¶ The Pentagon and other U.S. government agencies began to implement shutdown plans on Tuesday after Congress failed to reach a deal to fund the federal government in the new fiscal year beginning October 1.¶ A last-minute measure passed by Congress and signed by President Barack Obama will ensure the Pentagon's 1.4 million military employees worldwide will continue to receive paychecks during the shutdown. They were required to work under prior law but would not have been paid until Congress approved funding.¶ The new law also ensures that civilians who are required to work despite the shutdown will also be paid, Hagel said. But under law, anyone not directly involved in protecting lives and property are not considered exempt and must be placed on leave.¶ "Our lawyers are now looking through the (new) law that the president signed ... to see if there's any margin here or widening in the interpretation of the law regarding exempt versus non-exempt civilians," Hagel said. "Our lawyers believe that maybe we can expand the exempt status."¶ Hagel said he didn't know how many people the department might be able to call back from leave, or how long it would take to reach a determination, but he said it was "the priority" in the Pentagon's general counsel's office.¶ The shutdown has direct implications for the staff with Hagel on his week-long trip to South Korea and Japan. They are considered exempt while supporting the secretary's mission abroad, but that status may change for some when they return home on Friday, Pentagon spokesman George Little said.¶ The U.S. defense chief said he broke away from celebrations in South Korea on Monday to discuss the shutdown by phone with Deputy Defense Secretary Ashton Carter and Pentagon Comptroller Robert Hale. He said they would hold another round of talks on Tuesday as the shutdown went into force.¶ "We'll probably have to furlough about 400,000 DoD (Defense Department) civilians when they come to work here in a couple of hours," Hagel said. "Those that have been designated non-exempt will be told and will be asked to go home."¶ The Pentagon chief said since arriving in Seoul on Sunday night, he had been questioned by South Korean officials about the threatened shutdown and why it seemed likely to take place.¶ "It does have an effect on our relationships around the world and it cuts straight to the obvious question: Can you rely on the United States as a reliable partner to fulfill its commitments to its allies?" Hagel told reporters.¶ "Here this great republic and democracy, the United States of America, shuts down its government," he added. "The Pentagon, even though we are (partly) exempted, the military has no budget. We are still living under this dark cloud of uncertainty not knowing what's going to happen.¶ "It does cast a very significant pall over America's credibility with our allies when this kind of thing happens. It's nonsensical ... It's completely irresponsible," Hagel said.

#### Syria was the mortal blow

**Foxman 9-12**-13 [Abraham, National Director of the Anti-Defamation League, holds a JD law degree from the New York University School of Law, “It’s Iran, stupid -- how to guarantee US credibility remains after Syria crisis,” <http://www.foxnews.com/opinion/2013/09/12/its-iran-stupid-how-to-guarantee-us-credibility-remains-after-syria-crisis/>]

It has become conventional wisdom that the roller coaster of American decision-making on the Syria issue has dealt a significant, if not mortal blow, to American credibility and leadership in the world.¶ This perception is not without good reason. ¶ When President Obama first established a "red line" in Syria on their use of chemical weapons, it was seen as a way to avoid or postpone any decision on U.S. intervention on the side of the rebels against the authoritarian regime of Bashar al-Assad.¶ Then, after the chemical attack that left many dead, and the president’s commitment to military action in response, his sudden turnabout in going to Congress raised further questions. ¶ Then followed a third twist in the road, with a difficult congressional vote looming, when the president announced qualified support for a Russian proposal to monitor, control and eventually dismantle the Syrian chemical store. All of which left many people questioning the administration’s ability to be taken seriously as a leader on many global challenges.

#### PRISM

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

Shifting attitudes and quiet reauthorization flies in the face of the standard the president has set for himself. In a 2009 speech at the National Archives, Obama emphasized the importance of the consent of the governed in security affairs,¶ "I believe with every fiber of my being that in the long run we cannot keep this country safe unless we enlist the power of our most fundamental values... My administration will make all information available to the American people so that they can make informed judgments and hold us accountable."¶ The president's inability to live up to this ideal is particularly jarring as he defends PRISM. Following the leaks, he's said he is pushing the intelligence community to release what it can, and rightly insists that the NSA is not listening in on Americans' phone calls. Those are helpful steps, but should have been raised during the National Archives speech just months into his administration, not six months into his second term.¶ Director of National Intelligence James Clapper continues to argue that disclosure of collection methods will give America's enemies a "'playbook' to avoid detection." That's thin gruel. First, America's enemies are already aware of the NSA's extensive electronic surveillance capabilities. That's why Osama Bin Laden and deceased al Qaeda in Iraq leader Abu Musab al Zarqawi used a complex network of couriers rather than electronic communications. It's typical operational security of truly dangerous operatives. Second, Obama stated as recently as late May that the threat from al Qaeda's core operatives has decreased significantly, shifting to less deadly cells scattered throughout the Middle East and North Africa.¶ The lack of public debate, shifting attitudes towards civil liberties, insufficient disclosure, and a decreasing terrorist threat demands that collecting Americans' phone and Internet records must meet the absolute highest bar of public consent. It's a test the Obama administration is failing.¶ This brings us back to Harry Truman and Jim Crow. Even though PRISM is technically legal, the lack of recent public debate and support for aggressive domestic collection is hurting America's soft power.¶ The evidence is rolling in. The China Daily, an English-language mouthpiece for the Communist Party, is having a field day, pointing out America's hypocrisy as the Soviet Union did with Jim Crow. Chinese dissident artist Ai Wei Wei made the link explicitly, saying "In the Soviet Union before, in China today, and even in the U.S., officials always think what they do is necessary... but the lesson that people should learn from history is the need to limit state power."¶ Even America's allies are uneasy, at best. German Chancellor Angela Merkel grew up in the East German police state and expressed diplomatic "surprise" at the NSA's activities. She vowed to raise the issue with Obama at this week's G8 meetings. The Italian data protection commissioner said the program would "not be legal" in his country. British Foreign Minister William Hague came under fire in Parliament for his government's participation.¶ If Americans supported these programs, our adversaries and allies would have no argument. As it is, the next time the United States asks others for help in tracking terrorists, it's more likely than not that they will question Washington's motives.

#### We’ll mishandle legitimacy on war powers- all influence is militarized

**Takacs ‘13** [Stacy Takacs is associate professor and director of American studies at Oklahoma State University. Her research focuses on the intersections of popular and political cultures in the contemporary United States, and her work has appeared in such journals as Cultural Critique, Spectator: Journal of Film and Television Criticism, Journal of Popular Culture, Feminist Media Studies, and Cultural Studies, “Real War News, Real War Games: The Hekmati Case and the Problems of Soft Power,” <http://muse.jhu.edu/journals/american_quarterly/v065/65.1.takacs.html>]

