# 1nc

### 1

#### AUMF strong now- Congress supports a broad interpretation

Brooks, 13 -- Georgetown University law professor

[Rosa, New America Foundation Schwartz senior fellow, served as a counselor to the U.S. defense undersecretary for policy from 2009 to 2011 and previously served as a senior advisor at the U.S. State Department, "Mission Creep in the War on Terror," Foreign Policy, 3-14-13, www.foreignpolicy.com/articles/2013/03/14/mission\_creep\_in\_the\_war\_on\_terror, accessed 8-24-13, mss]

"When you're not near the girl you love, love the girl you're near," sang Frank Sinatra. The U.S. government seems to have its own variant: When you're not near the terrorist you're supposed to target, target the terrorist you're near. To accommodate this desire, both the Bush and Obama administrations have had to gradually stretch the AUMF's language to accommodate an ever-widening range of potential targets, ever more attenuated from the 9/11 perpetrators. The shift has been subtle, and for the most part **Congress** has **aided and abetted it**. In the 2006 and 2009 Military Commissions Acts, for instance, Congress gave military commissions jurisdiction over individuals who are "part of forces associated with al Qaeda or the Taliban," along with "those who purposefully and materially support such forces in hostilities against U.S. Coalition partners." This allowed the Bush and then the Obama administration to argue that in the original 2001 AUMF, Congress must have implicitly authorized the use of force against al Qaeda and Taliban "associated forces." That is, if Congress considers it appropriate for U.S. military commissions to have jurisdiction over al Qaeda and Taliban associates, Congress must believe the executive branch has the authority to detain such associates, and the authority to detain must stem from the authority to use force. This suggests that Congress must believe the AUMF should be read in the context of traditional law-of-war authorities, which include the implied authority to use force against (or detain) both the declared enemy and the enemy's "co-belligerents" or "associated forces." By 2009, the Obama administration was arguing in court that, at least when it comes to detention, the AUMF implicitly authorizes the president "to detain persons who were part of, or substantially supported, Taliban or al Qaeda forces or associated forces that are engaged in hostilities against the United States or its coalition partners" (my emphasis). Note how far this has shifted from the original language of the AUMF: The focus is no longer merely on those who were directly complicit in the 9/11 attacks, but on a far broader category of individuals. This broadened understanding of executive detention authority was later given the congressional nod in the 2012 National Defense Authorization Act, which used virtually identical language.

#### Detention authority comes from the AUMF

**Kelley ’12** [Michael, MA in journalism from Medill, writer for Business Insider, “Why Losing Indefinite Detention Powers Would Be A Disaster For Obama,” Oct. 24, http://www.businessinsider.com/why-losing-indefinite-detention-powers-would-be-a-disaster-for-obama-2012-10]

There's a big story by Greg Miller in the Washington Post on how the Obama administration has expanded its powers in the War on Terror.¶ Miller notes that the legal foundation for U.S. counterterrorism strategy is partially based on "the Congressional authorization to use military force" (AUMF) that was passed after 9/11.¶ Specifically it seems to be based on an interpretation of the AUMF that was "reaffirmed" by the indefinite detention clause of the National Defense Authorization Act (NDAA). ¶ This explains why Obama is fighting so hard to keep the indefinite detention clause in effect.¶ **In court** **the government argued** that the **indefinite detention** clause **is simply a "reaffirmation" of the** Authorization Use Of Military Force (**AUMF**), which gives the president authority "to use all necessary and appropriate force against those ... [who] aided the terrorist attacks that occurred on September 11, 2001 or harbored such organizations or persons." In the NDAA lawsuit, the government argued that the NDAA §1021 is simply an "affirmation" or "reaffirmation" of the AUMF.

#### Decreasing AUMF authorizations snowballs- causes judicial rollback of the AUMF

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[Beau, “Reauthorizing the ‘War on Terror’: The Legal and Policy Implications of the AUMF’s Coming Obsolescence,” Military Law Review, Vol 211, 2012, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2150874, accessed 8-21-13, mss]

**The scope of** the **AUMF is** also **important for** any **future judicial opinion** that might rely in part on Justice Jackson’s Steel Seizure concurrence.23 Support from Congress places the President’s actions in Jackson’s first zone, where executive power is at its zenith, because it “includes all that [the president]~~he~~ possesses in [their]~~his~~ own right plus all that Congress can delegate.”24 Express or implied **congressional disapproval, discernible by identifying the** outer limits **of** the **AUMF’s authorization, would place the President’s “power . . . at its** lowest ebb.”25 In this third zone, executive claims “must be scrutinized with caution, for what is at stake is the equilibrium established by our constitutional system.”26 Indeed, Jackson specifically rejected an overly powerful executive, observing that the Framers did not intend to fashion the President into an American monarch.27 Jackson’s concurrence has become the most significant **guidepost** in debates over the constitutionality of executive action in the realm of national security and foreign relations.28 Indeed, some have argued that it was given “the status of law”29 by then-Associate Justice William Rehnquist in Dames & Moore v. Regan.30 Speaking for the Court, Rehnquist applied Jackson’s tripartite framework to an executive order settling pending U.S. claims against Iran, noting that “[t]he parties and the lower courts . . . have all agreed that much relevant analysis is contained in [Youngstown].”31 More recently, Chief Justice John Roberts declared that “Justice Jackson’s familiar **tripartite scheme** provides the accepted framework for evaluating executive action in [the area of foreign relations law].”32 Should a future court adjudicate the nature or extent of the President’s authority to engage in military actions against terrorists, an applicable statute would confer upon such executive action “the strongest of presumptions and the widest latitude of judicial interpretation.”33 The AUMF therefore exercises a profound legal influence on the future of the United States’ struggle against terrorism, and its precise scope, authorization, and continuing vitality matter a great deal.

#### That shifts US doctrine to international self-defense- expanded *jus ad bellum* collapses global firebreak on use-of-force

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[Beau, “Reauthorizing the ‘War on Terror’: The Legal and Policy Implications of the AUMF’s Coming Obsolescence,” Military Law Review, Vol 211, 2012, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2150874, accessed 9-19-13, mss]

In a world without a valid AUMF, the United States could base its continued worldwide counterterrorism operations on various alternative domestic legal authorities. All of these alternative bases, however, carry with them significant costs—detrimental to U.S. security and democracy. The foreign and national security policy of the United States should rest on “a comprehensive legal regime to support its actions, one that [has] the blessings of Congress and to which a court would defer as the collective judgment of the American political system about a novel set of problems.”141 Only then can the President’s efforts be sustained and legitimate. 2. Effect on the International Law of Self-Defense A failure to reauthorize military force would lead to significant negative consequences on the international level as well. Denying the Executive Branch the authority to carry out military operations in the armed conflict against Al Qaeda would force the President to find authorization elsewhere, most likely in the international law of selfdefense— the jus ad bellum.142 Finding sufficient legal authority for the United States’s ongoing counterterrorism operations in the international law of self-defense, however, is problematic for several reasons. As a preliminary matter, relying on this rationale usurps Congress’s role in regulating the contours of U.S. foreign and national security policy. If the Executive Branch can assert “self-defense against a continuing threat” to target and detain terrorists worldwide, it will almost always be able to find such a threat.143 Indeed, the Obama Administration’s broad understanding of the concept of “imminence” illustrates the danger of allowing the executive to rely on a self-defense authorization alone.144 This approach also would inevitably lead to dangerous “slippery slopes.” Once the President authorizes a targeted killing of an individual who does not pose an imminent threat in the strict law enforcement sense of “imminence,”145 there are few potential targets that would be off-limits to the Executive Branch. Overly malleable concepts are not the proper bases for the consistent use of military force in a democracy. Although the **Obama** Administration has **disclaimed** this manner of **broad authority because the AUMF “does not authorize** military **force** **against anyone** the Executive labels a ‘terrorist,’”146 **relying solely on** the **international** law of **self** **defense would** likely **lead to precisely such a result**. The slippery slope problem, however, is not just limited to the United States’s military actions and the issue of domestic control. The creation of international norms is an iterative process, one to which the United States makes significant contributions. Because of this outsized influence, the United States should not claim international legal rights that it is not prepared to see proliferate around the globe. Scholars have observed that the Obama Administration’s “expansive and open-ended interpretation of the right to self-defence threatens to destroy the prohibition on the use of armed force . . . .”147 Indeed, “[i]f other states were to claim the broad-based authority that the United States does, to kill people anywhere, anytime, **the result would be chaos**.”148

### 2

#### **the affirmative does not prohibit the ability of the President to make a military decision in one of the following areas mentioned in the topic – it merely requires a process or disclosure for the President to go through before exercising his commander and chief power**

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

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

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

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

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

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

#### Vote neg---Only prohibitions on authority guarantee neg ground---their interpretation lets affs no link the best neg offense like deference

### 3

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### 4

#### The President of the United States should request his Counsel and the Office of Legal Counsel for coordination over his war powers authority on indefinite detention authority. The President should find that individuals in military detention who have won their habeas corpus cannot be detained and narrowly defer to judicial release rulings on detention cases.

#### Constraints through executive coordination solves signaling

**POSNER & VERMEULE 2006** --- \*Prof of Law at U Chicago, AND \*\* Prof of Law at Harvard (9/19/2006, Eric A. Posner & Adrian Vermeule, “The Credible Executive,” <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=931501)>)

IV. Executive Signaling: Law and Mechanisms

We suggest that the executive’s credibility problem can be solved by second-order mechanisms of executive signaling. In the general case, well-motivated executives send credible signals by taking actions that are more costly for ill-motivated actors than for well-motivated ones, thus distinguishing themselves from their ill-motivated mimics. Among the specific mechanisms we discuss, an important subset involve executive self-binding, whereby executives commit themselves to a course of action that would impose higher costs on ill-motivated actors. Commitments themselves have value as signals of benign motivations.This departs from the usual approach in legal scholarship. Legal theory has often discussed self-binding by “government” or government officials. In constitutional theory, it is often suggested that constitutions represent an attempt by “the people” to bind “themselves” against their own future decisionmaking pathologies, or relatedly that constitutional prohibitions represent mechanisms by which governments commit themselves not to expropriate investments or to exploit their populations.71 Whether or not this picture is coherent,72 it is not the question we examine here, although some of the relevant considerations are similar.73 We are not concerned with binding the president so that he cannot abuse his powers, but with how he might bind himself or take other actions that enhance his credibility, so that he can generate support from the public and other members of the government. Furthermore, our question is subconstitutional; it is whether a well-motivated executive, acting within an established set of constitutional and statutory rules, can use signaling to generate public trust. Accordingly we proceed by assuming that no constitutional amendments or new statutes will be enacted. Within these constraints, what can a well-motivated executive do to bootstrap himself to credibility? The problem for the well-motivated executive is to credibly signal his benign motivations; in general, the solution is to engage in actions that are less costly for good types than for bad types. We begin with some relevant law; then examine a set of possible mechanisms, emphasizing both the conditions under which they might succeed and the conditions under which they might not; and then examine the costs of credibility. A. A Preliminary Note on Law and Self-Binding Many of our mechanisms are unproblematic from a legal perspective, as they involve presidential actions that are clearly lawful. But a few raise legal questions; in particular, those that involve self-binding.74 Can a president bind himself to respect particular first-order policies? With qualifications, the answer is “yes, at least to the same extent that a legislature can.” Formally, a duly promulgated executive rule or order binds even the executive unless and until it is validly abrogated, thereby establishing a new legal status quo.75 The legal authority to establish a new status quo allows a president to create inertia or political constraints that will affect his own future choices. In a practical sense, presidents, like legislatures, have **great de facto power to adopt policies that shape the legal landscape for the future.** A president might commit himself to a long-term project of defense procurement or infrastructure or foreign policy, narrowing his own future choices and **generating new political coalitions** that will act to defend the new rules or policies.More schematically, we may speak of formal and informal means of self-binding: (1) The president might use formal means to bind himself. This is possible in the sense that an executive order, if otherwise valid, legally binds the president while it is in effect and may be enforced by the courts. It is not possible in the sense that the president can always repeal the executive order if he can bear the political and reputational costs of doing so. (2) The president might use informal means to bind himself. This is not only possible but frequent and important. Issuing an executive rule providing for the appointment of special prosecutors, as Nixon did, is not a formal self-binding.76 However, there may be large political costs to repealing the order. This effect does not depend on the courts’ willingness to enforce the order, even against Nixon himself. Court enforcement makes the order legally binding while it is in place, but only political and reputational enforcement can protect it from repeal. Just as a dessert addict might announce to his friends that he is going on a no-dessert diet in order to raise the reputational costs of backsliding and thus commit himself, so too the repeal of an executive order may be seen as a breach of faith even if no other institution ever enforces it. In what follows, we will invoke both formal and informal mechanisms. For our purposes, the distinction between the authority to engage in de jure self-binding (legally limited and well-defined) and the power to engage in de facto self-binding (broad and amorphous) is secondary. So long as policies are **deliberately chosen with a view to generating credibility**, and do so by constraining the **president’s own future choices** in ways that impose greater costs on ill-motivated presidents than on well-motivated ones, **it does not** **matter whether the constraint is formal or informal**. B. Mechanisms What signaling mechanisms might a well-motivated executive adopt to credibly assure voters, legislators and judges that his policies rest on judgments about the public interest, rather than on power-maximization, partisanship or other nefarious motives? Intrabranch separation of powers. In an interesting treatment of related problems, Neal Katyal suggests that the failure of the Madisonian system counsels “internal separation of powers” within the executive branch.77 Abdication by Congress means that there are few effective checks on executive power; second-best substitutes are necessary. Katyal proposes some mechanisms that would be adopted by Congress, such as oversight hearings by the minority party, but his most creative proposals are for arrangements internal to the executive branch, such as redundancy and competition among agencies, stronger civil-service protections and internal adjudication of executive controversies by insulated “executive” decisionmakers who resemble judges in many ways.78Katyal’s argument is relevant because the mechanisms he discusses might be understood as signaling devices, but his overall approach is conceptually flawed, on two grounds. First, the assumption that second-best constraints on the executive should reproduce the Madisonian separation of powers within the executive branch is never defended. The idea seems to be that this is as close as we can get to the first-best, while holding constant everything else in our constitutional order. But the general theory of second-best states that approaching as closely as possible to the first-best will not necessarily be the preferred strategy;79 the best approach may be to adjust matters on other margins as well, in potentially unpredictable ways. If the Madisonian system has failed in the ways Katyal suggests, the best compensating adjustment might be, for all we know, to switch to a parliamentary system. (We assume that no large-scale changes of this sort are possible, whereas Katyal seemingly assumes that they are, or at least does not make clear his assumptions in this regard). Overall, Katyal’s view has a kind of fractal quality – each branch should reproduce within itself the very same separation of powers structure that also describes the whole system – but it is not explained why the constitutional order should be fractal. Second, Katyal’s proposals for internal separation of powers are self-defeating: the motivations that Katyal ascribes to the executive are inconsistent with the executive adopting or respecting the prescriptions Katyal recommends.80 Katyal never quite says so explicitly, but he clearly envisions the executive as a power-maximizing actor, in the sense that the president seeks to remove all constraints on his current choices.81 Such an executive would not adopt or enforce the internal separation of powers to check himself. Executive signaling is not, even in principle, a solution to the lack of constraints on a power-maximizing executive in the sense Katyal implicitly intends. Although an illmotivated executive might bind himself to enhance his strategic credibility, as explained above, he would not do so in order to restore the balance of powers. Nor is it possible, given Katyal’s premise of legislative passivity or abdication, that Congress would force the internal separation of powers on the executive. In what follows, we limit ourselves to proposals that are consistent with the motivations, beliefs, and political opportunities that we ascribe to the well-motivated executive, to whom the proposals are addressed. This limitation ensures that the proposals are not self-defeating, whatever their costs. The contrast here must not be drawn too simply. A well-motivated executive, in our sense, might well attempt to increase his power. The very point of demonstrating credibility is to encourage voters and legislators to increase the discretionary authority of the executive, where all will be made better off by doing so. Scholars such as Katyal who implicitly distrust the executive, however, do not subscribe to this picture of executive motivations. Rather, they see the executive as an unfaithful agent of the voters; the executive attempts to maximize his power even where fully-informed voters would prefer otherwise. An actor of that sort will have no incentive to adopt proposals intended to constrain that sort of actor. Independent commissions. We now turn to some conceptually coherent mechanisms of executive signaling. Somewhat analogously to Katyal’s idea of the internal separation of powers, a well-motivated executive might establish independent commissions to review policy decisions, either before or after the fact. Presidents do this routinely, especially after a policy has had disastrous outcomes, but sometimes beforehand as well. Independent commissions are typically blue-ribbon and bipartisan.82 We add to this familiar process the idea that the President might gain credibility by publicly committing or binding himself to give the commission authority on some dimension. The president might publicly promise **to follow the recommendations** of such a commission, or to allow the commission to exercise de facto veto power over a policy decision before it is made, or might promise before the policy is chosen that the commission will be given power to review its success after the fact. To be sure, there will always be some wiggle room in the terms of the promise, but that is true of almost all commitments, which raise the costs of wiggling out even if they do not completely prevent it. Consider whether George W. Bush’s credibility would have been enhanced had he appointed a blue-ribbon commission to examine the evidence for weapons of mass destruction in Iraq before the 2003 invasion, and publicly promised not to invade unless the commission found substantial evidence of their existence. Bush would have retained his preexisting legal authority to order the invasion even if the commission found the evidence inadequate, but the political costs of doing so would have been large. Knowing this, and knowing that Bush shared that knowledge, the public could have inferred that Bush’s professed motive – elimination of weapons of mass destruction – was also his real motive. Public promises that inflict reputational costs on badly motivated behavior help the well-motivated executive to credibly distinguish himself from the ill-motivated one. The more common version of this tactic is to appoint commissions after the relevant event, as George W. Bush did to investigate the faulty reports by intelligence agencies that Iraq possessed weapons of mass destruction.83 If the president appoints after-the-fact commissions, the commissions can enhance his credibility for the next event—by showing that he will be willing, after that event, to subject his statements to scrutiny by public experts. Here, however, the demonstration of credibility is weaker, because there is no commitment to appoint any after-the-fact commissions in the future – merely a plausible inference that the president’s future behavior will track his past behavior. Bipartisan appointments. In examples of the sort just mentioned, the signaling arises from public position-taking. The well-motivated executive might produce similar effects through appointments to office.84 A number of statutes require partisan balance on multimember commissions; although these statutes are outside the scope of our discussion, we note that presidents might approve them because they allow the president to commit to a policy that legislators favor, thus encouraging legislators to increase the scope of the delegation in the first place.85 For similar reasons, presidents may consent to restrictions on the removal of agency officials, because the restriction enables the president to commit to giving the agency some autonomy from the president’s preferences.86 Similar mechanisms can work even where no statutes are in the picture. As previously mentioned, during World War II, FDR appointed Republicans to important cabinet positions, making Stimson his Secretary of War. Clinton appointed William Cohen, a moderate Republican, as Secretary of Defense in order to shore up his credibility on security issues. Bipartisanship of this sort might improve the deliberation that precedes decisions, by impeding various forms of herding, cascades and groupthink;87 however, we focus on its credibility-generating effects. By (1) expanding the circle of those who share the president’s privileged access to information, (2) ensuring that policy is partly controlled by officials with preferences that differ from the president’s, and (3) inviting a potential whistleblower into the tent, bipartisanship helps to dispel the suspicion that policy decisions rest on partisan motives or extreme preferences, which in turn encourages broader delegations of discretion from the public and Congress. A commitment to bipartisanship is only one way in which appointments can generate credibility. Presidents might simply appoint a person with a reputation for integrity, as when President Nixon appointed Archibald Cox as special prosecutor (although plausibly Nixon did so because he was forced to do so by political constraints, rather than as a tactic for generating credibility). A person with well-known preferences on a particular issue, even if not of the other party or widely respected for impartiality, can serve as a credible whistleblower on that issue. Thus presidents routinely award cabinet posts to leaders of subsets of the president’s own party, leaders whose preferences are known to diverge from the president’s on the subject; one point of this is to credibly assure the relevant interest groups that the president will not deviate (too far) from their preferences. The Independent Counsel Statute institutionalized the special prosecutor and strengthened it. But the statute proved unpopular and was allowed to lapse in 1999.88 This experience raises two interesting questions. First, why have presidents confined themselves to appointing lawyers to investigate allegations of wrongdoing; why have they not appointed, say, independent policy experts to investigate allegations of policy failure? Second, why did the Independent Counsel Statute fail? Briefly, the statute failed because it was too difficult to control the behavior of the prosecutor, who was not given any incentive to keep his investigation within reasonable bounds.89 Not surprisingly, policy investigators would be even less constrained since they would not be confined by the law, and at the same time, without legal powers they would probably be ignored on partisan grounds. A commission composed of members with diverse viewpoints is harder to ignore, if the members agree with each other. More generally, the decision by presidents to bring into their administrations members of other parties, or persons with a reputation for bipartisanship and integrity, illustrates the formation of domestic coalitions of the willing. Presidents can informally bargain around the formal separation of powers90 by employing subsets of Congress, or of the opposing party, to generate credibility while maintaining a measure of institutional control. FDR was willing to appoint Knox and Stimson, but not to give the Republicans in Congress a veto. Truman was willing to ally with Arthur Vandenbergh but not with all the Republicans; Clinton was willing to appoint William Cohen but not Newt Gingrich. George W. Bush likewise made a gesture towards credibility by briefing members of the Senate Intelligence Committee – including Democrats – on the administration’s secret surveillance program(s), which provided a useful talking point when the existence of the program(s) was revealed to the public. Counter-partisanship. Related to bipartisanship is what might be called counterpartisanship: presidents have greater credibility when they choose policies that cut against the grain of their party’s platform or their own presumed preferences.91 Only Nixon could go to China, and only Clinton could engineer welfare reform. Voters and publics rationally employ a political heuristic: the relevant policy, which voters are incapable of directly assessing, must be highly beneficial if it is chosen by a president who is predisposed against it by convictions or partisan loyalty.92 Accordingly, those who wish to move U.S. terrorism policy towards greater security and less liberty might do well to support the election of a Democrat.93 By the same logic, George W. Bush is widely suspected of nefarious motives when he rounds up alleged enemy combatants, but not when he creates a massive prescription drug benefit. Counter-partisanship can powerfully enhance the president’s credibility, but it depends heavily on a lucky alignment of political stars. A peace-loving president has credibility when he declares a military emergency but not when he appeases; a belligerent president has credibility when he offers peace but not when he advocates military solutions. A lucky nation has a well-motivated president with a belligerent reputation when international tensions diminish (Ronald Reagan) and a president with a pacific reputation when they grow (Abraham Lincoln, who opposed the Mexican War). But a nation is not always lucky. Transparency. The well-motivated executive might **commit to transparency**, as a way to reduce the costs to outsiders of monitoring his actions.94 The FDR strategy of inviting potential whistleblowers from the opposite party into government is a special case of this; the implicit threat is that the whistleblower will make public any evidence of partisan motivations. The more ambitious case involves actually exposing the executive’s decisionmaking processes to observation. To the extent that an ill-motivated executive cannot publicly acknowledge his motivations or publicly instruct subordinates to take them into account in decisionmaking, transparency will exclude those motivations from the decisionmaking process. The public will know that only a well-motivated executive would promise transparency in the first place, and the public can therefore draw an inference to credibility.Credibility is especially enhanced when transparency is effected through journalists with reputations for integrity or with political preferences opposite to those of the president. Thus George W. Bush gave Bob Woodward unprecedented access to White House decisionmaking, and perhaps even to classified intelligence,95 with the expectation that the material would be published. This sort of disclosure to journalists is not real-time transparency – no one expects meetings of the National Security Council to appear on CSPAN – but the anticipation of future disclosure can have a disciplining effect in the present. By inviting this disciplining effect, the administration engages in signaling in the present through (the threat of) future transparency.There are complex tradeoffs here, because transparency can have a range of harmful effects. As far as process is concerned, decisionmakers under public scrutiny may posture for the audience, may freeze their views or positions prematurely, and may hesitate to offer proposals or reasons for which they can later be blamed if things go wrong.96 As for substance, transparency can frustrate the achievement of programmatic or policy goals themselves. Where security policy is at stake, secrecy is sometimes necessary to surprise enemies or to keep them guessing. Finally, one must take account of the incentives of the actors who expose the facts—especially journalists who might reward presidents who give them access by portraying their decisionmaking in a favorable light.97 We will take up the costs of credibility shortly.98 In general, however, the existence of costs does not mean that the credibility-generating mechanisms are useless. Quite the contrary: where the executive uses such mechanisms, voters and legislators can draw an inference that the executive is well-motivated, precisely because the existence of costs would have given an ill-motivated executive an excuse not to use those mechanisms.

