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### 1NC

#### Using the law to restrain its own war power authority only re-centralizes power --- Voting neg to reject the 1AC’s institutional war power narrative is the most productive political act

RANA 2011 - A.B. summa cum laude from Harvard College and his J.D. from Yale Law School. He also earned a Ph.D. in political science at Harvard, where his dissertation was awarded the university's Charles Sumner Prize. He was an Oscar M. Ruebhausen Fellow in Law at Yale (Aziz Rana, “Who Decides on Security?”, August 11, 2011, <http://scholarship.law.cornell.edu/clsops_papers/87/>)

Despite such democratic concerns, a large part of what makes today’s dominant security concept so compelling are two purportedly objective sociological claims about the nature of modern threat. As these claims undergird the current security concept, by way of a conclusion I would like to assess them more directly and, in the process, indicate what they suggest about the prospects for any future reform. The first claim is that global interdependence means that the U.S. faces near continuous threats from abroad. Just as Pearl Harbor presented a physical attack on the homeland justifying a revised framework, the American position in the world since has been one of permanent insecurity in the face of new, equally objective dangers. Although today these threats no longer come from menacing totalitarian regimes like Nazi Germany or the Soviet Union, they nonetheless create of world of chaos and instability in which American domestic peace is imperiled by decentralized terrorists and aggressive rogue states.187 Second, and relatedly, the objective complexity of modern threats makes it impossible for ordinary citizens to comprehend fully the causes and likely consequences of existing dangers. **Thus, the best response is** the **further entrenchment** of Herring’s national security state, with the U.S. **permanently mobilized militarily** to gather intelligence and to combat enemies wherever they strike – at home or abroad. Accordingly, modern legal and political institutions that privilege executive authority and insulated decisionmaking are simply the necessary consequence of these externally generated crises. Regardless of these trade-offs, the security benefits of an empowered presidency (one armed with countless secret and public agencies as well as with a truly global military footprint)188 greatly outweigh the costs. Yet, although these sociological views have become commonplace, the conclusions that Americans should draw about security requirements are not nearly as clear cut as the conventional wisdom assumes. In particular, a closer examination of contemporary arguments about endemic danger suggests that such claims are **not objective empirical judgments** but rather are socially complex and **politically infused interpretations**. Indeed, the openness of existing circumstances to multiple interpretations of threat implies that the presumptive need for secrecy and centralization is not self-evident. And as underscored by high profile failures in expert assessment, claims to security expertise are themselves **riddled with ideological presuppositions and subjective biases**. All this indicates that the gulf between elite knowledge and lay incomprehension in matters of security may be far less extensive than is ordinarily thought. It also means that **the question of who decides** – and with it the issue of how democratic or insular our institutions should be – remains open as well. Clearly technological changes, from airpower to biological and chemical weapons, have shifted the nature of America’s position in the world and its potential vulnerability. As has been widely remarked for nearly a century, the oceans alone cannot guarantee our permanent safety. Yet, in truth they never fully ensured domestic tranquility. The nineteenth century was one of near continuous violence, especially with indigenous communities fighting to protect their territory from expansionist settlers. 189 But even if technological shifts make doomsday scenarios more chilling than those faced by Hamilton, Jefferson, or Taney, the mere existence of these scenarios tells us little about their likelihood or how best to address them. Indeed, these latter security judgments are inevitably permeated with subjective political assessments, assessments that carry with them preexisting ideological points of view – such as regarding how much risk constitutional societies should accept or how interventionist states should be in foreign policy. In fact, from its emergence in the 1930s and 1940s, supporters of the modern security concept have – at times unwittingly – reaffirmed the political rather than purely objective nature of interpreting external threats. In particular, commentators have repeatedly noted the link between the idea of insecurity and America’s post-World War II position of global primacy, one which today has only expanded following the Cold War. In 1961, none other than Senator James William Fulbright declared, in terms reminiscent of Herring and Frankfurter, that security imperatives meant that “our basic constitutional machinery, admirably suited to the needs of a remote agrarian republic in the 18th century,” was no longer “adequate” for the “20th- century nation.”190 For Fulbright, the driving impetus behind the need to jettison antiquated constitutional practices was the importance of sustaining the country’s “preeminen[ce] in political and military power.”191 Fulbright held that greater executive action and war-making capacities were essential precisely because the United States found itself “burdened with all the enormous responsibilities that accompany such power.”192 According to Fulbright, the United States had both a right and a duty to suppress those forms of chaos and disorder that existed at the edges of American authority. Thus, rather than being purely objective, **the American condition of permanent danger was itself deeply tied to political calculations about** the importance of global **primacy**. What generated the condition of continual crisis was not only technological change, but also the belief that the United States’ own ‘national security’ rested on the successful projection of power into the internal affairs of foreign states. The key point is that regardless of whether one agrees with such an underlying project, the **value** **of this project** is ultimately **a**n open **political question**. This suggests that whether distant crises should be viewed as generating insecurity at home is similarly as much an interpretative judgment as an empirically verifiable conclusion.193 To appreciate the open nature of security determinations, one need only look at the presentation of terrorism as a principal and overriding danger facing the country. According to the State Department’s Annual Country Reports on Terrorism, in 2009 “[t]here were just 25 U.S. noncombatant fatalities from terrorism worldwide” (sixteen abroad and nine at home).194 While the fear of a terrorist attack is a legitimate concern, these numbers – which have been consistent in recent years – place the gravity of the threat in perspective. Rather than a condition of endemic danger – requiring ever increasing secrecy and centralization – such facts are perfectly consistent with a reading that Americans do not face an existential crisis (one presumably comparable to Pearl Harbor) and actually enjoy relative security. Indeed, the disconnect between numbers and resources expended, especially in a time of profound economic insecurity, highlights the political choice of policymakers and citizens to persist in interpreting foreign events through a World War II and early Cold War lens of permanent threat. In fact, the continuous alteration of basic constitutional values to fit ‘national security’ aims highlights just how entrenched Herring’s old vision of security as pre-political and foundational has become, regardless of whether other interpretations of the present moment may be equally compelling. It also underscores a telling and often ignored point about the nature of modern security expertise, particularly as reproduced by the United States’ massive intelligence infrastructure. To the extent that political assumptions – like the centrality of global primacy or the view that instability abroad necessarily implicates security at home – shape the interpretative approach of executive officials, what passes as objective security expertise is itself intertwined with contested claims about how to view external actors and their motivations. This means that while modern conditions may well be complex, the conclusions of the presumed experts may not be systematically less liable to subjective bias than judgments made by ordinary citizens based on publicly available information. It further underscores that the question of who decides cannot be foreclosed in advance by simply asserting deference to elite knowledge. If anything, one can argue that the presumptive gulf between elite awareness and suspect mass opinion has generated its own very dramatic political and legal pathologies. In recent years, the country has witnessed a variety of security crises built on the basic failure of ‘expertise.’195 At present, part of what obscures this fact is the very culture of secret information sustained by the modern security concept. Today, it is commonplace for government officials to leak security material about terrorism or external threat to newspapers as a method of shaping the public debate.196 These ‘open’ secrets allow greater public access to elite information and embody a central and routine instrument for incorporating mass voice into state decision-making. But this mode of popular involvement comes at a key cost. Secret information is generally treated as worthy of a higher status than information already present in the public realm – the shared collective information through which ordinary citizens reach conclusions about emergency and defense. Yet, oftentimes, as with the lead up to the Iraq War in 2003, although the actual content of this secret information is flawed,197 its status as secret masks these problems and allows policymakers to cloak their positions in added authority. This reality highlights the importance of approaching security information with far greater collective skepticism; it also means that security judgments may be more ‘Hobbesian’ – marked fundamentally by epistemological uncertainty as opposed to verifiable fact – than policymakers admit. If both objective sociological claims at the center of the modern security concept are themselves profoundly contested, what does this mean for reform efforts that seek to recalibrate the relationship between liberty and security? Above all, it indicates that **the central problem** with the **procedural solutions** offered by constitutional scholars – emphasizing new statutory frameworks or greater judicial assertiveness – is that they **mistake a question of politics for one of law**. In other words, such scholars ignore the extent to which governing practices are the product of background political judgments about threat, democratic knowledge, professional expertise, and the necessity for insulated decision-making. To the extent that Americans are convinced that they face continuous danger from hidden and potentially limitless assailants – danger too complex for the average citizen to comprehend independently – it is inevitable that institutions (regardless of legal reform initiatives) will operate to centralize power in those hands presumed to enjoy military and security expertise. Thus, any systematic effort to **challenge the current framing** of the relationship between security and liberty **must begin by challenging the underlying assumptions** about knowledge and security upon which legal and political arrangements rest. Without a sustained and public debate about the validity of security expertise, its supporting institutions, and the broader legitimacy of secret information, there can be no substantive shift in our constitutional politics. The problem at present, however, is that no popular base exists to raise these questions. Unless such a base emerges, we can expect our prevailing security arrangements to become ever more entrenched.

#### Centralized institutionalizion causes genocide and extinction

HINDMARSH 2005 - Professor at the Australian School of Environmental Studies—Griffith University (Richard Hindmarsh, April 2005, Green Biopolitics & the Molecular Reordering of Nature, <http://www.essex.ac.uk/ecpr/events/jointsessions/paperarchive/granada/ws16/Hindmarsh.pdf>)

The first usage of the term ‘biopolitics’ that Braun and Gottweis (2004) refer to aligns to my longstanding analysis of the genetic engineering context. Unconnected to the traditional Foucauldian concept of **‘biopolitics’**, it ‘refers to the new public policy area of biotechnology policy which has co-evolved with the development of the life sciences’ to refer to transformations in medicine and health, or in food, agriculture and the environment. Here, biopolitical analysis is predominantly on biotechnology regulation and bioscientific-technological development. In turn, the second usage refers to the historical tradition of Foucauldian inquiry, which describes and analyses two forms of control and administration (the ‘art of government’) that emerged from the sixteenth century onwards. The first form concerns the disciplining, especially through institutionalisation, of individuals, or collections of individuals, for their usefulness (or performance) for integration into systems of **‘efficient and economic controls’** (Foucault 1990 [French version 1976]: 139). The second form is concerned with administering the biological processes and resources (or subjugation and control) of the species body or populations in general: namely their bodies, and reproduction. This is achieved through their productive engagement with the then emerging scientific methods such as, for example, statistics, in what Foucault calls the investment of the body of the population and its valorization. Typically, this area tackles the urban space, the habitat, the natural resources and their distribution, and within this, public health. Scientists and engineers, deemed holders of ‘**expert knowledges’**, carry out this **disciplining and administration** on behalf of the government (Foucault 1977, Rutherford 1999). This aims to ‘**normalize’ the knowledge** of the experts vis-à-vis other knowledges, although this is not a given but is achieved in a relational way. As such, systems of knowledge-power instead **negotiate and mediate society** and its directions. Forms of knowledge-power to ‘administer life’ (govern) and normalize governmentality, Foucault (1990: 143) refers to as ‘bio-power’, applied as a regime of power within the social body, rather from above it. This is carried out through the application of tactical elements (‘discourses’) or ‘discursive practices’: ‘practices of talk, text, writing, cognition, argumentation, and representation generally’ (Clegg 1989: 151). The exercise of power is thus not understood as a ‘single, all-encompassing strategy’ (Foucault 1990: 103), but, as Clegg (1989: 154) recognises, as ‘a more or less stable or shifting network of alliances extended over a shifting terrain of practice and discursively constituted interests. Points of resistance will open up at many points in the network. Their effect will be to fracture alliances, constitute regroupings and reposit strategies’. Such practices applied to the **administration of resources in managing human populations also introduces the notion of the environment and its control**, and thus the Cartesian body-mind or nature-culture dichotomy — which has been described as ‘the drawing apart of the human subject, or “experiencer”, and the world experienced’ (Pratt et al. 2000: 7). Much environmental thought has since ascribed this divide as the main cause of today’s environmental problems (as discussed below). The Cartesian divide paralleled the emergence of bio-power, during the Enlightenment, with logical links extended to the control of human populations through it partitioning and regulation, the focus of Foucault’s inquiry. Yet, in introducing the broader environmental context, my attention is almost immediately drawn to the point in Foucault’s conceptualisation of bio-power of his recognition that the techniques of the administration of life cannot effect total control, that ‘it [life] constantly escapes them’. Thus, even though Foucault’s focus is on human life and its regulation, where ‘escape’ equates to resistance, ‘escape’, in reference to the management of natural resources where the Foucauldian gaze is also upon the health of the people, institutional and/or technological failure of administration **can instead cause environmental breakdown** that instead exposes human health to undue risk and hazard, the opposite of health**.** This, I would posit, is posed by Foucault, although rather opaquely, in The Will To Knowledge (1990: 137), Wars are no longer waged in the name of a sovereign who must be defended; they are waged on behalf of the existence of everyone … the decision that initiates them and the one that **terminates them** are in fact increasingly informed by the naked question of survival … **The atomic situation is now at the end point** of this process: **the power to guarantee an individual’s existence.** The principle underlying the tactics of battle — **that one has to be capable of killing in order to go on living** — **has become the principle that defines the strategy of states**. But the existence in question is no longer the juridical existence of sovereignity; **at stake is the biological existence** of a population. **If genocide is indeed the dream of modern powers**, this is not because of a recent return of the ancient right to kill**; it is because power is situated and exercised at the level of life,** the species, the race, and the large-scale phenomena of population.

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#### Drones are key to solve Yemeni terrorism- prevents worse intervention

**Terrill ’13** [W. Andrew Terrill is the ¶ Strategic Studies Institute's ¶ Middle East specialist. He ¶ served with the Lawrence ¶ Livermore National ¶ Laboratory and US Air ¶ War College. Dr. Terrill ¶ has published in numerous ¶ academic journals on a wide ¶ range of topics, including ¶ nuclear proliferation. He has ¶ participated in the Middle ¶ Eastern Track 2 talks, part of ¶ the Middle East Peace Process, “Drones over Yemen: Weighing Military Benefits and Political Costs,” <http://www.strategicstudiesinstitute.army.mil/pubs/parameters/Issues/WinterSpring_2013/2_Article_Terrill.pdf>]