When Barack Obama was elected to the presidency in 2008, he promised to implement a “smarter” foreign policy strategy that balanced the use of hard and soft power assets on a situational basis. As if to affirm the demotion of hard power, he jettisoned the name “Global War on Terror” and adopted “Overseas Contingency Operation.”1 To speak of “visual culture and the war on terrorism,” then, is something of an anachronism. Yet, arguably, visual media play an even more important role now that soft power has been embraced as a complement to war. And, make no mistake, Obama’s “smart power” strategy is not a campaign to end war or replace it with diplomacy. As former CIA chief Michael Hayden recently declared, Obama’s foreign policy is the same as Bush’s, “but with more killing.”2 Like its forerunners, the Obama administration seeks to perpetuate American power and influence; it is just willing to do so by any means necessary. Thus smart power is less a departure from hard power than an extension of it into new realms.¶ The case of Amir Mirzaei Hekmati, a US citizen recently arrested in Iran, convicted of spying for the CIA, and condemned to death, all for his association with the online gaming company Kuma Games, provides some insight into the shifting terrain of geopolitics in the information age. Specifically, it illustrates a change in the conceptions of hard and soft power, such that the two have become virtually indistinguishable. This change both derives from and perpetuates a broader move toward the militarization of the social field, which has important consequences for our capacity to imagine a condition of peace. Popular media have certainly played a role in this process by glorifying military institutions and exploits and celebrating soldier-subjects and their behaviors. As I argued in Terrorism TV, films, video games, and television shows have helped position militarism at the center of public policy and social life in the United States, and this process has been going on for decades.3 Kuma Games, which makes the online gaming series Kuma/War, figured prominently in that discussion. Following Roger Stahl, I argued that such games work like [End Page 177] advertisements for the military lifestyle, interpellating players into a military mind-set and turning them into “virtual citizen-soldiers,” ready to accept the legitimacy of hard power and willing to apply it to virtually any social problem. What I failed to ask at the time was how militarization might affect other populations: as a tool of soft power, how might such games help shape the field of geopolitical engagement? How might the militarization of social life, pursued in and through US popular culture, influence others in the global mediascape?¶ The Hekmati case brings such questions to the fore and begs us to think more deeply about the nature of soft power in the contemporary context. Hekmati’s arrest should be situated in relation to two recent and troubling trends in US foreign policy. The first is the militarization of public diplomacy under the aegis of the war on terror. As State Department budgets have atrophied, military budgets have exploded, leaving the military as the only government entity with the operational capacity to engage foreign populations on behalf of the state. But military information operations tend to be short-term and highly instrumental, targeting populations to achieve a strategic advantage. Militarized public diplomacy treats information as a weapon and, thus, makes cross-cultural dialogue hard to sustain. The second trend multiplies and extends the first, for the privatization of militarism enables all sorts of independent actors to carry the banner for the US Armed Forces. Video games are an important example of this trend, for the most popular games are still the military-themed first-person shooters, which reduce geopolitics to a conflict structure and invite players to duke it out for supremacy. Diplomacy and compromise are not even options.¶ Together these trends raise the following questions: What happens when soft power resources are used like weapons, “to create, strengthen, or preserve conditions favorable for the advancement of USG [US government] interests, policies, and objectives?”4 Will the United States be able to wield influence if its communications and diplomacy operations look and feel like psychological operations? And what will happen to international relations if hard power logics are placed at the center of cross-cultural exchange? If the military story becomes the only story US culture is interested in telling or selling, where does that leave non-Americans? The case of Amir Hekmati embodies this collapse of public and private, hard and soft power assets and thus can illuminate the likely outcome of the United States’ decision to privilege power over communication and exchange in the information age.¶ Netwar on Iran¶ Iran has been an early testing ground for the use of soft power to achieve instrumental, hard power goals. Since the 1979 revolution, the United States [End Page 178] has not had formal diplomatic relations with the Iranian regime. As a result, contacts have been irregular and informal, and all of them “have been used, either overtly or covertly, to promote regime change.”5 In 2006 the Bush administration established an Office of Iranian Affairs inside the State Department to coordinate its “transformational diplomacy” operations. The office received $66 million from Congress to “promote freedom and human rights in Iran.” Some of that money was used to establish Persian-language radio and TV operations under the Voice of America banner; the rest went “to support the efforts of civil-society groups” and dissidents operating inside Iran to promote democracy and effect regime change.6 Such overt attempts at public diplomacy were supplemented by an expansion of covert military and intelligence operations in the country. In 2007 President George W. Bush signed a presidential finding authorizing an increase in reconnaissance expeditions to “[gather] information [and] [enlist] support” for regime change efforts in the country. Congress provided $400 million to support these efforts, much of which went to fund attacks on Iranian security forces by extremist groups like Jundullah (a group the US State Department has labeled a terrorist organization).7 US Special Forces in Iraq, meanwhile, stepped up cross-border raids into Iran with the aim of kidnapping or killing high-ranking members of the Iranian Revolutionary Guard.8¶ The Obama administration came to power promising to reestablish formal diplomatic ties with Iran, but was forced by circumstances to embrace an equally informal combination of public diplomacy and covert military adventurism. Obama did eliminate the so-called Democracy Fund and has toned down the “regime change” rhetoric, but US funding for both overt and covert operations in the region has actually increased under his watch.9 He has authorized a “broad expansion of clandestine military activity” in the Middle East, including operations to gather “reconnaissance that could pave the way for possible military strikes . . . if tensions over [Iran’s] nuclear ambitions escalate.”10 In 2011 he helped the Israelis unleash a computer virus that wiped out up to one-fifth of Iran’s nuclear centrifuges, and he has authorized the target killing of Iranian nuclear scientists.11¶ Is it any wonder, then, that Iran has replied to these provocations with its own militarized campaign to counter and contain US influence in the region? When the United States began funneling money to prodemocracy groups inside Iran, the Ahmadinejad regime responded with a coordinated propaganda campaign to tar all such groups as CIA stooges.12 It instituted a crackdown on activists, teachers, intellectuals, women’s rights groups, and labor leaders, accusing them of receiving support from the United States and thus of committing treason. When the US Congress responded by appropriating [End Page 179] $30 million to document and publicize human rights abuses inside Iran, the Iranian authorities countered with their own $20 million program to expose human rights violations in the United States.13 Since then, Iran has banned or blocked access to cable, Internet, and cell phone transmissions during periods of strife and, under the guise of the “Iranian Cyber Army,” redirected Twitter and Facebook traffic to websites carrying anti-American slogans. The Iranian authorities have imposed stringent Internet filters and firewalls to preempt political speech in cyberspace and launched their own cyberattacks on sensitive computer systems in Israel and the United States.¶ The Hekmati case must be placed squarely within this context of low-intensity conflict, or netwar. According to John Arquilla and David Ronfeldt, netwar is “a comprehensive information-oriented approach to social conflict,” which extends the field of battle into civil society and blurs once-distinct boundaries between offense and defense, soldiers and civilians, combat operations and diplomatic endeavors.14 The concept is designed to account for the entry of nonstate actors into the fields of war and diplomacy and to describe how information works as a weapon within this extensive field of combat. On the one hand, information technologies can be used to create deep coalitions predicated on shared values or interests. Al-Qaeda’s use of the Internet to recruit soldiers and financial supporters is a model for this aspect of netwar. On the other hand, information can also be used as a weapon to confuse the enemy and preemptively deprive it of support. Tiziana Terranova has argued that the US response to the 1979 Iranian revolution was an early example of this strategy. US media outlets portrayed the revolutionaries as irrational zealots and the US hostages as sympathetic civilians in need of rescue. The resulting images bombarded viewers’ senses, provoking affective responses (revulsion, pity, anger) that short-circuited any attempt at rational argument or political dialogue. By “focus[ing] all public attention on building up a wave of resentment against the Iranians,” the State Department ensured the United States would assume the moral high ground.15 It was a technique for producing, rather than speaking to, a public. Thus it was not propaganda but information warfare. The truth or falsity of the representations mattered less than their capacity to mobilize a pro-US public.¶ Arguably, this is the role that public diplomacy serves in the contemporary era. It is no longer about communicating values, exchanging information, or enlightening foreign publics; it is about “stirring people up” and controlling the battle space. The Iranian authorities seem to understand this quite well, which is why they have made popular culture into a prominent battleground in their low-intensity conflict with the United States. Viewing US entertainment [End Page 180] media as Trojan horses, they have banned American music, censored Hollywood films, prohibited the use of satellite dishes, shut down Facebook, and, most recently, pulled Barbie from store shelves for promoting “destructive” cultural and social habits. In one sense, Hekmati’s arrest is just an extension of such cultural warfare. In another sense, however, it is a deepening of that conflict, for it acknowledges the role of privatized commercial culture in the militarization of the social field. Like the state, Kuma/War and other such militarized video games frame politics in warlike terms. They produce a conflict structure that attracts others and ends up trapping the United States in its own nets/netwars.¶ Militarized Gaming as Information Warfare¶ In a videotaped “confession” aired on Iranian state TV, Hekmati admitted to receiving military intelligence training and working for Kuma Games, which he portrayed as a CIA front operation. The real aim of Kuma Games is not to entertain, he said, but “to convince the people of the world and Iraq that what the US does in Iraq and other countries is good and acceptable.”16 Among other things, Hekmati worked on game modules for the online series Kuma/ War, which the website describes as “an interactive chronicle of the War on Terror.”17 Each ten- to fifteen-minute “episode” allowed subscribers to replay military engagements from the recent past, using logistical material supplied by a team of military advisers. Popular episodes included “Operation Anaconda,” “Fallujah: Operation Al Fajr,” and “The Death of Osama Bin Laden.” Three episodes have focused on Iran and likely raised the hackles of Hekmati’s captors: a two-part series called “Iran Hostage Rescue Mission,” focused on “Operation Eagle Claw,” the aborted Delta Force mission to rescue US hostages held in the US Embassy in Tehran during the 1979 revolution, and the speculative fiction “Assault on Iran,” which is described as “the most plausible scenario [for] delaying or destroying Iran’s nuclear arms capabilities.” More so than other episodes, these give a good sense of what Kuma/War is really about: chronicling US conflict so that players can invent or remake history as it suits them.¶ Like other military-themed video games, Kuma/War places players in the shoes of the US military and asks them work through logistical information to achieve a mission. To enhance the realism, each episode is framed by a range of documentary intertexts, from faux news reports to logistical data, satellite imagery, and interviews with military experts and actual participants in the events. For example, the “Iran Hostage Rescue Mission” modules are framed by interviews with “the CIA’s former ‘Master of Disguise,’ Antonio Mendez” (he of the caper at the heart of the new film Argo). The series’ motto is “Real War [End Page 181] News. Real War Games,” but the ads for the site invite players to “re-create the news” and “remake history.”18 And, as the Iran modules demonstrate, there is plenty of room to make history up as you go. “Iran Hostage Rescue Mission,” for example, is predicated on the understanding that you will succeed where US Delta Forces originally failed, and “Assault on Iran” invites players to live history before it happens. Likewise, Jennifer Terry reports that Kuma/War’s gamed version of the 2004 Marine assault on Fallujah (“Fallujah: Operation Al Fajr”) transforms US soldiers into protectors of Iraqi civilians trapped inside the battle zone. Though in reality it was the US military cordon that trapped the civilians in the first place and the US soldiers who constituted the gravest threat to their survival, in Kuma’s version, you get to be the defender, not the aggressor.18¶ As these examples illustrate, there is nothing subtle about Kuma/War’s biases. If it really was a CIA propaganda operation, one wonders why Kuma Games would bother making it seem like a private corporation.20 More likely, Iran’s attempt to draw attention to the games is not about the content or ownership but about the way video games, in general, have come to direct and modulate global attention. Games like Army of Two, Call of Duty: Modern Warfare, and the Battlefield series all share an orientalist imaginary, which identifies Arabs and Muslims as enemies of the United States and constructs US heroism through their extermination. As propaganda, they are fairly ham-fisted, but as weapons in an information war over how to frame contemporary conflicts, they effectively mobilize enmity against Middle Eastern populations and produce publics willing to support US militarism as a solution to the problem.¶ The Iranian authorities know full well that games like these are not state propaganda. However, they are also unwilling to let them stand unchallenged as a historical framework. By identifying Kuma Games as a CIA front operation, I think they mean to reframe the US story about its endeavors in the Middle East, thereby depriving the United States of “its attractiveness and legitimacy” in the eyes of others. In other words, the Hekmati arrest is an information operation designed to “[create] a disabling environment” for the delivery of US messaging.21 Iran and its allies are also taking their case against such games to the players themselves. In response to Kuma/War’s “Assault on Iran,” for example, the Association of Islamic Unions of Students in Iran designed its own game called Special Operation 85: Hostage Rescue. It is a first-person shooter game in which players work to free two Iranian nuclear scientists kidnapped by the United States. The Central Intelligence Bureau of Hezbollah has also created two first-person shooters (Special Force 1 and 2) that allow players to replay key battles from the conflicts between Lebanon and Israel in the 1980s and [End Page 182] 2006. Here, the Israelis are the enemy, and Hezbollah are the heroic underdogs from whose perspective the battles are fought.22¶ Kuma CEO Keith Halper describes these game design wars as a new form of political debate. “We have made a point,” he says, “they have responded.”23 Yet both Eastern and Western war-themed games tend to use a “shoot-and-destroy mechanic” that promotes a faith in militarism as the solution to all sorts of social problems. As a message about geopolitics, these games privilege a conflict-structure that is appealing in its simplicity and satisfying in its emotional charge. They are the video game equivalents of President Bush’s framing of the US response to 9/11 as a “war” on terror. Such phrasing may have been designed to empower and reassure distraught Americans, but the administration failed to take into the account the problem of multiple audiences. Al-Qaeda was attracted by this framing. It, too, prefers to see the world in warlike terms and has been more than happy to adopt the slogan for its own recruiting efforts. Indeed, a case can be made that the war frame helped Al-Qaeda more than it inspired the United States and its allies. Certainly it has fueled resentment against the United States and fostered a generation of angry young men who see guns and bombs as their salvation.¶ Conclusion¶ In his defense of “smart power,” Joseph Nye makes an impassioned case for the increased use of soft power to achieve American foreign policy objectives. “Promoting democracy, human rights, and development of civil society,” he argues, is “not best handled with the barrel of a gun.”22 True enough, but does the language of power in any manifestation really suit these objectives? Even if US diplomacy were not thoroughly militarized, would not the recourse to words like “soft power” and “smart power” still privilege coercion over persuasion, compulsion over attraction, militarism over diplomacy? The recent cultural wars with Iran, including the arrest of Amir Hekmati, expose the limits of the new smart power philosophy of global engagement. The low-intensity, tit-for-tat struggle to shape the interpretation of American power reveals a fundamental coherence between Iran and the United States around the question of power politics. Iran has clearly been attracted to and persuaded by the US framing of geopolitics as a militarized power struggle. This has not resulted in enhanced US credibility or trust, however. Instead, the use of soft power as a weapon has subverted cross-cultural dialogue and exchange and made peace harder to attain. Just ask Amir Hekmati—if he survives his current tour of duty on the front lines of contemporary netwar.

#### 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.

#### Warming 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.

#### No modeling or momentum

Mead '10 (Walter Russell, senior fellow for U.S. foreign policy at the Council on Foreign Relations, The Death of Global Warming, http://blogs.the-american-interest.com/wrm/2010/02/01/the-death-of-global-warming/, February 1, 2010)

The global warming movement as we have known it is dead. Its health had been in steady decline during the last year as the once robust hopes for a strong and legally binding treaty to be agreed upon at the Copenhagen Summit faded away. By the time that summit opened, campaigners were reduced to hoping for a ‘politically binding’ agreement to be agreed that would set the stage for the rapid adoption of the legally binding treaty. After the failure of the summit to agree to even that much, the movement went into a rapid decline. The movement died from two causes: bad science and bad politics. After years in which global warming activists had lectured everyone about the overwhelming nature of the scientific evidence, it turned out that the most prestigious agencies in the global warming movement were breaking laws, hiding data, and making inflated, bogus claims resting on, in some cases, no scientific basis at all. This latest story in the London Times is yet another shocker; the IPCC’s claims that the rainforests were going to disappear as a result of global warming are as bogus and fraudulent as its claims that the Himalayan glaciers would melt by 2035. It seems as if a scare story could grab a headline, the IPCC simply didn’t care about whether it was reality-based. With this in mind, ‘climategate’ — the scandal over hacked emails by prominent climate scientists — looks sinister rather than just unsavory. The British government has concluded that University of East Anglia, home of the research institute that provides the global warming with much of its key data, had violated Britain’s Freedom of Information Act when scientists refused to hand over data so that critics could check their calculations and methods. Breaking the law to hide key pieces of data isn’t just ‘science as usual,’ as the global warming movement’s embattled defenders gamely tried to argue. A cover-up like that suggests that you indeed have something to conceal. The urge to make the data better than it was didn’t just come out of nowhere. The global warmists were trapped into the necessity of hyping the threat by their realization that the actual evidence they had — which, let me emphasize, all hype aside, is serious, troubling and establishes in my mind the need for intensive additional research and investigation, as well as some prudential steps that would reduce CO2 emissions by enhancing fuel use efficiency and promoting alternative energy sources — was not sufficient to get the world’s governments to do what they thought needed to be done. Hyping the threat increasingly doesn’t look like an accident: it looks like it was a conscious political strategy. Now it has failed. Not everything that has come out of the IPCC and the East Anglia Climate Unit is false, but enough of their product is sufficiently tainted that these institutions can best serve the cause of fighting climate change by stepping out of the picture. New leadership might help, but everything these two agencies have done will now have to be re-checked by independent and objective sources. The global warming campaigners got into this mess because they had a deeply flawed political strategy. They were never able to develop a pragmatic approach that could reach its goals in the context of the existing international system. The global warming movement proposed a complex set of international agreements involving vast transfers of funds, intrusive regulations in national economies, and substantial changes to the domestic political economies of most countries on the planet. As it happened, the movement never got to the first step — it never got the world’s countries to agree to the necessary set of treaties, transfers and policies that would constitute, at least on paper, a program for achieving its key goals. Even if that first step had been reached, the second and third would almost surely not have been. The United States Congress is unlikely to pass the kind of legislation these agreements would require before the midterm elections, much less ratify a treaty. (It takes 67 senate votes to ratify a treaty and only 60 to overcome a filibuster.) After the midterms, with the Democrats expected to lose seats in both houses, the chance of passage would be even more remote — especially as polls show that global warming ranks at or near the bottom of most voters’ priorities. American public opinion supports ‘doing something’ about global warming, but not very much; support for specific measures and sacrifices will erode rapidly as commentators from Fox News and other conservative outlets endlessly hammer away. Without a commitment from the United States to pay its share of the $100 billion plus per year that poor countries wanted as their price for compliance, and without US participation in other aspects of the proposed global approach, the intricate global deals fall apart. Since the United States was never very likely to accept these agreements and ratify these treaties, and is even less prepared to do so in a recession with the Democrats in retreat, even “success” in Copenhagen would not have brought the global warming movement the kind of victory it sought — although it would have created a very sticky and painful political problem for the United States. But even if somehow, miraculously, the United States and all the other countries involved not only accepted the agreements but ratified them and wrote domestic legislation to incorporate them into law, it is extremely unlikely that all this activity would achieve the desired result. Countries would cheat, either because they chose to do so or because their domestic systems are so weak, so corrupt or so both that they simply wouldn’t be able to comply. Governments in countries like China and India aren’t going to stop pushing for all the economic growth they can get by any means that will work — and even if central governments decided to move on global warming, state and local authorities have agendas of their own. The examples of blatant cheating would inevitably affect compliance in other countries; it would also very likely erode what would in any case be an extremely fragile consensus in rich countries to keep forking over hundreds of billions of dollars to poor countries — many of whom would not be in anything like full compliance with their commitments. For better or worse, the global political system isn’t capable of producing the kind of result the global warming activists want. It’s like asking a jellyfish to climb a flight of stairs; you can poke and prod all you want, you can cajole and you can threaten. But you are asking for something that you just can’t get — and at the end of the day, you won’t get it. The grieving friends and relatives aren’t ready to pull the plug; in a typical, whistling-past-the-graveyard comment, the BBC first acknowledges that even if the current promises are kept, temperatures will rise above the target level of two degrees Celsius — but let’s not despair! The BBC quotes one of its own reporters: “BBC environment reporter Matt McGrath says the accord lacks teeth and does not include any clear targets on cutting emissions. But if most countries at least signal what they intend to do to cut their emissions, it will mark the first time that the UN has a comprehensive written collection of promised actions, he says.”