#### The plan would uniquely decimate Obama and the military’s credibility to calm alliances and deter enemies ---- makes terrorism and global nuclear war more likely --- INDEPENDENTLY prevents ability to negotiate Iranian miscalc

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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** maysend **signal**s **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.

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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.

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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

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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.

#### Iran miscalc would spark nuclear war

Ben-Meir, 2/6/2007 (Alon – professor of international relations at the Center for Global Affairs, Ending iranian defiance, United Press International, p. lexis)

That Iran stands today able to challenge or even defy the United States in every sphere of American influence in the Middle East attests to the dismal failure of the Bush administration's policy toward it during the last six years. **Feeling emboldened and unrestrained**, Tehran may, however, miscalculate the consequences of its own actions, which could **precipitate a catastrophic regional war**. The Bush administration has less than a year to rein in Iran's reckless behavior if it hopes to prevent such an ominous outcome and achieve, at least, a modicum of regional stability. By all assessments, Iran has reaped the greatest benefits from the Iraq war. The war's consequences and the American preoccupation with it have provided Iran with an historic opportunity to establish Shiite dominance in the region while aggressively pursuing a nuclear weapon program to deter any challenge to its strategy. Tehran is fully cognizant that the successful pursuit of its regional hegemony has now become intertwined with the clout that a nuclear program bestows. Therefore, it is most unlikely that Iran will give up its nuclear ambitions at this juncture, unless it concludes that the price will be too high to bear. That is, whereas before the Iraq war Washington could deal with Iran's nuclear program by itself, now the Bush administration must also disabuse Iran of the belief that it can achieve its regional objectives with impunity. Thus, while the administration attempts to stem the Sunni-Shiite violence in Iraq to prevent it from engulfing other states in the region, Washington must also take a clear stand in Lebanon. Under no circumstances should Iranian-backed Hezbollah be allowed to topple the secular Lebanese government. If this were to occur, it would trigger not only a devastating civil war in Lebanon but a wider Sunni-Shiite bloody conflict. The Arab Sunni states, especially, Saudi Arabia, Egypt and Jordan, are terrified of this possible outcome. For them Lebanon may well provide the litmus test of the administration's resolve to inhibit Tehran's adventurism but they must be prepared to directly support U.S. efforts. In this regard, the Bush administration must wean Syria from Iran. This move is of paramount importance because not only could Syria end its political and logistical support for Hezbollah, but it could return Syria, which is predominantly Sunni, to the Arab-Sunni fold. President Bush must realize that Damascus' strategic interests are not compatible with Tehran's and the Assad regime knows only too well its future political stability and economic prosperity depends on peace with Israel and normal relations with the United States. President Bashar Assad may talk tough and embrace militancy as a policy tool; he is, however, the same president who called, more than once, for unconditional resumption of peace negotiation with Israel and was rebuffed. The stakes for the United States and its allies in the region are too high to preclude testing Syria's real intentions which can be ascertained only through direct talks. It is high time for the administration to reassess its policy toward Syria and begin by abandoning its schemes of regime change in Damascus. Syria simply matters; the administration must end its efforts to marginalize a country that can play such a pivotal role in changing the political dynamic for the better throughout the region. Although ideally direct negotiations between the United States and Iran should be the first resort to resolve the nuclear issue, as long as Tehran does not feel seriously threatened, it seems unlikely that the clergy will at this stage end the nuclear program. In possession of nuclear weapons Iran will intimidate the larger Sunni Arab states in the region, bully smaller states into submission, threaten Israel's very existence, use oil as a political weapon to blackmail the West and instigate regional proliferation of nuclear weapons' programs. In short, if unchecked, Iran could **plunge the Middle East into** a deliberate or inadvertent **nuclear conflagration**. If we take the administration at its word that it would not tolerate a nuclear Iran and considering these regional implications, Washington is left with no choice but to warn Iran of the severe consequences of not halting its nuclear program.

### 5

#### CIR is Passing now because of political capital- its top of the docket

**Rojas, 10-17** (Nicole, “Congressman Luis Gutierrez: 'Votes Exist for Comprehensive Immigration Reform' [Exclusive Video],” <http://www.latinospost.com/articles/29855/20131017/congressman-luis-gutierrez-votes-exist-comprehensive-immigration-reform-exclusive-video.htm>)

It comes as little surprise that immigration reform has taken a backseat to the government shutdown that began on October 1. But while the White House and Congress have devoted the last 16 days to the fiscal cliff and debt ceiling, all signs indicate that immigration reform will be the next issue on the docket.¶ In an exclusive interview with Latinos Post at the onset of the government shutdown, Rep. Luis Gutierrez, D- Ill., discussed the “detrimental effect” the shutdown had on immigration reform talks. Gutierrez, who has made immigration reform one of his top priorities, also discussed what he expects will happen to the immigration reform debate in the future.¶ “I think that if we didn’t have the government shutdown, if we didn’t have this looming fiscal cliff because of the debt ceiling, I think there’d be more of an appetite to take [it] up,” Gutierrez told Latinos Post. “We’re not going to take up immigration reform while we’re dealing with the fiscal cliff. Absolutely, it’s taking a detrimental effect.”¶ “That doesn’t mean we can’t do it,” the congressman added. “It’s just we’re going to have to get this [the government shutdown] done first.”¶ Gutierrez, who spoke at the Congressional Hispanic Caucus Institute’s Public Policy Conference earlier this month, has special interest in immigration reform through his participation in the House of Representative’s “Gang of Seven.” The “Gang of Seven,” which is the House’s bipartisan team currently working on overhauling the country’s immigration laws, saw the departure of two Republican members in late September, including Reps. John Carter, R-Texas, and Sam Johnson, R-Texas.¶ Despite their departures, Gutierrez assured that the group is committed to bringing about immigration reform. “The votes exist for comprehensive immigration reform,” he said. “The fact that Johnson and Carter have left does not change that.”¶ Gutierrez added, “Never before have we seen such broad based support for it. And because that broad based support for it exists, sooner or later we’re going to get a vote.”¶ According to a recent report by [Buzzfeed](http://www.buzzfeed.com/evanmcsan/obama-has-already-won-the-shutdown-fight-and-hes-coming-for), advocates for immigration reform contest that immigration reform could be the next issue the House tackles once the government shutdown comes to an end. Frank Sharry, the executive director of the immigration reform group America’s Voice, told Buzzfeed that “sinking poll numbers for Republican” and a “badly damaged” GOP image could be enough to address immigration reform.¶ It appears that the White House is also eager to have immigration reform as their top priority once the fiscal crisis is resolved, Reuters reported. During an interview with Univision, President Barack Obama said, “Once that’s down, you know, the day after, I’m going to be pushing to say, call a vote on immigration reform.”¶ On Tuesday, Obama blamed House Speaker John Boehner for preventing immigration reform from going to a vote, Reuters reported. “We had a very strong Democratic and Republican vote in the Senate,” he said. “The only thing right now that’s holding it back is, again, Speaker Boehner now willing to call the bill on the floor of the House of Representatives.”¶ Despite the House’s inability to call the bill to a vote, Gutierrez seemed confident that it would before the end of the year. “I can see the House of Representatives passing the bill,” he said. “I can see the House of Representatives passing the bill and going to conference by the end of the year.”

#### 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.

#### CIR key to economy

Smith 12. [Gerry, technology reporter, "Brain Drain: Why We're Driving Immigration Talent Overseas" Huffington Post -- November 5 -- www.huffingtonpost.com/2012/11/09/immigrant-entrepreneur\_n\_2077183.html]

Stories like his are not unique. They’re also troubling for the U.S. economy, advocates say. For the first time, the number of immigrant-founded startups is in decline, as foreign-born entrepreneurs struggle to obtain a limited number of visas and green cards and decide to launch companies in other countries that offer perks to start businesses there. Losing founders like Darash, who launch startups that create jobs, means that America risks losing a source of employment and a competitive edge in the global economy as the country claws its way out of a recession, they say.¶ For years, immigrant entrepreneurs have propelled the growth of Silicon Valley, building some of the most successful tech companies in the world: Sergey Brin, co-founder of Google, was born in Russia; Elon Musk, co-founder of PayPal and Tesla, was born in South Africa; Vinod Khosla, co-founder of Sun Microsystems, was born in India. When they immigrated, it was likely easier for them because there was not a backlog that there is today, according to Vivek Wadhwa, a professor at the Pratt School of Engineering at Duke University who researches high-tech immigration. Immigrants are more than twice as likely to start a business as native-born Americans, according to a report earlier this year by the Partnership for a New American Economy. And their companies have produced sizable economic benefits. This year, engineering and technology companies founded in the United States employed about 560,000 workers and generated $63 billion in sales, according to Wadhwa. About a quarter of those companies had at least one foreign-born founder.¶ An estimated three out of every four startups fail, if not more. But by the conventional wisdom of Silicon Valley, Darash’s chances were even slimmer. For one, he does not have a co-founder. He insists he doesn’t need one. (Paul Graham, creator of the startup incubator Y Combinator, has said having a co-founder is critical because “a startup is too much for one person to bear.”) Darash also never worked for a major tech company before, so he did not have the network of contacts that help other entrepreneurs find engineers and meet investors.¶ But what he has lacked in support and connections he has made up for through a work ethic that borders on obsession.¶ “Asaf is a stubborn guy,” said Adam Gries, a childhood friend and founder of Smart Bites, a smartphone app that teaches people English. “He gets into his head that something is going to happen and he’s tenacious.”¶ Darash awakes every morning at 4:30 a.m., takes the BART train from his home in Berkeley to San Francisco, and arrives at the office by 6 a.m. He works for an hour, then walks across the street to the gym to swim and lift weights (A back injury he suffered while serving in the Israeli army requires him to stay physically strong). He typically does not go home until 9 p.m., after his children have gone to bed. Employees say he is a “total workaholic” who sends emails past midnight and sleeps just a few hours a night.¶ “I have a one-and-a-half year old who sees his Daddy maybe three hours a week,” Darash said. “It’s hard to explain how much sacrifice you make to bring a company from an idea to something real, especially if it’s a company with high-level technology.”¶ He is hands-on about all aspects of the company, from courting new clients to writing code. But lately, Darash has been distracted, spending valuable hours gathering documents and talking to lawyers, instead of running his company. His wife recently flew back to Israel to find housing and a school for their kids in case they have to leave the United States. He describes feeling a range of emotions: anger, fear, frustration. Mostly, though, he is confused. In his homeland of Israel, politicians fight over who can attract more foreign entrepreneurs. The United States, he says, should be rolling out the welcome mat for him, not ushering him out the door.¶ “I could not even comprehend this would become a problem,” he said. “I’m creating a company. I’m creating jobs. There’s nothing bad in what I’m doing and there’s nothing I’m taking away from someone else. The only thing I’m doing is creating more!”¶ “SERIOUS ALARM”¶ Since 2005, the number of immigrant-founded startups in Silicon Valley has declined from 52 percent to 44 percent, according to Wadhwa, who argues this drop is cause for “serious alarm” because America needs to attract immigrant entrepreneurs for its economy to recover.¶ “The United States risks losing a key growth engine right at the moment when it’s economy is stuck in a deep ditch, growing slowly and struggling to create jobs,” Wadhwa wrote in his new book, The Immigrant Exodus.¶ Their recent decline could be linked to entrepreneurs finding better business prospects abroad, especially in countries with growing economies like India and China. But advocates say a major reason why immigrants are launching fewer startups in the United States is because they are struggling to secure visas to remain in the country.