In the case of Yemen, drones are not popular with the local population, but they do appear to have been stunningly successful in achieving ¶ goals that support the United States and Yemeni national interests by ¶ helping to defeat the radical group al Qaeda in the Arabian Peninsula ¶ (AQAP). This organization is one of the most successful affiliates of the ¶ original al Qaeda group led by Osama bin Laden until his death in 2011. ¶ AQAP became prominent in the early 2000s when it began terrorist ¶ operations in Saudi Arabia, though it was ultimately defeated in that ¶ country. Following this defeat, AQAP retained its name and regrouped ¶ in Yemen, merging with the local al Qaeda organization operating ¶ there in 2009. AQAP (which Yemenis simply call al Qaeda) has a recent ¶ history of challenging the Yemeni government as well as a long record of ¶ attempting to execute spectacular terrorist events in the United States. ¶ This agenda has made it vital for the United States to oppose AQAP and ¶ help the Yemeni government in a variety of ways, including drone use, ¶ when appropriate.¶ Clearly fearing a domestic backlash, former Yemeni President Ali ¶ Abdullah Saleh, who remained in office until early 2012, consistently ¶ denied his government was allowing the United States to conduct drone ¶ operations over Yemen. Saleh’s denials regarding drones could hardly be ¶ considered credible since some extremely high profile strikes occurred ¶ while he was president. Of special importance was a successful February ¶ 2002 missile attack on six senior al Qaeda terrorists in Yemen. The Saleh ¶ government originally claimed these individuals were killed in a Yemeni Air Force bombing attack, but this story unraveled after a senior US official revealed information about the drone strike during a CNN interview.2¶ In response to domestic pressure created by the CNN disclosure, ¶ Saleh eventually acknowledged that the February 2002 strike was conducted by a US drone, but he did not admit to any later strikes by the ¶ time he left power ten years later.3¶ The president’s continuing denials ¶ were almost universally disbelieved as there had been numerous Yemeni ¶ and international news reports of US drone warfare against AQAP, often ¶ citing seemingly credible sources on background. These press reports ¶ included a discussion of a fatal September 2011 US drone attack on ¶ AQAP planner Anwar al Awlaki. In response to such information, Saleh ¶ went so far as to claim that Yemeni forces had killed Awlaki, although ¶ virtually no one took such statements seriously.4¶ In sharp contrast to ¶ Saleh, current Yemeni President Abed Rabbu Hadi has spoken glowingly of US drones used in Yemen, describing them as an effective way ¶ to strike the enemy while minimizing collateral damage to innocent ¶ civilians through precision strikes. 5¶ Despite Hadi’s assurances, drone ¶ use remains a hotly contested domestic issue in Yemen.¶ Achievements in Yemen Enabled by Drones¶ The history of US drone activity in Yemen is still subject to considerable secrecy and cannot be written in full until more information ¶ has been declassified and released. Nevertheless, there are a number ¶ of known examples where drones appear to have made a significant ¶ difference in helping the Yemeni government cope with AQAP while ¶ reducing that organization’s ability to conduct international terrorism. ¶ Two of these instances are especially compelling and deserve special ¶ consideration. They are:¶ (1) the September 2011 death of terrorist leader Anwar al Awlaki, ¶ and ¶ (2) the use of drones to support Yemen’s May-June 2012 offensive ¶ against AQAP insurgents and members of the AQAP insurgent organization, Ansar al Shariah, which by early 2012 had seized power in a ¶ number of southern Yemeni towns and cities. 6¶ The death of Awlaki in a drone strike is especially informative when ¶ considering the value of these systems.7¶ Despite Awlaki’s US citizenship, President Obama was reported by Newsweek to have considered him a ¶ higher priority for capture or elimination than Ayman al Zawahiri, bin ¶ Laden’s replacement as the leader of “al Qaeda central.”8¶ Federal prosecutors, in a case involving an alleged Awlaki associate, maintain that ¶ he was the mastermind behind a variety of terrorist activities including the 2009 “Christmas bomber” plot. 9¶ In this effort, Umar Farouk ¶ Abdulmutallab, a terrorist operative and Awlaki “student” attempted to ¶ demolish a Detroit-bound passenger jet that left Amsterdam with 280 ¶ people aboard. This plan failed, and Abdulmutallab was badly burned ¶ when a bomb sewn into his underwear did not detonate properly. He ¶ was then restrained by airline personnel and arrested when the aircraft ¶ landed.10 This unsuccessful plot appears to have had the diabolical ¶ purpose of provoking US leadership to invade Yemen in response to ¶ these innocent deaths. Such an intervention with ground troops could ¶ have produced catastrophic results. Yemen is a highly nationalistic ¶ country of 24 million people and 60 million firearms. Any intervention ¶ there could last for years and expand rather than diminish the ranks of ¶ AQAP. This disaster was well worth avoiding on both foreign policy and ¶ humanitarian grounds. Another important, but less well-known, series of events relevant ¶ to these controversies involves what is believed to be the extensive use ¶ of drones to support a critical Yemeni government offensive against ¶ AQAP in May-June 2012. At this time, President Hadi unleashed an ¶ offensive against AQAP forces which had seized significant territory ¶ within several southern provinces and were administering them in what ¶ one AQAP leader described as “the Taliban way.”11 AQAP had been ¶ able to seize these areas due to the disorder in the Yemeni government ¶ brought about by a strong popular movement involving huge public ¶ demonstrations, against the regime of President Saleh. This movement ¶ was inspired by the “Arab Spring” revolutions in Tunisia and Egypt, but ¶ unlike those countries, the old regime in Yemen took more than a year ¶ to fall. When President Saleh did resign after 33 years in power, Yemen ¶ was left with a number of challenges resulting from government paralysis during the grinding effort to remove him. In addition, the military ¶ was deeply divided between pro-Saleh and anti-Saleh factions that had, ¶ on occasion, skirmished with each other and inflicted some casualties ¶ during the last year of the Saleh regime.12¶ While military fragmentation was deep in the army, the situation ¶ in the air force had an additional complication. Large elements of this ¶ service were conducting a labor strike when President Hadi entered ¶ office due to severe problems with their pay. In Yemen, military pay ¶ passes through the hands of senior officers before it reaches servicemembers and is sometimes skimmed. Strikers claimed that former President Saleh’s half-brother, General Mohammed Saleh, the air force ¶ commander, had diverted large amounts of their pay to himself and his ¶ cronies making it difficult for them to survive.13 While Hadi relieved ¶ General Saleh from command in March 2012, the general resisted his ¶ removal and briefly ordered loyal troops to occupy and close Sanaa ¶ International Airport.14 When Hadi refused to compromise, the erstwhile air force commander backed down and left his position. General ¶ Saleh’s April departure ended the mutiny, but it is difficult to believe ¶ that the air force was up to its full operational capability by the time the ¶ offensive began less than a month later.15 Despite these problems, Hadi ¶ was not prepared to wait until the military could be rebuilt before liberating the southern territories controlled by AQAP. The situation in south ¶ Yemen was such that he saw a near-term military offensive as urgent.¶ At the beginning of President Hadi’s May offensive he, therefore, ¶ had a fractured army and a dysfunctional air force. Army leaders from ¶ competing factions were often disinclined to support one another in any ¶ way including facilitating the movement of needed supplies. Conversely, ¶ the air force labor strike had been a major setback to the efficiency ¶ of the organization, which was only beginning to operate as normal ¶ in May 2012. Even before the mutiny, the Yemen Air Force had only ¶ limited capabilities to conduct ongoing combat operations, and it did not ¶ have much experience providing close air support to advancing troops. ¶ Hadi attempted to make up for the deficiencies of his attacking force ¶ by obtaining aid from Saudi Arabia to hire a number of tribal militia ¶ fighters to support the regular military. These types of fighters have ¶ been effective in previous examples of Yemeni combat, but they could ¶ also melt away in the face of military setbacks. Adding to his problems, President Hadi had only recently taken ¶ office after a long and painful set of international and domestic negotiations to end the 33-year rule of President Saleh. If the Yemeni military ¶ was allowed to be defeated in the confrontation with AQAP, that ¶ outcome could have led to the collapse of the Yemeni reform government and the emergence of anarchy throughout the country. Under ¶ these circumstances, Hadi needed every military edge that he could ¶ obtain, and drones would have been a valuable asset to aid his forces as ¶ they moved into combat. As planning for the campaign moved forward, ¶ it was clear that AQAP was not going to be driven from its southern ¶ strongholds easily. The fighting against AQAP forces was expected to be ¶ intense, and Yemeni officers indicated that they respected the fighting ¶ ability of their enemies.16¶ Shortly before the ground offensive, drones were widely reported ¶ in the US and international media as helping to enable the Yemeni government victory which eventually resulted from this campaign.17¶ Such support would have included providing intelligence to combatant ¶ forces and eliminating key leaders and groups of individuals prior to and ¶ then during the battles for southern towns and cities. In one particularly ¶ important incident, Fahd al Qusa, who may have been functioning as ¶ an AQAP field commander, was killed by a missile when he stepped out ¶ of his vehicle to consult with another AQAP leader in southern Shabwa ¶ province.18 It is also likely that drones were used against AQAP fighters preparing to ambush or attack government forces in the offensive.19¶ Consequently, drone warfare appears to have played a significant role ¶ in winning the campaign, which ended when the last AQAP-controlled ¶ towns were recaptured in June, revealing a shocking story of the abuse ¶ of the population while it was under occupation.20 Later, on October 11, ¶ 2012, US Secretary of Defense Leon Panetta noted that drones played a ¶ “vital role” in government victories over AQAP in Yemen, although he ¶ did not offer specifics.21 AQAP, for its part, remained a serious threat ¶ and conducted a number of deadly actions against the government, ¶ although it no longer ruled any urban centers in the south.

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#### A. Definitions

#### The only War Power authority is the ability to MAKE MILITARY DECISIONS

Bajesky 13 (2013¶ Mississippi College Law Review¶ 32 Miss. C. L. Rev. 9¶ LENGTH: 33871 words ARTICLE: Dubitable Security Threats and Low Intensity Interventions as the Achilles' Heel of War Powers NAME: Robert Bejesky\* BIO: \* M.A. Political Science (Michigan), M.A. Applied Economics (Michigan), LL.M. International Law (Georgetown). The author has taught international law courses for Cooley Law School and the Department of Political Science at the University of Michigan, American Government and Constitutional Law courses for Alma College, and business law courses at Central Michigan University and the University of Miami.)

A numerical comparison indicates that the Framer's intended for Congress to be the dominant branch in war powers. Congressional war powers include the prerogative to "declare war;" "grant Letters of Marque and Reprisal," which were operations that fall short of "war"; "make Rules for Government and Regulation of the land and naval Forces;" "organize, fund, and maintain the nation's armed forces;" "make Rules concerning Captures on Land and Water," "raise and support Armies," and "provide and maintain a Navy." [n25](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.771738.1261791409&target=results_DocumentContent&returnToKey=20_T17974748742&parent=docview&rand=1376677997032&reloadEntirePage=true#n25) In contrast, the President is endowed with one war power, named as the Commander-in-Chief of the Army and Navy. [n26](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.771738.1261791409&target=results_DocumentContent&returnToKey=20_T17974748742&parent=docview&rand=1376677997032&reloadEntirePage=true#n26)¶ The Commander-in-Chief authority is a core preclusive power, predominantly designating that the President is the head of the military chain of command when Congress activates the power. [n27](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.771738.1261791409&target=results_DocumentContent&returnToKey=20_T17974748742&parent=docview&rand=1376677997032&reloadEntirePage=true#n27) Moreover, peripheral Commander-in-Chief powers are bridled by statutory and treaty restrictions [n28](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.771738.1261791409&target=results_DocumentContent&returnToKey=20_T17974748742&parent=docview&rand=1376677997032&reloadEntirePage=true#n28) because the President "must respect any constitutionally legitimate restraints on the use of force that Congress has enacted." [n29](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.771738.1261791409&target=results_DocumentContent&returnToKey=20_T17974748742&parent=docview&rand=1376677997032&reloadEntirePage=true#n29) However, even if Congress has not activated war powers, the President does possess inherent authority to expeditiously and unilaterally react to defend the nation when confronted with imminent peril. [n30](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.771738.1261791409&target=results_DocumentContent&returnToKey=20_T17974748742&parent=docview&rand=1376677997032&reloadEntirePage=true#n30) Explicating the intention behind granting the President this latitude, Alexander Hamilton explained that "it is impossible to foresee or to define the extent and variety of national exigencies, or the correspondent extent and variety of the means which may be necessary to satisfy them." [n31](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.771738.1261791409&target=results_DocumentContent&returnToKey=20_T17974748742&parent=docview&rand=1376677997032&reloadEntirePage=true#n31) The Framers drew a precise distinction by specifying that the President was empowered "to repel and not to commence war." [n32](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.771738.1261791409&target=results_DocumentContent&returnToKey=20_T17974748742&parent=docview&rand=1376677997032&reloadEntirePage=true#n32)

#### **B. Violation – 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

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#### The President of the United States should request his Counsel and the Office of Legal Counsel for coordination over his war powers authority on targeted killing operations and indefinite detention within zones of conflict to publically declared territories. The President should limit targeted killing operations and indefinite detention within zones of conflict to publically declared territories and through the statutory codification of current executive branch review policy for those practices; and in addition, by limiting targeted killing operations and indefinite detention outside zones of conflict to those reviewable operational practices that meet an individualized threat requirement, a least-harmful-means test, which contain procedural safeguards, on those occasions where prosecution through the criminal justice system is infeasible, and by statutory codification of executive branch review policy for those practices.

#### 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.

### 1NC

#### Shutdown will be shortlived now –

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

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

#### A strong Obama is key to a deal -

Milbank 9/30/13 (Dana, The Star Tribune, "Try Pivoting to Dubya's Playbook")

Throughout his presidency, Obama has had great difficulty delivering a consistent message. Supporters plead for him to take a position — any position — and stick with it. His shifting policy on confronting Syria was the most prominent of his vacillations, but his allies have seen a similar approach to the Guantanamo Bay prison, counterterrorism and climate change. Even on issues such as gun control and immigration where his views have been consistent, Obama has been inconsistent in promoting his message. Allies are reluctant to take risky stands, because they fear that Obama will change his mind and leave them standing alone.¶ Now come the budget showdowns, which could define the rest of his presidency. Republican leaders are trying to shift the party’s emphasis from the fight over a government shutdown to the fight over the debt-limit increase, where they have more support. A new Bloomberg National poll found that Americans, by 2-to-1, disagree with Obama’s view that Congress should raise the debt limit without any conditions.¶ But Obama has a path to victory. The Bloomberg poll also found that Americans think lawmakers should stop trying to repeal Obamacare. And that was before House Republicans dramatically overplayed their hand by suggesting that they’ll allow the nation to default if Obama doesn’t agree to their laundry list of demands, including suspending Obamacare, repealing banking reforms, building a new oil pipeline, easing environmental regulations, limiting malpractice lawsuits and restricting access to Medicare.¶ To beat the Republicans, Obama might follow the example of a Republican, George W. Bush. Whatever you think of what he did, he knew how to get it done: by simplifying his message and repeating it, ad nauseum, until he got the result he was after.¶ Obama instead tends to give a speech and move along to the next topic. This is why Obama is forever making “pivots” back to the economy, or to healthcare. But the way to pressure Congress is to be President One Note.¶ In the debt-limit fight, Obama already has his note: He will not negotiate over the full faith and credit of the United States. That’s as good a theme as any; it matters less what the message is than that he delivers it consistently.¶ This is a clean message: Republicans are threatening to tank the economy — through a shutdown or, more likely, through a default on the debt — and Obama isn’t going to negotiate with these hostage takers.¶ Happily for Obama, Republicans are helping him to make the case by being publicly belligerent. After last week’s 21-hour speech on the Senate floor by Sen. Ted Cruz, R-Texas, the publicity-seeking Texan and Sen. Mike Lee, R-Utah, objected to a bipartisan request to move a vote from Friday to Thursday to give House Republicans more time to craft legislation avoiding a shutdown. On the Senate floor, Sen. Bob Corker, R-Tenn., accused them of objecting because they had sent out emails encouraging their supporters to tune in to the vote on Friday. The Washington Post’s Ed O’Keefe caught Cruz “appearing to snicker” as his colleague spoke — more smug teenager than legislator.¶ Even if his opponents are making things easier for him, Obama still needs to stick to his message. As in Syria, the president has drawn a red line by saying he won’t negotiate with those who would put the United States into default. If he retreats, he will embolden his opponents and demoralize his supporters.

#### Prolonged shutdown will collapse the economy

Wall Street Journal 10/1/13 (Eric Morath and Sudeep Reddy, "Biggest Economic Threat: Debt Ceiling, Not Shutdown")

A shutdown alone is expected to do little economic damage to the overall U.S. economy, based on prior experience. Economists at J.P. Morgan Chase on Tuesday estimated each week of a shutdown would reduce the annualized pace of fourth quarter economic growth by 0.12 percentage point due to reduced pay to government workers. The forecast doesn't account for any private-sector effects or damage to consumer confidence.¶ The lost pay could be recouped after the shutdown ends if Congress agrees to compensate workers retroactively for their days off, as has happened in the past.¶ For Derek Volk, president of Volk Packaging Corp. in Biddeford, Maine, the government shutdown is a potential speed bump for a company that has otherwise been growing steadily this year. Volk has nearly doubled its sales force and invested in new box-making equipment this year, but he fears the government pullback could hold back his region's economy.¶ More¶ [Heard: Fed Up With the Shutdown](http://online.wsj.com/article/SB10001424052702303643304579109594284203218.html)¶ "I do know that it's going to be a beautiful weekend for Maine foliage and the leaf peepers won't be going to Acadia National Park," he said, citing the park's shutdown. "They won't be eating at local restaurants, staying at hotels and ultimately consuming products that are delivered in a box."¶ The bigger risk to the economy and markets is the prospect that a protracted fight over the shutdown leads lawmakers into an impasse over how to raise the government's borrowing limit by mid-October. Without an increase in the debt ceiling, the government could run out of cash to pay all its bills—such as Social Security checks, military pay and interest on its debt—which analysts say could cause severe financial turmoil.¶ The nonpartisan Congressional Budget Office says the U.S. will start missing payments by the end of the October unless Congress raises the borrowing limit.¶ The government hit its $16.7 trillion debt ceiling in May and since then has been using emergency measures to conserve cash.¶ Treasury Secretary Jack Lew told lawmakers in a letter Tuesday that the U.S. is now using its final emergency measures. That means Treasury will have about $30 billion in cash on hand by Oct. 17 plus incoming tax revenue to pay its bills, he said.¶ Gauging the economy's course could be harder in coming weeks. The nation's key economic scorekeepers—statistical agencies within the Labor and Commerce departments—suspended operations Tuesday because of the shutdown.¶ One of the most eagerly awaited reports—the September employment figures—isn't expected to be released Friday if the shutdown continues. The data will be important to Federal Reserve officials considering how long to continue their bond-buying program, which has buoyed markets for much of the past year. The government still plans to release a weekly report on initial filings for jobless benefits on Thursday; that data is largely produced by state agencies and compiled by the Labor Department.¶ One of most closely watched private-sector gauges of economic activity, released Tuesday, showed the nation's factories gaining strength in September. The Institute for Supply Management, a private group of purchasing managers, said its manufacturing index rose to 56.2 from 55.7 in August, reaching its highest level since April 2011. Figures above 50 indicate expansion for the sector.¶ "It feels like we're building momentum," said Bradley Holcomb, chairman of ISM's manufacturing survey. A sustained shutdown, however, "will trickle down to the rest of the economy, probably first to the service sector and then to manufacturing. "¶ Businesses said the latest troubles in Washington could restrain sales and investment.¶ "Watching the silliness in Washington is discouraging for the greatest nation in the world," said Drew Greenblatt, president of Marlin Steel Wire Products in Baltimore. "If customers don't really need it, if it isn't crucial, they're not going to pull trigger in this environment."

#### Economic collapse causes nuclear war

Merlini 11

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

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

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#### 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.

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

Barnes, 12 -- J.D. Candidate, Boston University School of Law

[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

Barnes, 12 -- J.D. Candidate, Boston University School of Law

[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

#### Causes global hotspots to go nuclear

Obayemi, 6 -- East Bay Law School professor

[Olumide, admitted to the Bars of Federal Republic of Nigeria and the State of California, Golden Gate University School of Law, "Article: Legal Standards Governing Pre-Emptive Strikes and Forcible Measures of Anticipatory Self-Defense Under the U.N. Charter and General International Law," 12 Ann. Surv. Int'l & Comp. L. 19, l/n, accessed 9-19-13, mss]

The United States must abide by the rigorous standards set out above that are meant to govern the use of preemptive strikes, because today's international system is characterized by a relative infrequency of interstate war. It has been noted that developing doctrines that lower the threshold for preemptive action could put that accomplishment at risk, and exacerbate regional crises already on the brink of open conflict. n100 This is important as O'Hanlon, Rice, and Steinberg have rightly noted: ...countries already on the brink of war, and leaning strongly towards war, might use the doctrine to justify an action they already wished to take, and the effect of the U.S. posture may make it harder for the international community in general, and the U.S. in particular, to counsel delay and diplomacy. Potential **examples abound**, ranging from Ethiopia and Eritrea, to China and Taiwan, to the Middle East. But perhaps the clearest case is the India-Pakistan crisis. n101 The world must be a safe place to live in. We cannot be ruled by bandits and rogue states. There must be law and order not only in the books but in enforcement as well. No nation is better suited to enforce international law than the United States. The Bush Doctrine will stand the test [\*42] of time and survive. Again, we submit that nothing more would protect the world and its citizens from **nuclear weapons**, terrorists and rogue states than an able and willing nation like the United States, acting as a policeman of the world within all legal boundaries. This is the essence of the preamble to the United Nations Charter.