#### Ice age coming now – co2 key prevent end of civilization

Marsh ‘12 (Gerald E. Marsh, Retired Physicist from the Argonne National Laboratory and a former consultant to the Department of Defense on strategic nuclear technology and policy in the Reagan, Bush, and Clinton Administration, “The Coming of a New Ice Age,” <http://www.winningreen.com/site/epage/59549_621.htm>, 2012)

CHICAGO — Contrary to the conventional wisdom of the day, the real danger facing humanity is not global warming, but more likely the coming of a new Ice Age. What we live in now is known as an interglacial, a relatively brief period between long ice ages. Unfortunately for us, most interglacial periods last only about ten thousand years, and that is how long it has been since the last Ice Age ended. How much longer do we have before the ice begins to spread across the Earth’s surface? Less than a hundred years or several hundred? We simply don’t know. Even if all the temperature increase over the last century is attributable to human activities, the rise has been relatively modest one of a little over one degree Fahrenheit — an increase well within natural variations over the last few thousand years. While an enduring temperature rise of the same size over the next century would cause humanity to make some changes, it would undoubtedly be within our ability to adapt. Entering a new ice age, however, would be catastrophic for the continuation of modern civilization. One has only to look at maps showing the extent of the great ice sheets during the last Ice Age to understand what a return to ice age conditions would mean. Much of Europe and North-America were covered by thick ice, thousands of feet thick in many areas and the world as a whole was much colder. The last “little” Ice Age started as early as the 14th century when the Baltic Sea froze over followed by unseasonable cold, storms, and a rise in the level of the Caspian Sea. That was followed by the extinction of the Norse settlements in Greenland and the loss of grain cultivation in Iceland. Harvests were even severely reduced in Scandinavia And this was a mere foreshadowing of the miseries to come. By the mid-17th century, glaciers in the Swiss Alps advanced, wiping out farms and entire villages. In England, the River Thames froze during the winter, and in 1780, New York Harbor froze. Had this continued, history would have been very different. Luckily, the decrease in solar activity that caused the Little Ice Age ended and the result was the continued flowering of modern civilization. There were very few Ice Ages until about 2.75 million years ago when Earth’s climate entered an unusual period of instability. Starting about a million years ago cycles of ice ages lasting about 100,000 years, separated by relatively short interglacial periods, like the one we are now living in became the rule. Before the onset of the Ice Ages, and for most of the Earth’s history, it was far warmer than it is today. Indeed, the Sun has been getting brighter over the whole history of the Earth and large land plants have flourished. Both of these had the effect of dropping carbon dioxide concentrations in the atmosphere to the lowest level in Earth’s long history. Five hundred million years ago, carbon dioxide concentrations were over 13 times current levels; and not until about 20 million years ago did carbon dioxide levels dropped to a little less than twice what they are today. It is possible that moderately increased carbon dioxide concentrations could extend the current interglacial period. But we have not reached the level required yet, nor do we know the optimum level to reach. So, rather than call for arbitrary limits on carbon dioxide emissions, perhaps the best thing the UN’s Intergovernmental Panel on Climate Change and the climatology community in general could do is spend their efforts on determining the optimal range of carbon dioxide needed to extend the current interglacial period indefinitely. NASA has predicted that the solar cycle peaking in 2022 could be one of the weakest in centuries and should cause a very significant cooling of Earth’s climate. Will this be the trigger that initiates a new Ice Age? We ought to carefully consider this possibility before we wipe out our current prosperity by spending trillions of dollars to combat a perceived global warming threat that may well prove to be only a will-o-the-wisp.

#### Co2 fertilization key to agriculture- stops extinction

Carter et.al ‘11(Carter Robert, PhD, Adjuct Research Fellow, James Cook University, Fred Singer, PhD, President of the Science and Environmental Policy Project, Susan Crockford, evolutionary biologist with a specialty in skeletal taxonomy , paleozoology and vertebrate evolution, Joseph D’Aleo, 30 years of experience in professional meteorology, former college professor of Meteorology at Lyndon State College, Indur Goklany, independent scholar, author, and co-editor of the Electronic Journal of Sustainable Development, Sherwood Idso, President of the Center for the Study of Carbon Dioxide and Global Change, Research Physicist with the US Department of Agriculture, Adjunct Professor in the Departments of Geology, Botany, and Microbiology at Arizona State University, Bachelor of Physics, Master of Science, and Doctor of Philosophy, all from the University of Minnesota, Madhav Khandekar, former research scientist from Environment Canada and is an expert reviewer for the IPCC 2007 Climate Change Panel, Anthony Lupo, Department Chair and Professor of Atmospheric Science at the University of Missouri, Willie Soon, astrophysicist at the Solar and Stellar Physics Division of the Harvard-Smithsonian Center for Astrophysics, Mitch Taylor (Canada) [“Climate Change Reconsidered 2011 Interim Report,” September, Science and Environmental Policy Project, Center for the Study of Carbon Dioxide and Global Change)

Several years ago, Waggoner (1995) rhetorically asked: How much land can ten billion people spare for nature? That was the title of an essay he wrote to illuminate the dynamic tension between the need for land to support the agricultural enterprises that sustain mankind and the need for land to support the natural ecosystems that sustain all other creatures. As noted by Huang et al. (2002), human populations ―have encroached on almost all of the world‘s frontiers, leaving little new land that is cultivatable.‖ And in consequence of humanity‘s ongoing usurpation of this most basic of natural resources, Raven (2002) has noted ―species-area relationships, taken worldwide in relation to habitat destruction, lead to projections of the loss of fully two-thirds of all species on earth by the end of this century.‖ In addition, Wallace (2000) has calculated we will need to divert essentially all usable non-saline water on the face of the Earth to the agricultural enterprises that will be required to meet the food and fiber needs of humanity‘s growing numbers well before that. So what parts of the world are likely to be hit hardest by the great land-grabbing and water-consuming machine of humanity? Tilman et al. (2001) report developed countries are expected to withdraw large areas of land from farming between now and the middle of the century (2050), leaving developing countries to shoulder essentially all of the growing burden of feeding our expanding population. In addition, they calculate the loss of these countries‘ natural ecosystems to crops and pasture represent about half of all potentially suitable remaining land, which ―could lead to the loss of about a third of remaining tropical and temperate forests, savannas, and grasslands,‖ along with the many unique species they support. If one were to pick the most significant problem currently facing the biosphere, this would probably be it: a single species of life, Homo sapiens, is on course to annihilate two-thirds of the ten million or so other species with which we share the planet within the next several decades, simply by taking their land and water. Global warming, by comparison, pales in significance, as its impact is nowhere near as severe and in fact may be neutral or even positive. In addition, its chief cause is highly debated, and actions to thwart it are much more difficult, if not impossible, to define and implement. Furthermore, what many people believe to be the main cause of global warming—anthropogenic CO2 emissions—may actually be a powerful force for preserving land and water for nature. In an analysis of the problem of human land-use expansion, Tilman et al. (2002) introduced a few more facts before suggesting some solutions. They noted, for example, that by 2050 the human population of the globe is projected to be 50 percent larger than it was in 2000, and that global grain demand could double because of expected increases in per-capita real income and dietary shifts toward a higher proportion of meat. Hence, they stated the obvious when they concluded, ―raising yields on existing farmland is essential for ‗saving land for nature‘.‖ So how is it to be done? Tilman et al. (2002) suggested a strategy built around three essential tasks: (1) increasing crop yield per unit land area, (2) increasing crop yield per unit of nutrients applied, and (3) increasing crop yield per unit of water used. Regarding the first of these requirements, Tilman et al. note that in many parts of the world the historical rate of increase in crop yields is declining, as the genetic ceiling for maximal yield potential is being approached. This observation, in their words, ―highlights the need for efforts to steadily increase the yield potential ceiling.‖ With respect to the second requirement, they indicate, ―without the use of synthetic fertilizers, world food production could not have increased at the rate it did [in the past] and more natural ecosystems would have been converted to agriculture.‖ Hence, they state the solution ―will require significant increases in nutrient use efficiency, that is, in cereal production per unit of added nitrogen, phosphorus,‖ and so forth. Finally, as to the third requirement, Tilman et al. remind us ―water is regionally scarce,‖ and ―many countries in a band from China through India and Pakistan, and the Middle East to North Africa either currently or will soon fail to have adequate water to maintain per capita food production from irrigated land.‖ Increasing crop water use efficiency, therefore, is also a must. Although the impending biological crisis and several important elements of its potential solution are thus well defined, Tilman et al. (2001) noted ―even the best available technologies, fully deployed, cannot prevent many of the forecasted problems.‖ This was also the conclusion of Idso and Idso (2000), who stated that although ―expected advances in agricultural technology and expertise will significantly increase the food production potential of many countries and regions,‖ these advances ―will not increase production fast enough to meet the demands of the even faster-growing human population of the planet.‖ Fortunately, we have a powerful ally in the ongoing rise in the air‘s CO2 content that can provide what we can‘t. Since atmospheric CO2 is the basic ―food‖ of essentially all plants, the more of it there is in the air, the bigger and better they grow. For a nominal doubling of the air‘s CO2 concentration, for example, the productivity of Earth‘s herbaceous plants rises by 30 to 50 percent (Kimball, 1983; Idso and Idso, 1994), and the productivity of its woody plants rises by 50 to 80 percent or more (Saxe et al. 1998; Idso and Kimball, 2001). Hence, as the air‘s CO2 content continues to rise, the land use efficiency of the planet will rise right along with it. In addition, atmospheric CO2 enrichment typically increases plant nutrient use efficiency and plant water use efficiency. Thus, with respect to all three of the major needs identified by Tilman et al. (2002), increases in the air‘s CO2 content pay huge dividends, helping to increase agricultural output without the taking of new land and water from nature.