#### Economic decline 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.

#### High skilled workers key to biotech

**Mowad 7.** [Michelle, Doctor, “Cap on Visas for Skilled Foreign Workers Stifling Biotech, Tech”, San Diego Business Journal, 4-23, http://www.allbusiness.com/legal/immigration-law-passports-visas-employment/10582800-1.html]

The local biotechnology and technology industries, highly dependent on very highly skilled workers, are waiting to see if their foreign job applicants have been awarded work visas. U.S. immigration officials received twice the maximum number of applications for H-1B visas given to foreign individuals holding advanced degrees on the first day of the application process. The U.S. Citizenship and Immigration Services opened the application process on April 2 for granting visas for the new fiscal year that starts Oct. 1. Because the "cap" was exceeded the first day, the USCIS will hold a lottery to select from the applicants who applied on the first and second days. There are enormous economic and health benefits to opening up employment to international candidates, said Kristie Ford with Biocom, a life sciences industry association representing 530-plus member companies in Southern California. "Biotech is an industry that is going to continue to boom, and we need a work force that fits the industry needs," she said. Domestic businesses use the H-1B program so they can hire foreign workers In occupations that require theoretical or technical expertise in specialized fields, such as accounting, architecture, education, engineering, law, mathematics, medicine and health, physics, social sciences and theology. Kevin Carroll, executive director of the San Diego chapter of the American Electronics Association, said technology businesses have a history of welcoming the best and brightest workers. He said there is a need to raise the cap. "We need more (H-1B visas) and we need them now," said Carroll, whose AeA chapter consists of 150 technology-based member businesses. He said that demand for technology employers is extremely high. The unemployment rate for engineers is significantly low at 2 percent, according to Carroll. "This has an impact on the ability of San Diego to stay competitive," he said. Carroll added that a limited number of work visas forces companies to go to extraordinary lengths for recruiting. Each year, the USCIS processes 65,000 H-1B visas. This year, the agency received 124,000 applications in the first two days. In addition, the USCIS will issue an additional 20,000 H-1B visas to foreigners who hold advanced degrees from U.S. universities. USCIS received 13,000 applications for this type of visa within the first two days of the processing period. Individuals who applied for the work visa earlier this month will now have to wait up to four weeks after April 12 before they know if they have been approved or need to leave the country. The wait and importance of H-1B visas to San Diego is at the forefront of many minds. Attorneys from the San Diego office of Duane Morris LLP will host a seminar on the current trends in employment, benefits and immigration law on April 26. Topics to be covered include H-1B visas and the caps being met so early. Lisa Spiegel, an immigration and nationality attorney with Duane Morris, said two years ago applications reached the cap amount in August. Last year, the applications reached the cap amount in May and this year on the first day. "It is a sign of the economy growing," she said. "Companies need more high-tech workers." She said highly skilled jobs in the computer and biotechnology industries are driving the need for a higher cap number. "Companies need employees with a certain level of education and skill set, and they can't find enough in the U.S. so they are willing to hire top talent from around the world, but the problem is that they can't get them into the U.S.," she said. She added that domestic companies often resort to opening foreign satellite offices because it is so difficult to bring professionals here. "The U.S. is losing out on attracting foreign workers and top talent to come here, we are losing their taxes, we are losing the company's tax base and we are losing the ability to make the U.S. a place where the top talent wants to come for graduate school," she said. And if foreigners can't be certain they can obtain a work visa after graduation from a U.S. university, they may be reluctant to attend school here, she said. "These are not people coming in illegally, these are people coming in and contributing to our country," she said. The economy of California will suffer as a result of this cap, said Spiegel. "Companies are losing workers and losing the ability to remain competitive because they cannot get enough people to staff their projects," she said. The San Diego office of Mintz Levin Cohn Ferris Glovsky and Popeo PC hosted an immigration strategies conference April 19 at Estancia La Jolla Hotel & Spa. William L. Coffman, an attorney with Mintz Levin's Boston office, was a speaker at the event. Coffman reviewed alternative visa options for foreigners who may not be awarded an H-1B visa. Biocom offers several programs aimed to attract a local and national work force. The association created a Life Sciences Success program to facilitate student internships, teacher externships and a summer life sciences boot camp to connect students and teachers with leading companies in San Diego's life sciences community. Last year, 34 students attended boot camp, 44 participated in summer internships and 18 educators carried out externships. "Bottom line is that life sciences companies need a skilled work force," said Ford, associate director of Workforce Development for Biocom. "Biocom is trying to help it two ways - we are trying to grow our homegrown work force, but then we also support raising the H-1B visa cap as well." While many companies are not optimistic applicants will receive these coveted H-1B visas, talk of immigration reform has permeated the market. For now, industry associates including Biocom and local businesses are attempting to garner support for reform to make life easier for biotechnology and technology.

#### Solves extinction

**Trewavas 00** [Anthony, Institute of Cell and Molecular Biology – University of Edinburgh, “GM Is the Best Option We Have”, AgBioWorld, 6-5, http://www.agbioworld.org/biotech-info/articles/biotech-art/best\_option.html]

But these are foreign examples; global warming is the problem that requires the UK to develop GM technology. 1998 was the warmest year in the last one thousand years. Many think global warming will simply lead to a wetter climate and be benign. I do not. Excess rainfall in northern seas has been predicted to halt the Gulf Stream. In this situation, average UK temperatures would fall by 5 degrees centigrade and give us Moscow-like winters. There are already worrying signs of salinity changes in the deep oceans. Agriculture would be seriously damaged and necessitate the rapid development of new crop varieties to secure our food supply. We would not have much warning. Recent detailed analyses of arctic ice cores has shown that the climate can switch between stable states in fractions of a decade. Even if the climate is only wetter and warmer new crop pests and rampant disease will be the consequence. GM technology can enable new crops to be constructed in months and to be in the fields within a few years. This is the unique benefit GM offers. The UK populace needs to much more positive about GM or we may pay a very heavy price. In 535A.D. a volcano near the present Krakatoa exploded with the force of 200 million Hiroshima A bombs. The dense cloud of dust so reduced the intensity of the sun that for at least two years thereafter, summer turned to winter and crops here and elsewhere in the Northern hemisphere failed completely. The population survived by hunting a rapidly vanishing population of edible animals. The after-effects continued for a decade and human history was changed irreversibly. But the planet recovered. Such examples of benign nature's wisdom, in full flood as it were, dwarf and make miniscule the tiny modifications we make upon our environment. There are apparently 100 such volcanoes round the world that could at any time unleash forces as great. And even smaller volcanic explosions change our climate and can easily threaten the security of our food supply. Our hold on this planet is tenuous. In the present day an equivalent 535A.D. explosion would **destroy** much of our **civilisation**. Only those with agricultural technology sufficiently advanced would have a chance at **survival**. Colliding asteroids are another problem that requires us to be forward-looking accepting that **technological advance may be the only buffer between us and annihilation**.

#### Solves US-India relations --- builds trade relationships

LA Times 12, 11/9/2012 (Other countries eagerly await U.S. immigration reform, p. http://latimesblogs.latimes.com/world\_now/2012/11/us-immigration-reform-eagerly-awaited-by-source-countries.html)

"**C**omprehensive **i**mmigration **r**eform will see expansion of skilled labor visas," predicted B. Lindsay Lowell, director of policy studies for the Institute for the Study of International Migration at Georgetown University. A former research chief for the congressionally appointed Commission on Immigration Reform, Lowell said he expects to see at least a fivefold increase in the number of highly skilled labor visas that would provide "a significant shot in the arm for India and China."¶ There is widespread consensus among economists and academics that skilled migration fosters new trade and business relationships between countries and enhances links to the global economy, Lowell said.¶ "Countries like India and China weigh the opportunities of business abroad from their expats with the possibility of brain drain, and I think they still see the immigration opportunity as a bigger plus than not," he said.

#### India-Pakistan war would trigger nuclear winter

Fai 1 (Ghulam, Kashmiri American Council, July 8, Washington Times)

The foreign policy of the United States in South Asia should move from the lackadaisical and distant (with India crowned with a unilateral veto power) to aggressive involvement at the vortex. The most dangerous place on the planet is Kashmir, a disputed territory convulsed and illegally occupied for more than 53 years and sandwiched between nuclear-capable India and Pakistan. It has ignited two wars between the estranged South Asian rivals in 1948 and 1965, and a third could trigger nuclear volleys and a nuclear winter threatening **the** entire **globe**. The United States would enjoy no sanctuary. This apocalyptic vision is no idiosyncratic view. The Director of Central Intelligence, the Department of Defense, and world **experts** generally **place Kashmir at the peak of their** nuclear **worries**. Both India and Pakistan are racing like thoroughbreds to bolster their nuclear arsenals and advanced delivery vehicles. Their defense budgets are climbing despite widespread misery amongst their populations. Neither country has initialed the Nuclear Non-Proliferation Treaty, the Comprehensive Test Ban Treaty, or indicated an inclination to ratify an impending Fissile Material/Cut-off Convention.

### Solvency

#### CX proves their interpretation of the plan can’t solve --- The executive can just keep them in detention and ignore the ruling—Kiyemba proves

Milko 12

[Winter, 2012, Jennifer L. Milko, “Separation of Powers and Guantanamo Detainees: Defining the Proper Roles of the Executive and Judiciary in Habeas Cases and the Need for Supreme Guidance”, 50 Duq. L. Rev. 173]

A. Arguments for a Remedy By urging deference to the Executive Branch, the D.C. Circuit Court of Appeals has scolded the district courts that have second-guessed the political branches' determinations about release and suitable transfers. Those in favor of judicial power have argued that the denial of the right to review the Executive's decisions is allowing too much deference to that branch and severely limiting the remedies that courts have had the power to issue in the past. Though the petitioners have made several arguments for relief, the main arguments for judicial power stem from the idea that the court of appeals has been improperly applying Supreme Court precedent. Petitioners have argued that the D.C. Court of Appeals expanded the scope of Munaf too broadly as the Supreme Court noted that the decision was limited to the facts of that case. n118 In Munaf, the Court was primarily concerned about allowing the Iraqi government to have the power to punish people who had committed crimes in that territory when fashioning its holding, and the petitioners in that case had the opportunity of notice because they were told about their transfer and were able to petition the court to try and prevent it. n119 Petitioners have argued that those facts are entirely different than cases such as Mohammed and Khadr were there was concern of torture in foreign nations but no need to allow those nations to have the ability to prosecute the detainees for crimes, there was potential for torture at the hands of non-government entities, and no notice of transfer was permitted. n120 [\*190] Additionally, Petitioners have argued that the use of Munaf has impermissibly limited Boumediene by preventing courts from fashioning equitable relief for habeas petitions. n121 There has been concern that the ability to use the writ of habeas will be essentially eliminated if there is no chance for a petitioner to challenge the Executive Branch's determinations regarding safe transfers. The Boumediene Court spent considerable time discussing the history of the writ n122 and noted that the tribunals implemented in that case to determine enemy combatant status were not a sufficient replacement for the writ of habeas because they lacked, in part, the authority to issue an order of release. n123 Here, the D.C. Circuit Court of Appeals has effectively prevented the other courts from determining if there is a right not to be transferred, which has been argued to be an inadequate statement of the right of habeas. n124 Similarly, it has been argued that by accepting the Executive Branch's assurances of its efforts to release the detainees, the courts are not properly using the power of habeas corpus that has been granted to them by the Constitution. n125 By refusing to question these assertions, the courts would be unable to offer a remedy to the petitioners who have the privilege of habeas corpus. n126 The Petitioners also argued a due process right to challenge transfers as the detainees have a right to a meaningful hearing to at least have the opportunity to challenge the Government's conclusions regarding safety. n127 By refusing to second-guess the Executive, the judiciary may be losing an important check on the former's power because there is no guarantee that the Executive is ensuring safety or making the best effort to protect the unlawfully kept detainees. Without allowing courts to have the power to enjoin a transfer in order to examine these concerns, there is the potential that the detainee could be harmed at the hands of foreign terrorists. Without the ability to challenge the Executive Branch through the judicial tool of habeas corpus, there has been genuine concern that the courts are losing too much power and that their authority [\*191] is being improperly limited, as they are not utilizing their constitutional power properly.

#### The aff results in shipping enemy combatants overseas – makes us look worse

Umansky, 5 – senior editor at ProPublica (Eric, 6/17. “Closing Guantanamo prison may not be the best option.” http://onlineathens.com/stories/061805/opi\_20050618001.shtml)

Closing the U.S. prison at Guantanamo Bay has suddenly become a hot topic. Since Sen. Joseph R. Biden Jr., D-Del., broached the idea, the notion has been gaining steam. Last weekend, Sen. Mel Martinez, R-Fla., added the first Republican voice to the chorus, and there were Senate hearings Wednesday on detainee issues. Even President Bush seems to be hinting that he's game. Asked during a television interview whether Gitmo should be shut, the president said, "We're exploring all alternatives as to how best to do the main objective, which is to protect America." Gitmo has come to represent the lack of accountability and the extralegal aspects of the war on terrorism. Shuttering it would be a grand gesture. The symbolism would be important and could help improve the U.S. image. But if that is all that is done, a closure risks obscuring a more important issue and could even be counterproductive: If the U.S. is to really regain its standing as a defender of human rights, it needs to do more than mothball a single jail; it needs to change its policies. If the prison were to close, what would happen to the detainees? Most of them were judged by former commanders at Guantanamo to be merely Taliban foot soldiers. Some, presumably, would simply be released. Others might face military tribunals, and some would most likely be shipped off, to be held by other countries. The last two possibilities are not a welcome scenario from either a moral or public relations perspective. Consider the tribunals. Heavily stacked against defendants, they've been condemned by such groups as the American Bar Association and military defense lawyers, who actually sued the government over the lack of prisoners' rights. Shipping terror suspects to other countries, even their own countries, could be worse. The U.S. has been practicing a form of this: "extraordinary rendition," in which prisoners are picked up in one locale - "snatched" in CIA parlance - and find themselves incarcerated elsewhere, in countries such as Syria or Uzbekistan. A United States military boat patrols in front of Camp Delta in this 2002 file photo, in Guantanamo Bay, Cuba. The legal process in such cases isn't just flawed, it doesn't exist. Detainees get no trials or hearings before a judge. The U.S. gets pro forma promises that prisoners won't be tortured, but there is no known monitoring. And Uzbekistan, for instance, has gained some renown for reports of political prisoners being boiled alive. Rendition hasn't generated the headlines or the level of outrage as Guantanamo Bay. But stories from rendered detainees have made it out, and they do little for the U.S. image. One Australian citizen who was rendered to Egypt was reportedly hung from a wall and given electric shock. In something of a reprieve, he was transferred to Guantanamo Bay. He arrived without most of his fingernails. There's also a perverse possibility intrinsic in **closing Gitmo**: It **could end up making the U.S. less accountable. With the visible symbol of unfair treatment swept away, pressure for wider change might dissipate**. It's important to remember that Gitmo is only one of a group of U.S. prisons around the globe set up to hold "enemy combatants" captured in the war on terrorism. Far less is known about the other jails, which are reportedly run by the CIA. There's one at Bagram Air Base in Afghanistan, called the Salt Pits. As The New York Times reported, two detainees have been killed at Bagram. More obscure is the reported facility at a base in Diego Garcia in the Indian Ocean. Unlike at Guantanamo Bay, no reporters have been allowed to visit these jails.