### Solvency

#### Doesn’t solve Pakistan

Deeks ’12 (Ashley S. Deeks 12, Academic Fellow, Columbia Law School, Spring 2012, “ARTICLE: "Unwilling or Unable": Toward a Normative Framework for Extraterritorial Self-Defense,” Virginia Journal of International Law, 52 Va. J. Int'l L. 483)

In an August 2007 speech, then-Presidential candidate Barack Obama asserted that his administration would take action against high-value leaders of al-Qaida in Pakistan if the United States had actionable intelligence about them and President Musharraf would not act. n1 He later clarified his position, stating, "What I said was that if we have actionable intelligence against bin Laden or other key al-Qaida officials ... and Pakistan is unwilling or unable to strike against them, we should." n2 On May 2, 2011, the United States put those words into operation. Without the consent of Pakistan's government, U.S. forces entered Pakistan to capture or kill Osama bin Laden. In the wake of the successful U.S. military operation, the Government of Pakistan objected to the "unauthorized unilateral action" of the United States. n3 U.S. officials, on the other hand, suggested that the United States declined to provide Pakistan with advance knowledge of the raid because it was concerned that doing so might have compromised the mission. n4 This failure to notify suggests that the United States determined that Pakistan was indeed "unwilling or unable" to suppress the threat posed by bin Laden. n5 Unfortunately, international law currently gives the United States (or any state in a similar position) little guidance about what factors are relevant when making such [\*486] a determination. Yet the stakes are high: the U.S.-Pakistan relationship has come under serious strain as a result of the operation. If, in the future, a state in Pakistan's position deems another state's use of force in its territory pursuant to an "unwilling or unable" determination to be unlawful, the territorial state could use force in response. The lack of guidance therefore has the potential to be costly. President Obama's speech invoked an important but little understood legal standard governing the use of force. More than a century of state practice suggests that it is lawful for State X, which has suffered an armed attack by an insurgent or terrorist group, to use force in State Y against that group if State Y is unwilling or unable to suppress the threat. n6 Yet there has been virtually no discussion, either by states or scholars, of what that standard means. What factors must the United States consider when evaluating Pakistan's willingness or ability to suppress the threats to U.S. (as well as NATO and Afghan) forces? Must the United States ask Pakistan to take measures itself before the United States lawfully may act? How much time must the United States give Pakistan to respond? What if Pakistan proposes to respond to the threat in a way that the United States believes may not be adequate? Many states agree that the "unwilling or unable" test is the correct standard by which to assess the legality of force in this context. For example, Russia used force in Georgia in 2002 against Chechen rebels who had conducted violent attacks in Russia, based on Russia's conclusion that Georgia was unwilling or unable to suppress the rebels' attacks. n7 Israel has invoked the "unwilling or unable" standard periodically in justifying its use of force in Lebanon against Hezbollah and the Palestine Liberation Organization, noting, "Members of the [Security] Council need scarcely be reminded that under international law, if a State is unwilling or unable to prevent the use of its territory to attack another State, that latter State is entitled to take all necessary measures in its own defense." n8 Similarly, [\*487] Turkey defends its use of force in Iraq against the Kurdish Workers' Party (PKK) by claiming that Iraq is unable to suppress the PKK. n9 Several U.S. administrations have stated that the United States will inquire whether another state is unwilling or unable to suppress the threat before using force without consent in that state's territory. n10 Given that academic discussion of the test has been limited thus far, we may describe what "unwilling or unable" means only at a high level of generality. n11 In its most basic form, a state (the "victim state") suffers an armed attack from a nonstate group operating outside its territory and concludes that it is necessary to use force in self-defense to respond to the continuing threat that the group poses. The question is whether the state in which the group is operating (the "territorial state") will agree to suppress the threat on the victim state's behalf. The "unwilling or unable" test requires a victim state to ascertain whether the territorial state is willing and able to address the threat posed by the nonstate group before using force in the territorial state's territory without consent. If the territorial state is willing and able, the victim state may not use force in the territorial state, and the territorial state is expected to take the appropriate steps against the nonstate group. If the territorial state is unwilling or unable to take those steps, however, it is lawful for the victim state to use [\*488] that level of force that is necessary (and proportional) to suppress the threat that the nonstate group poses. A test constructed at this level of generality offers insufficient guidance to states. Although many inquiries in the use of force area lack precision, including questions about what constitutes an "armed attack" and when force is proportional, states and commentators have discussed the possible meanings of these terms at length and in great detail. n12 The same is not true for the "unwilling or unable" test; strikingly little attention has been paid to the nature and consequences of -- or solutions to -- the imprecision surrounding the "unwilling or unable" test. The test's lack of content undermines the legitimacy of the test as it currently is framed and suggests that it is not, in its current form, imposing effective constraints on a state's use of force. n13 To address this flaw, this Article first identifies the test's historical parentage in the law of neutrality and then conducts an original analysis of two centuries of state practice in order to develop normative factors that define what it means for a territorial state to be "unwilling or unable" to suppress attacks by a nonstate actor.

#### Restrictions can’t stop Obama ---- he knows the tricks

LEVINE 2012 - Law Clerk; J.D., May 2012, University of Michigan Law School (David Levine, 2013 SURVEY OF BOOKS RELATED TO THE LAW: BOOK NOTICE: A TIME FOR PRESIDENTIAL POWER? WAR TIME AND THE CONSTRAINED EXECUTIVE, 111 Mich. L. Rev. 1195)

Both the Declare War Clause n49 and the War Powers Resolution n50 give Congress some control over exactly when "wartime" exists. While the U.S. military was deployed to Libya during the spring and summer of 2011, the Obama Administration **advanced the argument that,** under the circumstances, **it was bound by neither** clause. n51 If Dudziak is worried about "war's presence as an ongoing feature of American democracy" (p. 136), Libya is a potent case study with implications for the use of force over the coming decades.

Article I, Section 8 of the U.S. Constitution grants to Congress the power to "declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water." n52 Although there is substantial debate on the precise scope of these powers, n53 this clause at least provides some measure of congressional control over significant commitments of U.S. forces to battle. However, it has long been accepted that presidents, acting pursuant to the commander-in-chief power, may "introduce[] armed forces into situations in which they encounter[], or risk[] encountering, hostilities, but which [are] not "wars' in either the common meaning or the [\*1207] constitutional sense." n54 Successive administrations have adopted some variant of that view and have invariably deployed U.S. forces abroad in a limited manner based on this inherent authority. n55

The Obama Administration has adopted this position - that a president has ***inherent*** constitutional **authority** to deploy forces outside of war - and even sought to clarify it. In the Office of Legal Counsel's ("OLC") memo to President Obama on the authority to use military force in Libya, n56 the Administration acknowledged that the Declare War Clause is a "possible constitutionally-based limit on ... presidential authority to employ military force." n57 The memo reasoned that the Constitution speaks only to Congress's ability to shape engagements that are "wars," and that presidents have deployed forces in limited contexts from the earliest days of the Union. n58 Acknowledging those facts, the memo concluded that the constitutional limit on congressional power must be the conceptual line between war and not war. In locating this boundary, the memo looked to the "anticipated nature, scope, and duration" of the conflict to which President Obama was introducing forces. n59 OLC found that the "war" standard "will be satisfied only by prolonged and substantial military engagements, typically involving exposure of U.S. military personnel to significant risk over a substantial period." n60

The Obama Administration's position was not out of sync with previous presidential practice - the Declare War Clause did not require congressional approval prior to executive deployment of troops. In analyzing the "nature, scope, and duration" questions, the memo looked first to the type of missions that U.S. forces would be engaged in. The air missions envisioned for the Libya operation did not pose the threat of withdrawal difficulty or escalation risk that might indicate "a greater need for approval [from Congress] at the outset." n61 The nature of the mission, then, was not similar to full "war." Similarly, the scope of the intended operation was primarily limited, at the time the memo was written, to enforcing a no-fly zone. n62 Consequently, [\*1208] the operation's expected duration was not long. Thus, concluded OLC, "the use of force by the United States in Libya [did not rise] to the level of a "war' in the constitutional sense." n63 While this conclusion may have been uncontroversial, it highlights Dudziak's concerns over the manipulation of the idea of "wartime," concerns that were heightened by the Obama Administration's War Powers Resolution analysis. Congress passed the War Powers Resolution in 1973 in an attempt to rein in executive power in the wake of the Vietnam War. n64 The resolution provides that the president shall "in every possible instance ... consult with Congress before introducing United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances." n65 Additionally, when the president sends U.S. forces "into hostilities or into situations where imminent involvement in hostilities is clearly indicated," the resolution requires him to submit a report to Congress describing the circumstances of the deployment and the expected involvement of U.S. troops in the "hostilities." n66 Within sixty days of receiving that report, Congress must either declare war or in some other way extend the deployment; in the absence of some ratifying action, the resolution requires that the president withdraw U.S. forces. n67 Though eschewing the plainly confrontational route of directly challenging Congress's power under the War Powers Resolution, the Obama Administration implicitly challenged Congress's ability to affect future operations. In declining to withdraw forces, despite Congress's lack of approving legislation, President Obama claimed that the conflict in Libya could not be deemed "hostilities" as that term is used in the resolution. This argument was made both in a letter to Congress during the summer of 2011 n68 and in congressional testimony given by Harold Koh, the State Department Legal Advisor under the Obama Administration. n69 [\*1209] Koh's testimony provides the most complete recitation of the Obama Administration's analysis and focuses on four factors that distinguish the fighting in Libya (or at least the United States' participation) from "hostilities": the scope of the mission, the exposure of U.S. forces, the risk of escalation, and the nature of the tactics to be used. First, "the mission is limited." n70 That is, the objectives of the overall campaign led by the North American Treaty Organization ("NATO") were confined to a "civilian protection operation ... implementing a U.N. Security Council resolution." n71 Second, the "exposure" of the U.S. forces involved was narrow - the conflict did not "involve active exchanges of fire with hostile forces" in ways that would endanger U.S. service members' safety. n72 Third, the fact that the "risk of escalation [was] limited" weighed in favor of not categorizing the conflict as "hostilities." n73 Finally, the "military means" the United States used in Libya were limited in nature. n74 The majority of missions were focused on "providing intelligence capabilities and refueling assets." n75 Those American flights that were air-to-ground missions were a mix of suppression-of-enemy-air-defenses operations to enforce a no-fly zone and strikes by armed Predator drones. n76 As a point of comparison, Koh noted that "the total number of U.S. munitions dropped has been a tiny fraction of the number dropped in Kosovo." n77 With the exception of this final factor, these considerations are quite similar to the factors that define whether a conflict is a "war" for constitutional purposes. n78

The result of this reasoning is a **substantially relaxed restraint** on presidential authority to use force abroad going forward. As armed drones begin [\*1210] to make up a larger portion of the United States' arsenal, n79 and as other protective technologies, such as standoff munitions n80 and electronic warfare techniques, gain traction, it is far more likely that the "exposure" of U.S. forces will decrease substantially. The force used in Yemen and the Horn of Africa is illustrative of this new paradigm where U.S. service members are not "involved [in] active exchanges of fire with hostile forces," n81 but rather machines use force by acting as human proxies. To the same point, if the "military means" used in Libya are markers of something short of "hostilities," the United States is only likely to see the use of those means increase in the coming decades. Pressing the logic of Koh's testimony, leeway for unilateral executive action **will increase** as the makeup of our arsenal continues to modernize. n82

Dudziak worries about the invocation of "wartime" as an argument for the perpetual exercise of extraordinary powers. The Libya scenario, of course, is somewhat different - the president has argued that the absence of "war" leaves him a residuum of power such that he may use force abroad without congressional input. The two positions are of a piece, though. Dudziak argues that legacy conceptions of "wartime" and "peacetime" have left us vulnerable to the former's use, in and of itself, as a reason for increased executive power. Such literal thinking - that "war" is something specific or that the word "hostilities" has certain limits - also opens the door to the Obama Administration's defense of its position on Libya. And looking at the substance of that position leaves much to be desired.

Both Koh's testimony and the OLC memo pay lip service to the idea that the policy considerations underlying their position are consistent with the policy considerations of the Framers with respect to the Declare War Clause and Congress with respect to the War Powers Resolution. But the primary, if not the only, consideration mentioned is the loss of U.S. forces. That concern is front and center when analyzing the "exposure" of service [\*1211] members, n83 and it is also on display with respect to discussions about the nature and scope of an operation. n84 This is not the only policy consideration that one might intuit from those two provisions, however. Using lethal force abroad is a very serious matter, and the U.S. polity might rationally want input from the more representative branch in deciding when, where, and how that force is used in its name. In that same vein, permitting one individual to embroil the nation in foreign conflicts - limited or otherwise - without the input of another coequal branch of government is potentially dangerous. n85

As Dudziak's framework highlights the limits of the Obama Administration's argument for expansive power, so does the Administration's novel dissection of "hostilities" illustrate the limits of Dudziak's analysis. Dudziak presents a narrative arc bending toward the expansion of wartime and, as a result, increased presidential power. That is not the case with Libya: the president finds power in "not war" rather than in "wartime." If the American public is guilty, as Dudziak asserts, of using the outmoded and misleadingly concrete terminology of "wartime" to describe an increasingly complex phenomenon, Dudziak herself is guilty of operating within a paradigm where wartime necessarily equals more executive power (than does "not war"), a paradigm that has been supplanted by a more nuanced reality. Although [\*1212] Dudziak identifies the dangers of manipulating the boundaries of wartime, her catalog of manipulations remains incomplete because of the inherent limits of her framework.

This realization does not detract from Dudziak's warnings about the perils of endless wartime, however. Indeed, the powers that President Obama has claimed seem, perhaps, more palatable after a decade in which war has been invoked as an argument for many executive powers that would, in other eras, seem extraordinary. Though he has not explicitly invoked war during the Libya crisis, President Obama has certainly shown a willingness to manipulate its definition in the service of expanded executive power in ways that seem sure to increase "war's presence as an ongoing feature of American democracy" (p. 136).

Conclusion Dudziak presents a compelling argument and supports it well. War Time is potent as a rhetorical device and as a way to frame decisionmaking. This is especially so for the executive branch of the U.S. government, for which wartime has generally meant increased, and ever more expansive, power. As the United States continues to transit an era in which the lines between "war" and "peace" become increasingly blurred and violent adversaries are a constant, the temptation to claim wartime powers - to render the extraordinary ordinary - is significant.

This Notice has argued that, contrary to Dudziak's concerns, the temptation is not absolute. Indeed, in some instances - notably, detention operations in Iraq and Afghanistan - we are still able to differentiate between "war" and "peace" in ways that have hard legal meaning for the actors involved. And, importantly, the executive still feels compelled to abide by these distinctions and act in accordance with the law rather than claim wartime exceptionalism.

That the temptation is not absolute, however, does not mean that it is not real or that Dudziak's concerns have not manifested themselves. This detachment of expansive power from temporally bound periods has opened the door for, and in some ways incentivized, limiting wartime rather than expanding it. While President Obama has recognized the legal constraints that "war" imposes, he has also followed in the footsteps of executives who have attempted to manipulate the definition of "war" itself (and now the definition of "hostilities") in order to **evade those constraints** as much as possible. To the extent he has succeeded in that evasion, he has confirmed what seems to be Dudziak's greatest fear: that "military engagement no longer seems to require the support of the American people, but instead their inattention" (p. 132).

#### External actors won’t enforce

BRADLEY\* AND MORRISON\*\* 2013 - \*William Van Alstyne Professor of Law, Duke Law School AND \*\* Liviu Librescu Professor of Law, Columbia Law School (Curtis A. Bradley AND Trevor W. Morrison, "Presidential Power, Historical Practice, And Legal Constraint”, January 15, 2013, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2191700>)

The Executive Branch’s attention to historical practice is also reflected in presidential issuance of “constitutional signing statements.” These statements, made when the President is signing a bill into law, call into question the constitutionality of one or more provisions in the bill and suggest that the President might **not comply** with the provisions, often on the ground that the provisions threaten to interfere with presidential authority. 36 As the Executive Branch has explained, “[p]articularly since omnibus bills have become prevalent, signing statements have often been used to ensure that concerns about the constitutionality of discrete statutory provisions do not require a veto of the entire bill.” 37 Although issued by both Democratic and Republican presidents, 38 these statements are controversial, with some critics claiming that the rule of law and separation of powers are offended when a President reserves the ability to disregard part of bill that he signs into law. 39 It does not appear, however, that Presidents commonly disregard the provisions to which they object in signing statements. This was true even during the George W. Bush Administration, which had a reputation for being particularly aggressive in its issuance of signing statements. 40 Thus, instead of signaling an active intent to disregard the identified provision, signing statements may be better understood as attempts by the Executive Branch to prevent a claim that it has acquiesced in congressional intrusions on executive authority. In other words, these statements appear to be designed, at least in part, to prevent historical gloss from developing in a way that might limit presidential authority. 41

Legal scholarship relating to presidential power, especially in the area of foreign affairs, also frequently refers to historical practice. A number of scholars have referenced such practice, for example, in assessing whether and to what extent the President has the constitutional authority to initiate military operations in the absence of congressional authorization. 42 Other scholars have emphasized practice in considering the circumstances under which the President may conclude international agreements without obtaining the consent of two-thirds of the Senate. 43 Even outside the foreign affairs area, academic debates about presidential authority—such as about the President’s power to remove executive officials from office 44 —are greatly influenced by considerations of historical practice.

B. Limitations on Judicial Review

If courts routinely reviewed contested issues of presidential power, they could decide whether and when to credit historical practice in this area. They could also decide whether novel presidential assertions of authority were justified, before such assertions became established practice. But judicial review in this area is **anything but routine**. Courts obviously do review issues of presidential power in some instances, especially when individual rights are perceived to be at stake, as both Youngstown and the series of Supreme Court decisions concerning the “war on terror” illustrate. 45 When individual rights are not directly implicated, however, courts **often abstain** from addressing questions surrounding the allocation of authority between Congress and the President.