#### Co2 fertilization key to Chinese wheat- key to global food security- solves the root cause of Chinese internal instability

Knappenberger 12/19 (Paul C. Knappenberger, Administrator of the World Climate Report, Assistant Director of the Center for the Study of Science, Global Science Report is a weekly feature from the Center for the Study of Science, “CO2 Benefits Outweigh Climate Stressors: Chinese Wheat”, December 19, 2012)

In the vast majority of laboratory and field experiments, the benefits of higher atmospheric carbon dioxide (CO2) concentrations for plants (including food crops) generally outweigh the negative impacts from climate change. And this is even assuming the “dumb farmer scenario” that we recently blogged, in which farmers and agronomists don’t develop new production techniques, technologies, crop varietals, etc., to adapt to change, turning expected losses into gains. There is overwhelming evidence such as the remarkably robust increase that has occurred in the yield of most of the world’s major crops when grown in developing or developed nations. In other words, adding CO2 to the atmosphere may be a win-win situation for the world’s vegetation, but we digress… Here, we’ll highlight a new study showing that including the fertilization effect of higher CO2 concentrations in a crop model of wheat grown in China turns projections of future climate change-driven reductions in crop yields into CO2-driven yield increases. The study was conducted by researchers Yujie Liu and Fulu Tao of the Chinese Academy of Sciences and will soon be published in the Journal of Applied Meteorology and Climatology. Liu and Tao used a complex crop model to evaluate the changes in wheat production (which accounts from 22% China’s primary food production), in the main wheat cultivation areas in China under three climate change scenarios—global temperature increases of 1°, 2°, and 3°C. They modeled the crop response both with and without considering the fertilization impacts of additional atmospheric CO2 concentrations (which presumably produced the warming) and compared the results. Here is their summary: There is a high probability of decreasing (increasing) changes in yield and water use efficiency under higher temperature scenarios without (with) consideration of CO2 fertilization effects. Elevated CO2 concentration generally compensates for the negative effects of warming temperatures on production. Moreover, positive effects of elevated CO2 concentration on grain yield increase with warming temperatures. The findings could be critical for climate change-driven agricultural production that ensures global food security. Findings and conclusions like these are a breath of carbon dioxide-enhanced fresh air in a world of climate gloomsaying.

#### Chinese political instability causes nuclear war

Yee et al. ‘2 (Herbert Yee, Professor of Politics and International Relations at the Hong Kong Baptist University, and Ian Storey, Lecturer in Defence Studies at Deakin University, 2002, “The China Thre AT: Perceptions, Myths and Reality,” RoutledgeCurzon, 2002)

The forth factor contributing to the perception of a China threat is the fear of political and economic collapse in the PRC, resulting in territorial fragmentation, civil war and waves of refugees pouring into neighbouring countries. Naturally, any or all of these scenarios would have a profoundly negative impact on regional stability. Today the Chinese leadership faces a raft of internal problems, including the increasing political demands of its citizens, a growing population, a shortage of natural resources and a deterioration in the natural environment caused by rapid industrialization and pollution. These problems are putting a strain on the central government’s ability to govern effectively. Political disintegration or a Chinese civil war might result in millions of Chinese refugees seeking asylum in neighbouring countries. Such an unprecedented exodus of refugees from a collapsed PRC would no doubt put a severe strain on the limited resources of China’s neighbours. A fragmented China could also result in another nightmare scenario—nuclear weapons falling into the hands of irresponsible local provincial leaders or warlords. From this perspective a disintegrating China would also pose a threat to its neighbours and the world.

# 2NC – Impact Overview 2NC

#### 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.

#### (C) Tie-breaker – strong alliances solve the use of WMD

ROSS 1999 - Douglas Ross, Professor of Political Science – Simon Fraser University, Winter 1998/1999, International Journal, Vol. 54, No. 1, “Canada’s Functional Isolationism And The Future Of Weapons Of Mass Destruction”, Lexis

Thus, an easily accessible tax base has long been available for spending much more on international security than recent governments have been willing to contemplate. Negotiating the landmines ban, discouraging trade in small arms, promoting the United Nations arms register are all worthwhile, popular activities that polish the national self-image. But they should all be supplements to, not substitutes for, a proportionately equitable commitment of resources to the management and prevention of international conflict – and thus the containment of the WMD threat. Future American governments will not ‘police the world’ alone. For almost fifty years the Soviet threat compelled disproportionate military expenditures and sacrifice by the United States. That world is gone. Only by enmeshing the capabilities of the United States and other leading powers in a co-operative security management regime where the burdens are widely shared does the world community have any plausible hope of avoiding warfare involving nuclear or other WMD.

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#### Perception of executive war power strong now

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)

¶ The implicit consensus that the President is constitutionally empowered to threaten military force in this situation is, in my view, correct, but it presents an anomaly: proponents of drawing that line argued that doing so was necessary to prevent a war (or at least a bigger and more destructive war) down the road,4 while critics argued that it would needlessly provoke or drag the United States into a war5 — the very sorts of concerns that usually animate strident war powers debates. More generally, the allocation of constitutional war powers is thought to be of paramount import because it could affect whether or when the United States goes to war and it implicates core questions about how our democracy should decide matters of such consequence.6 Yet legal discourse in this area excludes almost completely some central ways in which the United States actually wields its military power, namely, with threats of war or force. This Article breaks down that barrier and connects the legal issues with the strategic ones.¶ As to the constitutional issues, there is wide agreement among legal scholars on the general historical saga of American war powers – by which I mean here the authority to use military force, and not the specific means or tactics by which war is waged once initiated7 – though there remains intense disagreement about whether this is an optimistic or pessimistic story from the perspective of constitutional values and protection of American interests. Generally speaking, the story goes like this: The Founders placed decisions whether actively to engage in military hostilities in Congress’s hands, and Presidents mostly (but not always) respected this allocation for the first century and a half of our history.8 At least by the Cold War, however, Presidents began exercising this power unilaterally in a much wider set of cases, and Congress mostly allowed them to;9 an effort to realign legislatively the allocation after the Vietnam War failed, and today the President has a very free hand in using military force that does not rise to the level of “war” (in constitutional terms, which is usually confined to large-scale and long-duration uses of ground forces).10 From a functional standpoint, this dramatic shift in constitutional power is seen as either good, because decisions to use force require policy dexterity inherent in the presidency, or bad, because unilateral presidential decisions to use force are more prone than congressionally-checked ones to be dangerously rash.11¶ With this story and split in resulting views in mind, lawyers and legal scholars continue to debate a series of familiar constitutional questions: Does the historical gloss of practice among the political branches – the patterns of behavior by the President and Congress with respect to using force – provide legal justification for this shift toward executive power? Without requiring congressional authorization before engaging in hostilities, are there sufficient checks on executive action? Does this shift in power lead the United States into needless and costly wars, and if so should it be remedied with more potent checks, whether led by Congress or courts, to reestablish a constitutional formula closer to the original one?¶ The main data set for analyzing these questions is, not surprisingly, actual wars and other hostile engagements of U.S. forces abroad. In ascertaining and describing the patterns of executive behavior and congressional responses, legal scholars look at armed conflicts and combat operations of the past. Legal debates heat up during or following wars, especially major ones that go badly, or military combat that extends longer than expected. Proposed solutions focus on the commencement of armed hostilities – military engagement with the enemy – and what, if any, inter-branch actions must precede or accompany it.¶ There is a major disconnect here, though, between legal analysis and scholarship of constitutional war powers – specifically, its predominant focus on actual military engagements – and the way the United States wields its military might, especially since the onset of the Cold War and extending into the 21st century. Often times the most important policy tool derived from U.S. military power is not waging war – it is threatening war or force. The power to threaten war is closely related to, but analytically distinct from, the power to make it.¶ By “threats” in this Article I mean communicating the will and capability to use military force, as a way to induce other actors to change behavior – whether to do something or to not do something.12 During major periods of American history, including the present one, U.S. strategy relied heavily on perceptions of U.S. military might and willingness to use it; that is, it has relied on the manipulation of risk to deter aggression or other actions by adversaries, to coerce or compel certain actions by other states or international actors, to reassure allies, and to pursue other political designs under the shadow of armed threats.13 The primary purpose to which U.S. military might has been directed since World War II has generally been to prevent wars or avoid them; when wars or large-scale force was actually used, it was because a prior policy or strategy had failed, for instance, deterrent threats were insufficiently credible, crises involving U.S. threats of force escalated in ways difficult to control, and so on – not because making war was intended as the best approach to a danger or sometimes even that it was the expected result. In this regard, most of the time that U.S. military power is “used” – and often when it is most successful – it does not manifest as a war or major military engagement at all.¶ Put another way, there is a basic paradox at work here, that if threats of force work, force does not have to be used (at least not “used” in the sense that constitutional lawyers’ think about it). Other things being equal, in theory the greater the credibility of the threat, the less likely it will be necessary to make good on it. Because this argument is about wars that don’t happen, though, it is difficult to develop empirical evidence to support it. Accordingly, statesmen cannot be so sure of its validity and constitutional lawyers’ tend to overlook it entirely.¶ There is a close parallel to this disconnect between legal discourse and security strategy in international law. Article 2(4) of the UN Charter prohibits “the threat or use of force against the territorial integrity or political independence of any state.”14 However, legal doctrine is not at all well developed with respect to threats beyond prohibiting the most blatantly aggressive ones,15 nor is the regulation of threats of force well theorized in legal scholarship.16 As with domestic law of American war powers, the threat element has mostly disappeared from discussion, even though international relations scholars recognize that threatened force is doing so much work.17¶ This Article is not a doctrinal argument. It is an argument about framing and method, intended to fill an analytical gap and therefore to inform understanding of the functional advantages and disadvantages of legal formulas for allocating war powers.18 Specifically, Part I of this Article contends that understanding evolution in constitutional war powers and the merits or dangers of these developments requires widening the data set and investigative lens to include threats of force and incorporating the insights of the past several decades’ analysis by political scientists and scholars of American grand strategy. Doing so reveals aspects of the war powers story obscured by legal discourse and method focused predominantly on actual uses of force, and it alters and refines the orthodox functional arguments usually relied on by both sides – presidentialist (favoring vast unilateral executive authority to use force) and congressionalist (favoring tight legislative checks on that authority) – of the war powers debate. Most notably, and putting in game-theoretic terms, the debate between presidentialist and congressionalist legal scholars about functional advantages takes place only at the final stage of the decision tree; but the President’s ability to threaten force is critically important at earlier stages in determining whether that final stage will even occur at all.19¶ Part II draws on several strands of political science literature to illuminate the relationship between war powers law and threats of force. As a descriptive matter, the swelling scope of the president’s practice in wielding threatened force largely tracks the standard historical narrative of war powers shifting from Congress to the President. Indeed, adding threats of force to that story might suggest that this shift in powers of war and peace has been even more dramatic than usually supposed, at least in terms of how formal congressional checks are exercised.¶ Part II also shows, however, that congressional checks and influence – even if not formal legislative powers – operate more robustly and in different ways to shape strategic decision-making than usually supposed in legal debates about war powers, and that these checks and influence can enhance the potency of threatened force. This Article thus fits into a broader scholarly debate now raging about the extent to which the modern President is meaningfully constrained by law, and in what ways.20 Recent political science scholarship suggests that Congress already exerts constraining influences on presidential decisions to threaten force, even without resorting to binding legislative actions.21 Moreover, when U.S. security strategy relies heavily on threats of force, credibility of signals is paramount. Whereas it often used to be assumed that institutional checks on executive discretion undermined democracies’ ability to threaten war credibly, some recent political science scholarship also offers reasons to expect that congressional political constraints can actually bolster the credibility of U.S. threats.22

#### Psychological assurance– even if the plan doesn’t affect warfighting it undermines allied confidence in the arsenal

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The goal of assurance provides some additional pertinent metrics for U.S. force adequacy. For example, officials in NATO countries have indicated that U.S. strategic nuclear force levels should be comparable to Russia’s and that some number of U.S. nuclear weapons must remain deployed on NATO territory. These metrics appear to have nothing to do with the possible demands of “warfighting,” but are important for the psychological/political goal of allied assurance. And, as noted above, Japanese officials have indicated that U.S. nuclear capabilities should be “superior” to those of China, and that the United States should make clear its commitment to sustain superior nuclear capabilities as a means of dissuading Chinese nuclear competition. They also have stated that for deterrence purposes U.S. nuclear forces, while not deployed on Japanese territory, should be credible, readily available in the area and visible. This mix of desirable characteristics again suggests the value of a vigorous industrial infrastructure, and a mix of U.S. force platforms with a range of possible force loadings. The force attributes of flexibility and survivability, and the adaptability of U.S. planning and force development were compatible with the Cold War’s high numbers of weapons and strategic platforms, and with continuous nuclear modernization programs. Those attributes may also be possible at much lower numbers of deployed forces and platforms; but ever lower numbers will impose limitations on force flexibility and survivability, planning adaptability, and call into question the viability of the industrial infrastructure. Recognition of these various force and infrastructure attributes important for deterrence, assurance, dissuasion, and damage limitation should contribute to how “adequacy” is defined for the U.S. strategic arsenal and to the corresponding measures of merit for U.S. forces. If so, some helpful parameters will be injected into the