### Judicial globalism

#### Democracy causes war:

#### Democratic/autocratic wars—Institutions, norms and security communities ensure conflict

Chris **Dasse 6** Professor of International Relations at the University of Munich. “Democratic Wars Looking at the Dark Side of Democratic Peace” p. 75

This hypothesis postulates a causal relationship between democratic community building, which draws on shared institutions, common values and security cooperation on the one hand, and democratic belligerence vis-à-vis non-democratic states on the other, which is based on non-recognition, exclusion and enmity. A process seems to be at work in international relations that works similarly to the mechanism Charles Tilly described as the state-building process in Europe, in which internal pacification was achieved through external war-making (Tilly, 1975a, 1985). In the international system of today, an analogous mechanism is contributing to democratic community building and the renunciation of violence through coalition warfare and collective conflict management (Cederman, 2001). That means that the very same reasons that generate peaceful relations among democracies also provoke democracies to wage war against non-democracies. If this is the case, it might be helpful to draw on explanations of democratic peace in order to generate hypotheses about ‘democratic war’ and to explain the war-proneness of democracies vis-à-vis nondemocratic states. Throughout this, it is important not to focus on the reasons for the use of force alone but also to look at the way in which military means are applied. For Alexis de Tocqueville observed that changing reasons for war also lead to changing forms of warfare. Therefore, to explain democratic war, Tocqueville seems to be more helpful than Kant. While Kant focuses on the singular decision to go to war, Tocqueville takes the processes into account by which democracies engage in military action. By doing so, he is able to analyse some of the dynamics that create the democratic war puzzle. In his famous book on ‘Democracy in America’ he summarized his findings: ‘There are two things which a democratic people will always find very difficult – to begin a war and to end it’ (Tocqueville, 1840, p. 393). In what follows, I will focus on three reasons why democracies might be peaceful to each other, but abrasive or even bellicose towards nondemocracies. The first reason is an institutional one: domestic institutions 76 Democratic Wars dampen conflicts among democracies but aggravate conflicts between democracies and non-democracies. The second reason is a normative one: shared social values and political ideals prevent wars between democracies but make wars between democracies and non-democracies more likely and savage. The third reason is a structural one: the search for safety encourages democracies to create security communities by renouncing violence among themselves but demands assertiveness against outsiders and the willingness to use military means if enlargement of that community cannot be achieved peacefully. To illustrate this, I will draw mainly on the United States as an example following a Tocquevillean tradition, but knowing that not all democracies behave in the same way or that the US is the only war-fighting democracy. It is clear that the hypotheses are first conjectures and that more case studies and quantitative tests are needed to reach more general conclusions

#### Autocratic peace true- DPT isn’t

Erik Gartzke, University of California, and Alex Weisiger 2013, University of Pennsylvania. “Permanent Friends? Dynamic Difference and the Democratic Peace” http://dss.ucsd.edu/~egartzke/publications/gartzke\_weisiger\_isq\_2013.pdf

The “autocratic peace” involves a class of arguments¶ about the conflictual consequences of regime similarity¶ and difference. Theories disagree over whether demo-¶ cratic and autocratic relations are distinct or equivalent.¶ Early studies of the autocratic peace typically focused on¶ certain geographic regions. Despite having little democ-¶ racy, low levels of economic development, arbitrary¶ national borders, and widespread civil conflict, Africa¶ experiences surprisingly little interstate war. Several stud-¶ ies attribute the “African peace” to historical norms and¶ to the strategic behavior of insecure leaders who recog-¶ nize that challenging existing borders invites continental¶ war while encouraging secessionist movements risks reci-¶ procal meddling in the country’s own domestic affairs¶ (Jackson and Rosberg 1982; Herbst 1989, 1990).¶ 6¶ How-¶ ever, these arguments fail to address tensions between¶ individual (state, leader) interests and social goods. The¶ security dilemma implies precisely that leaders act aggres-¶ sively despite lacking revisionist objectives (Jervis 1978).¶ Initial statistical evidence of an autocratic peace¶ emerged in a negative form with the observation that¶ mixed democratic¶ –¶ autocratic dyads are more conflict¶ prone than either jointly democratic or jointly autocratic¶ dyads (Gleditsch and Hegre 1997; Raknerud and Hegre¶ 1997). Studies have sought systematic evidence for or¶ against an autocratic peace. Oren and Hays (1997) evalu-¶ ate several data sets, finding that autocracies are less war¶ prone than democracy¶ –¶ autocracy pairs. Indeed, they find¶ that socialist countries with advanced industrialized econ-¶ omies are more peaceful than democracies. Werner¶ (2000) finds an effect of political similarity that coexists¶ with the widely recognized effect of joint democracy. She¶ attributes the result to shared preferences arising from a¶ reduced likelihood of disputes over domestic politics.¶ Peceny, Beer and Sanchez-Terry (2002) break down the¶ broad category of autocracy into multiple subgroups and¶ find evidence that shared autocratic type (personalistic¶ dictatorships, single-party regimes, or military juntas)¶ reduces conflict, although the observed effects are less¶ pronounced than for joint democracy. Henderson (2002)¶ goes further by arguing that there is no empirically verifi able democratic peace. Instead, political dissimilarity¶ causes conflict. Souva (2004) argues and finds that simi-¶ larity of both political and economic institutions encour-¶ ages peace. In the most sophisticated analysis to date,¶ Bennett (2006) finds a robust autocratic peace, though¶ the effect is smaller than for joint democracy and limited¶ to coherent autocratic regimes. Petersen (2004), in con-¶ trast, uses an alternate categorization of autocracy and¶ finds no support for the claim that similarity prevents or¶ limits conflict. Still, the bulk of evidence suggests that similar polities are associated with relative peace, even¶ among nondemocracies.¶ The autocratic peace poses unique challenges for demo-¶ cratic peace theories. Given that the democratic peace¶ highlights apparently unique characteristics of joint¶ democracy, many explanations are predicated on attributes¶ found only in democratic regimes. An autocratic peace¶ implies that scholars should focus on corollaries or conse-¶ quences of shared regime type, in addition to, or perhaps¶ even instead of democracy. In this context, arguments¶ about democratic norms (Maoz and Russett 1993; Dixon¶ 1994), improved democratic signaling ability (Fearon 1994;¶ Schultz 1998, 1999, 2001), the peculiar incentives imposed¶ on leaders by democratic institutions (Bueno de Mesquita¶ et al. 1999, 2003), and democratic learning (Cederman¶ 2001a) all invite additional scrutiny. While it is theoretically¶ possible that a democratic peace and an autocratic peace¶ could arise from independent causal processes, logical ele-¶ gance and the empirical similarities inherent in shared¶ regime type provide cause to explore theoretical argu-¶ ments that spring from regime similarity in general.¶

#### Diversionary wars

Christopher **Gelpi**, Center for International Affairs, Harvard, JOURNAL OF CONFLICT RESOLUTION, April 19**97**, p. 261+. ASP.

Thus, in general, I conclude that democracies will prefer diversion as a solution to domestic unrest, but authoritarian states will prefer repression. These preferences have specific implications for states' tendencies to initiate force when they are involved in an international crisis. In particular, if a democratic state is involved in an international crisis and is also faced with domestic unrest, the leadership will view the crisis as an opportunity for diverting popular attention away from domestic problems and will become more likely to initiate the use of force in that crisis.

#### Democracy undermines deterrence casues war

John Norton **Moore**, Walter Brown Professor of Law, University of Virginia, “Beyond the Democratic Peace: Solving the War Puzzle,” VIRGINIA JOURNAL OF INTERNATIONAL LAW ASSOCIATION v. 44, Winter 20**04**, p. 390-391.

Given the likely principal path to war for democracies, does the evidence suggest that democracies are uniquely poor at deterrence? Certainly some visible features of democracies may contribute to misperceptions by potential aggressors. The healthy pluralism and robust free speech, the anti-war skepticism, the checks and balances, and diffusion of power between the executive and legislative branches may all contribute to undermining deterrence in specific settings. Hitler was certainly encouraged by the infamous 1933 Oxford Union pledge: "This House will under no circumstances fight for its King and Country" and the record of British and French diplomacy from 1935 to 1939 caving to Hitler's demands. Japan was certainly encouraged in its perception of a weak United States, little committed to its Pacific interests, by the pervasive isolationist mood in the United States as reflected in the 1934-36 Nye Commission, five "neutrality laws" passed from 1935 to 1939, the 1938 Ludlow Amendment, and the fact that when Congress finally reinstated the draft it did so by only one vote and on condition that no draftees fight outside this hemisphere. Examples of such misguided efforts to avoid war are legion. It is possible that settings of lessened public perception of war risk may generate political responses that can sometimes result in inadequate deterrence against the next major threat. Examples of such a cycle can be seen in the rapid U.S. demobilizations following World Wars I and II and, to a lesser extent, following the Cold War.

#### Democracies destroy the environment—statistically proven

**Midlarsky 98** (Democracy and the Environment: An Empirical Assessment Author(s): Manus I. Midlarsky Source: Journal of Peace Research, Vol. 35, No. 3, Special Issue on Environmental Conflict (May, 1998), pp. 341-361 Published by: Sage Publications, Ltd. Stable URL: http://www.jstor.org/stable/424940)

Yet one wonders if all of the preceding arguments do not constitute an idealization of democracy that ignores the rough and tumble of actual decision-making within the legislative and executive branches of government. Corporations and environmental groups can fight each other to a standstill, leaving a decision-making vacuum instead of a direct impact of democracy on the environment. Or as the result of budget constraints, democracies may not be responsive to environmental imperatives but to more pressing issues of the economic sustenance of major portions of the voting public. The nuts and bolts of daily democratic governance may turn out to be very different from the ideal. There are further difficulties in the hypothesized positive relationship between democracy and the environment. First is the problem of potential inequality, always a difficulty in practising democracy in the absence of draconian redistribution schemes. According to Lafferty & Meadowcroft (1996b): Environmental problems are typically experienced as external constraints which frustrate established expectations and which require an adjustment to existing social practices. They threaten a pre-existing structure of entitlements and raise questions concerning distributive justice. While the idea that a cleaner environment will benefit everyone that green policies are good for both rich and poor, industrialists and consumers - is attractive, in reality environmental problems touch dijferent groups in diffrerent ways As intimated earlier, stable democracies cannot long persist under conditions of extreme inequality. A second concern is the difficulty presented by the globalization of environmental issues. As Paehlke (1996: 28) put it, 'The great danger for both democracy and environment is that, while economy and environment are now global in character, democracy functions on only national and local decision levels and only within some nations.' The problems imposed by the Chernobyl disaster of course constitute an illustration in extremis. But even between democracies there are difficulties imposed by the sharing of a common environment. The acidification of Scandinavian lakes as the result of British industry is but one case in point. Despite the existence of two democratically elected governments accountable to their separate populations, the resolution of such environmental problems between the two countries requires negotiation and treaty making that would not necessarily be accountable to these populations.

#### Extinction

**Diner 94** – Judge Advocate General’s Corps [Major David N., United States Army Military Law Review Winter, lexis]

By causing widespread extinctions, humans have artificially simplified many ecosystems. As biologic simplicity increases, so does the risk of ecosystem failure. The spreading Sahara Desert in Africa, and the dustbowl conditions of the 1930s in the United States are relatively mild examples of what might be expected if this trend continues. Theoretically, each new animal or plant extinction, with all its dimly perceived and intertwined affects, could cause total ecosystem collapse and human extinction. Each new extinction increases the risk of disaster. Like a mechanic removing, one by one, the rivets from an aircraft's wings, n80 mankind may be edging closer to the abyss.

#### democracy ruins primacy

Chris **Zambelis**, policy analyst, Strategic Assessment Center, Hicks and Associates, Inc., “The Strategic Implications of Political Liberalization and Democratization in the Middle East,” PARAMETERS, Autumn 20**05**, pp. 87-102. Available from the World Wide Web at: [www.carlisle.army.mil/usawc/Parameters/05autumn/zambelis.htm](http://www.carlisle.army.mil/usawc/Parameters/05autumn/zambelis.htm), accessed 3/9/06.

Given the populist credentials of Islamists, the rise of Islamist governments may transform the political and foreign policy orientation of traditional allies. This possibility should be of concern considering the credibility problem Washington faces in the region. As mentioned earlier, public opinion surveys demonstrate that America’s poor credibility does not stem from a popular Arab and Muslim aversion to American culture and democracy. Instead, Muslims harbor deep resentments toward US foreign policy in the region.40 Since democratic governments are by definition accountable to their citizens, public opinion will play an increasingly influential role in the political and foreign policy orientation of countries where Islamists dominate. When Islamists come to power, they will likely act on their populist impulses, at least in the early stages of any transition.41 For example, incumbent governments may place conditions on the continued presence of American military forces on their soil, but still keep dialogue open. Others may limit cooperation or abandon agreements governing security collaboration with Washington. It is also possible that democratic governments will cater to public opinion and demand that American forces vacate military installations altogether. It is no surprise that the new Shia-dominated Iraq has hinted at the need for establishing a timetable for the withdrawal of Coalition forces. Other governments may reorient their foreign policies away from the United States and look to Europe, Russia, and even China or India. China has been active in cultivating closer ties to prominent energy producers in the region, namely Sudan and Iran, in order to secure energy sources to fuel its dynamic economic growth.42 Beijing also has boosted security cooperation with Pakistan.43 India is pursuing a similar strategy in the region.44

#### Russian anti-Americanism is high

**Dale 12**—Heritage Foundations Senior Fellow in Public Diplomacy studies [[Helle Dale](http://blog.heritage.org/author/hdale/), “ Russia with Hate: Anti-Americanism Rampant in Putin’s Kremlin,” The Foundry, April 23, 2012 at 4:30 pm, pg. http://tinyurl.com/d4x8y7m

For the Russian government, using the U.S. as variously a whipping boy and a scarecrow is extremely convenient. Indeed, [anti-Americanism](http://www.mendeley.com/research/russian-antiamericanism-priority-target-u-s-public-diplomacy/) is a long-standing and fundamental pillar of Russian foreign policy and public diplomacy. As noted by Heritage’s [Ariel Cohen](http://www.heritage.org/research/reports/2012/03/how-the-us-should-deal-with-putins-russia), “Anti-Americanism in Russia is rampant. Putin has relentlessly created an image of Russia under attack from Western enemies. It worked for the elections and is likely to continue as a pillar of Russia’s domestic and foreign policy.”

Anti-American rhetoric is also a standard feature of the broadcasts of Russia Today, the Kremlin’s international news channel, which can be found on many American cable systems. However, while Russian commentators can spew allegations with impunity, the U.S. government’s Radio Liberty and Voice of America (VOA) are banned or severely curtailed in most Russian media markets. In fact, prior to the Russian presidential election, VOA broadcasters were warned against covering Russian election issues under threat of being kicked off the market altogether. The fact that the U.S. media market is free leaves it open to abuses. Nevertheless, a tougher approach to reciprocity in media access is clearly needed.\

#### No Russian War

Weitz ‘11 (Richard, senior fellow at the Hudson Institute and a World Politics Review senior editor, “Global Insights: Putin not a Game-Changer for U.S.-Russia Ties,” <http://www.scribd.com/doc/66579517/Global-Insights-Putin-not-a-Game-Changer-for-U-S-Russia-Ties>, September 27, 2011)

Fifth, there will inevitably be areas of conflict between Russia and the United States regardless of who is in the Kremlin. Putin and his entourage can never be happy with having NATO be Europe's most powerful security institution, since Moscow is not a member and cannot become one. Similarly, the Russians will always object to NATO's missile defense efforts since they can neither match them nor join them in any meaningful way. In the case of Iran, Russian officials genuinely perceive less of a threat from Tehran than do most Americans, and Russia has more to lose from a cessation of economic ties with Iran -- as well as from an Iranian-Western reconciliation. On the other hand, these conflicts can be managed, since they will likely remain limited and compartmentalized. Russia and the West do not have fundamentally conflicting vital interests of the kind countries would go to war over. And as the Cold War demonstrated, nuclear weapons are a great pacifier under such conditions. Another novel development is that Russia is much more integrated into the international economy and global society than the Soviet Union was, and Putin's popularity depends heavily on his economic track record. Beyond that, there are objective criteria, such as the smaller size of the Russian population and economy as well as the difficulty of controlling modern means of social communication, that will constrain whoever is in charge of Russia.