Judicial abstention is particularly common in the foreign affairs area. Consider, for example, the question whether the President is constitutionally required to obtain congressional authorization before initiating military hostilities. Despite numerous presidential initiations of hostilities without congressional authorization in the post-World War II period, courts have generally refused to consider the issue. 46 Courts have similarly avoided addressing whether presidents must obtain congressional or senatorial approval before terminating a treaty, 47 and whether and to what extent presidents may use executive agreements in lieu of treaties. 48

Courts invoke a **variety of doctrines** in support of this abstention. They enforce general standing requirements **strictly** and, at least since the Supreme Court’s 1997 decision in Raines v. Byrd, 49 they typically find that individual members of Congress lack standing to challenge presidential action. 50 Some lower courts also invoke ideas of “political ripeness,” pursuant to which they **will not intervene** in inter-branch disputes until the affected branch has exhausted its own political resources to address the purported problem, a requirement that is rarely if ever satisfied. 51 Another potential barrier to judicial review is the political question doctrine, which the lower courts apply with some frequency in the foreign affairs area. 52

Academic defenders of this judicial abstention have argued either that the political branches have adequate resources to protect their interests, 53 or that the courts lack sufficient competence to resolve separation of powers issues, especially in the foreign affairs and national security areas. 54 Other scholars have bemoaned this abstention as an abdication of the judicial role and have blamed it for contributing to what they perceive to be an undesirable growth in executive power in the modern era. 55 The key point for present purposes is that many issues of presidential power are resolved, if at all, outside the courts. Moreover, even when the courts do intervene, they are likely to give significant deference to patterns of governmental practice, especially if the patterns are longstanding and appear to reflect inter-branch agreement. 56

### Executive Overreach

#### Prolif is inevitable- no one models US restraint

**Etzioni ‘13** [Amitai, professor of international relations at George Washington University, “The Great Drone Debate,” March-April, <http://usacac.army.mil/CAC2/MilitaryReview/Archives/English/MilitaryReview_20130430_art004.pdf>]

Other critics contend that by the United States using drones, it leads other countries into making and using them. For example, Medea Benjamin, the cofounder of the anti-war activist group CODEPINK and author of a book about drones argues that, “The proliferation of drones should evoke reﬂection on the precedent that the United States is setting by killing anyone it wants, anywhere it wants, on the basis of secret information. Other nations and non-state entities are watching—and are bound to start acting in a similar fashion.”60 Indeed scores of countries are now manufacturing or purchasing drones. There can be little doubt that the fact that drones have served the United States well has helped to popularize them. However, it does not follow that United States should not have employed drones in the hope that such a show of restraint would deter others. First of all, this would have meant that either the United States would have had to allow terrorists in hardto-reach places, say North Waziristan, to either roam and rest freely—or it would have had to use bombs that would have caused much greater collateral damage. Further, the record shows that even when the United States did not develop a particular weapon, others did. Thus, China has taken the lead in the development of anti-ship missiles and seemingly cyber weapons as well. One must keep in mind that the international environment is a hostile one. Countries—and especially non-state actors— most of the time do not play by some set of selfconstraining rules. Rather, they tend to employ whatever weapons they can obtain that will further their interests. The United States correctly does not assume that it can rely on some non-existent implicit gentleman’s agreements that call for the avoidance of new military technology by nation X or terrorist group Y—if the United States refrains from employing that technology.

#### Drone prolif doesn’t escalate or cause terrorism

**Singh ’12** [Joseph Singh is a researcher at the Center for a New American Security, an independent and non-partisan organization that focuses on researching and analyzing national security and defense policies, also a research assistant at the Institute for Near East and Gulf Military Analysis (INEGMA) North America, is a War and Peace Fellow at the Dickey Center, a global research organization, “Betting Against a Drone Arms Race,” 8-13-12, <http://nation.time.com/2012/08/13/betting-against-a-drone-arms-race/>]

Bold predictions of a coming drones arms race are all the rage since the uptake in their deployment under the Obama Administration. Noel Sharkey, for example, argues in an August 3 op-ed for the Guardian that rapidly developing drone technology — coupled with minimal military risk — portends an era in which states will become increasingly aggressive in their use of drones.¶ As drones develop the ability to fly completely autonomously, Sharkey predicts a proliferation of their use that will set dangerous precedents, seemingly inviting hostile nations to use drones against one another. Yet, the narrow applications of current drone technology coupled with what we know about state behavior in the international system lend no credence to these ominous warnings.¶ Indeed, critics seem overly-focused on the domestic implications of drone use.¶ In a June piece for the Financial Times, Michael Ignatieff writes that “virtual technologies make it easier for democracies to wage war because they eliminate the risk of blood sacrifice that once forced democratic peoples to be prudent.”¶ Significant public support for the Obama Administration’s increasing deployment of drones would also seem to legitimate this claim. Yet, there remain equally serious diplomatic and political costs that emanate from beyond a fickle electorate, which will prevent the likes of the increased drone aggression predicted by both Ignatieff and Sharkey.¶ Most recently, the serious diplomatic scuffle instigated by Syria’s downing a Turkish reconnaissance plane in June illustrated the very serious risks of operating any aircraft in foreign territory.¶ States launching drones must still weigh the diplomatic and political costs of their actions, which make the calculation surrounding their use no fundamentally different to any other aerial engagement.¶ This recent bout also illustrated a salient point regarding drone technology: most states maintain at least minimal air defenses that can quickly detect and take down drones, as the U.S. discovered when it employed drones at the onset of the Iraq invasion, while Saddam Hussein’s surface-to-air missiles were still active.¶ What the U.S. also learned, however, was that drones constitute an effective military tool in an extremely narrow strategic context. They are well-suited either in direct support of a broader military campaign, or to conduct targeted killing operations against a technologically unsophisticated enemy.¶ In a nutshell, then, the very contexts in which we have seen drones deployed. Northern Pakistan, along with a few other regions in the world, remain conducive to drone usage given a lack of air defenses, poor media coverage, and difficulties in accessing the region.¶ Non-state actors, on the other hand, have even more reasons to steer clear of drones:¶ – First, they are wildly expensive. At $15 million, the average weaponized drone is less costly than an F-16 fighter jet, yet much pricier than the significantly cheaper, yet equally damaging options terrorist groups could pursue.¶ – Those alternatives would also be relatively more difficult to trace back to an organization than an unmanned aerial vehicle, with all the technical and logistical planning its operation would pose.¶ – Weaponized drones are not easily deployable. Most require runways in order to be launched, which means that any non-state actor would likely require state sponsorship to operate a drone. Such sponsorship is unlikely given the political and diplomatic consequences the sponsoring state would certainly face.¶ – Finally, drones require an extensive team of on-the-ground experts to ensure their successful operation. According to the U.S. Air Force, 168 individuals are needed to operate a Predator drone, including a pilot, maintenance personnel and surveillance analysts.¶ In short, the doomsday drone scenario Ignatieff and Sharkey predict results from an excessive focus on rapidly-evolving military technology.¶ Instead, we must return to what we know about state behavior in an anarchistic international order. Nations will confront the same principles of deterrence, for example, when deciding to launch a targeted killing operation regardless of whether they conduct it through a drone or a covert amphibious assault team.¶ Drones may make waging war more domestically palatable, but they don’t change the very serious risks of retaliation for an attacking state. Any state otherwise deterred from using force abroad will not significantly increase its power projection on account of acquiring drones.¶ What’s more, the very states whose use of drones could threaten U.S. security – countries like China – are not democratic, which means that the possible political ramifications of the low risk of casualties resulting from drone use are irrelevant. For all their military benefits, putting drones into play requires an ability to meet the political and security risks associated with their use.¶ Despite these realities, there remain a host of defensible arguments one could employ to discredit the Obama drone strategy. The legal justification for targeted killings in areas not internationally recognized as war zones is uncertain at best.¶ Further, the short-term gains yielded by targeted killing operations in Pakistan, Somalia and Yemen, while debilitating to Al Qaeda leadership in the short-term, may serve to destroy already tenacious bilateral relations in the region and radicalize local populations.¶ Yet, the past decade’s experience with drones bears no evidence of impending instability in the global strategic landscape. Conflict may not be any less likely in the era of drones, but the nature of 21st Century warfare remains fundamentally unaltered despite their arrival in large numbers.

#### Scenario B- Detention

#### The status quo is goldilocks- Obama is deliberative and sharing war-making authority, but making the moves necessary for flexible self-defense- Syria proves

Corn, 13 -- Mother Jones' Washington bureau chief

[David, "Obama, Syria, and Congress: Why Did He Go There?" Mother Jones, www.motherjones.com/politics/2013/09/why-obama-sought-congressional-authorization-syria, accessed 9-23-13, mss]

Given all these swirling and complicated political dynamics, why did Obama grant Congress the right to hold him hostage? Some cynics have suggested that he might be seeking a way out of the corner he red-lined himself into. The polls show a strike would likely be highly unpopular among American voters, and experts of various ideological bents have raised serious questions about the efficacy and impact of a limited US military assault designed to deter Assad from the further use of chemical weapons. If Congress doesn't green light the endeavor, Obama can say he gave it a shot and retreat. Others have slammed Obama for not having the spine to go it alone, speculating he felt the need for political cover. But there's an alternative explanation: He's doing the right thing—or what he believes is the right thing. A former senior Obama adviser who still works with the White House says, "Look at this. Is there any other explanation, other than he thinks this is what he ought to do?" Meaning that Obama, the former law professor, is paying heed to the constitutional notion that the president shares war-making responsibility with Congress. Though this question has long been a source of unresolved conflict between presidents and legislators—and Obama did not seek congressional approval for the military action in Libya and has ordered drone strikes without official Capitol Hill backing—he does appear to be sympathetic to the idea that a president does not possess unhindered and unchecked war-making authority. During the 2008 campaign, he declared, "The president does not have power under the Constitution to unilaterally authorize a military attack in a situation that does not involve stopping an actual or imminent threat to the nation." In Libya, Obama did not act in sync with his campaign statement. But in that instance, past and present Obama aides have contended, the president had only two days or so to mount a strike (with European and Arab allies) to prevent a possible slaughter of Libyan civilians. So Obama sidestepped his previously held view, put that particular principle on hold—and took the hit. This time around, as Obama has pointed out, he does not have to move quickly to thwart an imminent threat. Consequently, he has had the chance to proceed according to constitutional rules (as he sees them). "I think it was pretty clear to him," says a former senior White House official, "that if he blew past Congress this time, that would be it." That is, the idea of joint executive-legislative responsibility for war would be trampled so far into the ground it could remain buried for years to come. Though **Obama** has **aimed to preserve a flexible degree of executive privilege**—and he still might order a strike on Syria without Congress' okay—**he didn't want to do long-term damage to this central constitutional principle.** Sure, **he'll bend it, but he won't break it**. Guiding him, this former aide suggested, was that trademarked Obama nuance-ism that blends pragmatism and principle in a manner that hardly lends itself to crystal-clear messaging.

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

**Law and Versteeg ’12** [David S. Law, Professor of Law and Professor of Political Science, Washington University in St. Louis. B.A., M.A., Ph.D., Stanford University; J.D., Harvard Law School; B.C.L. in European and Comparative Law, University of Oxford, Mila Versteeg, Associate Professor, University of Virginia School of Law. B.A., LL.M., Tilburg University; LL.M., Harvard Law School; D.Phil., University of Oxford, “The Declining Influence of the United States Constitution,” New York University Law Review, Vol. 87, No. 3, pp. 762-858, June 2012, online]

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

**Other variables account for peace between democracies—DPT is statistically flawed**

Rosato 11 Sebastian, Dept of Political Science at Notre Dame. “The Handbook on the Political Economy of War”, Google Books

15.3.2 Militarized Disputes There are at least two reasons to doubt the claim that pairs of democracies are less prone to conflict than other pairs of states. First, despite their assertions, it is not clear that democratic peace theorists have established the existence of a powerful association between joint democracy and peace. Second, there is good evidence that factors other than democracy -many of them consistent with realist expectations - account for the peace among democratic states.14 Significance Democratic peace theorists have yet to provide clearcut evidence that there is a significant relationship between their independent and dependent variables, joint democracy and peace. It is now clear, for example, that Maoz and Russett's analysis of the Cold War period, which claims to establish the existence of a joint, separate peace, does not in fact do so. In a reassessment of that analysis, which follows the original as closely as possible save for the addition of a control for economic interdependence, Oneal ct al. (1996) find that a continuous measure of democracy is not significantly correlated with peace. Moreover, a supplementary analysis of contiguous dyads those that experience most of the conflicts also finds no significant relationship between a continuous measure of joint democracy and peace whenever a control for economic interdependence is included or not. This finding is particularly damaging because democratic peace theorists argue that "most theoretical explanations of the separate peace imply a continuous effect: the more democratic a pair of states, the less likely they are to become involved in conflict" (Oneal and Ray 1997, p. 752). Oneal and Ray (1997, pp. 756-7) conclude that the original Maoz and Russett finding does not survive reanalysis because it is based on a joint democracy variable that, although widely used, is poorly calculated and constructed- and they therefore propose a new democracy measure that they claim does achieve statistical significance. Their new measure of joint democracy uses the democracy score of the less democratic state in a dyad on the assumption that conflict is a function of the regime type of the less constrained of two interacting states. This "weak link" specification appears to provide powerful support for the democratic peace finding: "As the less democratic state becomes more democratic, the likelihood of conflict declines. This is clear evidence of the pacific benefits of democracy." The new variable provides "corroboration of the democratic peace" (Oneal and Ray 1997, pp. 764-5). Oneal and Russett concur with this conclusion in a separate analysis that also uses the weak link assumption. An increase in democracy in the state that is "freer lo resort to violence, reduces the likelihood of dyadic conflict" (Oneal and Russett 1997, p. 279). Although the weak link measure is widely accepted as the gold standard in studies of the relationship between democracy and a variety of international outcomes, it does not provide evidence that joint democracy is significantly related lo peace

. Even as they developed it, Oneal and Ray admitted that the weak link was not a pure measure of joint democracy. What it really revealed was that the probability of conflict was "a function of the average level of democracy in a dyad ... [and] also the political distance separating the states along the democracy-autocracy continuum" (1997, p. 768, emphasis added). The problem, of course, is that the logics advanced to explain the democratic peace refer to the effects of democracy on state behavior; none refer to the effects of political similarity. Thus findings generated using the weak link specification - which is to say all the major assessments of the democratic peace - may not actually support the central democratic peace claim that it is something about the norms and institutions of democracies that enables them to remain at peace. This is precisely the conclusion that Errol Henderson reaches in his compelling assessment of Oneal and Russctt's work. His analysis replicates theirs precisely with two minor modifications: he includes only the first year of any dispute because democratic peace theory is about the incidence of disputes, not their duration, and he introduces a political similarity variable in order to disentangle the effects of joint democracy and political distance on conflict. His central result is striking: democracy ;\*is not significantly associated with the probability of dispute onset." "What is apparent from the results," he concludes, "is that in the light of quite reasonable, modest, and straightforward modifications of Oneal and Russett's . . . research design, there is no statistically significant relationship between joint democracy and a decreased likelihood of militarized interstate conflict" (Henderson 2002, pp. 37-9). Mark Souva (2004) reaches essentially the same conclusion in an analysis of the relationship between domestic institutions and interstate conflict using the weak link specification. In a model that includes variables for political and economic institutional similarity, both of which are significantly associated with peace, there is no significant relationship between joint democracy and the absence of conflict.

Squo Solves and No Brink: Democracy has expanded globally even without U.S. promotion and will continue to

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

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

### Alliance

#### Allies suck

Walt ’12 (Stephen M. Walt, That Walt Guy, http://walt.foreignpolicy.com/posts/2012/09/11/the\_credibility\_fetish, “Why are U.S. leaders so obsessed with credibility?”, September 11, 2012)