#### Prez flex is key to quick action and intel

Glenn Sulmasy 9, law faculty of the United States Coast Guard Academy, , Anniversary Contributions: Use of Force: Executive Power: the Last Thirty Years, 30 U. Pa. J. Int'l L. 1355

Since the attacks of 9/11, the original concerns noted by Hamilton, Jay, and Madison have been heightened. Never before in the young history of the United States has the need for an energetic executive been more vital to its national security. The need for quick action in this arena requires an executive response - particularly when fighting a shadowy enemy like al Qaeda - not the deliberative bodies opining on what and how to conduct warfare or determining how and when to respond. The threats from non-state actors, such as al Qaeda, make the need for dispatch and rapid response even greater. Jefferson's concerns about the slow and deliberative institution of Congress being prone to informational leaks are even more relevant in the twenty-first century. The advent of the twenty-four hour media only leads to an increased need for retaining enhanced levels of executive [\*1362] control of foreign policy. This is particularly true in modern warfare. In the war on international terror, intelligence is vital to ongoing operations and successful prevention of attacks. Al Qaeda now has both the will and the ability to strike with the equivalent force and might of a nation's armed forces. The need to identify these individuals before they can operationalize an attack is vital. Often international terror cells consist of only a small number of individuals - making intelligence that much more difficult to obtain and even more vital than in previous conflicts. The normal movements of tanks, ships, and aircrafts that, in traditional armed conflict are indicia of a pending attack are not the case in the current "fourth generation" war. Thus, the need for intelligence becomes an even greater concern for the commanders in the field as well as the Commander-in-Chief.¶ Supporting a strong executive in foreign affairs does not necessarily mean the legislature has no role at all. In fact, their dominance in domestic affairs remains strong. Additionally, besides the traditional roles identified in the Constitution for the legislature in foreign affairs - declaring war, ratifying treaties, overseeing appointments of ambassadors, etc. - this growth of executive power now, more than ever, necessitates an enhanced, professional, and apolitical oversight of the executive. An active, aggressive oversight of foreign affairs, and warfare in particular, by the legislature is now critical. Unfortunately, the United States - particularly over the past decade - has witnessed a legislature unable to muster the political will necessary to adequately oversee, let alone check, the executive branch's growing power. Examples are abundant: lack of enforcement of the War Powers Resolution abound the executive's unchecked invasions of Grenada, Panama, and Kosovo, and such assertions as the Authorization for the Use of Military Force, the USA Patriot Act, military commissions, and the updated Foreign Intelligence Surveillance Act ("FISA"). There have been numerous grand-standing complaints registered in the media and hearings over most, if not all, of these issues. However, in each case, the legislature has all but abdicated their constitutionally mandated role and allowed the judicial branch to serve as the only real check on alleged excesses of the executive branch. This deference is particularly dangerous and, in the current environment of foreign affairs and warfare, tends to unintentionally politicize the Court.¶ The Founders clearly intended the political branches to best serve the citizenry by functioning as the dominant forces in [\*1363] guiding the nation's foreign affairs. They had anticipated the political branches to struggle over who has primacy in this arena. In doing so, they had hoped neither branch would become too strong. The common theme articulated by Madison, ambition counters ambition, n17 intended foreign affairs to be a "give and take" between the executive and legislative branches. However, inaction by the legislative branch on myriad policy and legal issues surrounding the "war on terror" has forced the judiciary to fulfill the function of questioning, disagreeing, and "checking" the executive in areas such as wartime policy, detentions at Guantanamo Bay, and tactics and strategy of intelligence collection. The unique nature of the conflict against international terror creates many areas where law and policy are mixed. The actions by the Bush administration, in particular, led to outcries from many on the left about his intentions and desire to unconstitutionally increase the power of the Presidency. Yet, the Congress never firmly exercised the "check" on the executive in any formal manner whatsoever.¶ For example, many policymakers disagreed with the power given to the President within the Authorization to Use Military Force ("AUMF"). n18 Arguably, this legislation was broad in scope, and potentially granted sweeping powers to the President to wage the "war on terror." However, Congress could have amended or withdrawn significant portions of the powers it gave to the executive branch. This lack of withdrawal or amendment may have been understandable when Republicans controlled Congress, but as of November 2006, the Democrats gained control of both houses of the Congress. Still, other than arguing strongly against the President, the legislature did not necessarily or aggressively act on its concerns. Presumably this inaction was out of concern for being labeled "soft on terror" or "weak on national security" and thereby potentially suffering at the ballot box. This virtual paralysis is understandable but again, the political branches were, and remain, the truest voice of the people and provide the means to best represent the country's beliefs, interests, and national will in the arena of foreign affairs. It has been this way in the past but the more recent (certainly over the past thirty years and even more so in the past decade) intrusions of the judicial branch into what [\*1364] was intended to be a "tug and pull" between the political branches can properly be labeled as an unintended consequence of the lack of any real legislative oversight of the executive branch.¶ Unfortunately, now nine unelected, life-tenured justices are deeply involved in wartime policy decision making. Examples of judicial policy involvement in foreign affairs are abundant including Rasul v. Bush; n19 Hamdi v. Rumsfeld; n20 Hamdan v. Rumsfeld; n21 as well as last June's Boumediene v. Bush n22 decision by the Supreme Court, all impacting war policy and interpretation of U. S. treaty obligations. Simply, judges should not presumptively impact warfare operations or policies nor should this become acceptable practice. Without question, over the past thirty years, this is the most dramatic change in executive power. It is not necessarily the strength of the Presidency that is the change we should be concerned about - the institutional search for enhanced power was anticipated by the Founders - but they intended for Congress to check this executive tendency whenever appropriate. Unfortunately, this simply is not occurring in twenty-first century politics. Thus, the danger does not necessarily lie with the natural desire for Presidents to increase their power. The real danger is the judicial branch being forced, or compelled, to fulfill the constitutionally mandated role of the Congress in checking the executive.¶ 4. PRESIDENT OBAMA AND EXECUTIVE POWER¶ The Bush presidency was, and continues to be, criticized for having a standing agenda of increasing the power of the executive branch during its eight-year tenure. Numerous articles and books have been dedicated to discussing these allegations. n23 However, as argued earlier, the reality is that it is a natural bureaucratic tendency, and one of the Founders presciently anticipated, that each branch would seek greater powers whenever and wherever possible. As the world becomes increasingly interdependent, technology and armament become more sophisticated, and with [\*1365] the rise of twenty-first century non-state actors, the need for strong executive power is not only preferred, but also necessary. Executive power in the current world dynamic is something, regardless of policy preference or political persuasions, that the new President must maintain in order to best fulfill his constitutional role of providing for the nation's security. This is simply part of the reality of executive power in the twenty-first century. n24

## 2NC Democracy

### 2NC No Modeling

#### US policies aren’t modeled- resource and culture differences

**Rabkin ’13** [Jeremy Rabkin is a Professor of Law at the George Mason School of Law, “Declining Influence or Difficulty in Measuring?” [www.heritage.org/research/lecture/2013/05/model-resource-or-outlier-what-effect-has-the-us-constitution-had-on-the-recently-adopted-constitutions-of-other-nations](http://www.heritage.org/research/lecture/2013/05/model-resource-or-outlier-what-effect-has-the-us-constitution-had-on-the-recently-adopted-constitutions-of-other-nations)]

All these complications are merely conceptual. If you want to measure influence you have a still deeper challenge.¶ When foreigners look at the United States, they don’t focus on the short list of provisions in the Bill of Rights. They look at the larger trends in American society—what we still sometimes call “the American way of life.” By earlier views, our “constitution” is the whole range of policies and practices that constitute us as Americans, and the parchment text in the National Archives is only a small part of that.¶ Around the world, a lot of people love or envy what they see as “American.” Many fear or despise things they view as American, often just because they are (or can be seen as) “American.” Much of the world has a love/hate relationship with America, and that’s hardly surprising, given that America is so large and powerful and hard (for others) to control.¶ So we should expect that leaders in many countries may want to embrace certain American patterns without saying so or without doing so too openly or explicitly. Many leaders may view America as an ultimate model but not something they can imitate directly or imitate fully right now, and there may be very practical and realistic reasons for such inhibitions, quite apart from the background of ambivalence in public opinion.¶ Even when people are not ambivalent in their desire to embrace American practices, they may not have the wherewithal to do so, given their own resources. That is true even for constitutional arrangements. You might think it is enviable to have an old, well-established constitution, but that doesn’t mean you can just grab it off the shelf and enjoy it in your new democracy. You might think it is enviable to have a broad respect for free debate and tolerance of difference, but that doesn’t mean you can wave a wand and supply it to your own population. We can’t think of most constitutional practices as techniques or technologies which can be imported into different cultures as easily as cell phones or Internet connections.¶ Our own constitutional experience is somewhat revealing here. The American Founders were at some pains to deny any resemblance between the federal Constitution and British practice, since Americans were enamored with the idea of establishing a free republic and associated British practice with monarchy and oppression, but many analysts have noted that the American presidency seems to draw a good deal—if covertly—from characteristics of British monarchy in the 18th century. Much of our legislative practice (regarding the internal rules of each chamber) was modeled on parliamentary practice without quite saying so. And American courts continued to draw on the common law, even on common law rulings of English courts in later periods.¶ It would not be easy to measure the long-term influence of English models in American constitutional practice. It would be foolish to suppose the influence ended in 1776 or that it does not count unless it has been explicitly avowed. We are continually adapting historic English practices to our own setting, which is very different in important ways—but not nearly so different as early American statesmen (and many nationalist-minded scholars) have claimed.¶ If you take a wider view of “constitutionalism” beyond particular formal structures, let alone lists of rights guarantees, I think it is at least arguable that Europe has, in some ways, been adapting to something we think of (and Europeans may think of) as “the American way of life.” In important ways, the liberalization of trade has unsettled cozy relationships between governments and favored industries or firms. Protesters in France and other countries regularly denounce the trends toward more open, competitive markets as “Anglo–Saxon” or “American.” Similar complaints are heard in Latin America. To the rest of the world, liberal political economy is “American”—more so than particular details of our constitutional structure.¶ I agree with Professor Versteeg that we have no reason to rethink our own Constitution simply because it has not kept up with constitutional trends (in the narrow sense of “constitutional”) in other countries. We should not sacrifice the advantages we gain from constitutional stability merely to emulate those who don’t have the option of relying on an old constitution. We have long-standing, shared traditions of understanding which allow our courts to read a great deal into terse constitutional formulas like “due process of law.” Others, without the benefit of such traditions, may need to spell out a longer list of guarantees.¶ But we should remember that the nations of the world are not competing to see who can best institutionalize the ideals of international human rights conventions. Many countries reject the aims of human rights conventions (or at least their original aims). Fascism looked attractive to many countries—before 1945. Extreme forms of socialism remained attractive until the collapse of the Soviet empire in 1989. We have no reason to believe that history has now ended. The new regimes that have been emerging in the wake of the Arab Spring seem more inspired by Iran or Turkey than by Western liberal models.¶ When we think about the influence of the American constitutional scheme, we should think in large terms and in the long term. Getting other countries to copy particular provisions in our formal constitutional texts is not the ultimate prize.