### 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.

#### We’ll mishandle credibility 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.

#### Legitimacy’s inevitable and not key to heg

Brooks and Wohlforth, 9 (Stephen Brooks and William Wohlforth, both are professors of Government at Dartmouth, “Reshaping the world order: how Washington should reform international institutions,” Foreign Affairs, March-April)

FOR ANALYSTS such as Zbigniew Brzezinski and Henry Kissinger, the key reason for skepticism about the United States' ability to spearhead global institutional change is not a lack of power but a lack of legitimacy. Other states may simply refuse to follow a leader whose legitimacy has been squandered under the Bush administration; in this view, the legitimacy to lead is a fixed resource that can be obtained only under special circumstances. The political scientist G.John Ikenberry argues in After Victory that states have been well positioned to reshape the institutional order only after emerging victorious from some titanic struggle, such as the French Revolution, the Napoleonic Wars, or World War I or II. For the neoconservative Robert Kagan, the legitimacy to lead came naturally to the United States during the Cold War, when it was providing the signal service of balancing the Soviet Union. The implication is that today, in the absence of such salient sources of legitimacy, the wellsprings of support for U.S. leadership have dried up for good. But this view is mistaken. For one thing, it overstates how accepted U.S. leadership was during the Cold War: anyone who recalls the Euromissile crisis of the 1980s, for example, will recognize that mass opposition to U.S. policy (in that case, over stationing intermediaterange nuclear missiles in Europe) is not a recent phenomenon. For another, it understates how dynamic and malleable legitimacy is. Legitimacy is based on the belief that an action, an actor, or a political order is proper, acceptable, or natural. An action - such as the Vietnam War or the invasion of Iraq - may come to be seen as illegitimate without sparking an irreversible crisis of legitimacy for the actor or the order. When the actor concerned has disproportionately more material resources than other states, the sources of its legitimacy can be refreshed repeatedly. After all, this is hardly the first time Americans have worried about a crisis of legitimacy. Tides of skepticism concerning U.S. leadership arguably rose as high or higher after the fall of Saigon in 1975 and during Ronald Reagan's first term, when he called the Soviet Union an "evil empire." Even George W. Bush, a globally unpopular U.S. president with deeply controversial policies,oversaw a marked improvement in relations with France, Germany, and India in recent years - even before the elections of Chancellor Angela Merkel in Germany and President Nicolas Sarkozy in France. Of course, the ability of the United States to weather such crises of legitimacy in the past hardly guarantees that it can lead the system in the future. But there are reasons for optimism. Some of the apparent damage to U.S. legitimacy might merely be the result of the Bush administration's approach to diplomacy and international institutions. Key underlying conditions remain particularly favorable for sustaining and even enhancing U.S. legitimacy in the years ahead. The United States continues to have a far larger share of the human and material resources for shaping global perceptions than any other state, as well as the unrivaled wherewithal to produce public goods that reinforce the benefits of its global role. No other state has any claim to leadership commensurate with Washington's. And largely because of the power position the United States still occupies, there is no prospect of a counterbalancing coalition emerging anytime soon to challenge it. In the end, the legitimacy of a system's leader hinges on whether the system's members see the leader as acceptable or at least preferable to realistic alternatives. Legitimacy is not necessarily about normative approval: one may dislike the United States but think its leadership is natural under the circumstances or the best that can be expected. Moreover, history provides abundant evidence that past leading states - such as Spain, France, and the United Kingdom - were able to revise the international institutions of their day without the special circumstances Ikenberry and Kagan cite. Spainfashioned both normative and positive laws to legitimize its conquest of indigenous Americans in the early seventeenth century; France instituted modern concepts of state borders to meet its needs as Europe's preeminent land power in the eighteenth century; and the United Kingdom fostered rules on piracy, neutral shipping, and colonialism to suit its interests as a developing maritime empire in the nineteenth century. As Wilhelm Grewe documents in his magisterial The Epochs of International Law, these states accomplished such feats partly through the unsubtle use of power: bribes, coercion, and the allure oflucrative long-term cooperation. Less obvious but often more important, the bargaining hands of the leading states were often strengthened by the general perception that they could pursue their interests in even less palatable ways - notably, through the naked use of force. Invariably, too, leading states have had the power to set the international agenda, indirectly affecting the development of new rules by defining the problems they were developed to address. Given its naval primacy and global trading interests, the United Kingdom was able to propel the slave trade to the forefront of the world's agenda for several decades after it had itself abolished slavery at home, in 1833. The bottom line is that the UnitedStates today has the necessary legitimacy to shepherd reform of the international system.

#### Stability will survive without US hegemony

Fettweis ‘10 (Chris Fettweis, Professor of national security affairs @ U.S. Naval War College, Georgetown University Press, “Dangerous times?: the international politics of great power peace” Google Books)

Simply stated, the hegemonic stability theory proposes that international peace is only possible when there is one country strong enough to make and enforce a set of rules. At the height of Pax Romana between 27 BC and 180 AD, for example, Rome was able to bring unprecedented peace and security to the Mediterranean. The Pax Britannica of the nineteenth century brought a level of stability to the high seas. Perhaps the current era is peaceful because the United States has established a de facto Pax Americana where no power is strong enough to challenge its dominance, and because it has established a set of rules that a generally in the interests of all countries to follow. Without a benevolent hegemony, some strategists fear, instability may break out around the globe. Unchecked conflicts could cause humanitarian disaster and, in today’s interconnected world economic turmoil that would ripple throughout global financial markets. If the United States were to abandon its commitments abroad, argued Art, the world would “become a more dangerous place” and, sooner or later, that would “rebound to America’s detriment.” If the massive spending that the United States engages in actually produces stability in the international political and economic systems, then perhaps internationalism is worthwhile. There are **good theoretical and empirical reasons**, however, the belief that U.S. hegemony is not the primary cause of the current era of stability. First of all, the hegemonic stability argument overstates the role that the United States plays in the system. No country is strong enough to police the world on its own. The only way there can be stability in the community of great powers is if self-policing occurs, ifs **states** have **decided** that their **interest are served by peace**. If no pacific normative shift had occurred among the great powers that was filtering down through the system, then no amount of international constabulary work by the United States could maintain stability. Likewise, if it is true that such a shift has occurred, then most of what the hegemon spends to bring stability would be wasted. The 5 percent of the world’s population that live in the United States simple could not force peace upon an unwilling 95. At the risk of beating the metaphor to death, the United States may be patrolling a neighborhood that has already rid itself of crime. Stability and unipolarity may be simply coincidental. In order for U.S. hegemony to be the reason for global stability, the rest of the world would have to expect reward for good behavior and fear punishment for bad. Since the end of the Cold War, the United States has not always proven to be especially eager to engage in humanitarian interventions abroad. Even rather incontrovertible evidence of genocide has not been sufficient to inspire action. Hegemonic stability can only take credit for influence those decisions that would have ended in war without the presence, whether physical or psychological, of the United States. Ethiopia and Eritrea are hardly the only states that could go to war without the slightest threat of U.S. intervention. Since most of the world today is free to fight without U.S. involvement, something else must be at work. Stability exists in many places where no hegemony is present. Second, the limited empirical evidence we have suggests that there is little connection between the relative level of U.S. activism and international stability. During the 1990s the United States cut back on its defense spending fairly substantially, By 1998 the United States was spending $100 billion less on defense in real terms than it had in 1990. To internationalists, defense hawks, and other believers in hegemonic stability this irresponsible "peace dividend" endangered both national and global security "No serious analyst of American military capabilities," argued Kristol and Kagan, "doubts that the defense budget has been cut much too far to meet Americas responsibilities to itself and to world peace."" If the pacific trends were due not to U.S. hegemony but a strengthening norm against interstate war, however, one would not have expected an increase in global instability and violence. The verdict from the past two decades is fairly plain: The world grew more peaceful while the United States cut its forces. No state seemed to believe that its security was endangered by a less-capable Pentagon, or at least none took any action that would suggest such a belief. No militaries were enhanced to address power vacuums; no security dilemmas drove mistrust and arms races; no regional balancing occurred once the stabilizing presence of the U.S. military was diminished. The rest of the world acted as if the threat of international war was not a pressing concern, despite the reduction in U.S. capabilities. The incidence and magnitude of global conflict declined while the United States cut its military spending under President Clinton, and it kept declining as the Bush Administration ramped spending back up. No complex statistical analysis should be necessary to reach the conclusion that the two are unrelated. It is also worth noting for our purposes that the United States was no less safe.

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#### Contextual definitions bad – intent to define outweighs

Eric Kupferbreg 87, University of Kentucky, Senior Assistant Dean, Academic & Faculty Affairs at Northeastern University, College of Professional Studies Associate Director, Trust Initiative at Harvard School of Public Health 1987 “Limits - The Essence of Topicality” http://groups.wfu.edu/debate/MiscSites/DRGArticles/Kupferberg1987LatAmer.htm

Often, field contextual definitions are too broad or too narrow for debate purposes. Definitions derived from the agricultural sector necessarily incorporated financial and bureaucratic factors which are less relevant in considering a 'should' proposition. Often subject experts' definitions reflected administrative or political motives to expand or limit the relevant jurisdiction of certain actors. Moreover, field context is an insufficient criteria for choosing between competing definitions. A particularly broad field might have several subsets that invite restrictive and even exclusive definitions. (e.g., What is considered 'long-term' for the swine farmer might be significantly different than for the grain farmer.) Why would debaters accept definitions that are inappropriate for debate? If we admit that debate is a unique context, then additional considerations enter into our definitional analysis.

#### There's a clear brightline---restrictions sets a ceiling--- not just process

USCA 77, UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, 564 F.2d 292, 1977 U.S. App. LEXIS 10899,. 1978 Fire & Casualty Cases (CCH) P317

Continental argues that even if the Aetna and Continental policies provide coverage for the Cattuzzo accident, that coverage should [\*\*8] be limited to a total of $300,000 because Atlas agreed to procure "not less than" $300,000 coverage. The District Court properly found that the subcontract language does not support a restriction on the terms of Continental's policy because the subcontract only sets a floor, not a ceiling, for coverage.

#### Restrictions on authority are distinct from conditions

William Conner 78, former federal judge for the United States District Court for the Southern District of New York United States District Court, S. D. New York, CORPORACION VENEZOLANA de FOMENTO v. VINTERO SALES, http://www.leagle.com/decision/19781560452FSupp1108\_11379

Plaintiff next contends that Merban was charged with notice of the restrictions on the authority of plaintiff's officers to execute the guarantees. Properly interpreted, the "conditions" that had been imposed by plaintiff's Board of Directors and by the Venezuelan Cabinet were not "restrictions" or "limitations" upon the authority of plaintiff's agents but rather conditions precedent to the granting of authority. Essentially, then, plaintiff's argument is that Merban should have known that plaintiff's officers were not authorized to act except upon the fulfillment of the specified conditions.

#### And, substantial requires an objective, absolute measurement--- there's no way to quantify the impact oversight has on War Powers which means that their interpretation has no coherent way to account for an entire word in the topic

Words & Phrases 64, 40 W&P 759

The words "outward, open, actual, risible, substantial, and exclusive," in connection with a change of possession, mean substantially the same thing. They mean not concealed; not bidden; exposed to view; free from concealment dissimulation, reserve, or disguise; in full existence; denoting that which not merely can be, but is opposed to potential, apparent, constructive, and imaginary; veritable; genuine; certain; absolute; real at present time, as a matter of fact, not merely nominal; opposed to form; actually existing; true; not including, admitting, or pertaining to any others; undivided; sole; opposed to inclusive. Bass v. Pease, 79 111. App. 308, 31R

#### Increase means from a baseline

Rogers 5 Judge, STATE OF NEW YORK, ET AL., PETITIONERS v. U.S. ENVIRONMENTAL PROTECTION AGENCY, RESPONDENT, NSR MANUFACTURERS ROUNDTABLE, ET AL., INTERVENORS, 2005 U.S. App. LEXIS 12378, \*\*; 60 ERC (BNA) 1791, 6/24, lexis

 [\*\*48]  Statutory Interpretation. [HN16](http://www.lexis.com/research/retrieve?_m=1fe428155fdfc9074f3623f0dae9d78a&docnum=14&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlz-zSkAW&_md5=0ebd338d6a7793de8561db53b915effd&focBudTerms=term%20increase&focBudSel=all#clscc16)While the CAA defines a "modification" as any physical or operational change that "increases" emissions, it is silent on how to calculate such "increases" in emissions. [42 U.S.C. § 7411(a)(4)](http://www.lexis.com/research/buttonTFLink?_m=8541fbf7a7f5554ca588059b132acd17&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b367%20U.S.%20App.%20D.C.%203%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=103&_butInline=1&_butinfo=42%20U.S.C.%207411&_fmtstr=FULL&docnum=14&_startdoc=1&wchp=dGLbVlz-zSkAW&_md5=1f89a0e47b1996a5400e8d865d8da08a). According to government petitioners, the lack of a statutory definition does not render the term "increases" ambiguous, but merely compels the court to give the term its "ordinary meaning." See [Engine Mfrs.Ass'nv.S.Coast AirQualityMgmt.Dist., 541 U.S. 246, 124 S. Ct. 1756, 1761, 158 L. Ed. 2d 529(2004)](http://www.lexis.com/research/buttonTFLink?_m=8541fbf7a7f5554ca588059b132acd17&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b367%20U.S.%20App.%20D.C.%203%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=104&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b541%20U.S.%20246%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=14&_startdoc=1&wchp=dGLbVlz-zSkAW&_md5=48f016ea3eabfdb898b67b348b11662c); [Bluewater Network, 370 F.3d at 13](http://www.lexis.com/research/buttonTFLink?_m=8541fbf7a7f5554ca588059b132acd17&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b367%20U.S.%20App.%20D.C.%203%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=105&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b370%20F.3d%201%2cat%2013%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=14&_startdoc=1&wchp=dGLbVlz-zSkAW&_md5=78fdfe9d48c7b91d7659b90c0198707e); [Am. Fed'n of Gov't Employees v. Glickman, 342 U.S. App. D.C. 7, 215 F.3d 7, 10 [\*23]  (D.C. Cir. 2000)](http://www.lexis.com/research/buttonTFLink?_m=8541fbf7a7f5554ca588059b132acd17&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b367%20U.S.%20App.%20D.C.%203%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=106&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b342%20U.S.%20App.%20D.C.%207%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=14&_startdoc=1&wchp=dGLbVlz-zSkAW&_md5=fb18ff0b92931ac00621d88dae997e67). Relying on two "real world" analogies, government petitioners contend that the ordinary meaning of "increases" requires the baseline to be calculated from a period immediately preceding the change. They maintain, for example, that in determining whether a high-pressure weather system "increases" the local temperature, the relevant baseline is the temperature immediately preceding the arrival of the weather system, not the temperature five or ten years ago. Similarly,  [\*\*49]  in determining whether a new engine "increases" the value of a car, the relevant baseline is the value of the car immediately preceding the replacement of the engine, not the value of the car five or ten years ago when the engine was in perfect condition.

## Solvency

### We don’t know wtf to do 2nc

#### Inconsistent adjudication criteria guts the aff – divergent rulings and lack of access to information destroys the process

Michael Mukasey (writer for the Wall Street Journal) November 2008 “Al Qaeda Detainees and Congress's Duty” http://online.wsj.com/article/SB122722814865546291.html

Of course, we believe that the court should have reached a different conclusion with respect to the five detainees. But on a more general level, the court's order highlights the challenges that inhere in applying a civil litigation framework to wartime decisions that often must be made on the basis of the best available intelligence.¶ Other federal courts hearing the approximately 250 Gitmo habeas cases have sought to answer similar questions. But as different judges reach different answers -- and as some of those answers, I fear, create risks for our national security -- there remains a pressing need for Congress, working with the administration, to establish one set of rules that is both consistent with the Supreme Court's decision and recognizes the important national security and intelligence interests of the United States.¶ The questions with which courts have grappled are of critical importance. They include foundational issues: How should we define an "enemy combatant" during a conflict with a nontraditional enemy like al Qaeda? They include trial issues: What evidence may the government rely on when making that determination? And they include practical issues: What does it mean to order a detainee "released"? Can a court order release into the U.S. if a detainee cannot be transferred to his home country, either because it won't accept him or because we fear he might be mistreated upon his return?¶ In July, I urged Congress to work with the administration to fashion a uniform set of rules for these cases, expressing two basic concerns with leaving these matters to the courts. The first was that the courts would reach inconsistent decisions, leading to protracted litigation and the likelihood of different procedures in different cases.¶ The second was that the courts would not be well-positioned to address fully our national security and intelligence interests. As a former federal judge, I know well the constraints on federal courts. They cannot find facts on their own and are limited to the evidence presented by the parties before them. By contrast, Congress and the executive branch are well equipped to learn and evaluate facts, and skilled in balancing the difficult policy choices at stake.¶ In the absence of legislation, however, the courts have proceeded with these cases. I appreciate the difficulty of the task that these judges were given, and I believe they have done an admirable job under the circumstances. Nevertheless, we have seen courts diverging on key issues, meaning that the rules in each case will likely vary significantly and will likely be finally resolved only after multiple appeals.¶ More importantly, in many cases, the government has faced great difficulty in collecting and presenting evidence in a manner that protects the vital sources and methods upon which our national security depends. Indeed, lacking clear protections for classified information, we have found at times that we are simply unable to provide our best evidence to the court. Our national security framework, in short, is not -- and should not be -- designed primarily to handle the burdens of discovery accompanying ordinary civil litigation.