What's the biggest mistake the United States has made since the end of the Cold War? Invading Iraq? Helping screw up the Israel-Palestine peace process? Missing the warning signs for 9/11, and then overreacting to the actual level of danger that Al Qaeda really posed? Not recognizing we had a bubble economy and a corrupt financial industry until after the 2007 meltdown? Those are all worthy candidates, and I'm sure readers can think of others. But today I want to propose another persistent error, which lies at the heart of many of the missed opportunities or sins of commission that we made since the Berlin Wall came down. It is in essence a conceptual mistake: a failure to realize just how much the world changed when the Soviet Union collapsed, and a concomitant failure to adjust our basic approach to foreign policy appropriately. I call this error the "credibility fetish." U.S. leaders have continued to believe that our security depends on convincing both allies and adversaries that we are steadfast, loyal, reliable, etc., and that our security guarantees are iron-clad. It is a formula that reinforces diplomatic rigidity, because it requires us to keep doing things to keep allies happy and issuing threats (or in some cases, taking actions) to convince foes that we are serious. And while it might have made some degree of sense during the Cold War, it is increasingly counterproductive today. One could argue that credibility did matter during the Cold War. The United States did face a serious peer competitor in those days, and the Soviet Union did have impressive military capabilities. Although a direct Soviet attack on vital U.S. interests was always unlikely, one could at least imagine certain events that might have shifted the global balance of power dramatically. For example, had the Soviet Union been able to conquer Western Europe or the Persian Gulf and incorporate these assets into its larger empire, it would have had serious consequences for the United States. Accordingly, U.S. leaders worked hard to make sure that the U.S. commitment to NATO was credible, and we did similar things to bolster U.S. credibility in Asia and the Gulf. Of course, we probably overstated the importance of "credibility" even then. Sloppy analogies like the infamous "domino theory" helped convince Americans that we had to fight in places that didn't matter (e.g., Vietnam) in order to convince everyone that we'd also be willing to fight in places that did. We also managed to convince ourselves that credible nuclear deterrence depended on having a mythical ability to "prevail" in an all-out nuclear exchange, even though winning would have had little meaning once a few dozen missiles had been fired. Nonetheless, in the rigid, bipolar context of the Cold War, it made sense for the United States to pay some attention to its credibility as an alliance leader and security provider. But today, the United States faces no peer competitor, and it is hard to think of any single event that would provoke a rapid and decisive shift in the global balance of power. Instead of a clear geopolitical rival, we face a group of medium powers: some of them friendly (Germany, the UK, Japan, etc.) and some of them partly antagonistic (Russia, China). Yet Russia is economically linked to our NATO allies, and China is a major U.S. trading partner and has been a major financier of U.S. debt. This not your parents' Cold War. There are also influential regional powers such as Turkey, India, or Brazil, with whom the U.S. relationship is mixed: We agree on some issues and are at odds on others. And then there are clients who depend on U.S. protection (Israel, Saudi Arabia, Afghanistan, Taiwan, etc.) but whose behavior often creates serious headaches for whoever is in the White House. As distinguished diplomat Chas Freeman recently commented, "the complexity and dynamism of the new order place a premium on diplomatic agility. Stolid constancy and loyalty to pre-existing alliance relationship are not the self-evident virtues they once were. We should not be surprised that erstwhile allies put their own interest ahead of ours and act accordingly. Where it is to our long-term advantage, we should do the same." What might this mean in practice? As I've noted repeatedly, it means beginning by recognizing that the United States is both very powerful and very secure, and that there's hardly anything that could happen in the international system that would alter the global balance of power overnight. The balance is shifting, to be sure, but these adjustments will take place over the course of decades. Weaker states who would like U.S. protection need it a lot more than we need them, which means our "credibility" is more their problem than ours. Which in turn means that if other states want our help, they should be willing to do a lot to convince us to provide it. Instead of obsessing about our own "credibility," in short, and bending over backwards to convince the Japanese, South Koreans, Singaporeans, Afghans, Israelis, Saudis, and others that we will do whatever it takes to protect them, we ought to be asking them what they are going to do for themselves, and also for us. And instead of spending all our time trying to scare the bejeezus out of countries like Iran (which merely reinforces their interest in getting some sort of deterrent), we ought to be reminding them over and over that we have a lot to offer and are open to better relations, even if the clerical regime remains in power and maybe even if -- horrors! -- it retains possession of the full nuclear fuel cycle (under IAEA safeguards). If nothing else, adopting a less confrontational posture is bound to complicate their own calculations. This is not an argument for Bush-style unilateralism, or for a retreat to Fortress America. Rather, it is a call for greater imagination and flexibility in how we deal with friends and foes alike. I'm not saying that we should strive for zero credibility, of course; I'm merely saying that we'd be better off if other states understood that our credibility was more conditional. In other words, allies need to be reminded that our help is conditional on their compliance with our interests (at least to some degree) and adversaries should also be reminded that our opposition is equally conditional on what they do. In both cases we also need to recognize that we are rarely going to get other states to do everything we want. Above all, it is a call to recognize that our geopolitical position, military power, and underlying economic strength give us the luxury of being agile in precisely the way that Freeman depicts. Of course, some present U.S. allies would be alarmed by the course I'm suggesting, because it would affect the sweetheart deals they've been enjoying for years. They'll tell us they are losing confidence in our leadership, and they'll threaten to go neutral, or maybe even align with our adversaries. Where possible, they will enlist Americans who are sympathetic to their plight to pressure on U.S. politicians to offer new assurances. In most cases, however, such threats don't need to be taken seriously. And we just have to patiently explain to them that we're not necessarily abandoning them, we are merely 1) making our support more conditional on their cooperation with us on things we care about, and 2) remaining open to improving relations with other countries, including some countries that some of our current allies might have doubts about. I know: It's a radical position: we are simply going to pursue the American national interest, instead of letting our allies around the world define it for us. The bottom line is that the United States is in a terrific position to play realpolitik on a global scale, precisely because it needs alliance partners less than most of its partners do. And even when allies are of considerable value to us, we still have the most leverage in nearly every case. As soon as we start obsessing about our credibility, however, we hand that leverage back to our weaker partners and we constrain our ability to pursue meaningful diplomatic solutions to existing conflicts. Fetishizing credibility, in short, is one of the reasons American diplomacy has achieved relatively little since the end of the Cold War.

#### No relations impact

Leonard ‘12 (Mark Leonard is co-founder and director of the European Council on Foreign Relations, the first pan-European think tank., 7/24/2012, "The End of the Affair", www.foreignpolicy.com/articles/2012/07/24/the\_end\_of\_the\_affair)

But Obama's stellar personal ratings in Europe hide the fact that the Western alliance has never loomed smaller in the imagination of policymakers on either side of the Atlantic. Seen from Washington, there is not a single problem in the world to be looked at primarily through a transatlantic prism. Although the administration looks first to Europeans as partners in any of its global endeavors -- from dealing with Iran's nuclear program to stopping genocide in Syria -- it no longer sees the European theater as its core problem or seeks a partnership of equals with Europeans. It was not until the eurozone looked like it might collapse -- threatening to bring down the global economy and with it Obama's chances of reelection -- that the president became truly interested in Europe. Conversely, Europeans have never cared less about what the United States thinks. Germany, traditionally among the most Atlanticist of European countries, has led the pack. Many German foreign-policy makers think it was simply a tactical error for Berlin to line up with Moscow and Beijing against Washington on Libya. But there is nothing accidental about the way Berlin has systematically refused even to engage with American concerns over German policy on the euro. During the Bush years, Europeans who were unable to influence the strategy of the White House would give a running commentary on American actions in lieu of a substantive policy. They had no influence in Washington, so they complained. But now, the tables are turned, with Obama passing continual judgment on German policy while Chancellor Angela Merkel stoically refuses to heed his advice. Europeans who for many years were infantilized by the transatlantic alliance, either using sycophancy and self-delusion about a "special relationship" to advance their goals or, in the case of Jacques Chirac's France, pursuing the even more futile goal of balancing American power, have finally come to realize that they can no longer outsource their security or their prosperity to Uncle Sam. On both sides of the Atlantic, the ties that held the alliance together are weakening. On the American side, Obama's biography links him to the Pacific and Africa but not to the old continent. His personal story echoes the demographic changes in the United States that have reduced the influence of Americans of European origin. Meanwhile, on the European side, the depth of the euro crisis has crowded out almost all foreign policy from the agenda of Europe's top decision-makers. The end of the Cold War means that Europeans no longer need American protection, and the U.S. financial crisis has led to a fall in American demand for European products (although U.S. exports to Europe are at an all-time high). What's more, Obama's lack of warmth has precluded him from establishing the sorts of human relationships with European leaders that animate alliances. When asked to name his closest allies, Obama mentions non-European leaders such as Recep Tayyip Erdogan of Turkey and Lee Myung-bak of South Korea. And his transactional nature has led to a neglect of countries that he feels will not contribute more to the relationship -- within a year of being elected, Obama had managed to alienate the leaders of most of Europe's big states, from Gordon Brown to Nicolas Sarkozy to Jose Luis Rodriguez Zapatero. Americans hardly remember, but Europe's collective nose was put out of joint by Obama's refusal to make the trip to Europe for the 2010 EU-U.S. summit. More recently, Obama has reached out to allies to counteract the impression that the only way to get a friendly reception in Washington is to be a problem nation -- but far too late to erase the sense that Europe matters little to this American president. Underlying these superficial issues is a more fundamental divergence in the way Europe and the United States are coping with their respective declines. As the EU's role shrinks in the world, Europeans have sought to help build a multilateral, rule-based world. That is why it is they, rather than the Chinese or the Americans, that have pushed for the creation of institutionalized global responses to climate change, genocide, or various trade disputes. To the extent that today's world has not collapsed into the deadlocked chaos of a "G-zero," it is often due to European efforts to create a functioning institutional order. To Washington's eternal frustration, however, Europeans have not put their energies into becoming a full partner on global issues. For all the existential angst of the euro crisis, Europe is not as weak as people think it is. It still has the world's largest market and represents 17 percent of world trade, compared with 12 percent for the United States. Even in military terms, the EU is the world's No. 2 military power, with 21 percent of the world's military spending, versus 5 percent for China, 3 percent for Russia, 2 percent for India, and 1.5 percent for Brazil, according to Harvard scholar Joseph Nye. But, ironically for a people who have embraced multilateralism more than any other on Earth, Europeans have not pooled their impressive economic, political, and military resources. And with the eurozone's need to resolve the euro crisis, the EU may split into two or more tiers -- making concerted action even more difficult. As a result, European power is too diffuse to be much of a help or a hindrance on many issues. On the other hand, Obama's United States -- although equally committed to liberal values -- thinks that the best way to safeguard American interests and values is to craft a multipartner world. On the one hand, Obama continues to believe that he can transform rising powers by integrating them into existing institutions (despite much evidence to the contrary). On the other, he thinks that Europe's overrepresentation in existing institutions like the World Bank and the International Monetary Fund is a threat to the consolidation of that order. This is leading a declining America to increasingly turn against Europe on issues ranging from climate change to currencies. The most striking example came at the 2009 G-20 in Pittsburgh, when Obama worked together with the emerging powers to pressure Europeans to give up their voting power at the IMF. As Walter Russell Mead, the U.S. international relations scholar, has written, "[I]ncreasingly it will be in the American interest to help Asian powers rebalance the world power structure in ways that redistribute power from the former great powers of Europe to the rising great powers of Asia today." But the long-term consequence of the cooling of this unique alliance could be the hollowing out of the world order that the Atlantic powers have made. The big unwritten story of the last few decades is the way that a European-inspired liberal economic and political order has been crafted in the shell of the American security order. It is an order that limits the powers of states and markets and puts the protection of individuals at its core. If the United States was the sheriff of this order, the EU was its constitutional court. And now it is being challenged by the emerging powers. Countries like Brazil, China, and India are all relatively new states forged by movements of national liberation whose experience of globalization has been bound up with their new sense of nationhood. While globalization is destroying sovereignty for the West, these former colonies are enjoying it on a scale never experienced before. As a result, they are not about to invite their former colonial masters to interfere in their internal affairs. Just look at the dynamics of the United Nations Security Council on issues from Sudan to Syria. Even in the General Assembly, the balance of power is shifting: 10 years ago, China won 43 percent of the votes on human rights in the United Nations, far behind Europe's 78 percent. But in 2010-11, the EU won less than 50 percent to China's nearly 60 percent, according to research by the European Council on Foreign Relations. Rather than being transformed by global institutions, China's sophisticated multilateral diplomacy is changing the global order itself. As relative power flows Eastward, it is perhaps inevitable that the Western alliance that kept liberty's flame alight during the Cold War and then sought to construct a liberal order in its aftermath is fading fast. It was perhaps inevitable that both Europeans and Americans should fail to live up to each other's expectations of their respective roles in a post-Cold War world. After all, America is still too powerful to happily commit to a multilateral world order (as evidenced by Congress's reluctance to ratify treaties). And Europe is too physically safe to be willing to match U.S. defense spending or pool its resources. What is surprising is that the passing of this alliance has not been mourned by many on either side. The legacy of Barack Obama is that the transatlantic relationship is at its most harmonious and yet least relevant in 50 years. Ironically, it may take the election of someone who is less naturally popular on the European stage for both sides to wake up and realize just what is at stake.

#### NSA spying thumps it

Levs and Shoichet ’13 (Josh Levs and Catherine E. Shoichet, CNN, “Europe furious, 'shocked' by report of U.S. spying”, <http://www.cnn.com/2013/06/30/world/europe/eu-nsa>, July 1, 2013)

(CNN) -- European officials reacted with fury Sunday to a report that the U.S. National Security Agency spied on EU offices. The European Union warned that if the report is accurate, it will have tremendous repercussions. "I am deeply worried and shocked about the allegations," European Parliament President Martin Schulz said in a statement. "If the allegations prove to be true, it would be an extremely serious matter which will have a severe impact on EU-US relations. On behalf of the European Parliament, I demand full clarification and require further information speedily from the U.S. authorities with regard to these allegations."

#### No impact

Walt ‘10 (Stephen, Professor of international relations at Harvard University, “ Is NATO irrelevant?”, <http://walt.foreignpolicy.com/posts/2010/09/24/is_nato_irrelevant>, September 24, 2010)

Nonetheless, I share William Pfaff's view that NATO doesn't have much of a future. First, Europe's economic woes are forcing key NATO members (and especially the U.K.) to adopt draconian cuts in defense spending. NATO's European members already devote a much smaller percentage of GDP to defense than the United States does, and they are notoriously bad at translating even that modest amount into effective military power. The latest round of defense cuts means that Europe will be even less able to make a meaningful contribution to out-of-area missions in the future, and those are the only serious military missions NATO is likely to have. Second, the ill-fated Afghan adventure will have divisive long-term effects on alliance solidarity. If the United States and its ISAF allies do not win a clear and decisive victory (a prospect that seems increasingly remote), there will be a lot of bitter finger-pointing afterwards. U.S. leaders will complain about the restrictions and conditions that some NATO allies (e.g., Germany) placed on their participation, while European publics will wonder why they let the United States get them bogged down there for over a decade. It won't really matter who is really responsible for the failure; the key point is that NATO is unlikely to take on another mission like this one anytime soon (if ever). And given that Europe itself is supposedly stable, reliably democratic, and further pacified by the EU, what other serious missions is NATO supposed to perform? The third potential schism is Turkey, which has been a full NATO member since 1950. I'm not as concerned about Turkey's recent foreign policy initiatives as some people are, but there's little doubt that Ankara's diplomatic path is diverging on a number of key issues. The United States, United Kingdom, France, and Germany have been steadily ratcheting up pressure on Iran, while Turkey has moved closer to Tehran both diplomatically and economically. Turkey is increasingly at odds with Washington on Israel-Palestine issues, which is bound to have negative repercussions in the U.S. Congress. Rising Islamophobia in both the United States and Europe could easily reinforce these frictions. And given that Turkey has NATO's largest military forces (after the United States) and that NATO operates largely by consensus, a major rift could have paralyzing effects on the alliance as a whole. Put all this together, and NATO's future as a meaningful force in world affairs doesn't look too bright. Of course, the usual response to such gloomy prognostications is to point out that NATO has experienced crises throughout its history (Suez, anyone?), and to remind people that it has always managed to weather them in the past. True enough, but most of these rifts occurred within the context of the Cold War, when there was an obvious reason for leaders in Europe and America to keep disputes within bounds. Of course, given NATO's status as a symbol of transatlantic solidarity, no American president or European leader will want to preside over its demise. Plus, you've got all those bureaucrats in Brussels and Atlantophiles in Europe and America who regard NATO as their life's work. For all these reasons, I don't expect NATO to lose members or dissolve. I'll even be somewhat surprised if foreign policy elites even admit that it has serious problems. Instead, NATO is simply going to be increasingly irrelevant. As I wrote more than a decade ago: . . .the Atlantic Alliance is beginning to resemble Oscar Wilde's Dorian Gray, appearing youthful and robust as it grows older -- but becoming ever more infirm. The Washington Treaty may remain in force, the various ministerial meetings may continue to issue earnest and upbeat communiques, and the Brussels bureaucracy may keep NATO's web page up and running-all these superficial routines will go on, provided the alliance isn't asked to actually do anything else. The danger is that NATO will be dead before anyone notices, and we will only discover the corpse the moment we want it to rise and respond." Looking back, I'd say I underestimated NATO's ability to rise from its sickbed. Specifically, it did manage to stagger through the Kosovo War in 1999 and even invoked Article V guarantees for the first time after 9/11. NATO members have sent mostly token forces to Afghanistan (though the United States, as usual, has done most of the heavy lifting). But even that rather modest effort has been exhausting, and isn't likely to be repeated. A continent that is shrinking, aging, and that faces no serious threat of foreign invasion isn't going to be an enthusiastic partner for future adventures in nation-building, and it certainly isn't likely to participate in any future U.S. effort to build a balancing coalition against a rising China.

#### The squo is reverse proliferating- no impact

Kahl et. al 13 (Colin H., Senior Fellow at the Center for a New American Security and an associate professor in the Security Studies Program at Georgetown University’s Edmund A. Walsh School of Foreign Service, Melissa G. Dalton, Visiting Fellow at the Center for a New American Security, Matthew Irvine, Research Associate at the Center for a New American Security, February, “If Iran Builds the Bomb, Will Saudi Arabia Be Next?” <http://www.cnas.org/files/documents/publications/CNAS_AtomicKingdom_Kahl.pdf>, 2013)