#### No effective modeling- global norms are hollow

**Posner 8-28**-13 [Eric, professor at the University of Chicago Law School, “The U.S. Has No Legal Basis to Intervene in Syria,” <http://www.slate.com/articles/news_and_politics/view_from_chicago/2013/08/the_u_s_has_no_legal_basis_for_its_action_in_syria_but_that_won_t_stop_us.html>]

Inter arma enim silent leges, said the Romans—in times of war, the law falls silent. But ours is a chattier society. Rather than keep silent, our laws speak loudly about war. We just don’t follow them—as the U.S. military intervention in Syria is about to show.¶ Press reports say that President Obama has ordered his lawyers to supply him with a legal justification for a military assault on Syria, and unnamed officials have cited the Geneva Protocol, the Chemical Weapons Convention, the Kosovo precedent, and the so-called Responsibility to Protect doctrine. They have not cited the United Nations Charter, which flatly bans military interventions without Security Council approval, which the United States cannot obtain because of Russian and Chinese opposition.¶ The Geneva Protocol of 1925 (which Syria ratified) and the Chemical Weapons Convention of 1993 (which Syria has not ratified) ban the use of chemical weapons, but do not authorize countries to attack other countries that violate these treaties. The United States has no more authority to attack Syria for violating these treaties than it does to bomb Europe for giving import preferences to Caribbean banana producers in violation of international trade law. At one time, countries could use military force as “countermeasures” against treaty violators, but only against violators that harmed the country in question—and Syria has not used chemical weapons against the United States—but in any event, that rule has been superseded by the U.N. Charter.¶ The Kosovo precedent refers to the 1999 military intervention in Serbia, launched to stop a campaign of ethnic cleansing against people living in that region of Serbia. Then, too, the United States failed to obtain approval from the Security Council but attacked anyway. It’s odd to claim the Kosovo attack as a precedent, as it was widely regarded as illegal at the time and afterward.¶ But most people, or at least Westerners, believed that the Kosovo intervention was morally justified because it stopped a massacre, and efforts were made to carve out an exception to the U.N. rules, so that a “humanitarian intervention” would be lawful even without Security Council approval. That effort failed because people believed it would be too easy for countries to use humanitarian intervention as a pretext for attacking countries for other reasons. After all, humanitarian conditions are bad in nearly all countries that someone might like to invade. Instead, an international conference hammered together a compromise that all countries have a “Responsibility to Protect” their own citizens and citizens of other countries. But this idea was never sanctified in a treaty and is not law.¶ The most honest thing to do would be to admit that the international law on the use of force is defunct, as professor Michael Glennon has argued. Virtually all major countries have broken the rules from time to time, even the saintly European countries that joined in the Kosovo intervention. The U.S. has ignored the U.N. rules on numerous occasions—Vietnam, Grenada, Panama, Kosovo, the second Iraq War, and the 2011 war in Libya, where it secured an authorization to stop massacres of civilians but violated its terms by seeking regime change. But the U.S. government does not repudiate the U.N. rules because it wants other countries to comply with them.¶ On the domestic front, things are hardly better. The Constitution gives Congress, not the executive, the power to declare war, and at present writing, the administration seems unlikely to ask Congress for authorization lest it say no. This too would be a repeat of the Libya intervention, which lacked congressional authorization. To avoid the impression that the president can go to war whenever he wants, pretty much in clear violation of the founders’ intentions, the executive branch has invented a number of largely phony limits on executive military action. At one point the theory was that the executive may send military forces anywhere in the world in order to discharge its responsibility to protect Americans or American property, a theory that was used to justify the use of military force without congressional authorization in Somalia in 1992–1993. One might wonder whether such a theory imposes any limits; one might ask, “In what country are there no Americans or American property that could be protected?” Syria, it turns out.¶ No one alleges that the Syrian government poses a threat to Americans or American property, so the Obama administration can’t fall back on that theory, and doesn’t seem inclined to. But the executive branch claims the authority to use military intervention to protect the “national interest,” and it is not hard to find a national interest at stake. Ironically, the Justice Department’s Libya opinion identified “maintaining the credibility of the United Nations Security Council and the effectiveness of its actions to promote international peace and security” as one of the national interests justifying military intervention without congressional approval. Don’t expect a repeat of that argument in the Syria opinion. The other national interest was that of promoting regional stability—also not a good one here either, since no one seems to think that lobbing some cruise missiles onto Syrian soil will promote regional stability. Most likely the government will argue that there is a (heretofore ignored) national interest in deterring the use of chemical weapons as well as in protecting foreign civilians from massacres. With “national interest” so capaciously understood, it is clear that the president will always be able to find a national interest justifying a military intervention, so there are no constitutional constraints on his power to initiate military intervention.¶ Congress tried to bring the executive under control back in 1973 by enacting the War Powers Resolution, which can be read to implicitly authorize the use of military force as long as the president reports back to Congress and withdraws forces after 60 days unless Congress gives authorization in the interim. In 2011 President Obama ignored a Justice Department opinion that he must end the use of force in Libya, instead obtaining a compliant legal opinion from White House Counsel Robert Bauer and State Department Legal Adviser Harold Koh, who argued that the bombings and killings in Libya did not amount to “hostilities” and so did not trigger the withdrawal provision in the War Powers Resolution. In another indication of the administration’s respect for Congress, earlier this month the administration refused to call the coup in Egypt a coup so as to evade a statute that requires a cutoff of foreign aid to countries in which a military coup overthrows a democratically elected leader.¶ One can be cynical or realistic. I prefer the latter. The Romans had it right: It is not realistic to put legal constraints on war powers. Law works through general prospective rules that apply to a range of factual situations. International relations and national security are too fluid and unpredictable to be governed by a set of legal propositions that command general assent secured in advance. Laws governing war make us feel more secure but they don’t actually make us more secure. So while it is satisfying to fling the charge of hypocrisy at the president and his lawyers, and we might disagree about the wisdom of an attack on Syria, let’s just hope that when they invoke the law, they don’t actually believe what they are saying.

### 2NC No Judicial Modeling

#### US courts aren’t modeled

**Liptak ’08** [Adam, Pulitzer Prize finalist for Journalism and Supreme Court correspondent for The New York Times, “U.S. Supreme Court's global influence is waning,” 9-17-08, <http://www.nytimes.com/2008/09/17/world/americas/17iht-18legal.16249317.html?pagewanted=all&_r=0>]

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

### 2NC No Asia War

#### Interdependence

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Large scale interstate war or armed conflict is unthinkable in the region due to the high level of interdependency and democratization. It is believed that economic interdependency can reduce conflicts and prevent war. Democracy can lead to more transparency, accountability, and participation that can reduce collective fears and create more confidence and trust among the people in the region. In addition, globalism and regionalism are taking the center stage of national and foreign policy of many governments in the region except North Korea. The combination of those elements of peace is necessary for peace and stability in the region and those elements are present and being improved in this region.

### 2NC Demo Impact

## Legitimacy

### 2NC- No silver bullets

#### Single issues don’t resolve perception- scholarly consensus proves actions are situational

**Fettweis** **‘08** [Christopher, professor of political science at Tulane, “Credibility and the War on Terror,” Political Science Quarterly, Winter]

Since Vietnam, scholars have been generally unable to identify cases in which high credibility helped the United States achieve its goals. The shortterm aftermath of the Cuban Missile Crisis, for example, did not include a string of Soviet reversals, or the kind of benign bandwagoning with the West that deterrence theorists would have expected. In fact, the perceived reversal in Cuba seemed to harden Soviet resolve. As the crisis was drawing to a close, Soviet diplomat Vasily Kuznetsov angrily told his counterpart, "You Americans will never be able to do this to us again."37 Kissinger commented in his memoirs that "the Soviet Union thereupon launched itself on a determined, systematic, and long-term program of expanding all categories of its military power .... The 1962 Cuban crisis was thus a historic turning point-but not for the reason some Americans complacently supposed."38 The reassertion of the credibility of the United States, which was done at the brink of nuclear war, had few long-lasting benefits. The Soviets seemed to learn the wrong lesson. There is actually scant evidence that other states ever learn the right lessons. Cold War history contains little reason to believe that the credibility of the superpowers had very much effect on their ability to influence others. Over the last decade, a series of major scholarly studies have cast further doubt upon the fundamental assumption of interdependence across foreign policy actions. Employing methods borrowed from social psychology rather than the economics-based models commonly employed by deterrence theorists, Jonathan Mercer argued that threats are far more independent than is commonly believed and, therefore, that reputations are not likely to be formed on the basis of individual actions.39 While policymakers may feel that their decisions send messages about their basic dispositions to others, most of the evidence from social psychology suggests otherwise. Groups tend to interpret the actions of their rivals as situational, dependent upon the constraints of place and time. Therefore, they are not likely to form lasting impressions of irresolution from single, independent events. Mercer argued that the interdependence assumption had been accepted on faith, and rarely put to a coherent test; when it was, it almost inevitably failed.40

### 2NC- Alt causes

#### Syria ended US cred- we look like a paper tiger

**The Daily Star 9-18**-13 [“Paper tigers,” <http://www.dailystar.com.lb/Opinion/Editorial/2013/Sep-18/231659-paper-tigers.ashx#axzz2fEdTP7Gp>]

Amid the diplomatic debacle surrounding Syria over the last few weeks, Russia, and in particular President Vladimir Putin, has appeared the major player on the global stage. After decades of American hegemony internationally, is the order being reversed? Are we witnessing – if not a complete switch in roles – a return to Cold War days of parity between the two powers?¶ Upon his first election, U.S. President Barack Obama seemed to represent a new era for American foreign policy: the promise of an administration which would be nuanced and calmer than the preceding years, based on decisions led by reasoned thinking and reflection.¶ Instead, on Syria at the very least, Obama has stumbled and fumbled his way through the last few years: he has dithered, and flip-flopped, never genuinely seeming to know what he believes. He has issued seemingly black-and-white ultimatums, which, in the end, were apparently not ultimatums. His secretary of state, John Kerry, has spoken in similarly hazy or amateurish language. Ahead of assumed military strikes on Syria he said that any action would be “unbelievably small.” What then, the U.S. public, and indeed many advisers and actors within his own administration, were left asking, was the point?¶ This diplomatic weakness has left those in the Kremlin hardly believing their luck and given Putin the impetus to take the initiative. The Russians have thus been able to climb back up the superpower ladder, in a region which has always been so important to them, while simultaneously claiming to have the Syrians’ best interests at heart through stalling the threat of airstrikes. But in reality they are pushing for a U.N. resolution without teeth, one which will do nothing to limit the regime’s power, chemical or otherwise, and have no effect on the rate of killings, which have actually appeared to have increased since the Geneva deal was struck.¶ Putin, with almost admirable stealth, clearly realized that revenge was a dish best served cold. Years of resentment over the collapse of the Soviet Union coupled with divisions within the U.S. administration – between Obama and Kerry, the president and defense chiefs and between the president and Congress – have allowed him to manipulate the current situation to his own ends.¶ This Syrian chapter – quite apart from the thousands of deaths, the destruction of a country’s infrastructure and the millions of lives uprooted – will forever be a black mark in the annals of American history.¶ And this latest incident – the use of sarin gas to kill hundreds of people on Aug. 21 – will perhaps be a turning point in America’s standing in the world. A regime which has committed crimes against humanity, the U.N. tells us, is, it appears, about to get away with mass murder, yet again, a red line which Obama himself drew. Assad and his backers are aware that the forest is full of paper tigers.

#### More alt causes-

Shut down—alexander ev, treaty obligations

#### Economic crisis kills—shutdown

**Neu 2-8**-13 [C. Richard Neu is a senior economist at the nonprofit, nonpartisan RAND Corporation, “U.S. 'Soft Power' Abroad Is Losing Its Punch,” <http://www.rand.org/blog/2013/02/us-soft-power-abroad-is-losing-its-punch.html>]