#### 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.

### Ship

#### Bagrm? Al Maqaleh leaves massive detention authority independent of the aff—this totally jacks the aff

Vladeck 12 [10/01/12, Professor Stephen I. Vladeck of the Washington College of Law at American University, “Detention Policies: What Role for Judicial Review?”, <http://www.abajournal.com/magazine/article/detention_policies_what_role_for_judicial_review/>)]

The short chapter that follows aims to take Judge Brown’s suggestion seriously. As I explain, although Judge Brown is clearly correct that judicial review has affected the size of the detainee populations within the territorial United States and at Guantanamo, it does not even remotely follow that the jurisprudence of the past decade has precipitated a shift away from detention and toward targeted killings. To the contrary, the jurisprudence of Judge Brown’s own court has simultaneously (1) left the government with far greater detention authority than might otherwise be apparent where noncitizens outside the United States are concerned; and (2) for better or worse, added a semblance of legitimacy to a regime that had previously and repeatedly been decried as lawless. And in cases where judicial review prompted the government to release those against whom it had insufficient evidence, the effects of such review can only be seen as salutary. Thus, at the end of a decade where not a single U.S. military detainee was freed by order of a federal judge, it is more than a little ironic for Judge Brown to identify “take no prisoners” as Boumediene’s true legacy. The role of judicial review in the three post-9/11 military detention cases in which the detainees were held within the territorial United States is impossible to overstate. Despite the Bush administration’s initial position that the detention of “enemy combatants” posed a nonjusticiable political question, the federal courts (and the Supreme Court, in particular) were emphatic in suggesting that such detentions were subject to judicial review, even as they divided over the merits in each of the three cases. Thus, in the case of Yasser Esam Hamdi, the federal government argued to the Supreme Court that “some evidence” was sufficient to justify the long-term detention of U.S. citizens captured on the battlefield. Although the court agreed that the government had the authority to detain individuals like Hamdi, it disagreed as to the evidentiary burden, with a 6-1 majority concluding that a more rigorous evidentiary burden was necessary. Rather than attempting to provide such evidence on remand, the government quickly entered into an agreement with Hamdi wherein he agreed to relinquish his citizenship in exchange for his release and transfer to Saudi Arabia. In the case of Jose Padilla, although the Supreme Court initially threw out Padilla’s habeas petition in 2004 on the ground that he had filed in the wrong district court, the opinions in the contemporaneous Padilla and Hamdi decisions left the distinct impression that, on the merits, five justices would have rejected the argument that the 2001 Authorization for the Use of Military Force authorized the detention of U.S. citizens arrested within the territorial United States. Padilla refiled in the proper venue, only to have the government moot the case on the eve of Supreme Court review by indicting him on criminal charges and transferring him to civilian custody. As Fourth Circuit Judge J. Michael Luttig observed, the timing of the government’s conduct gave rise “to at least an appearance that the purpose of these actions may be to avoid consideration of our decision [upholding Padilla’s detention] by the Supreme Court.” Nevertheless, and over three dissents, the court denied certiorari. That pattern repeated itself in the case of Ali al-Marri (the one noncitizen subjected to military detention within the territorial United States), with the Obama administration mooting the merits of his detention after the Supreme Court granted certiorari by indicting him on criminal charges and transferring him to civilian custody. Thus, in all three cases, the specter of future judicial review—in the district court in Hamdi and in the Supreme Court in Padilla and al-Marri—directly led to a change in policy, and there have been no additional stateside military detention cases since. At least based on the public record, one can only make an inferential case that this pattern was repeated with regard to Guantanamo, but the circumstantial evidence is fairly compelling. Although 779 noncitizens were at one time detained as “enemy combatants” at Guantanamo, the detainee population dropped from 597 at the time of the Supreme Court’s Rasul decision in 2004 to 269 at the time Boumediene was decided, and from that number to the 171 men detained there today. And although none of the 600 detainees who have been released from Guantanamo were directly freed by a judicial order, it stands to reason that the sharp uptick in the rate of transfers out of Guantanamo (along with the virtual cessation of transfers in) after June 2004 was a direct reaction to, and result of, the court’s decision in Rasul v. Bush, which held that the federal habeas statute extended to Guantanamo. Moreover, in the four years since Boumediene, there have been at least 11 distinct district court decisions granting habeas relief that the government declined to appeal on the merits. Not all of the detainees at issue in those cases have been released, but those that were certainly weren’t hurt by the judicial proceedings on their behalf. Inasmuch as the detainee litigation appears to have exerted hydraulic pressure on the executive branch to reduce the detainee population at Guantanamo, it has arguably also invested the detentions in the cases that remain with at least a modicum of legitimacy—at least for those detainees who have not been cleared for release. After all, the government now is able to argue that the detainees still at Guantanamo have received the exact judicial review called for by the Constitution; the fact that the courts have denied relief in many of those cases only underscores the validity of that aspect of the U.S. detention regime in the short term (and perhaps in the long term as well). Far less data exists to evaluate the relationship between judicial review and the number of detainees held by the United States in Afghanistan. Here, though, the data is less important than the case law. Notwithstanding Boumediene, the D.C. Circuit held in al-Maqaleh v. Gates that noncitizens detained in Afghanistan, even if they are not citizens of or arrested in Afghanistan, are not entitled to pursue habeas relief in the U.S. federal courts. In so holding, the appeals court specifically rejected the detainees’ argument that judicial review must be available lest the government deliberately choose to send new detainees to Afghanistan

to escape judicial oversight: “The notion that the United States deliberately confined the detainees in the theater of war rather than at, for example, Guantanamo, is not only unsupported by the evidence, it is not supported by reason. To have made such a deliberate decision to ‘turn off the Constitution’ would have required the military commanders or other executive officials making the situs determination to … predict the Boumediene decision long before it came down. Because Maqaleh means that judicial review will not extend to Afghanistan absent a showing of deliberate manipulation on the government’s part (and perhaps not even then), the conclusion appears manifest that Boumediene’s holding is limited to Guantanamo, and that the government in fact does not face the prospect of judicial review in future cases involving the detention of noncitizens elsewhere outside the territorial United States. As such, Judge Brown’s suggestion in Latif that Boumediene has chilled (and will chill) future military detentions of terrorism suspects necessarily fails to persuade. At least for noncitizens picked up outside the territorial United States, Maqaleh preserves substantial flexibility on the government’s part and leaves judicial review as an unlikely proposition, at best. But there’s another aspect to the jurisprudence of the past decade that also poses a stark contrast with Judge Brown’s reasoning: thanks to the work of Brown and her colleagues on the D.C. Circuit, even in cases in which judicial review does apply, the relevant substantive and procedural standards governing such review leave the government with sweeping authority. With regard to noncitizens outside the territorial United States, current case law requires the government to show merely by a preponderance of the evidence (i.e., that it is more likely than not) that the detainee was “part of” or “substantially supported” al-Qaida. And thanks to Latif (the very decision in which Judge Brown objected to Boumediene), intelligence reports are treated with a presumption of regularity—making it incredibly difficult as a practical matter for detainees to overcome the government’s evidence. In point of fact, there has not been a single case to date in which the D.C. Circuit either affirmed a district court’s grant of habeas relief or reversed the denial thereof. Given the government’s successful track record before Judge Brown and her colleagues, it’s that much harder to understand her claim that “the systemic cost of defending detention decisions” has dissuaded the government from doing so. If the litigation of the last few years has suggested anything with regard to the future of U.S. detainee policy, it is that the cost to the government of defending detention decisions in the D.C. Circuit is not particularly high, especially compared to the benefit that such review has provided.

## The demo shit

### A2 “Demo Inevitable”

#### Uniqueness disproves- backsliding/authoritarianism now

#### Democracy will inevitably disappear- the aff is ethnocentric

**Gat 9** (Democracy's Victory Is Not Preordained. By: Gat, Azar, Foreign Affairs, 00157120, Jul/Aug2009, Vol. 88, Issue 4 Database: Business Source Complete Democracy's Victory Is Not Preordained Section: Responses: Which Way Is History Marching? Debating the Authoritarian Revival, Azar Gat is Ezer Weizman Professor of National Security at Tel Aviv University and the author of War in Human Civilization.

Two recent articles in these pages-- "The Myth of the Autocratic Revival" (January/February 2009) and "How Development Leads to Democracy" (March/April 2009)--have taken issue with my July/August 2007 essay, "The Return of Authoritarian Great Powers." In the first, Daniel Deudney and G. John Ikenberry dispute my argument that the authoritarian capitalist great powers Germany and Japan were defeated in both world wars largely because of contingent factors rather than structural inefficiencies. As I have argued, these countries were too small in comparison to the United States. With respect to the challenge posed by China and Russia, Deudney and Ikenberry insist that developed nondemocratic capitalist societies will not be viable in the long run. They restate modernization theory-- most recently amplified by the political scientists Francis Fukuyama and Michael Mandelbaum--according to which there is only one sustainable route to modernity: the liberal democratic path. Seen in this light, those countries unfortunate enough to have strayed from the path originally taken by the United Kingdom and the United States eventually must converge on the road to liberalism, either because they are inferior to democracies in terms of power or because their intractable internal contradictions will eventually usher in democratic transformation. Liberal democracy is presumed to possess intrinsic advantages, a presumption that confers an air of inevitability on the past as well as on the future. If "world history is the world's court," as Hegel put it, then history's verdict is clear. But is it really? Or might the owl of Minerva, due to its current flight path, be encountering optical illusions? SIZE MATTERS Deudney and Ikenberry believe--like Hegel--that accidents happen to those who are accident-prone. They insist that Germany and Japan were defeated in World War II due to their deep-seated structural problems. It is true that Germany suffered from a critical production failure in 1940-42, but this was remedied from 1942 on. In World War I, it had experienced no similar failure. Nor did Japan's industrial war machine suffer extraordinary failure in World War II. In both world wars, the nondemocratic capitalist great powers performed great feats and initially won shattering victories. On the other side, the democracies repeatedly blundered: they were dangerously late in rising to the challenge; their armed forces, particularly during the 1930s, were ill prepared; their initial defeats were potentially catastrophic; and their conduct thereafter was not free of serious errors. Contrary to the comforting notion that the democratic system eventually proved superior, the reason for Germany's and Japan's defeats lies in the fact that the two countries were simply smaller than their adversaries and less tolerant of failure. For Germany to have broken out of its limited territorial confines and fatally crippled the superior coalition assembled against it in either of the world wars, it would have needed a consecutive string of major successes. Indeed, it came remarkably close to achieving that goal in both world wars. By contrast, the colossal power of the United States meant that the democracies were able to sustain catastrophic failures-- such as the loss of Russia as an ally in World War I and the fall of France and the destruction of the U.S. Pacific fleet at Pearl Harbor in World War II--and still recover. Thus, without the United States as their ally, France and the United Kingdom would probably have lost to Germany in both world wars. The remainder of the twentieth century would have been very different, and political scientists would have had a far less rosy story to tell about democracy. The constructed grand narrative of the twentieth century would have emphasized the superior cohesiveness of authoritarian regimes, not the triumph of freedom. For grand narratives, like history, are written by the victors.

### Overview

#### Democratic/autocratic wars outweigh, 3 reasons

Escalate faster

Last longer

Preemption

Chris **Dasse 6** Professor of International Relations at the University of Munich. “Democratic Wars Looking at the Dark Side of Democratic Peace” 89

As far as the form of warfare is concerned, democratic wars differ markedly from other wars. The domestic structure of democracies tends to devalue traditional limits on military ends and means. Democratic wars, it seems, have a specific propensity to escalate, since institutions designed for the control of the military are overruled in times of war. The normative justifications of democratic war tend to favour ‘regime change’ as a war aim, thus dissolving another limitation of traditional warfare. Finally, the political reasons for democratic war call for proactive rather than reactive policy choices and allow the preventive use of force in order to expand the security community of democratic states.

#### Default eNeg Democracy doesn’t cause peace – statistical models are spurious and don’t assume economic growth\*\*\*

Mousseau, 12 (Michael – Professor IR Koç University, “The Democratic Peace Unraveled: It’s the Economy” International Studies Quarterly, p 1-12)

Model 2 presents new knowledge by adding the control for economic type. To capture the dyadic expectation of peace among contract-intensive nations, the variable Contract- intensive EconomyL (CIEL) indicates the value of impersonal contracts in force per capita of the state with the lower level of CIE in the dyad; a high value of this measure indicates both states have contract-intensive economies. As can be seen, the coefficient for CIEL ()0.80) is negative and highly significant. This corroborates that impersonal economy is a highly robust force for peace. The coefficient for DemocracyL is now at zero. There are no other differences between Models 1 and 2, whose samples are identical, and no prior study corroborating the democratic peace has considered contractintensive economy. Therefore, the standard econometric inference to be drawn from Model 2 is the nontrivial result that all prior reports of democracy as a force for peace are probably spurious, since this result is predicted and fully accounted for by economic norms theory. CIEL and DemocracyL correlate only in the moderate range of 0.47 (Pearson’s r), so the insignificance of democracy is not likely to be a statistical artifact of multicollinearity. This is corroborated by the variance inflation factor for DemocracyL in Model 2 of 1.85, which is well below the usual rule-of-thumb indicator of multicollinearity of 10 or more. Nor should readers assume most democratic dyads have both states with impersonal economies: While almost all nations with contract-intensive economies (as indicated with the binary measure for CIE) are democratic (Polity2 > 6) (Singapore is the only long-term exception), more than half—55%—of all democratic nation-years have contract-poor economies. At the dyadic level in this sample, this translates to 80% of democratic dyads (all dyads where DemocracyBinary6 = 1) that have at least one state with a contract-poor economy. In other words, not only does Model 2 show **no evidence of causation from democracy to peace** (as reported in Mousseau 2009), but it also illustrates that this absence of democratic peace includes the vast majority—80%—of democratic dyad-years over the sample period. Nor is it likely that the causal arrow is reversed—with democracy being the ultimate cause of contract-intensive economy and peace. This is because correlations among independent variables are not calculated in the results of multivariate regressions: Coefficients show only the effect of each variable after the potential effects of the others are kept constant at their mean levels. If it was democracy that caused both impersonal economy and peace, then there would be some variance in DemocracyL remaining, after its partial correlation with CIEL is excluded, that links it directly with peace. The positive direction of the coefficient for DemocracyL informs us that no such direct effect exists (Blalock 1979:473–474). Model 3 tests for the effect of DemocracyL if a control is added for mixed-polity dyads, as suggested by Russett (2010:201). As discussed above, to avoid problems of mathematical endogeneity, I adopt the solution used by Mousseau, Orsun and Ungerer (2013) and measure regime difference as proposed by Werner (2000), drawing on the subcomponents of the Polity2 regime measure. As can be seen, the coefficient for Political Distance (1.00) is positive and significant, corroborating that regime mixed dyads do indeed have more militarized conflict than others. Yet, the inclusion of this term has no effect on the results that concern us here: CIEL ()0.85) is now even more robust, and the coefficient for DemocracyL (0.03) is above zero.7 Model 4 replaces the continuous democracy measure with the standard binary one (Polity2 > 6), as suggested by Russett (2010:201), citing Bayer and Bernhard (2010). As can be observed, the coefficient for CIEL ()0.83) remains negative and highly significant, while DemocracyBinary6 (0.63) is in the positive (wrong) direction. As discussed above, analyses of fatal dispute onsets with the far stricter binary measure for democracy (Polity = 10), put forward by Dafoe (2011) in response to Mousseau (2009), yields perfect prediction (as does the prior binary measure Both States CIE), causing quasi-complete separation and inconclusive results. Therefore, Model 5 reports the results with DemocracyBinary10 in analyses of all militarized conflicts, not just fatal ones. As can be seen, the coefficient for DemocracyBinary10 ()0.41), while negative, is not significant. Model 6 reports the results in analyses of fatal disputes with DemocracyL squared (after adding 10), which implies that the likelihood of conflict decreases more quickly toward the high values of DemocracyL. As can be seen, the coefficient for DemocracyL 2 is at zero, further corroborating that even very high levels of democracy do not appear to cause peace in analyses of fatal disputes, once consideration is given to contractintensive economy. Models 3, 4, and 6, which include Political Distance, were repeated (but unreported to save space) with analyses of all militarized interstate disputes, with the democracy coefficients close to zero in every case. Therefore, the conclusions reached by Mousseau (2009) are corroborated even with the most stringent measures of democracy, consideration of institutional distance, and across all specifications: The **democratic peace appears spurious**, with contract-intensive economy being the more likely explanation for both democracy and the democratic peace.

### War

#### Institutions cause war- 1NC Dasse

#### Institutions cause war but can’t stop it- get overruled in crisis

Chris **Dasse 6** Professor of International Relations at the University of Munich. “Democratic Wars Looking at the Dark Side of Democratic Peace” 81-2

In sum, democratic institutions, designed to limit governmental power, do not always have pacifying effects. They inculcate restraints in conflicts with other democracies but they can be circumvented by determined governments by using covert warfare. What is more, they may even contribute to the escalation of conflict by providing incentives for democratic governments to use force as diversionary action or to expand war aims in order to secure domestic consensus. Finally, democratic institutions allow for the relatively unfettered use of force since peacetime provisions for civil control of the military are lifted in times of war – at least in the American variant of civil–military relations. 82 Democratic Wars Thus, democratic war is partly due to the institutional disposition of

democratic states.

### Africa

#### \*\*Africa war escalates

Glick ‘7(Dec. 10, 2007 Caroline Glick , THE JERUSALEM POST)

The Horn of Africa is a dangerous and strategically vital place. Small wars, which rage continuously, can easily escalate into big wars. Local conflicts have regional and global aspects. All of the conflicts in this tinderbox, which controls shipping lanes from the Indian Ocean into the Red Sea, can potentially give rise to regional, and indeed global conflagrations between competing regional actors and global powers.

### Deterrence

#### And it puts an escalation ladder 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**.

### Econ

#### Democracy kills global growth

**Garten 4** DEAN OF THE YALE SCHOOL OF MANAGEMENT The Trouble With Freedom By Jeffrey E. Garten | NEWSWEEK From the magazine issue dated May 10, 2004, http://www.newsweek.com/2004/05/09/the-trouble-with-freedom.html

The growth of democracy could, for example, slow the expansion of international trade. Reason: a democratic government cannot decree the dropping of barriers but must listen to the views of farmers, workers, manufacturers, nongovernmental organizations and others. In many countries, the voice of public opinion will play a larger role than ever before. At best, this is likely to delay international trade talks as governments attempt to reach delicate compromises among competing interests at home. At worst, it could lead to rising protectionism as anti-trade groups scream the loudest.