\*\*\*cites Jacques Hymans, USC Associate Professor of IR\*\*\*

I I I . LESSONS FRO M HISTOR Y Concerns over “regional proliferation chains,” “falling nuclear dominos” and “nuclear tipping points” are nothing new; indeed, reactive proliferation fears date back to the dawn of the nuclear age.14 Warnings of an inevitable deluge of proliferation were commonplace from the 1950s to the 1970s, resurfaced during the discussion of “rogue states” in the 1990s and became even more ominous after 9/11.15 In 2004, for example, Mitchell Reiss warned that “in ways both fast and slow, we may very soon be approaching a nuclear ‘tipping point,’ where many countries may decide to acquire nuclear arsenals on short notice, thereby triggering a proliferation epidemic.” Given the presumed fragility of the nuclear nonproliferation regime and the ready supply of nuclear expertise, technology and material, Reiss argued, “a single new entrant into the nuclear club could catalyze similar responses by others in the region, with the Middle East and Northeast Asia the most likely candidates.”16 Nevertheless, predictions of inevitable proliferation cascades have historically proven false (see The Proliferation Cascade Myth text box). In the six decades since atomic weapons were first developed, nuclear restraint has proven far more common than nuclear proliferation, and cases of reactive proliferation have been exceedingly rare. Moreover, most countries that have started down the nuclear path have found the road more difficult than imagined, both technologically and bureaucratically, leading the majority of nuclear-weapons aspirants to reverse course. Thus, despite frequent warnings of an unstoppable “nuclear express,”17 William Potter and Gaukhar Mukhatzhanova astutely note that the “train to date has been slow to pick up steam, has made fewer stops than anticipated, and usually has arrived much later than expected.”18 None of this means that additional proliferation in response to Iran’s nuclear ambitions is inconceivable, but the empirical record does suggest that regional chain reactions are not inevitable. Instead, only certain countries are candidates for reactive proliferation. Determining the risk that any given country in the Middle East will proliferate in response to Iranian nuclearization requires an assessment of the incentives and disincentives for acquiring a nuclear deterrent, the technical and bureaucratic constraints and the available strategic alternatives. Incentives and Disincentives to Proliferate Security considerations, status and reputational concerns and the prospect of sanctions combine to shape the incentives and disincentives for states to pursue nuclear weapons. Analysts predicting proliferation cascades tend to emphasize the incentives for reactive proliferation while ignoring or downplaying the disincentives. Yet, as it turns out, instances of nuclear proliferation (including reactive proliferation) have been so rare because going down this road often risks insecurity, reputational damage and economic costs that outweigh the potential benefits.19 Security and regime survival are especially important motivations driving state decisions to proliferate. All else being equal, if a state’s leadership believes that a nuclear deterrent is required to address an acute security challenge, proliferation is more likely.20 Countries in conflict-prone neighborhoods facing an “enduring rival”– especially countries with inferior conventional military capabilities vis-à-vis their opponents or those that face an adversary that possesses or is seeking nuclear weapons – may be particularly prone to seeking a nuclear deterrent to avert aggression.21 A recent quantitative study by Philipp Bleek, for example, found that security threats, as measured by the frequency and intensity of conventional militarized disputes, were highly correlated with decisions to launch nuclear weapons programs and eventually acquire the bomb.22 The Proliferation Cascade Myth Despite repeated warnings since the dawn of the nuclear age of an inevitable deluge of nuclear proliferation, such fears have thus far proven largely unfounded. Historically, nuclear restraint is the rule, not the exception – and the degree of restraint has actually increased over time. In the first two decades of the nuclear age, five nuclear-weapons states emerged: the United States (1945), the Soviet Union (1949), the United Kingdom (1952), France (1960) and China (1964). However, in the nearly 50 years since China developed nuclear weapons, only four additional countries have entered (and remained in) the nuclear club: Israel (allegedly in 1967), India (“peaceful” nuclear test in 1974, acquisition in late-1980s, test in 1998), Pakistan (acquisition in late-1980s, test in 1998) and North Korea (test in 2006).23 This significant slowdown in the pace of proliferation occurred despite the widespread dissemination of nuclear know-how and the fact that the number of states with the technical and industrial capability to pursue nuclear weapons programs has significantly increased over time.24 Moreover, in the past 20 years, several states have either given up their nuclear weapons (South Africa and the Soviet successor states Belarus, Kazakhstan and Ukraine) or ended their highly developed nuclear weapons programs (e.g., Argentina, Brazil and Libya).25 Indeed, by one estimate, 37 countries have pursued nuclear programs with possible weaponsrelated dimensions since 1945, yet the overwhelming number chose to abandon these activities before they produced a bomb. Over time, the number of nuclear reversals has grown while the number of states initiating programs with possible military dimensions has markedly declined.26 Furthermore – especially since the Nuclear Non-Proliferation Treaty (NPT) went into force in 1970 – reactive proliferation has been exceedingly rare. The NPT has near-universal membership among the community of nations; only India, Israel, Pakistan and North Korea currently stand outside the treaty. Yet the actual and suspected acquisition of nuclear weapons by these outliers has not triggered widespread reactive proliferation in their respective neighborhoods. Pakistan followed India into the nuclear club, and the two have engaged in a vigorous arms race, but Pakistani nuclearization did not spark additional South Asian states to acquire nuclear weapons. Similarly, the North Korean bomb did not lead South Korea, Japan or other regional states to follow suit.27 In the Middle East, no country has successfully built a nuclear weapon in the four decades since Israel allegedly built its first nuclear weapons. Egypt took initial steps toward nuclearization in the 1950s and then expanded these efforts in the late 1960s and 1970s in response to Israel’s presumed capabilities. However, Cairo then ratified the NPT in 1981 and abandoned its program.28 Libya, Iraq and Iran all pursued nuclear weapons capabilities, but only Iran’s program persists and none of these states initiated their efforts primarily as a defensive response to Israel’s presumed arsenal.29 Sometime in the 2000s, Syria also appears to have initiated nuclear activities with possible military dimensions, including construction of a covert nuclear reactor near al-Kibar, likely enabled by North Korean assistance.30 (An Israeli airstrike destroyed the facility in 2007.31) The motivations for Syria’s activities remain murky, but the nearly 40-year lag between Israel’s alleged development of the bomb and Syria’s actions suggests that reactive proliferation was not the most likely cause. Finally, even countries that start on the nuclear path have found it very difficult, and exceedingly time consuming, to reach the end. Of the 10 countries that launched nuclear weapons projects after 1970, only three (Pakistan, North Korea and South Africa) succeeded; one (Iran) remains in progress, and the rest failed or were reversed.32 The successful projects have also generally needed much more time than expected to finish. According to Jacques Hymans, the average time required to complete a nuclear weapons program has increased from seven years prior to 1970 to about 17 years after 1970, even as the hardware, knowledge and industrial base required for proliferation has expanded to more and more countries.33 Yet throughout the nuclear age, many states with potential security incentives to develop nuclear weapons have nevertheless abstained from doing so.34 Moreover, contrary to common expectations, recent statistical research shows that states with an enduring rival that possesses or is pursuing nuclear weapons are not more likely than other states to launch nuclear weapons programs or go all the way to acquiring the bomb, although they do seem more likely to explore nuclear weapons options.35 This suggests that a rival’s acquisition of nuclear weapons does not inevitably drive proliferation decisions. One reason that reactive proliferation is not an automatic response to a rival’s acquisition of nuclear arms is the fact that security calculations can cut in both directions. Nuclear weapons might deter outside threats, but leaders have to weigh these potential gains against the possibility that seeking nuclear weapons would make the country or regime less secure by triggering a regional arms race or a preventive attack by outside powers. Countries also have to consider the possibility that pursuing nuclear weapons will produce strains in strategic relationships with key allies and security patrons. If a state’s leaders conclude that their overall security would decrease by building a bomb, they are not likely to do so.36 Moreover, although security considerations are often central, they are rarely sufficient to motivate states to develop nuclear weapons. Scholars have noted the importance of other factors, most notably the perceived effects of nuclear weapons on a country’s relative status and influence.37 Empirically, the most highly motivated states seem to be those with leaders that simultaneously believe a nuclear deterrent is essential to counter an existential threat and view nuclear weapons as crucial for maintaining or enhancing their international status and influence. Leaders that see their country as naturally at odds with, and naturally equal or superior to, a threatening external foe appear to be especially prone to pursuing nuclear weapons.38 Thus, as Jacques Hymans argues, extreme levels of fear and pride often “combine to produce a very strong tendency to reach for the bomb.”39 Yet here too, leaders contemplating acquiring nuclear weapons have to balance the possible increase to their prestige and influence against the normative and reputational costs associated with violating the Nuclear Non-Proliferation Treaty (NPT). If a country’s leaders fully embrace the principles and norms embodied in the NPT, highly value positive diplomatic relations with Western countries and see membership in the “community of nations” as central to their national interests and identity, they are likely to worry that developing nuclear weapons would damage (rather than bolster) their reputation and influence, and thus they will be less likely to go for the bomb.40 In contrast, countries with regimes or ruling coalitions that embrace an ideology that rejects the Western dominated international order and prioritizes national self-reliance and autonomy from outside interference seem more inclined toward proliferation regardless of whether they are signatories to the NPT.41 Most countries appear to fall in the former category, whereas only a small number of “rogue” states fit the latter. According to one count, before the NPT went into effect, more than 40 percent of states with the economic resources to pursue nuclear programs with potential military applications did so, and very few renounced those programs. Since the inception of the nonproliferation norm in 1970, however, only 15 percent of economically capable states have started such programs, and nearly 70 percent of all states that had engaged in such activities gave them up.42 The prospect of being targeted with economic sanctions by powerful states is also likely to factor into the decisions of would-be proliferators. Although sanctions alone proved insufficient to dissuade Iraq, North Korea and (thus far) Iran from violating their nonproliferation obligations under the NPT, this does not necessarily indicate that sanctions are irrelevant. A potential proliferator’s vulnerability to sanctions must be considered. All else being equal, the more vulnerable a state’s economy is to external pressure, the less likely it is to pursue nuclear weapons. A comparison of states in East Asia and the Middle East that have pursued nuclear weapons with those that have not done so suggests that countries with economies that are highly integrated into the international economic system – especially those dominated by ruling coalitions that seek further integration – have historically been less inclined to pursue nuclear weapons than those with inward-oriented economies and ruling coalitions.43 A state’s vulnerability to sanctions matters, but so too does the leadership’s assessment regarding the probability that outside powers would actually be willing to impose sanctions. Some would-be proliferators can be easily sanctioned because their exclusion from international economic transactions creates few downsides for sanctioning states. In other instances, however, a state may be so vital to outside powers – economically or geopolitically – that it is unlikely to be sanctioned regardless of NPT violations. Technical and Bureaucratic Constraints In addition to motivation to pursue the bomb, a state must have the technical and bureaucratic wherewithal to do so. This capability is partly a function of wealth. Richer and more industrialized states can develop nuclear weapons more easily than poorer and less industrial ones can; although as Pakistan and North Korea demonstrate, cash-strapped states can sometimes succeed in developing nuclear weapons if they are willing to make enormous sacrifices.44 A country’s technical know-how and the sophistication of its civilian nuclear program also help determine the ease and speed with which it can potentially pursue the bomb. The existence of uranium deposits and related mining activity, civilian nuclear power plants, nuclear research reactors and laboratories and a large cadre of scientists and engineers trained in relevant areas of chemistry and nuclear physics may give a country some “latent” capability to eventually produce nuclear weapons. Mastery of the fuel-cycle – the ability to enrich uranium or produce, separate and reprocess plutonium – is particularly important because this is the essential pathway whereby states can indigenously produce the fissile material required to make a nuclear explosive device.45 States must also possess the bureaucratic capacity and managerial culture to successfully complete a nuclear weapons program. Hymans convincingly argues that many recent would-be proliferators have weak state institutions that permit, or even encourage, rulers to take a coercive, authoritarian management approach to their nuclear programs. This approach, in turn, politicizes and ultimately undermines nuclear projects by gutting the autonomy and professionalism of the very scientists, experts and organizations needed to successfully build the bomb.46 Alternative Sources of Nuclear Deterrence Historically, the availability of credible security guarantees by outside nuclear powers has provided a potential alternative means for acquiring a nuclear deterrent without many of the risks and costs associated with developing an indigenous nuclear weapons capability. As Bruno Tertrais argues, nearly all the states that developed nuclear weapons since 1949 either lacked a strong guarantee from a superpower (India, Pakistan and South Africa) or did not consider the superpower’s protection to be credible (China, France, Israel and North Korea). Many other countries known to have pursued nuclear weapons programs also lacked security guarantees (e.g., Argentina, Brazil, Egypt, Indonesia, Iraq, Libya, Switzerland and Yugoslavia) or thought they were unreliable at the time they embarked on their programs (e.g., Taiwan). In contrast, several potential proliferation candidates appear to have abstained from developing the bomb at least partly because of formal or informal extended deterrence guarantees from the United States (e.g., Australia, Germany, Japan, Norway, South Korea and Sweden).47 All told, a recent quantitative assessment by Bleek finds that security assurances have empirically significantly reduced proliferation proclivity among recipient countries.48 Therefore, if a country perceives that a security guarantee by the United States or another nuclear power is both available and credible, it is less likely to pursue nuclear weapons in reaction to a rival developing them. This option is likely to be particularly attractive to states that lack the indigenous capability to develop nuclear weapons, as well as states that are primarily motivated to acquire a nuclear deterrent by security factors (as opposed to status-related motivations) but are wary of the negative consequences of proliferation.

# 2nc

## solvo

#### Obama ignores restrictions- tons of loopholes

**Kumar 3-19**-13 [Anita, White House correspondent for McClatchy Newspapers, former writer for The Washington Post, covering Virginia politics and government, and spent a decade at the St. Petersburg Times, writing about local, state and federal government both in Florida and Washington, “Obama turning to executive power to get what he wants,” <http://www.mcclatchydc.com/2013/03/19/186309/obama-turning-to-executive-power.html#.Ue18CdK1FSE>]

President Barack Obama came into office four years ago skeptical of pushing the power of the White House to the limit, especially if it appeared to be circumventing Congress.¶ Now, as he launches his second term, Obama has grown more comfortable wielding power to try to move his own agenda forward, particularly when a deeply fractured, often-hostile Congress gets in his way.¶ He’s done it with a package of tools, some of which date to George Washington and some invented in the modern era of an increasingly powerful presidency. And he’s done it with a frequency that belies his original campaign criticisms of predecessor George W. Bush, invites criticisms that he’s bypassing the checks and balances of Congress and the courts, and whets the appetite of liberal activists who want him to do even more to advance their goals.¶ While his decision to send drones to kill U.S. citizens suspected of terrorism has garnered a torrent of criticism, his use of executive orders and other powers at home is deeper and wider.¶ He delayed the deportation of young illegal immigrants when Congress wouldn’t agree. He ordered the Centers for Disease Control and Prevention to research gun violence, which Congress halted nearly 15 years ago. He told the Justice Department to stop defending the Defense of Marriage Act, deciding that the 1996 law defining marriage as between a man and a woman was unconstitutional. He’s vowed to act on his own if Congress didn’t pass policies to prepare for climate change.¶ Arguably more than any other president in modern history, he’s using executive actions, primarily orders, to bypass or pressure a Congress where the opposition Republicans can block any proposal.¶ “It’s gridlocked and dysfunctional. The place is a mess,” said Rena Steinzor, a law professor at the University of Maryland. “I think (executive action) is an inevitable tool given what’s happened.”¶ Now that Obama has showed a willingness to use those tactics, advocacy groups, supporters and even members of Congress are lobbying him to do so more and more.¶ The Center for Progressive Reform, a liberal advocacy group composed of law professors, including Steinzor, has pressed Obama to sign seven executive orders on health, safety and the environment during his second term.¶ Seventy environmental groups wrote a letter urging the president to restrict emissions at existing power plants.¶ Sen. Barbara Mikulski, D-Md., the chairwoman of the Appropriations Committee, sent a letter to the White House asking Obama to ban federal contractors from retaliating against employees who share salary information.¶ Gay rights organizations recently demonstrated in front of the White House to encourage the president to sign an executive order to bar discrimination based on sexual orientation or gender identity by companies that have federal contracts, eager for Obama to act after nearly two decades of failed attempts to get Congress to pass a similar bill.¶ “It’s ridiculous that we’re having to push this hard for the president to simply pick up a pen,” said Heather Cronk, the managing director of the gay rights group GetEQUAL. “It’s reprehensible that, after signing orders on gun control, cybersecurity and all manner of other topics, the president is still laboring over this decision.”¶ The White House didn’t respond to repeated requests for comment.¶ In January, Obama said he continued to believe that legislation was “sturdier and more stable” than executive actions, but that sometimes they were necessary, such as his January directive for the federal government to research gun violence.¶ “There are certain issues where a judicious use of executive power can move the argument forward or solve problems that are of immediate-enough import that we can’t afford not to do it,” the former constitutional professor told The New Republic magazine.¶ Presidents since George Washington have signed executive orders, an oft-overlooked power not explicitly defined in the Constitution. More than half of all executive orders in the nation’s history – nearly 14,000 – have been issued since 1933.

#### Obama will circumvent Congress and the courts

**Kumar 3-19**-13 [Anita, White House correspondent for McClatchy Newspapers, former writer for The Washington Post, covering Virginia politics and government, and spent a decade at the St. Petersburg Times, writing about local, state and federal government both in Florida and Washington, “Obama turning to executive power to get what he wants,” <http://www.mcclatchydc.com/2013/03/19/186309/obama-turning-to-executive-power.html#.Ue18CdK1FSE>]

“The expectation is that they all do this,” said Ken Mayer, a political science professor at the University of Wisconsin-Madison who wrote “With the Stroke of a Pen: Executive Orders and Presidential Power.” “That is the typical way of doing things.”¶ But, experts say, Obama’s actions are more noticeable because as a candidate he was critical of Bush’s use of power. In particular, he singled out his predecessor’s use of signing statements, documents issued when a president signs a bill that clarifies his understanding of the law.¶ “These last few years we’ve seen an unacceptable abuse of power at home,” Obama said in an October 2007 speech.. “We’ve paid a heavy price for having a president whose priority is expanding his own power.”¶ Yet Obama’s use of power echoes that of his predecessors. For example, he signed 145 executive orders in his first term, putting him on track to issue as many as the 291 that Bush did in two terms.¶ John Yoo, who wrote the legal opinions that supported an expansion of presidential power after the 2001 terrorist attacks, including harsh interrogation methods that some called torture, said he thought that executive orders were sometimes appropriate – when conducting internal management and implementing power given to the president by Congress or the Constitution – but he thinks that Obama has gone too far.¶ “I think President Obama has been as equally aggressive as President Bush, and in fact he has sometimes used the very same language to suggest that he would not obey congressional laws that intrude on his commander-in-chief power,” said Yoo, who’s now a law professor at the University of California at Berkeley. “This is utterly hypocritical, both when compared to his campaign stances and the position of his supporters in Congress, who have suddenly discovered the virtues of silence.”¶ Most of Obama’s actions are written statements aimed at federal agencies that are published everywhere from the White House website to the Federal Register. Some are classified and hidden from public view.¶ “It seems to be more calculated to prod Congress,” said Phillip J. Cooper, the author of “By Order of the President: The Use and Abuse of Executive Direct Action.” “I can’t remember a president being that consistent, direct and public.”¶ Bush was criticized for many of his actions on surveillance and interrogation techniques, but attention has focused on Obama’s use of actions mostly about domestic issues.¶ In his first two years in the White House, when fellow Democrats controlled Capitol Hill, Obama largely worked through the regular legislative process to try to achieve his domestic agenda. His biggest achievements – including a federal health care overhaul and a stimulus package designed to boost the economy –came about with little or no Republican support.¶ But Republicans took control of the House of Representatives in 2010, making the task of passing legislation all the more difficult for a man with a detached personality who doesn’t relish schmoozing with lawmakers. By the next year, Obama wasn’t shy about his reasons for flexing his presidential power.¶ In fall 2011, he launched the “We Can’t Wait” campaign, unveiling dozens of policies through executive orders – creating jobs for veterans, adopting fuel efficiency standards and stopping drug shortages – that came straight from his jobs bills that faltered in Congress.¶ “We’re not waiting for Congress,” Obama said in Denver that year when he announced a plan to reduce college costs. “I intend to do everything in my power right now to act on behalf of the American people, with or without Congress. We can’t wait for Congress to do its job. So where they won’t act, I will.”¶ When Congress killed legislation aimed at curbing the emissions that cause global warming, Obama directed the Environmental Protection Agency to write regulations on its own incorporating some parts of the bill.¶ When Congress defeated pro-union legislation, he had the National Labor Relations Board and the Labor Department issue rules incorporating some parts of the bill.¶ “The president looks more and more like a king that the Constitution was designed to replace,” Sen. Charles Grassley, R-Iowa, said on the Senate floor last year.¶ While Republicans complain that Obama’s actions cross a line, experts say some of them are less aggressive than they appear.¶ After the mass shooting in Newtown, Conn., in December, the White House boasted of implementing 23 executive actions to curb gun control. In reality, Obama issued a trio of modest directives that instructed federal agencies to trace guns and send information for background checks to a database.¶ In his State of the Union address last month, Obama instructed businesses to improve the security of computers to help prevent hacking. But he doesn’t have the legal authority to force private companies to act.¶ “The executive order can be a useful tool but there are only certain things he can do,” said Melanie Teplinsky, an American University law professor who’s spoken extensively on cyber-law.¶ Executive actions often are fleeting. They generally don’t settle a political debate, and the next president, Congress or a court may overturn them.¶ Consider the so-called Mexico City policy. With it, Reagan banned federal money from going to international family-planning groups that provide abortions. Clinton rescinded the policy. George W. Bush reinstated it, and Obama reversed course again.¶ But congressional and legal action are rare. In 1952, the Supreme Court threw out Harry Truman’s order authorizing the seizure of steel mills during a series of strikes. In 1996, the District of Columbia Court of Appeals dismissed an order by Clinton that banned the government from contracting with companies that hire workers despite an ongoing strike.¶ Obama has seen some pushback.¶ Congress prohibited him from spending money to move inmates from the Guantanamo Bay U.S. naval base in Cuba after he signed an order that said it would close. A Chinese company sued Obama for killing its wind farm projects by executive order after he said they were too close to a military training site. A federal appeals court recently ruled that he’d exceeded his constitutional powers when he named several people to the National Labor Relations Board while the Senate was in recess.¶ But Obama appears to be undaunted.¶ “If Congress won’t act soon to protect future generations,” he told Congress last month, “I will.”