The way America flexes it economic muscle around the world is changing dramatically—and not necessarily for the better.¶ In 1997, facing a wave of sovereign debt defaults, the International Monetary Fund asked its member states to pledge lines of credit to support Fund rescue efforts. The United States and other nations did as asked. In 2009, the United States responded again to a call for expanded credit lines. When the Fund sought yet another expansion of these credit lines last April, 39 countries, including China, Russia, Brazil, Mexico, India, and Saudi Arabia, stepped up. Even cash-strapped Italy and Spain pledged support.¶ But the United States was conspicuously absent. A pledge from the United States requires congressional authorization. In the midst of last spring's contentious debate over U.S. government deficits and debts, support for an international body was a political nonstarter. Where the United States had previously demonstrated international leadership, other countries—some of them America's rivals for international influence—now make the running.¶ This is a small example of what may be a troubling trend: America's fiscal predicament and the seeming inability of its political system to resolve these matters may be taking a toll on the instruments of U.S. “soft power” and on the country's ability to shape international developments in ways that serve American interests.¶ The most potent instrument of U.S. soft power is probably the simple size of the U.S. economy. As the biggest economy in the world, America has a lot to say about how the world works. But the economics profession is beginning to understand that high levels of public debt can slow economic growth, especially when gross general government debt rises above 85 or 90 percent of GDP.¶ The United States crossed that threshold in 2009, and the negative effects are probably mostly out in the future. These will come at a bad time. The U.S. share of global economic output has been falling since 1999—by nearly 5 percentage points as of 2011. As America's GDP share declined, so did its share of world trade, which may reduce U.S. influence in setting the rules for international trade.¶ And it's not just the debt itself that may be slowing GDP growth. Economists at Stanford and the University of Chicago have demonstrated that uncertainty about economic policy—on the rise as a result of political squabbling over U.S. fiscal policy—typically foreshadows slower economic growth.¶ Investors may be growing skittish about U.S. government debt levels and the disordered state of U.S. fiscal policymaking.¶ From the beginning of 2002, when U.S. government debt was at its most recent minimum as a share of GDP, to the end of 2012, the dollar lost 25 percent of its value, in price-adjusted terms, against a basket of the currencies of major trading partners. This may have been because investors fear that the only way out of the current debt problems will be future inflation. The dollar has also given up a bit of its dominance as the preferred currency for international reserves among advanced economies. And the renminbi appears to have replaced the dollar as the “reference currency” for most of East Asia. (The good news is that in recent years U.S. banks have increased their share of deposits from foreigners, mostly at the expense of banks in London.)¶ More troubling for the future is that private domestic investment—the fuel for future economic growth—shows a strong negative correlation with government debt levels over several business cycles dating back to the late 1950s. Continuing high debt does not bode well in this regard.¶ But perhaps the worst consequences of U.S. debt are actions not taken.¶ U.S. international leadership has been based, in part, on contributions—political and financial—to major institutions and initiatives—International Monetary Fund, World Bank, General Agreements on Tariffs and Trade (and later World Trade Organization), NATO, North America Free Trade Agreement, the Marshall Plan, and so on. These served U.S. interests and made the world better.¶ But what have we done lately? The Doha round of trade negotiations has stalled. Ditto efforts at coordinated international action on climate change. Countries of the Arab Spring need rebuilding. Little progress is apparent on the Transpacific Partnership, a proposed new free-trade area. And warnings from the U.S. treasury secretary to his European counterparts about the dangers of failing to resolve the fiscal crisis in the eurozone met with public rebukes: Get your own house in order before you lecture us. Have U.S. fiscal problems undermined America's self confidence and external credibility to the extent that it can no longer lead?¶ And what about unmet needs at home—healthcare costs, a foundering public education system, deteriorating infrastructure, and increasing inequality? A strained fiscal situation that limits resources for action and absorbs so much political energy cannot be helping with any of these matters. But without progress on such things, what becomes of the social cohesion necessary for unified action abroad or the moral authority to lead other nations by example?¶ America's fiscal predicament is serious. The problem has become obvious in the last few years, but it has been building for decades, largely the result of promises of extensive social benefits without a corresponding willingness to pay for them.¶ Putting U.S. government financing on a sustainable path will require painful adjustments over a number of years—increased government revenue and painful reductions in government outlays, almost certainly including outlays for defense and international affairs. During the necessary period of fiscal adjustment and constrained government resources, U.S. international influence may decline yet further.

### 2NC Warming

### 2NC Soft Power

#### 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)

### 2NC Disease

#### WHO is inevitable—solves these things, no one is going to withdraw

Poser

#### No impact to disease—burnout,, natural selection, empirics, medicine in the squo solves

Posner ‘5

# 1nr OV

#### Failure to raise the debt ceiling crushes credibility -

Delamaide 9/27/13 (Darrell, Political Columnist for MarketWatch, "Congress Starting to Resemble the United Nations")

The brinksmanship over shutting down the government and risking default on U.S. debt is the ultimate test of American “exceptionalism.”¶ Can we parade our political dysfunction before the world and still retain the respect of other nations? Ask smirking Russian President Vladimir Putin about that.¶ Can we as the issuer of the world’s reserve currency manage a debt default without any long-term consequences? Heck, yes, seems to be the attitude of some cowboys in Washington. We’re the greatest nation on earth and we don’t have to follow the rules other nations follow, they imply.¶ President Barack Obama went to the United Nations this week to tell assembled world leaders that “America is exceptional — in part because we have shown a willingness, through the sacrifice of blood and treasure, to stand up not only for our own narrow self-interest, but for the interests of all.”¶ Click to Play¶ Obama: Government shutdown would be 'irresponsible'¶ President Obama addressed the Republican critics of his health-care plan on Thursday, calling their threat to shut down the government "irresponsible."¶ How credible are these words when our politicians can’t overcome their own narrow self-interest to take care of the commonweal in this country?¶ Does anyone believe that America wants to guarantee the security of Syrian children when our lawmakers won’t even provide food for hungry children at home?¶ Most Americans yawn when the news turns to the United Nations. We have come to dismiss the organization founded with such idealism after World War II as an ineffectual talking shop.¶ The General Assembly is useless, most people believe, because it is filled with crazy radicals who push for powerless motions that a sullen majority approves.

#### Turns leadership, and not the other way around

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.

# AT: Deadlock inev

#### The longer the shutdown goes on the more leverage democrats have on the debt ceiling

Bolton 10/2/13 (Alexander, "Dems: Prolonged shutdown will give us leverage on debt limit")

Previously, Democrats were resistant to such an idea. That was at least in part because President Obama is refusing to negotiate on the debt limit. But a Democratic senator told The Hill this week that is no longer a concern, saying the White House can effectively deal with the GOP’s tactics. ¶ Democrats are eager to deal with the debt limit now, when polls show most of the public blames Republicans for the shutdown. They contend it would be difficult for the GOP to make additional demands linked to the debt limit while they’re embroiled in a crisis over a six-weekend spending stopgap. ¶ Sen. Dianne Feinstein (D-Calif.) said Democrats will gain more leverage in the debt-limit fight as the government shutdown drags on.

**Debt ceiling will be raised now-shutdown increase pressure on the GOP**

**Klein, Washington Post, 9-28-13** (Ezra, “The House GOP’s shutdown plan is great news”, <http://www.washingtonpost.com/blogs/wonkblog/wp/2013/09/28/the-house-gops-shutdown-plan-is-great-news/>, ldg)

House Republicans plan to attach a one-year delay of Obamacare to the continuing resolution. That sharply increases the chances of a government shutdown beginning Monday night. Good. Speaker Boehner's original plan was to pass a clean bill to fund the government and then attach the one-year delay of Obamacare to the debt-ceiling bill. It was a strategy that would minimize the chances of a shutdown but maximize the chances of a default. Boehner wanted that strategy because he thought Republicans had more leverage on the debt limit than they do on the shutdown. A shutdown, after all, is just bad for the economy. A default is catastrophic for it. You'd have to be insanely reckless to permit the federal government to default on its debts. And Boehner believes that House Republicans are insanely reckless and that President Obama isn't. But that strategy failed. Boehner's members refused to wait for the debt ceiling. They want their showdown now. And that's all for the better. Moving the one-year delay of Obamacare to the CR maximizes the chances of a shutdown but makes a default at least somewhat less likely. If a shutdown begins Monday night, Republicans and Democrats will have more than two weeks to resolve it before hitting the debt ceiling. As Alec Phillips put it in a research note for Goldman Sachs, "If a shutdown is avoided, it is likely to be because congressional Republicans have opted to wait and push for policy concessions on the debt limit instead. By contrast, if a shutdown occurs, we would be surprised if congressional Republicans would want to risk another difficult situation only a couple of weeks later. The upshot is that while a shutdown would be unnecessarily disruptive, it might actually ease passage of a debt limit increase." One way a shutdown makes the passage of a debt limit increase easier is that it can persuade outside actors to come off the sidelines and begin pressuring the Republican Party to cut a deal. One problem in the politics of the fiscal fight so far is that business leaders, Wall Street, voters and even many pundits have been assuming that Republicans and Democrats will argue and carp and complain but work all this out before the government closes down or defaults. A shutdown will prove that comforting notion wrong, and those groups will begin exerting real political pressure to force a resolution before a default happens.

#### Boehner is caving on the debt ceiling now

Stein 10/3/2013 (Sam, Huffington Post, "Inside Obama's Game Plan for the Debt Limit")

In perhaps a small sign of progress in the impasse, Boehner signaled on Thursday that he may be willing to hold a vote to raise the debt ceiling even if Obama refuses to agree to the Republican demand of delaying implementation of the president's signature health care law by a year.¶ Jared Bernstein, who served as top economic adviser to Vice President Biden in the first term, said that by taking the debt ceiling debate off the table. Boehner could potentially gain some negotiating leverage in the budget fight, but he does it at the risk of the Republican base "throwing him under the bus."¶ Bernstein said the best way forward for the White House is continuing to be "very explicit" with Boehner that it remains open on long term budget issues, while standing pat on the condition that a short-term budget and debt limit vote is passed without conditions.¶ "You essentially tell him by putting clean votes on the floor right now buys a ticket to robust negotiations on the other side," Bernstein said. "At the point, it's perfectly legitimate for him to go into any negotiation with any asks that he wants."

**Limit will be raised now—Boehner will hold a vote but political capital is key**

**USA Today, 10/4** (Aamer Madhani, “Obama hammers Boehner on shutdown, debt ceiling”, 10/4/2013http://www.usatoday.com/story/news/politics/2013/10/03/obama-boehner-shutdown-debt-limit/2918545/)

**In perhaps a small sign of progress in the impasse, Boehner signaled on Thursday that he may be willing to hold a vote to raise the debt ceiling even if Obama refuses to agree to the Republican demand of delaying implementation of the president's signature health care law by a year.** Jared Bernstein, who served as top economic adviser to Vice President Biden in the first term, said that **by taking the debt ceiling debate off the table. Boehner could potentially gain some negotiating leverage in the budget fight**, but he does it at the risk of the Republican base "throwing him under the bus." Bernstein said the best way forward for the White House is continuing to be "very explicit" with Boehner that it remains open on long term budget issues, while standing pat on the condition that a short-term budget and debt limit vote is passed without conditions. "You essentially tell him **by putting clean votes on the floor right now buys a ticket to robust negotiations on the other side,"** Bernstein said. "At the point, it's perfectly legitimate for him to go into any negotiation with any asks that he wants." Even **as Boehner showed signs of flexibility on a debt limit vote**, House Republicans continued to pursue a piecemeal shutdown strategy to pass targeted funding bills for popular government services. House Majority Leader Eric Cantor, R-Va., wrote to rank-and-file Republicans in a memo Thursday that he was confident Obama and congressional Democrats would eventually bow to negotiations if Republicans hold the line.

# AT: PC Fails

**PC is key to debt ceiling- they haven’t answered this argument- even their uniqueness arguments value leverage and negotiations- proves presidential influence is key**

**Political capital theory is true**

-this evidence cites longitudinal statistical analysis

-PC leads to deal-cutting, adds to presidential attractiveness and results in vote-switching

**Beckman 10 – Professor of Political Science**

Matthew N. Beckman, Professor of Political Science @ UC-Irvine, 2010, “Pushing the Agenda: Presidential Leadership in U.S. Lawmaking, 1953-2004,” pg. 61-62

**For cases where the president wants to lobby but has limited political capital to draw on** (0 < C < C1), looking back, Figure 2.11 affirms the intuitive: **the president's legislative options are limited. Lacking** enough **capital** to induce leaders to accept any sort of "deal" that is better than he could get from lobbying pivotal voters, the president and his staffers' only viable strategy is the vote-centered one. But, of course, even executing **the** vote-centered **strategy does not yield much influence**; **the president simply does not have enough "juice" to substantially alter members' preferences or**, in turn, **the outcome**. **The president's prospects improve substantially,** though, **when he allocates** even modest levels of **political capital** (C, < C < c,.) **to lobbying for a particular initiative. At this point** - specifically, at C1 \_ an agenda-centered-**strategy becomes viable**. That is, **with** a medium investment of **political capital**, now **the president has** enough resources **to get opposing leaders to** cut a "deal**" with the White House** that is better than he could get from just lobbying pivotal voters. In fact, even with this rather modest infusion of political capital, C, to 4, an agenda-centered lobbying strategy allows a president to exert even more influence than would be possible with a massive investment (up to Gj) in voce-centered lobbying. And granting the president even more **political capital** to invest in an issue (c,. < C) only **adds to** an agenda-centered strategy's **attractiveness and effectiveness** compared to the more familiar vote-centered strategy. Overall, **the predicted impact of the president's agenda-centered lobbying is real, and** potentially **substantial**, **but** also highly **conditional**. In contrast to a vote-centered strategy, which can be employed whenever a president is willing and able to invest lobbying resources in advocating an issue, the White House's agenda-centered strategy only applies with (I) a far-off status quo, and (2) a medium to large supply of political capital. Absent these prerequisites, the president's fate turns on pivotal voters and his ability to influence them via vote- centered lobbying. But **often** these **strategic stars do align** - that is, **the president is flush with political capital** when seeking to change a distant status quo - and when they do, an agenda-centered strat- egy affords presidents not just a second path for exerting influence but also a better path. Indeed, **under these** favorable **conditions, the president gets far more policy bang for his lobbying buck** from an agenda-centered strategy than a vote-centered one - without having to prevail in an all-out floor fight for pivotal voters' support.