Democracies also tend to favor easy money, even when it's not the technically correct prescription for sound economic policies; it's a sure way for politicians to curry favor with the masses. The danger is that when several countries do this, the world economy develops a bias toward inflation--which ultimately is destructive to long-term growth. It is therefore vital to establish fiercely independent central banks with governors strong enough to withstand political pressure. Right now, for example, the finance ministers from Germany and France are in a highly visible f

ight with Jean-Claude Trichet, the president of the European Central Bank, over his insistence that now is not the right time to lower interest rates in the eurozone. This kind of confrontation is sure to be played out in many countries over the next few years. Speaking of easy money, democracies like to open the spending spigot, even when they shouldn't. Case in point: Brazil's president, Luiz Inacio Lula da Silva, is right now under intense public pressure to abandon his admirable fiscal conservatism in order to gun the economic engines. The temptation may be politically irresistible and even understandable, but international financial markets will not be pleased. Even the most advanced democracies, such as the United States, France and Germany, have demonstrated an inability to build the necessary long-term safety nets to prosper in a hypercompetitive global economy. Obviously, so too will less sophisticated democracies. Think about America's inability to rein in its enormous fiscal deficits, despite the certainty of massive upcoming expenses relating to Social Security and health care for its aging population. Or about the inability of major European nations to establish economically viable pension and unemployment compensation systems.

### Environment

#### authoritarianism solves environment

Mark **Beeson** 8 April 20**10**, Department of Political Science and International Relations, University of WesternAustralia, Perth, “The coming of environmental authoritarianism” http://www.academia.edu/539179/The\_coming\_of\_environmental\_authoritarianism

The East Asian region generally and Southeast Asia in particular have longbeen associated with authoritarian rule. It is argued that the intensiﬁcationof a range of environmental problems means that authoritarian rule islikely to become even more commonplace there in the future. Countrieswith limited state capacity will struggle to deal with the consequences of population expansion, economic development and the environmentaldegradation with which they are associated. A resurgence of authoritarianrule is made even more likely by China’s ‘successful’ developmentalexample and the extent of the region’s existing environmental problems.The dispiriting reality may be that authoritarian regimes – unattractive asthey may be – may even prove more capable of responding to the complexpolitical and environmental pressures in the region than some of its democracies. Keywords: authoritarianism; environment; Southeast Asia; China;development; path dependency Introduction The environment has become the deﬁning public policy issue of the era. Notonly will political responses to environmental challenges determine the healthof the planet, but continuing environmental degradation may also aﬀect political systems. This interaction is likely to be especially acute in parts of theworld where environmental problems are most pressing and the state’s ability to respond to such challenges is weakest. One possible consequence of environmental degradation is the development or consolidation of authoritar-ian rule as political elites come to privilege regime maintenance and internalstability over political liberalisation. Even eﬀorts to mitigate the impact of, orrespond to, environmental change may involve a decrease in individual liberty as governments seek to transform environmentally destructive behaviour. As a result, ‘environmental authoritarianism’ may become an increasingly common response to the destructive impacts of climate change in an age of diminishedexpectations.Long before the recent global economic crisis inﬂicted such a blow onAnglo-American forms of economic organisation, it was apparent that therewere other models of economic development and other modes of politicalorganisation that had admirers around the world. The rise of illiberal forms of capitalism and an apparent ‘democratic recession’ serve as a powerful remin-ders that there was nothing inevitable about the triumph of ‘Western’ politicaland economic practices or values (Zakaria 2003, Diamond 2008).

### Heg

#### democracy ruins primacy

Chris **Zambelis**, policy analyst, Strategic Assessment Center, Hicks and Associates, Inc., “The Strategic Implications of Political Liberalization and Democratization in the Middle East,” PARAMETERS, Autumn 20**05**, pp. 87-102. Available from the World Wide Web at: [www.carlisle.army.mil/usawc/Parameters/05autumn/zambelis.htm](http://www.carlisle.army.mil/usawc/Parameters/05autumn/zambelis.htm), accessed 3/9/06.

Given the populist credentials of Islamists, the rise of Islamist governments may transform the political and foreign policy orientation of traditional allies. This possibility should be of concern considering the credibility problem Washington faces in the region. As mentioned earlier, public opinion surveys demonstrate that America’s poor credibility does not stem from a popular Arab and Muslim aversion to American culture and democracy. Instead, Muslims harbor deep resentments toward US foreign policy in the region.40 Since democratic governments are by definition accountable to their citizens, public opinion will play an increasingly influential role in the political and foreign policy orientation of countries where Islamists dominate. When Islamists come to power, they will likely act on their populist impulses, at least in the early stages of any transition.41 For example, incumbent governments may place conditions on the continued presence of American military forces on their soil, but still keep dialogue open. Others may limit cooperation or abandon agreements governing security collaboration with Washington. It is also possible that democratic governments will cater to public opinion and demand that American forces vacate military installations altogether. It is no surprise that the new Shia-dominated Iraq has hinted at the need for establishing a timetable for the withdrawal of Coalition forces. Other governments may reorient their foreign policies away from the United States and look to Europe, Russia, and even China or India. China has been active in cultivating closer ties to prominent energy producers in the region, namely Sudan and Iran, in order to secure energy sources to fuel its dynamic economic growth.42 Beijing also has boosted security cooperation with Pakistan.43 India is pursuing a similar strategy in the region.44

#### Democracy spread kills primacy—specifically kills alliances

CIAO DATE: 03/03 Democratic Divergence: A Challenge to U.S. Primacy? Donald K. **Emmerson 3** \* onald K. Emmerson is Senior Fellow, Institute for International Studies at Stanford University. The PacNet Newsletter 2003 January 30, 2003 The Center for Strategic and International Studies http://www.ciaonet.org/pbei/csis/pac03/emd01/index.html

The consequences of democratization will pose the chief and most enduring challenge to U.S. primacy. Never have there been more electoral democracies in the world - 121 today, by Freedom House's latest count, up from 66 in 1987. So far, this trend has been cause mainly for American celebration. Viewed from the United States, democratization has been easy to construe as imitation - the sincerest form of flattery. American politicians routinely project U.S. democratic values as not just humane but human: what, deep in their hearts, everyone thinks and wants or, at any rate, would if they knew what was best. Whatever the accuracy of this presumption, it is at least less fantastic than the idea that installing the right to vote in a formerly authoritarian state will necessarily instill, among the newly enfranchised, sympathy for U.S. foreign policy - what Washington does as opposed to what Americans may believe. gis' extensive air defense capability, and joint operability. It is no coincidence that recently elected governments in Turkey and South Korea are not cheerleaders for confronting Iraq and North Korea, respectively. Living adjacent to the “evil axis” makes Turks and South Koreans uniquely vulnerable to the consequences of belligerence. Their electoral democracies assure that public fears based on this vulnerability cannot be ignored. As a senior adviser to Turkey's new prime minister recently observed, “Everybody knows that 80 to 85 percent of the Turkish people would say no to war in Iraq. As a democratic country, how can we say yes?” Gerhard Schröder's decision to comply with such logic in Germany's latest election is a main reason he remains chancellor of that country. And these countries are U.S. allies. Nor is the prospect of democratic divergence limited to these admittedly special cases. In foreign democracies generally, other things being equal, it is implausible that candidates and voters should consistently favor U.S. positions. Most Muslims, for example, are moderate. But in countries with large Muslim majorities and without strong secular traditions, it is not hard to envision an election whose results reduce the distance between state and religion, regardless of what the U.S. constitution's first amendment recommends. Nor is the chance of such outcomes limited to balloting among Muslims, witness the recent electoral success of hardline Hindus in the Indian state of Gujarat. Democratization need not be inimical to U.S. foreign policies. But democratic divergence in a more and more democratic world can be expected to limit the ability of U.S. administrations to act unilaterally in ways that significantly threaten or burden other countries. What is an election, after all, if not a multilateral consultation, among voters rather than states? Qualifications are needed: Democracies may diverge not only from the U.S. but also from each other. European disunity over Iraq is an illustration. An irony of unilateralist American rhetoric is that it can help stimulate a multilateral façade - a coalition of the somewhat willing - by motivating foot-dragging governments to move closer to Washington lest they lose all leverage and favor in the event of superpower success. Under mounting American pressure to become a launching pad for war against Baghdad, Ankara's “no” already has modulated to “yes” with reservations. And then there is British Prime Minister Tony Blair, who has been willing to ignore his own constituency's reluctance to say “yes” to President Bush - convergence at the top despite divergence from below. The implications of democratic divergence for U.S. power, therefore, are not its overthrow but its complication - and, prospectively, its erosion. In his State of the Union message to Congress on Jan. 28, 2003, President Bush emphasized U.S. power. “The course of this nation,” he said, “does not depend on the decisions of others.” An especially loud ovation followed. But one can wonder how much of the applause represented conviction as opposed to hope. U.S. history has not been impervious to the decisions of others. As for the future, events will rescue or refute the president's claim. In the meantime, it would be helpful to think clearly not only about threats from tyrants and terrorists, but also about how democracy could affect supremacy. Two illustrations: On Jan. 16 in The New York Times, commenting on Turkish reluctance to back a U.S. war in Iraq, columnist William Safire wrote: “Paradoxically, the growth of democracy in Turkey - which America cheers - has introduced an element of uncertainty” into the Turkish-American alliance. Paradoxically? Not by the logic of democratic divergence. In an adjacent op-ed, former National Security Adviser Richard Allen bemoaned South Korean divergence from a U.S. policy of confronting North Korea as “a serious breach of faith.” Breach of faith? Not if one's faith is in democracy, including the right to disagree. In a democratizing world, even a superpower may discover that the compliance of allies is no longer an element of certainty or a matter of faith, but a condition to be earned.

## Legitim

### Not effective

#### US engagement in multilat will never be strong enough to make it effective --- they can’t change this

Vezirgiannidou, 13 - Lecturer in International Organizations, University of Birmingham (SEVASTI-ELENI, “The United States and rising powers in a post-hegemonic global order,” International Affairs, May, Wiley Online)

The current US approach to rising powers, which engages them as equals in informal forums with little ‘hard’ law capabilities, while being passive or hesitant in reforming international institutions where it has a primary role (and a veto), exemplifies its own commitment to sovereignty and freedom of action in international politics. The US is just as reluctant as the BRICS to be bound by hard law commitments. It also indicates a lukewarm commitment to sharing its power with rising powers in hard law institutions. Some of this reluctance may be attributable to the constraints of congressional politics (and American exemptionalism); its strength can also depend on who sits in the White House and who his advisers are.118 Irrespective of the cause, this reluctance to share power formally while promoting multilateralism in informal settings is likely to have transformative implications on global order if it continues.¶ Specifically, the resulting order will become more plurilateral than multilateral, with the exclusion of minor powers and most decision­making moving into forums like the G20. It will also shift to more ‘soft law’ policy­making, as informal institutions will be less intrusive on sovereignty but also less able to move far beyond political declarations followed up on a voluntary basis. Finally, it is also likely to be more fragmented, as each power establishes a ‘sphere of influence’ in its region. This kind of order will not necessarily be more unstable, but even in such an order the US will have to accept some limits to its exercise of power abroad; it will not, though, be limited in its domestic policies, thus satisfying the exemptionalists in Congress. However, US policy­makers should be aware of the direction in which their current choices are moving global order; if they do not desire such an order, they should question their strategy towards both rising and minor powers and should show more leadership in the reform of formal institutions.

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### Exec CP – A2 He Lies

#### Requesting OLC advice gives Obama strategic room to say yes

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 resources of the OLC -- including its institutional memory -- render this office an invaluable source of legal expertise for the White House Counsel. Quite simply, the Counsel’s Office cannot provide all the information and the advising that an administration needs.

**OLC is the single most important legal office** in the government. More important really in terms of scholarship and memory and research – White House Counsel’s Office doesn’t really have the staff to do all [that] and they shouldn’t. It should be done in OLC.... [T]he White House doesn’t go to court without the department.... OLC was a huge problem for us in the sense that they were putting on a brake. We were free to ignore their advice but you knew so you did so at your peril because if you got into trouble you wouldn’t have them there backing you up, you wouldn’t have the institution backing you up. So you did it at your risk; you did it at your risk.... You’re best able to avoid the land mines if ... you restore the rightful place of the Office of Legal Counsel. When in doubt, ask them and they’ll tell you where the land mines are. (Gray interview, pp. 18-19, 21)

Several other Counsels echoed Gray’s description of the OLC **as a formidable ally** **and a significant check** on the White House. However, precisely because of the similarities in their responsibilities, the relationship between the White House Counsel and the OLC can be highly competitive. Both are recognized as legal experts immersed in politics and policy. Exacerbating matters, the jurisdictions of their offices, having evolved through practice, are blurred and lack strict bureaucratic rationality.

Yet, to an even larger extent, this competitive relationship reflects differences between the organizations. The White House Counsel is appointed by the president and does not require Senate confirmation. The members of the Justice Department include presidential appointees who are free of Senate confirmation, presidential nominees who are subject to Senate confirmation, and careerists. As such, Department officials have numerous and crosscutting loyalties. Further, while the president’s claim to executive privilege in regard to communications with the White House Counsel has been delimited in recent years, any possibility of the president successfully making such a claim in regard to the OLC may have been sacrificed in the Reagan administration.

... it had to do with a request by the Senate Judiciary Committee for all of William Rehnquist’s files when he was head of the Office of Legal Counsel at the Justice Department.... I thought that was simply harassment and I thought they were trying to create the kind of issue they could use to stop the nomination. I and the person who was then head of the Office of Legal Counsel in the Justice Department both felt this was a good executive privilege claim because the Office of Legal Counsel is the lawyer for the entire government, and in effect for the President, and everyone discloses everything to them to get rulings about legal issues. The whole underpinning of the attorney/client privilege, which is part of the executive privilege, is to get people to disclose all relevant information so you can give them the right advice. I thought, if there was ever a case, this was it. So I sent a memo to the President saying I thought he ought to claim executive privilege in this case, but Meese did not like at all that idea. We debated it in front of the President and the President decided he wouldn’t claim it.... [I]t turned out not to be as serious a problem as I thought, except that it creates a precedent. In the future, if someone wants the files of the Office of Legal Counsel, they are more likely to get them because this precedent exists. The result of that is that some people aren’t going to go to the Office of Legal Counsel for advice if they have to disclose things that they don’t want turned over to a Senate committee. (Wallison interview, p. 20)

Requesting a legal interpretation from the OLC, therefore, is clearly a strategic undertaking. If the Counsel does not involve the OLC -- or, having received the OLC’s interpretation, proceeds to set it aside -- the White House is isolated and will lack support for its actions. Politically, this is risky and even dangerous. C. Boyden Gray, for example, unequivocally concluded that the White House should never go to court without Justice’s support. At the same time, the OLC is staffed by experts who cannot claim executive privilege and, in any event, have allegiances that extend beyond the White House.

### Exec CP – A2 Perm do Both 2NC

#### Links to net benefit:

#### (A) External checks trigger backlash against Obama --- both international and domestically

#### (B) Perception of the micromanagement by the plan causes military backlash

**Ruffaa et al ’13** [Chiara Ruffaa, Department of Peace and Conﬂict Research, Uppsala University, Christopher Dandekerb, Department of Peace and Conﬂict Research, Uppsala University, Pascal Vennessonc, S. Rajaratnam School of International Studies (RSIS), Nanyang Technological University, “Soldiers drawn into politics? The inﬂuence of tactics in civil –military relations,” June, Small Wars & Insurgencies, Vol. 24, No. 2, 322–334, <http://www.kcl.ac.uk/kcmhr/publications/assetfiles/other/Ruffa2013politics.pdf>]

Actions in the theater of operation may have consequences for civil–military¶ relations back home. Furthermore, the desired objectives to be achieved have¶ shifted. Recent literature has agreed on ‘a shift away from the idea of the pursuit¶ of victory to that of success’ speciﬁcally at ‘establishing security condition’.16¶ Another feature of contemporary operations is the ‘process of dispersion of¶ military authority to lower levels of the command chain’.17 The dispersion of¶ military authority combines coercive and hierarchical elements typical of a¶ military organization with ‘group consensus’ and persuasive forms of authority¶ and it has led to the emergence of different leadership styles.18While sometimes¶ combined with micromanagement, this dispersion has led to greater autonomy for¶ soldiers in the ﬁeld and to a reduced control. Military operations have traditionally¶ been exceptional environments but in contemporary missions decisions often¶ have to be taken without orders.19 To be sure, communication technology has¶ encouraged both decentralization and centralization. Still, it is only a technology¶ and much depends on culture and organization of the user. This becomes¶ particularly difﬁcult to control when soldiers have wider margins of maneuver.¶ These interventions, Afghanistan and Iraq in particular, are ‘wars of contested¶ choice’, meaning that notwithstanding their differences they are not of existential¶ necessity.20 To complicate things further, politicians get involved while the¶ operation is ongoing; they **sometimes change the political objectives during the mission** or they have a moral and politically unrealistic view of the political¶ objectives to be achieved. This is the result of a combination of two constituent¶ elements, of what has been called the ‘dialectic of control’: dispersion and¶ micromanagement.21 Dispersion occurs when the military authority is dispersed¶ across levels of command; while micromanagement refers to a growing tendency¶ of centralizing control.22 Dispersion and micromanagement lead to a¶ compression of the three levels of war, namely strategic, operational, and¶ tactical.23 While these two elements may seem at odds with each other, they are¶ in fact connected. Micromanagement matters as much as dispersion. The tensions¶ between micromanagement – which refers to a centralized control and a topdown process – and diffusion lead to inconsistencies between orders given from¶ the top (without in-depth knowledge of the context) and diffusion of the level of¶ command. While potentially effective for operational activities, micromanagement risks being potentially frustrating when soldiers have to carry out activities¶ that range from humanitarian tasks to building bridges because they need to¶ assess on the ground where this is needed. Thus communications technologies are¶ double edged: (a) technology allows for either dispersion with local actors being¶ able to use a common picture with others to make local decisions that nonetheless¶ conform to the strategic principles set down by higher authority, or (b) they allow¶ senior ofﬁcers to micromanage as they think they know best because they can see¶ the detail that the lower levels can not. The key point here is that which direction¶ is taken – (a) or (b) – depends on factors such as the command culture of the military organization; the personality and orientation of senior ofﬁcers; and the¶ political nervousness/sensitivity/choices of ministers worried or not about what is¶ going on ‘down there’ and the consequences for the mission, their reputation, and¶ that of the government of which they are a part. These elements taken together¶ have created a set of conditions that have changed soldiers’ role in operations and¶ have made the tactical level more relevant and altered the ways in which they¶ connect to politicians and the political process.