#### No one will intervene

BRADLEY\* AND MORRISON\*\* 2013 - \*William Van Alstyne Professor of Law, Duke Law School AND \*\* Liviu Librescu Professor of Law, Columbia Law School (Curtis A. Bradley AND Trevor W. Morrison, "Presidential Power, Historical Practice, And Legal Constraint”, January 15, 2013, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2191700>)

The Executive Branch’s attention to historical practice is also reflected in presidential issuance of “constitutional signing statements.” These statements, made when the President is signing a bill into law, call into question the constitutionality of one or more provisions in the bill and suggest that the President might **not comply** with the provisions, often on the ground that the provisions threaten to interfere with presidential authority. 36 As the Executive Branch has explained, “[p]articularly since omnibus bills have become prevalent, signing statements have often been used to ensure that concerns about the constitutionality of discrete statutory provisions do not require a veto of the entire bill.” 37 Although issued by both Democratic and Republican presidents, 38 these statements are controversial, with some critics claiming that the rule of law and separation of powers are offended when a President reserves the ability to disregard part of bill that he signs into law. 39 It does not appear, however, that Presidents commonly disregard the provisions to which they object in signing statements. This was true even during the George W. Bush Administration, which had a reputation for being particularly aggressive in its issuance of signing statements. 40 Thus, instead of signaling an active intent to disregard the identified provision, signing statements may be better understood as attempts by the Executive Branch to prevent a claim that it has acquiesced in congressional intrusions on executive authority. In other words, these statements appear to be designed, at least in part, to prevent historical gloss from developing in a way that might limit presidential authority. 41

Legal scholarship relating to presidential power, especially in the area of foreign affairs, also frequently refers to historical practice. A number of scholars have referenced such practice, for example, in assessing whether and to what extent the President has the constitutional authority to initiate military operations in the absence of congressional authorization. 42 Other scholars have emphasized practice in considering the circumstances under which the President may conclude international agreements without obtaining the consent of two-thirds of the Senate. 43 Even outside the foreign affairs area, academic debates about presidential authority—such as about the President’s power to remove executive officials from office 44 —are greatly influenced by considerations of historical practice.

B. Limitations on Judicial Review

If courts routinely reviewed contested issues of presidential power, they could decide whether and when to credit historical practice in this area. They could also decide whether novel presidential assertions of authority were justified, before such assertions became established practice. But judicial review in this area is **anything but routine**. Courts obviously do review issues of presidential power in some instances, especially when individual rights are perceived to be at stake, as both Youngstown and the series of Supreme Court decisions concerning the “war on terror” illustrate. 45 When individual rights are not directly implicated, however, courts **often abstain** from addressing questions surrounding the allocation of authority between Congress and the President.

Judicial abstention is particularly common in the foreign affairs area. Consider, for example, the question whether the President is constitutionally required to obtain congressional authorization before initiating military hostilities. Despite numerous presidential initiations of hostilities without congressional authorization in the post-World War II period, courts have generally refused to consider the issue. 46 Courts have similarly avoided addressing whether presidents must obtain congressional or senatorial approval before terminating a treaty, 47 and whether and to what extent presidents may use executive agreements in lieu of treaties. 48

Courts invoke a **variety of doctrines** in support of this abstention. They enforce general standing requirements **strictly** and, at least since the Supreme Court’s 1997 decision in Raines v. Byrd, 49 they typically find that individual members of Congress lack standing to challenge presidential action. 50 Some lower courts also invoke ideas of “political ripeness,” pursuant to which they **will not intervene** in inter-branch disputes until the affected branch has exhausted its own political resources to address the purported problem, a requirement that is rarely if ever satisfied. 51 Another potential barrier to judicial review is the political question doctrine, which the lower courts apply with some frequency in the foreign affairs area. 52

Academic defenders of this judicial abstention have argued either that the political branches have adequate resources to protect their interests, 53 or that the courts lack sufficient competence to resolve separation of powers issues, especially in the foreign affairs and national security areas. 54 Other scholars have bemoaned this abstention as an abdication of the judicial role and have blamed it for contributing to what they perceive to be an undesirable growth in executive power in the modern era. 55 The key point for present purposes is that many issues of presidential power are resolved, if at all, outside the courts. Moreover, even when the courts do intervene, they are likely to give significant deference to patterns of governmental practice, especially if the patterns are longstanding and appear to reflect inter-branch agreement. 56

#### Executive has no constraints

BRADLEY\* AND MORRISON\*\* 2013 - \*William Van Alstyne Professor of Law, Duke Law School AND \*\* Liviu Librescu Professor of Law, Columbia Law School (Curtis A. Bradley AND Trevor W. Morrison, "Presidential Power, Historical Practice, And Legal Constraint”, January 15, 2013, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2191700)

The general posture of judicial abstention in this area raises questions about whether presidential power is truly subject to legal constraints. It is often easier—or at least more familiar—to talk meaningfully about law if there is a reasonable prospect that the actions in question will face judicial review. Because the courts are unlikely to intervene in many controversies relating to presidential power—and because any such intervention is likely to be deferential to the actions of the political branches—some scholars are inclined to say that presidents face (or will soon face) **virtually no constraints** at all. Part of the concern here is that Congress by itself often seems either **unable or unwilling** to provide adequate checks on executive power. Compounding the problem, in the view of some scholars, is that institutional arrangements within the Executive Branch are not able to constrain presidential decisionmaking. Bruce Ackerman, for example, claims to identify a range of developments in “politics and communications, bureaucratic and military organization,” as well as “executive constitutionalism,” that threaten to turn the presidency into “a vehicle for demagogic populism and lawlessness.” 57

Other scholars contend that presidents face some constraints on their actions, but depict those constraints in extralegal terms. Eric Posner and Adrian Vermeule, for example, argue that “law does little to constrain the modern executive,” and that whatever constraints presidents do face are instead a matter of “politics and public opinion.” 58 On this view, **any** seemingly stable arrangements affecting presidential power are simply “non-normative equilibria” 59 or focal points of coordination **with no authoritative status**. 60 If so, the existence of a particular arrangement might in some instances constrain presidential action, but it provides no strong normative justification for its continued existence if political or other extralegal factors pull in a different direction.

Some of this skepticism, especially when coming from the political left, is related to a more general concern about the growth of presidential power in the modern era, a concern reflected in the historian Arthur Schlesinger’s account of the “imperial presidency.” 61 That concern was especially prominent during the George W. Bush Administration, which was thought by some to have used the post-September 11 security environment as an opportunity to make particularly broad claims of presidential power. 62 But concerns about presidential unilateralism have continued into the Obama Administration. 63 The skepticism may also trace to post-Watergate cynicism about the behavior of government officials, including the extent to which they are likely to act based on internalized norms. 64

#### Congress empirically fails to close loopholes- Obama can circumvent

**Druck ‘12** [Judah A. Druck, law associate at Sullivan & Cromwell LLP, Cornell Law School graduate, magna cum laude graduate from Brandeis University, “Droning On: The War Powers Resolution and the Numbing Effect of Technology-Driven Warfare,” <http://www.lawschool.cornell.edu/research/cornell-law-review/upload/Druck-final.pdf>]

Of course, despite these various suits, Congress has received¶ much of the blame for the WPR’s treatment and failures. For example, Congress has been criticized for doing little to enforce the WPR¶ in using other Article I tools, such as the “power of the purse,”76 or by¶ closing the loopholes frequently used by presidents to avoid the WPR in the first place.77 Furthermore, in those situations where Congress¶ has decided to act, it has done so in such a disjointed manner as to¶ render any possible check on the President useless. For example, during President Reagan’s invasion of Grenada, Congress failed to reach¶ an agreement to declare the WPR’s sixty-day clock operative,78 and¶ later faced similar “deadlock” in deciding how best to respond to President Reagan’s actions in the Persian Gulf, eventually settling for a bill¶ that reflected congressional “ambivalence.”79 Thus, between the lack¶ of a “backbone” to check rogue presidential action and general ineptitude when it actually decides to act, Congress has demonstrated its¶ inability to remedy WPR violations.¶ Worse yet, much of Congress’s interest in the WPR is politically¶ motivated, leading to inconsistent review of presidential military decisions filled with post-hoc rationalizations. Given the political risk associated with wartime decisions,81 Congress lacks any incentive to act¶ unless and until it can gauge public reaction—a process that often¶ occurs after the fact.82 As a result, missions deemed successful by the¶ public will rarely provoke “serious congressional concern” about presidential compliance with the WPR, while failures will draw scrutiny.83¶ For example, in the case of the Mayaguez, “liberals in the Congress¶ generally praised [President Gerald Ford’s] performance” despite the¶ constitutional questions surrounding the conflict, simply because the public deemed it a success.84 Thus, even if Congress was effective at¶ checking potentially unconstitutional presidential action, it would only act when politically safe to do so. This result should be unsurprising: making a wartime decision provides little advantage for politicians, especially if the resulting action succeeds.85 Consequently,¶ Congress itself has taken a role in the continued disregard for WPR¶ enforcement.¶ The current WPR framework is broken: presidents avoid it, courts¶ will not rule on it, and Congress will not enforce it. This cycle has¶ culminated in President Obama’s recent use of force in Libya, which¶ created little, if any, controversy,86 and it provides a clear pass to future presidents, judges, and congresspersons looking to continue the¶ system of passivity and deferment.

#### Congress can’t prevent covert strikes- Obama can bypass

**Lohmann 1-28**-13 [Julia, director of the Harvard Law National Security Research Committee, BA in political science from the University of California, Berkeley, “Distinguishing CIA-Led from Military-Led Targeted Killings,” <http://www.lawfareblog.com/wiki/the-lawfare-wiki-document-library/targeted-killing/effects-of-particular-tactic-on-issues-related-to-targeted-killings/>]

The CAS mandates that the President inform the Senate and House Intelligence Committees of all covert actions, and turn over any U.S. government materials that those committees request. Id. § 413b(b). In general, the President must report any covert action to the Intelligence Committees as soon as possible after it is approved, before the action begins. However, in “extraordinary circumstances affecting vital interests of the United States,” the President may choose to inform only the members of the “Gang of Eight”—comprised of the chairmen and ranking minority members of each of the Intelligence Committees, as well as the Speaker and minority leader of the House and the majority and minority leaders of the Senate—rather than the full committees. Id. § 413b(c). In the event that the President decides to use this “extraordinary” route, he or she must provide written justification for limiting disclosure to the Gang of Eight. Id. § 413b(c).¶ The CAS thus seems to give Congress a significant oversight role in the CIA’s targeted killing decisionmaking process. But in reality, Congress arguably has far less power to influence covert actions than one might at first think. For example, L. Britt Snider highlights that, although the congressional committees may serve in an advisory capacity to the President, they cannot veto covert actions. And, while one might argue that Congress can control targeted killings through its power of the purse, Snider counters that Congress’s influence via appropriations is limited, as the President can use the Contingency Reserve Fund to carry out covert actions without explicit congressional approval.

## Advantage 1

### Drones

#### Doesn’t solve Pakistan

Deeks ’12 (Ashley S. Deeks 12, Academic Fellow, Columbia Law School, Spring 2012, “ARTICLE: "Unwilling or Unable": Toward a Normative Framework for Extraterritorial Self-Defense,” Virginia Journal of International Law, 52 Va. J. Int'l L. 483)

In an August 2007 speech, then-Presidential candidate Barack Obama asserted that his administration would take action against high-value leaders of al-Qaida in Pakistan if the United States had actionable intelligence about them and President Musharraf would not act. n1 He later clarified his position, stating, "What I said was that if we have actionable intelligence against bin Laden or other key al-Qaida officials ... and Pakistan is unwilling or unable to strike against them, we should." n2 On May 2, 2011, the United States put those words into operation. Without the consent of Pakistan's government, U.S. forces entered Pakistan to capture or kill Osama bin Laden. In the wake of the successful U.S. military operation, the Government of Pakistan objected to the "unauthorized unilateral action" of the United States. n3 U.S. officials, on the other hand, suggested that the United States declined to provide Pakistan with advance knowledge of the raid because it was concerned that doing so might have compromised the mission. n4 This failure to notify suggests that the United States determined that Pakistan was indeed "unwilling or unable" to suppress the threat posed by bin Laden. n5 Unfortunately, international law currently gives the United States (or any state in a similar position) little guidance about what factors are relevant when making such [\*486] a determination. Yet the stakes are high: the U.S.-Pakistan relationship has come under serious strain as a result of the operation. If, in the future, a state in Pakistan's position deems another state's use of force in its territory pursuant to an "unwilling or unable" determination to be unlawful, the territorial state could use force in response. The lack of guidance therefore has the potential to be costly. President Obama's speech invoked an important but little understood legal standard governing the use of force. More than a century of state practice suggests that it is lawful for State X, which has suffered an armed attack by an insurgent or terrorist group, to use force in State Y against that group if State Y is unwilling or unable to suppress the threat. n6 Yet there has been virtually no discussion, either by states or scholars, of what that standard means. What factors must the United States consider when evaluating Pakistan's willingness or ability to suppress the threats to U.S. (as well as NATO and Afghan) forces? Must the United States ask Pakistan to take measures itself before the United States lawfully may act? How much time must the United States give Pakistan to respond? What if Pakistan proposes to respond to the threat in a way that the United States believes may not be adequate? Many states agree that the "unwilling or unable" test is the correct standard by which to assess the legality of force in this context. For example, Russia used force in Georgia in 2002 against Chechen rebels who had conducted violent attacks in Russia, based on Russia's conclusion that Georgia was unwilling or unable to suppress the rebels' attacks. n7 Israel has invoked the "unwilling or unable" standard periodically in justifying its use of force in Lebanon against Hezbollah and the Palestine Liberation Organization, noting, "Members of the [Security] Council need scarcely be reminded that under international law, if a State is unwilling or unable to prevent the use of its territory to attack another State, that latter State is entitled to take all necessary measures in its own defense." n8 Similarly, [\*487] Turkey defends its use of force in Iraq against the Kurdish Workers' Party (PKK) by claiming that Iraq is unable to suppress the PKK. n9 Several U.S. administrations have stated that the United States will inquire whether another state is unwilling or unable to suppress the threat before using force without consent in that state's territory. n10 Given that academic discussion of the test has been limited thus far, we may describe what "unwilling or unable" means only at a high level of generality. n11 In its most basic form, a state (the "victim state") suffers an armed attack from a nonstate group operating outside its territory and concludes that it is necessary to use force in self-defense to respond to the continuing threat that the group poses. The question is whether the state in which the group is operating (the "territorial state") will agree to suppress the threat on the victim state's behalf. The "unwilling or unable" test requires a victim state to ascertain whether the territorial state is willing and able to address the threat posed by the nonstate group before using force in the territorial state's territory without consent. If the territorial state is willing and able, the victim state may not use force in the territorial state, and the territorial state is expected to take the appropriate steps against the nonstate group. If the territorial state is unwilling or unable to take those steps, however, it is lawful for the victim state to use [\*488] that level of force that is necessary (and proportional) to suppress the threat that the nonstate group poses. A test constructed at this level of generality offers insufficient guidance to states. Although many inquiries in the use of force area lack precision, including questions about what constitutes an "armed attack" and when force is proportional, states and commentators have discussed the possible meanings of these terms at length and in great detail. n12 The same is not true for the "unwilling or unable" test; strikingly little attention has been paid to the nature and consequences of -- or solutions to -- the imprecision surrounding the "unwilling or unable" test. The test's lack of content undermines the legitimacy of the test as it currently is framed and suggests that it is not, in its current form, imposing effective constraints on a state's use of force. n13 To address this flaw, this Article first identifies the test's historical parentage in the law of neutrality and then conducts an original analysis of two centuries of state practice in order to develop normative factors that define what it means for a territorial state to be "unwilling or unable" to suppress attacks by a nonstate actor.