**Political capital theory is true – newest data proves that presidents have significant legislative influence**

-conventional wisdom underestimates political capital theory

**Beckman 10 – Professor of Political Science**

Matthew N. Beckman, Professor of Political Science @ UC-Irvine, 2010, “Pushing the Agenda: Presidential Leadership in U.S. Lawmaking, 1953-2004,” pg. 2-3

Developing presidential coalition building as a generalizable class of strategies is itself instructive, a way of bringing clarity to presidential– congressional dynamics that have previously appeared idiosyncratic, if not irrational. However, **the study’s biggest payoff comes not from identifying presidents**’ legislative **strategies but rather from discerning their substantive effects.** In realizing how presidents target congressional processes upstream (how bills get to the ﬂoor, if they do) to inﬂuence downstream policy outcomes (what passes or does not), we see that **standard tests of presidential inﬂuence have missed most of it.** Using original data **and** new analyses **that account for the interrelationship between prevoting and voting stages of the legislative process, I ﬁnd that presidents’ legislative inﬂuence is** real**, often** substantial**, and, to date,** greatly underestimated.

**Political capital true**

-presidential offensive swings Congressional voting patterns

**Beckman 10 – Professor of Political Science**

Matthew N. Beckman, Professor of Political Science @ UC-Irvine, 2010, “Pushing the Agenda: Presidential Leadership in U.S. Lawmaking, 1953-2004,” pg. 60

As has been the case throughout, **when the president** eitherlackspolitical capital or chooses not to use it, his only available option is getting some issue onto the congressional calendar. **The president merely proposes** his preferred **policy, which leading allies and oppo- nents then counter with proposals of their own**. Although the president and each congressional leader wants to pass a bill as close to his or her ideal as possible, all end up settling on the pivotal voter's preference, So **when** unsupported by a White House lobbying offensive**, the president's proposals will surrender to whatever outcome the House median and Senate filibuster pivot prefer**.

# AT: Link Turn

#### Even if popular, Obama still has to use capital

Rogin 5/23/13 (Josh, Senior Correspondent for National Security and Politics for Newsweek and The Daily BEast, "How Obama Bungled The Guantanamo Closing")

“It looks like he’s learned some lessons from the last go-round,” said Ken Gude, chief of staff at the Center for American Progress, the think tank founded by former Clinton chief of staff John Podesta. “Starting by designating a site on a military base to hold commissions is a great first step. What is Congress going to say to the Defense Department? That it doesn’t think it can secure a U.S. military base inside the United States from potential attack by terrorists?”¶ The president’s new plan is only as viable as his willingness to fight for it, according to all those who witnessed its failure the first time around. It remains to be seen if Obama will use his political capital to make sure the job gets done, or if he will leave it to underlings who might not carry it out once more.¶ Congress is not going to move unless the White House is engaged and the president uses his own personal power to force lawmakers to implement a policy they may not like, said Moran.¶ “I believe the president genuinely wants to do this, but he needs to prove it and he needs to be prepared to use his leverage to make it happen,” he said. “If he doesn’t achieve it, it’s going to be one of those things that will bother him for the rest of his days.”

#### This is what happened to their “bipartisan amendment” when it was put to a floor vote

Joe Wolverton (J.D., University of Memphis) May 18, 2012 “Smith-Amash Amendment Rejected: Indefinite Detention Still the Law” http://www.thenewamerican.com/usnews/politics/item/11441-smith-amash-amendment-rejected-indefinite-detention-still-the-law

In a shameful display of disregard for the Constitution and for liberty, on Friday, the House of Representatives voted to perpetuate the president’s power to indefinitely detain American citizens.¶ By a vote of 238-182, members of Congress rejected the amendment offered by Representatives Adam Smith (D-Washington) and Justin Amash (R-Michigan) (left and right, respectively in photo montage at left) that would have repealed the indefinite detention provision passed overwhelmingly last year as part of the National Defense Authorization Act (NDAA) of 2012.¶ The Fiscal Year 2013 NDAA retains the indefinite detention provisions, as well as the section permitting prisoners to be transferred from civilian jurisdiction to the custody of the military.¶ "The frightening thing here is that the government is claiming the power under the Afghanistan authorization for use of military force as a justification for entering American homes to grab people, indefinitely detain them and not give them a charge or trial," Representative Amash said during House debate.¶ Debate on the Smith-Amash Amendment, as well as about 140 others began in the early, pre-dawn hours Friday morning.¶ In his impassioned speech supporting his amendment, Representative Smith reminded his colleagues that the NDAA granted to the president “extraordinary” powers and divested the American people of key civil liberties, as well as divesting civilian courts of their constitutional jurisdiction.¶ Smith pointed out that there was no need to transfer suspects into military custody as “hundreds” of terrorists have been tried in federal courts since the attacks of September 11, 2001.¶ Congressmen — Republicans and Democrats — were not persuaded and they voted against Smith-Amash.¶ Another amendment offered by Representatives Louie Gohmert (R-Texas), Jeff Landry (R-Louisiana), and Scott Rigell (R-Virginia) passed by a vote of 243-173. The Gohmert Amendment (House Amendment 1126) states that the NDAA will not “deny the writ of habeas corpus or deny any Constitutional rights for persons detained in the United States under the AUMF who are entitled to such rights.”¶ Again, this amendment is yet another indefensible use of vague language that would make it vulnerable to challenge in any court in any state in the Union, but somehow adds to its appeal among the Republicans in Congress.¶ Smith and those supporting his amendment claimed that Gohmert’s Amendment was unnecessary as it does nothing of any value other than restate what is already settled law: viz., that Americans have the right to a ask for a writ of habeas corpus.¶ Smith called Gohmert’s amendment “a smokescreen,” arguing that “It doesn’t protect any rights whatsoever.”¶ But supporters of indefinite detention suggested that the Smith-Amash amendment would incentivize terrorists to come to the United States, because they would receive more rights on U.S. soil than outside the country.¶ In response to these allegations, Gohmert said that terrorists “supported” Smith’s amendment.¶ Another influential Republican added to Gohmert’s misrepresentation of the Smith-Amash Amendment:¶ “We cannot look to guarantee those who seek to harm the U.S. the constitutional rights granted to Americans,” said Rep. Allen West (R-Florida). “If we extend that to them, this war on terror, now it’s a criminal action.”¶ The real crime is that Allen West and so many of his fellow Republican lawmakers have betrayed not only the Constitution, but their oaths of office to “preserve, protect, and defend” it from all enemies.¶ Of course, one can hardly expect 243 members of Congress to vote to declare themselves enemies of the Republic as to do such might expose them to arrest and indefinite detention per the terms of the NDAA passed by such a large majority.¶ It is remarkable that so many on the Right have promoted this hostile and open assault on the Constitution and freedom. Take for example this opinion posted by the Heritage Foundation on its website:¶ The Smith–Amash amendment would force the government to send any al-Qaeda member captured in the United States directly to federal court. If this amendment becomes law, it would limit a President’s flexibility and take off the table lawful military detention and lawful interrogation for intelligence purposes. For these and other reasons, the proposal is unwise.¶ Despite over-the-top claims to the contrary, last year’s National Defense Authorization Act (NDAA) does not impact the conditions under which a U.S. citizen may (or may not) be detained. In fact, section 1021 of the NDAA is explicit: The law regarding how U.S. citizens are handled, including the right to habeas corpus, is the same today as it was the day before it was passed.¶ Describing as “over-the-top” the claim that the NDAA authorizes the indefinite detention of American citizens is both irresponsible and inaccurate.¶ One would reasonably expect the scholars at the Heritage Foundation to have a bit of a better grip on the nuance of language used in the NDAA.¶ Perhaps these experts should read the words of Section 1021 more closely. This provision says that the military is not “required” to detain American citizens. That is hardly the same as saying that the military is “forbidden” from detaining American citizens.¶ Congress is full of attorneys who know the importance of specificity of language. They know that vagary in language is contrary to good law. In fact, innumerable laws are struck down by courts for being too vague.¶ The point is: if these men and women in Congress, so many of whom are trained in the law, meant to forbid the military from arresting and detaining American citizens, then it could have done so. They chose not to. They chose to leave that option open.¶ More importantly, these key terms so ill-defined that they are ripe for the wresting and within the penumbras of these cleverly crafted provisions could be found lurking the tools of tyranny. Wrenches that one day could force anyone branded as an enemy into a predetermined “terrorist” slot.¶ It is apropos to recall the timely words written by James Madison in a letter writing to Thomas Jefferson in 1798: ¶ “It is a universal truth that the loss of liberty at home is to be charged to the provisions against danger, real or pretended, from abroad.”¶ Representative Gohmert, Representative Allen West, the Heritage Foundation and others are likely unaware that they are the very fulfillment of Madison’s observation-cum-prophecy.¶ Each of these freedom-phobes invoked the specter of terror (in one way or another: “terrorist,” “al-Qaeda,” “enemies”) to justify the abolition of constitutionally guaranteed civil liberties.¶ Seemingly, those promoting these provisions would offer Americans as sacrifices on the altar of safety, the fires of which are fed by the kindling of the Constitution.¶ Despite the denigrating description offered by the Heritage Foundation, what the Smith-Amash Amendment actually did was identify and attempt to close two very large gaps still present in the 2013 NDAA.¶ First, the Smith-Amash Amendment explicitly forbids the indefinite detention of suspects, as well as the conducting of the trials of such suspects before military tribunals. The language in this amendment makes it clear that any individual arrested in the United States on charges stemming from the NDAA or the AUMF would be tried in a civilian court and be afforded the complete catalog of constitutional protections.¶ Second, the Smith-Amash Amendment would have absolutely repealed that section of the NDAA which provides that foreigners suspected of committing terrorist acts be held in military custody, unless they have been granted a specific waiver from the President.¶ Likely, it is that commendable clarity of language and intent that doomed the amendment from the beginning.

#### Republican disunity is high now –

Reuters 9/26/13 (Thomas Ferraro and Rachelle Younglai, "No clear path to ending US Debt Limit, Spending Impasse")

Republicans face internal challenges in the high-stakes fight over the basic functions of the U.S. government.¶ Some of the party's most conservative members were balking at their leaders' debt limit plan, which was widely seen as an opening move subject to negotiation, saying it does not do enough to rein in government spending.¶ Representative Tim Huelskamp of Kansas, speaking to reporters, said he and at least 17 other Republicans would oppose the measure, leaving the bill short of enough votes for passage, assuming all Democrats voted 'no.'¶ At the same time, some centrist Republicans think it is counter-productive to wage yet another fight against Obamacare, especially on a bill as important as the debt limit.

#### The plan rallies republicans together around civil trials- rally around the flag

Niels Lesniewski (writer for Roll Call) April 22, 2013 “Graham's Enemy Combatant Crusade Continues” http://www.rollcall.com/news/grahams\_enemy\_combatant\_crusade\_continues-224234-1.html

Sen. Lindsey Graham continued his push to hold the surviving Boston Marathon bombing suspect as an enemy combatant Monday afternoon, even after the Justice Department unveiled federal criminal charges.¶ The suspect “will not be treated as an enemy combatant,” according to White House Press Secretary Jay Carney.¶ The latest campaign by the South Carolina Republican to have an individual associated with terrorism held as an enemy combatant began on Twitter the afternoon of April 19, in the midst of the massive manhunt for Dzhokhar A. Tsarnaev.¶ Since then, Graham has led an effort with several other Republicans to push against offering Miranda rights and a guarantee of counsel to Tsarnaev, who reportedly became an American citizen last year.¶ “We should be focused on gathering intelligence from this suspect right now that can help our nation understand how this attack occurred and what may follow in the future. That should be our focus, not a future domestic criminal trial that may take years to complete,” Graham said in an April 20 joint statement with his GOP kindred spirits Kelly Ayotte of New Hampshire and John McCain of Arizona, with a guest appearance by Rep. Peter T. King, R-N.Y.

# AT: No Econ !

#### Economic decline causes protectionism and war – their defense doesn’t assume accompanying shifts in global power

Royal 10 – Jedediah Royal, Director of Cooperative Threat Reduction at the U.S. Department of Defense, 2010, “Economic Integration, Economic Signaling and the Problem of Economic Crises,” in Economics of War and Peace: Economic, Legal and Political Perspectives, ed. Goldsmith and Brauer, p. 213-215

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

#### Economic collapse kills millions and sparks great power wars

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.

# AT: Resilient