#### That triggers the DA and there’s an independent nuclear war impact

COHEN 1997 [Eliot, PhD from Harvard in political science, Professor of Strategic Studies at the Paul H. Nitze School of Advanced International Studies (SAIS) at the Johns Hopkins University, Director of the Strategic Studies Program at SAIS, served as Counselor to the United States Department of State under Secretary Condoleezza Rice from 2007 to 2009, http://www.fpri.org/americavulnerable/06.CivilMilitaryRelations.Cohen.pdf]

Left uncorrected, the trends in American civil-military relations could breed certain pathologies. The most serious possibility is that of a dramatic civil-military split during a crisis **involving the use of force**. In the recent past, such tensions did not result in open division. For example, Franklin Roosevelt insisted that the United States invade North Africa in 1942, though the chiefs of both the army and the navy vigorously opposed such a course, favoring instead a buildup in England and an invasion of the continent in 1943. Back then it was inconceivable that a senior military officer would leak word of such a split to the media, where it would have reverberated loudly and destructively. To be sure, from time to time individual officers broke the vow of professional silence to protest a course of action, but in these isolated cases the officers paid the accepted price of termination of their careers. In the modern environment, such cases might no longer be isolated. Thus, presidents might try to shape U.S. strategy so that it complies with military opinion, and rarely in the annals of statecraft has military opinion alone been an adequate guide to sound foreign policy choices. Had Lincoln followed the advice of his senior military advisers there is a good chance that the Union would have fallen. Had Roosevelt deferred to General George C. Marshall and Admiral Ernest J. King there might well have been a gory debacle on the shores of France in 1943. Had Harry S. Truman heeded the advice of his theater commander in the Far East (and it should be remembered that the Joint Chiefs generally counseled support of the man on the spot) there might have been **a third world war**. Throughout much of its history, the U.S. military was remarkably politicized by contemporary standards. One commander of the army, Winfield Scott, even ran for president while in uniform, and others (Leonard Wood, for example) have made no secret of their political views and aspirations. But until 1940, and with the exception of periods of outright warfare, the military was a negligible force in American life, and America was not a central force in international politics. That has changed. Despite the near halving of the defense budget from its high in the 1980s, it remains a significant portion of the federal budget, and the military continues to employ millions of Americans. More important, civil-military relations in the United States now no longer affect merely the closet-room politics of Washington, but the relations of countries around **the world**. American **choices** about the use of force, the **shrewdness** of American strategy, the **soundness** of American tactics, and the **will** of American leaders have global consequences. What might have been petty squabbles in bygone years are now magnified into quarrels of a far larger scale, and conceivably with far more grievous consequences. To ignore the problem would neglect one of the cardinal purposes of the federal government: “to provide for the common defense” in a world in which security cannot be taken for granted.

#### Only the CP triggers Congressional follow-on and avoids confrontation

BRZEZINSKI 2012, national security advisor under U.S. President Jimmy Carter (Zbigniew, 12/3/12, Obama's Moment, www.foreignpolicy.com/articles/2012/12/03/obamas\_moment)

In foreign affairs, the central challenge now facing President Barack Obama is how to regain some of the ground lost in recent years in shaping U.S. national security policy. Historically and politically, in America's system of separation of powers, it is the president who has the greatest leeway for decisive action in foreign affairs. He is viewed by the country as responsible for Americans' safety in an increasingly turbulent world. He is seen as the ultimate definer of the goals that the United States should pursue through its diplomacy, economic leverage, and, if need be, military compulsion. And **the world at large sees him** -for better or for worse -**as the** authentic voice of America.

To be sure, he is not a dictator. Congress has a voice. So does the public. And so do vested interests and foreign-policy lobbies. The congressional role in declaring war is especially important not when the United States is the victim of an attack, but when the United States is planning to wage war abroad. Because America is a democracy, public support for presidential foreign-policy decisions is essential. But no one in the government or outside it can match the president's authoritative voice when he speaks and then decisively acts for America.

This is true even in the face of determined opposition. Even when some lobbies succeed in gaining congressional support for their particular foreign clients in defiance of the president, for instance, many congressional signatories still quietly convey to the White House their readiness to support the president if he stands firm for "the national interest." **And a president who is willing to do so publicly**, while skillfully cultivating friends and allies on Capitol Hill, **can** then **establish such intimidating credibility that it is politically unwise to confront him**. This is exactly what Obama needs to do now.

### Exec Power DA – Impact Overview 2NC [1/\_\_]

#### DA outweighs and turns case: (A)

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) And terrorism has its own impact --- triggers full scale war

Hellman ‘8 (Martin E. Hellman\* \* Martin E. Hellman is a member of the National Academy of Engineering and Professor Emeritus at Stanford University. His current project applies risk analysis to nuclear deterrence)

Nuclear proliferation and the specter of nuclear terrorism are creating additional possibilities for triggering a nuclear war. If an American (or Russian) city were devastated by an act of nuclear terrorism, the public **outcry for immediate,** decisive **action would be** even **stronger than Kennedy** had to deal **with** when the **Cuban missiles** first became known to the American public. While the action would likely not be directed against Russia, it might be threatening to Russia (e.g., on its borders) or one of its allies and precipitate a crisis that resulted in a full-scale nuclear war. Terrorists with an apocalyptic mindset **might even** attempt to catalyze a full-scale nuclear war by disguising their act to look like an attack by the U.S. or Russia**.**

### Uniqueness – Courts 2NC

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

McCormack 13, Professor of Law at Utah

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

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

### Links

#### Your own evidence says you destroy global presidential negotiating credibility – shreds diplomatic trust and confidentiality

Milko 12

Winter, 2012, Jennifer L. Milko, and#34;Separation of Powers and Guantanamo Detainees: Defining the Proper Roles of the Executive and Judiciary in Habeas Cases and the Need for Supreme Guidanceand#34;, 50 Duq. L. Rev. 173~

B. Arguments for Deference

Based on Kiyemba II's use of Munaf, the D.C. Circuit Court of Appeals has determined that the courts cannot prevent a government transfer from Guantanamo to another country once the government has determined that the prisoner will not be subject to torture in that country. 128 The court has also urged deference to the political branches' assertions that they are working to release prisoners in a timely manner. 129 The court has seemed to follow an "if you say so" policy to the declarations of the Executive Branch in making decisions that impact the rights of the Guantanamo detainees.¶ The Government has argued that there is a necessity to deference because of the sensitive nature of the issues in these cases. The D.C. Circuit Court of Appeals in Kiyemba II noted that requiring pre-transfer notice would interfere with the Executive Branch's ability to engage in negotiations with foreign nations for the transfer of detainees. 130 The Executive Branch has the power to conduct the foreign affairs of the United States, and there is significant time and effort that goes into establishing relationships with foreign states in our nation's diplomatic endeavors. 131¶ It has been the established government policy to prevent the transfer of a detainee when there is a possibility of facing torture, and the D.C. Circuit Court of Appeals has not allowed interference with those declarations. 132 If the government has investigated the recipient nations in the transfer cases and has come to a conclusion that the transfer will be safe, allowing judicial interference may anger the recipient nations with accusations of human rights violations. Furthermore, such judicial determinations could undermine the Executive Branch's efforts of gaining the recipient nation's trust in order to facilitate an exchange of important information about the inner-workings of these governments. Furthermore, it has not traditionally been the realm of the courts to [\*192] investigate foreign diplomacy. By allowing judicial interference, the veil of confidentiality in the diplomatic negotiations could be in peril. 133¶ The Government has argued that the D.C. Circuit Court of Appeals correctly applied Munaf to the issue of whether a court can prevent the transfer of a detainee to a foreign nation upon release from confinement. 134 Citing as proof that the Kiyemba II was proper, there have been numerous cases that have reaffirmed it, and the Supreme Court has denied certiorari in that case. 135¶ The Government has also rejected attempts to distinguish the Munaf case. The Government disclaimed the factual distinctions, and noted that the main similarity was the fact that the Government in both instances provided assurances that the detainees would not be transferred to countries where torture was likely. 136 The Government also asserted that the argument that Munaf was limited to its facts should not be read so narrowly, as it rationale was not as limited. 137 Regardless of the factual distinctions, the petitioners still sought the same remedy-an injunction to prevent transfer based on torture-that should be governed under the authority of the Executive. 138¶ Due process arguments have also been foreclosed by Munaf in the view of the Government because the political branches have the power to decide whether a foreign nation's policies are just, thus giving the judiciary no place in assessing whether transfers should be avoided on the basis of a potential loss of constitutional rights. 139 The courts are not an avenue to challenge the Executive Branch's conclusions of which foreign nations would potentially torture transferred detainees on the basis of due process.¶ Lastly, the Government has contended that the Kiyemba II decision does not undermine or limit the Supreme Court's holding in Boumediene because that case and Munaf were decided on the same day by the Supreme Court and Munaf directly stated that habeas relief is unavailable in some situations, namely when the [\*193] government has decided that torture is unlikely to result after transfer. 140¶ In the separation of powers struggle, those in favor of deference have viewed the Executive Branch as a trustworthy and diligent diplomat, investigating and negotiating in order to resettlement for Guantanamo detainees. 141 Such foreign policy issues are arguably properly before the Executive Branch and are not a matter of concern for the judiciary because the courts are not engaged in diplomatic relations. While the time of detainment may be extended as a result of these investigations, the argument is that the Government is merely doing the job which it has power to do. The major concern is that the Executive Branch is engaging in delicate diplomacy and district court judges who are not involved in those negotiations and do not know the entirety of the situation would have the ability to sever those diplomatic lines and in the long run, harm detainees' chances of safe transfer due to foreign nation's anger or refusal to cooperate if they were able to second-guess the Executive.

#### Broad executive authority winning the war now ---- Restricting detention would signal weakness

Majidyar, 13 -- American Enterprise Institute senior research associate [Ahmad, “We Need Military Authorization Until Al-Qaida Is No Longer a Threat,” June 17th, http://www.usnews.com/debate-club/should-the-authorization-for-use-of-military-force-be-repealed/we-need-military-authorization-until-al-qaida-is-no-longer-a-threat]

Nearly 12 years since 9/11, the United States remains in a state of armed conflict and the 2001 Authorization for Use of Military Force continues to **provide the** **principal legal** **framework for** military and **detention operations** against al-Qaida, the Taliban and associated forces. The law has given both the Bush and Obama administrations the authority to "use all necessary and appropriate force against those nations, organizations, or persons" responsible for the September 11 attacks, in order to prevent any future terror plots against America. **As a result, al-Qaida** and the Taliban were removed from power in Afghanistan; Osama bin Laden and many of his top lieutenants were killed in Pakistan; and there have been no terror attacks of the 9/11 magnitude on American soil. Despite these gains, however, al-Qaida remains a viable threat. Over the past years, the terror group has metastasized and spread across the Middle East, forming al-Qaida in the Arabian Peninsula and al-Qaida in the Islamic Maghreb. Al-Qaida-affiliated groups have also exploited regional instability in the aftermath of the Arab Spring to gain a foothold in Syria, Libya and Egypt's Sinai. Moreover, some regional radical groups have become co-belligerents with al-Qaida in the fight against the West, including Somalia-based Al-Shabaab and Nigeria's Boko Haram. It is therefore premature and dangerous to repeal or significantly restrict the AUMF at this point, since it **would undercut** the **effectiveness** of U.S. counterterrorism efforts to deal with al-Qaida-related emerging threats worldwide. Suggestions to incorporate temporal and geographical limitations into the AUMF are also ill-advised. Confining the law to a specific number of countries or terrorist groups would give the enemy more freedom of action and allow it to create new fronts and sanctuaries in areas immune from U.S. counterterrorism operations. In his counterterrorism policy speech three weeks ago, President Obama promised to continue a "series of persistent, targeted efforts to dismantle specific networks of violent extremists that threaten America." in the absence of the AUMF, such actions would become **untenable** and devoid of a legal basis. At present, the AUMF provides the administration with **adequate** authorities to **pursue the war**. Until al-Qaida and associated forces are degraded to a level where they pose no substantial national security threat to the United States, the law should not be repealed or replaced.

#### If we win a link causes rollback/circumvention

Laura Young, Ph.D., Purdue University Associate Fellow, June 2013, Unilateral Presidential Policy Making and the Impact of Crises, Presidential Studies Quarterly, Volume 43, Issue 2

A president looks for chances to increase his power (Moe and Howell 1999). Windows of opportunity provide those occasions. These **openings create an environment where the president faces little backlash from Congress, the judicial branch, or even the public**. Though institutional and behavioral conditions matter, domestic and international crises play a pivotal role in aiding a president who wishes to increase his power (Howell and Kriner 2008, 475). These events overcome the obstacles faced by the institutional make-up of government. They also allow a president lacking in skill and will or popular support the opportunity to shape the policy formation process. In short, focusing events increase presidential unilateral power.

#### Court intervention on detention decimates war powers authority—undermines alliances and compromises military operations

McCarthy, 9

(Director-Center for Law & Counterterrorism at the Foundation for the Defense of Democracies, 8/20, “Outsourcing American Law,” http://www.aei.org/files/2009/08/20/20090820-Chapter6.pdf)

Empirically, judicial demands on executive branch procedural compliance, if unchecked, become **steadily more demanding over time.** The executive naturally responds by being more internally exacting to avoid problems. Progressively, executive compliance, initially framed and understood as a reasonably modest set of burdens to promote the integrity of judicial proceedings, becomes instead a consuming priority and expenditure, which, if permitted in the context of warfare, would **inevitably detract from the military mission that is the bedrock of our national security.** In the fore here, plainly, are such matters as discovery and confrontation rights. If the courts were given final authority, while hostilities are ongoing, to second-guess the executive’s decision to detain a combatant by scrutinizing reports that summarize the basis for detention, it is only a short leap to the court’s asking follow-up questions or determining that testimony, perhaps subject to cross-examination, is appropriate. Are we to make combat personnel available for these proceedings? Shall we take them away from the battle we have sent them to fight so they can justify to the satisfaction of a judge the capture of an alien enemy combatant that has already been approved by military commanders? Given the fog and anxiety of war, shall we expect them to render events as we would an FBI agent describing the circumstances of a domestic arrest? Nor is that the end of the intractable national security problems. What if capture was effected by our allies rather than our own forces (as was the case, for example, with the jihadist who was the subject of the Hamdi case)? Shall we try to compel affidavits or testimony from members of, say, the Northern Alliance? What kinds of strains will be put on our **essential wartime alliances** if they are freighted with requests to participate in American legal proceedings, and possibly compromise intelligence methods and sources – all for the purpose of providing heightened due process to the very terrorists who were making war on those allies? These are lines that Congress must draw. Leaving them for the courts themselves to sort out would place us on a path toward full-blown civilian trials for alien enemy combatants – the very outcome the creation of a new system was intended to avoid.

### A2 boumedine triggers

#### Boumediene gave significant flexibility – the plan is a significant break from the status quo

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3. a. Nothing in Boumediene justifies the order entered by the district court requiring the government to bring the petitioners at Guantanamo Bay to the United 23 States. The Court did not order any particular remedy in Boumediene , or even address the merits of any detainee’s habeas claim. See 128 S. Ct. at 2277. And it in no way suggested that the detainees in that case had any right to be brought to the United States. That issue did not arise in the case because the Boumediene petition- ers told the Court that “a release order would clearly not raise any diplomatic concerns given that Bosnia has repeatedly stated its willingness to accept the Boumediene Petitioners’ return.” Pet. Reply Br. at 18, Boumediene , supra (Nos. 06-1195 & 06-1196) (internal quota- tion marks and citation omitted). In fact, the Court observed in Boumediene that “common-law habeas corpus was, above all, an adaptable remedy,” and its “precise application and scope changed depending upon the circumstances.” 128 S. Ct. at 2267. Before extending the writ to Guantanamo Bay, the Court considered “the practical obstacles inherent in resolving the prisoner’s entitlement to the writ.” Id. at 2259. And the Court indicated that the appropriate remedy can take into account equitable principles and practical constraints: Although “the habeas court must have the power to order the conditional release of an individ- ual unlawfully detained,” a detainee’s immediate release “need not be the exclusive remedy and is not the appropriate one in every case in which the writ is granted.” Id. at 2266. A fortiori, that is true of an order releasing the petitioners at Guantanamo Bay into the United States.