#### Drone prolif is slow and the impact is small

**Zenko ’13** [Micah, Douglas Dillon fellow in the Center for Preventive Action (CPA) at the Council on Foreign Relations (CFR). Previously, he worked for five years at the Harvard Kennedy School and in Washington, DC, at the Brookings Institution, Congressional Research Service, and State Department’s Office of Policy Planning, “Reforming U.S. Drone Strike Policies,” January, Council Special Report No. 65, online]

Based on current trends, it is unlikely that most states will have, within ten years, the complete system architecture required to carry out¶ distant drone strikes that would be harmful to U.S. national interests.¶ However, those candidates able to obtain this technology will most¶ likely be states with the financial resources to purchase or the industrial¶ base to manufacture tactical short-range armed drones with limited¶ firepower that lack the precision of U.S. laser-guided munitions; the¶ intelligence collection and military command-and-control capabilities needed to deploy drones via line-of-sight communications; and crossborder¶ adversaries who currently face attacks or the threat of attacks¶ by manned aircraft, such as Israel into Lebanon, Egypt, or Syria; Russia¶ into Georgia or Azerbaijan; Turkey into Iraq; and Saudi Arabia into¶ Yemen. When compared to distant U.S. drone strikes, these contingencies¶ do not require system-wide infrastructure and host-state support.¶ Given the costs to conduct manned-aircraft strikes with minimal threat¶ to pilots, it is questionable whether states will undertake the significant¶ investment required for armed drones in the near term.

### detention

#### 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.

#### Restricting detention policies means we kill and extradite prisoners

Jack Goldsmith 09, a professor at Harvard Law School and a member of the Hoover Institution Task Force on National Security and Law, assistant attorney general in the Bush administration, 5/31/09, “The Shell Game on Detainees and Interrogation,” <http://www.washingtonpost.com/wp-dyn/content/article/2009/05/29/AR2009052902989.html>

The cat-and-mouse game does not end there. As detentions at Bagram and traditional renditions have come under increasing legal and political scrutiny, the Bush and Obama administrations have relied more on other tactics. They have secured foreign intelligence services to do all the work -- capture, incarceration and interrogation -- for all but the highest-level detainees. And they have increasingly employed targeted killings, a tactic that eliminates the need to interrogate or incarcerate terrorists but at the cost of killing or maiming suspected terrorists and innocent civilians alike without notice or due process.¶ There are at least two problems with this general approach to incapacitating terrorists. First, it is not ideal for security. Sometimes it would be more useful for the United States to capture and interrogate a terrorist (if possible) than to kill him with a Predator drone. Often the United States could get better information if it, rather than another country, detained and interrogated a terrorist suspect. Detentions at Guantanamo are more secure than detentions in Bagram or in third countries.¶ The second problem is that terrorist suspects often end up in less favorable places. Detainees in Bagram have fewer rights than prisoners at Guantanamo, and many in Middle East and South Asian prisons have fewer yet. Likewise, most detainees would rather be in one of these detention facilities than be killed by a Predator drone. We congratulate ourselves when we raise legal standards for detainees, but in many respects all we are really doing is driving the terrorist incapacitation problem out of sight, to a place where terrorist suspects are treated worse.¶ It is tempting to say that we should end this pattern and raise standards everywhere. Perhaps we should extend habeas corpus globally, eliminate targeted killing and cease cooperating with intelligence services from countries that have poor human rights records. This sentiment, however, is unrealistic. The imperative to stop the terrorists is not going away. The government will find and exploit legal loopholes to ensure it can keep up our defenses.¶ This approach to detention policy reflects a sharp disjunction between the public's view of the terrorist threat and the government's. After nearly eight years without a follow-up attack, the public (or at least an influential sliver) is growing doubtful about the threat of terrorism and skeptical about using the lower-than-normal standards of wartime justice.¶ The government, however, sees the terrorist threat every day and is under enormous pressure to keep the country safe. When one of its approaches to terrorist incapacitation becomes too costly legally or politically, it shifts to others that raise fewer legal and political problems. This doesn't increase our safety or help the terrorists. But it does make us feel better about ourselves.

#### 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.

## Advantage 2

#### 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.

# 1nr

#### We control terminal impact uniqueness- war taboo strong and effective now. Norms matter- prevents miscalc and escalation

Beehner, 12 – Council on Foreign Relations senior writer; Truman National Security Project fellow

[Lionel, "Is There An Emerging ‘Taboo’ Against Retaliation?" The Smoke Filled Room, 7-13-12, thesmokefilledroomblog.com/2012/07/13/is-there-an-emerging-taboo-against-retaliation/, accessed 9-22-13, mss]

The biggest international news in the quiet months before 9/11 was the collision of a U.S. Navy spy aircraft and a PLA fighter jet in China, during which 24 American crew members were detained. Even though the incident was lampooned on SNL, there was real concern that the incident would blow up, damaging already-tense relations between the two countries. But it quickly faded and both sides reached an agreement. Quiet diplomacy prevailed. Flash-forward a decade later and we have a similar border incident of a spy plane being shot down between Turkey and Syria. Cue the familiar drumbeats for war on both sides. To save face, each side has ratcheted up its hostile rhetoric (even though Syria’s president did offer something of an admission of guilt). But, as in the spring of 2001, I wouldn’t get too worried. One of the least noted global norms to emerge in recent decades has been the persistence of state restraint in international relations. Retaliation has almost become an unstated taboo. Of course, interstate war is obviously not a relic of previous centuries, but nor is it as commonplace anymore, despite persistent flare-ups that have the potential to escalate to full-blown war. Consider the distinct cases of India and South Korea. Both have sustained serious attacks with mass casualties in recent years: South Korea saw 46 of its sailors killed after the Cheonan, a naval vessel, was sunk by North Korea; India saw 200 citizens killed by the Mumbai attacks, orchestrated by Islamist groups with links to Pakistani intelligence. Yet neither retaliated with military force. Why? The short answer might be: Because a response may have triggered a nuclear war (both Pakistan and North Korea are nuclear-armed states). So nukes in this case may have acted as a deterrent and prevented an escalation of hostilities. But I would argue that it was not the presence of nuclear weapons that led to restraint but rather normative considerations. South Korea and India are also both rising democratic powers with fast-growing economies, enemies along their peripheries, and the military and financial backing of the United States. Their leaders, subject to the whims of an electorate, may have faced domestic pressures to respond with force or suffer reputational costs. And yet no escalation occurred and war was averted. Again, I argue that this is because there is an emerging and under-reported norm of restraint in international politics. Even Russia’s invasion of Georgia in August 2008, which may at first appear to disprove this theory, actually upholds it: The Russians barely entered into Georgia proper and could easily have marched onto the capital. But they didn’t. The war was over in 5 days and Russian troops retreated to disputed provinces. Similarly, Turkey will not declare war on Syria, no matter how angry it is that Damascus shot down one of its spy planes. Quiet diplomacy will prevail. In 1999, Nina Tannenwald made waves by proclaiming the emergence of what she called a “nuclear taboo” – that is, the non-use of dangerous nukes had emerged as an important global norm. Are we witnessing the emergence of a similar norm for interstate war? Even as violence rages on in the form of civil war and internal political violence all across the global map, interstate conflict is increasingly rare. My point is not to echo Steven Pinker, whose latest book, The Better Angles of Our Nature, painstakingly details a “civilizing process” and “humanitarian revolution” that has brought war casualties and murder rates down over the centuries. I’m not fully convinced by his argument, but certainly agree with the observation that at the state level, a norm of non-retaliation has emerged. The question is why. Partly, war no longer makes as much sense as in the past because capturing territory is no longer as advantageous as it once was. We no longer live in a world where marauding throngs of Dothraki-like bandits – or what Mancur Olson politely called “non-stationary bandits” – seek to expand their writ over large unconquered areas. This goes on, of course, at the intrastate level, but the rationale for interstate war for conquest is no longer as strong. Interstate wars of recent memory — the Eritrea-Ethiopia conflicts of 1999 and 2005, the Russia-Georgia War of 2008 — upon closer inspection, actually look more like intrastate wars. The latter was fought over two secessionist provinces; the former between two former rebel leaders-turned-presidents who had a falling out. But if we have reached a norm of non-retaliation to threats or attacks, does that mean that deterrence is no longer valid? After all, if states know there will be no response, why not step up the level of attacks? I would argue that the mere threat of retaliation is enough, as evidenced by Turkish leaders’ harsh words toward Syria (there is now a de facto no-fly zone near their shared border). Still, doesn’t restraint send a signal of weakness and lack of resolve? After all, didn’t Seoul’s non-response to the Cheonan sinking only invite Pyongyang to escalate hostilities? Robert Jervis dismisses the notion that a tough response signals resolve as being overly simplified. The observers’ interpretation of the actor and the risks involved also matter. When Schelling writes about the importance of “saving face,” he describes it as the “interdependence of a country’s commitments; it is a country’s reputation for action, the expectations other countries have about its behavior.” Others note that the presence of nuclear weapons forces states, when attacked, to respond with restraint to avoid the risk of nuclear escalation. Hence, we get “limited wars” rather than full-blown conflicts, or what some deterrent theorists describe as the “stability-instability paradox.” This is not a new concept, of course: Thucydides quoted King Archimadus of Sparta: “And perhaps then they see that our actual strength is keeping pace with the language that we use, they will be more inclined to give way, since their land will still be untouched and, in making up their minds, they will be thinking of advantages which they still possess and which have not yet been destroyed.” There will be future wars between states, of course. But **the days when an isolated incident, such as a spy plane being shot down or a cross-border incursion, can unleash a chain of events that lead to interstate wars** I believe are largely over **because of the emergence of restraint as a powerful norm**ative force in international politics, not unlike Tannenwald’s “nuclear taboo.” Turkey and Syria will only exchange a war of words, not actual hostilities. To do otherwise would be a violation of this existing norm.

#### India-Pakistan

Starr ’11 (Consequences of a Single Failure of Nuclear Deterrence by Steven Starr February 07, 2011 \* Associate member of the Nuclear Age Peace Foundation \* Senior Scientist for PSR)

Only a single failure of nuclear deterrence is required to start a nuclear war, and the consequences of such a failure would be profound. **Peer-reviewed studies predict** that **less than 1% of** the **nuclear weapons** now deployed in the arsenals of the Nuclear Weapon States, if detonated in urban areas, would immediately kill tens of millions of people, and cause long-term, **catastrophic disruptions** of the global **climate and** massive destruction ofEarth’sprotective **ozone** layer. The result would be a global nuclear famine that could kill up to one billion people. A full-scale war, fought with the strategic nuclear arsenals of the United States and Russia, would so utterly devastate Earth’s environment that most humans and other complex forms of life would not survive. Yet no Nuclear Weapon State has ever evaluated the environmental, ecological or agricultural consequences of the detonation of its nuclear arsenals in conflict. Military and political leaders in these nations thus remain dangerously unaware of the existential danger which their weapons present to the entire human race. Consequently, nuclear weapons remain as the cornerstone of the military arsenals in the Nuclear Weapon States, where nuclear deterrence guides political and military strategy. Those who actively support nuclear deterrence are trained to believe that deterrence cannot fail, so long as their doctrines are observed, and their weapons systems are maintained and continuously modernized. They insist that their nuclear forces will remain forever under their complete control, immune from cyberwarfare, sabotage, terrorism, human or technical error. They deny that the short 12-to-30 minute flight times of nuclear missiles would not leave a President enough time to make rational decisions following a tactical, electronic warning of nuclear attack. The U.S. and Russia continue to keep a total of 2000 strategic nuclear weapons at launch-ready status – ready to launch with only a few minutes warning. Yet both nations are remarkably unable to acknowledge that this high-alert status in any way increases the probability that these weapons will someday be used in conflict. How can strategic nuclear arsenals truly be “safe” from accidental or unauthorized use, when they can be launched literally at a moment’s notice? A cocked and loaded weapon is infinitely easier to fire than one which is unloaded and stored in a locked safe. The mere existence of immense nuclear arsenals, in whatever status they are maintained, makes possible their eventual use in a nuclear war. Our **best scientists** now **tell us** that **such a war would mean the end of human history**. We need to ask our leaders: Exactly what political or national goals could possibly justify risking a nuclear war that would likely cause the extinction of the human race? However, in order to pose this question, we must first make the fact known that existing nuclear arsenals – through their capacity to utterly devastate the Earth’s environment and ecosystems – threaten continued **human existence**. Otherwise, military and political leaders will continue to cling to their nuclear arsenals and will remain both unwilling and unable to discuss the real consequences of failure of deterrence. We can and must end the silence, and awaken the peoples of all nations to the realization that “nuclear war” means “global nuclear suicide”. A Single Failure of Nuclear Deterrence could lead to: \* A nuclear war **between India and Pakistan**; \* 50 Hiroshima-size (15 kiloton) weapons detonated in the mega-cities of both India and Pakistan (there are now 130-190 operational nuclear weapons which exist in the combined arsenals of these nations); \* The deaths of 20 to 50 million people as a result of the prompt effects of these nuclear detonations (blast, fire and radioactive fallout); \* Massive firestorms covering many hundreds of square miles/kilometers (created by nuclear detonations that produce temperatures hotter than those believed to exist at the center of the sun), that would engulf these cities and produce 6 to 7 million tons of thick, black smoke; \* About 5 million tons of smoke that would quickly rise above cloud level into the stratosphere, where strong winds would carry it around the Earth in 10 days; \* A stratospheric smoke layer surrounding the Earth, which would remain in place for 10 years; \* The dense smoke would heat the upper atmosphere, destroy Earth’s protective ozone layer, and block 7-10% of warming sunlight from reaching Earth’s surface; \* 25% to 40% of the protective ozone layer would be destroyed at the mid-latitudes, and 50-70% would be destroyed at northern and southern high latitudes; \* Ozone destruction would cause the average UV Index to increase to 16-22 in the U.S, Europe, Eurasia and China, with even higher readings towards the poles (readings of 11 or higher are classified as “extreme” by the U.S. EPA). It would take 7-8 minutes for a fair skinned person to receive a painful sunburn at mid-day; \* Loss of warming sunlight would quickly produce average surface temperatures in the Northern Hemisphere colder than any experienced in the last 1000 years; \* Hemispheric drops in temperature would be about twice as large and last ten times longer then those which followed the largest volcanic eruption in the last 500 years, Mt. Tambora in 1816. The following year, 1817, was called “The Year Without Summer”, which saw famine in Europe from massive crop failures; \* Growing seasons in the Northern Hemisphere would be significantly shortened. It would be too cold to grow wheat in most of Canada for at least several years; \* World grain stocks, which already are at historically low levels, would be completely depleted; grain exporting nations would likely cease exports in order to meet their own food needs; \* The one billion already hungry people, who currently depend upon grain imports, would likely starve to death in the years following this nuclear war; \* The total explosive power in these 100 Hiroshima-size weapons is less than 1% of the total explosive power contained in the currently operational and deployed U.S. and Russian nuclear forces.

#### China-Taiwan

Straits Times 2k (6-25, Lexis, No one gains in war over Taiwan)

THE DOOMSDAY SCENARIO THE high-intensity scenario postulates a cross-strait war escalating into a full-scale war between the US and China. If Washington were to conclude that splitting China would better serve its national interests, then a full-scale war becomes unavoidable. Conflict on such a scale would embroil other countries far and near and -- horror of horrors -- raise the possibility of a nuclear war. Beijing has already told the US and Japan privately that it considers any country providing bases and logistics support to any US forces attacking China as belligerent parties open to its retaliation. In the region, this means South Korea, Japan, the Philippines and, to a lesser extent, Singapore. If China were to retaliate, east Asia will be set on **fire**. And the conflagration may not end there as opportunistic powers elsewhere may try to overturn the existing world order. With the US distracted, Russia may seek to redefine Europe's political landscape. The balance of power in the Middle East may be similarly upset by the likes of Iraq. In south Asia, hostilities between India and Pakistan, each armed with its own nuclear arsenal, could enter a new and dangerous phase. Will a full-scale Sino-US war lead to a nuclear war? According to General Matthew Ridgeway, commander of the US Eighth Army which fought against the Chinese in the Korean War, the US had at the time thought of using nuclear weapons against China to save the US from military defeat. In his book The Korean War, a personal account of the military and political aspects of the conflict and its implications on future US foreign policy, Gen Ridgeway said that US was confronted with two choices in Korea -- truce or a broadened war, which could have led to the use of nuclear weapons. If the US had to resort to nuclear weaponry to defeat China long before the latter acquired a similar capability, there is little hope of winning a war against China 50 years later, short of using nuclear weapons. The US estimates that China possesses about 20 nuclear warheads that can destroy major American cities. Beijing also seems prepared to go for the nuclear option. A Chinese military officer disclosed recently that Beijing was considering a review of its "non first use" principle regarding nuclear weapons. Major-General Pan Zhangqiang, president of the military-funded Institute for Strategic Studies, told a gathering at the Woodrow Wilson International Centre for Scholars in Washington that although the government still abided by that principle, there were strong pressures from the military to drop it. He said military leaders considered the use of nuclear weapons mandatory if the country risked dismemberment as a result of foreign intervention. Gen Ridgeway said that should that come to pass, we would see the **destruction of civilisation**. There would be no victors in such a war. While the prospect of a nuclear Armaggedon over Taiwan might seem inconceivable, it cannot be ruled out entirely, for China puts sovereignty above everything else.

#### Shift from AUMF to *jus ad bellum* turns case- collapses cred and US leadership

Barnes, 12 -- J.D. Candidate, Boston University School of Law

[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]

Encouraging the proliferation of an expansive law of international self-defense would not only be harmful to U.S. national security and global stability, but it would also directly contravene the Obama Administration’s national security policy, sapping U.S. credibility. The Administration’s National Security Strategy emphasizes U.S. “moral leadership,” basing its approach to U.S. security in large part on “pursu[ing] a rules-based international system that can advance our own interests by serving mutual interests.”149 Defense Department General Counsel Jeh Johnson has argued that “[a]gainst an unconventional enemy that observes no borders and does not play by the rules, we must guard against aggressive interpretations of our authorities that will discredit our efforts, provoke controversy and invite challenge.”150 Cognizant of the risk of establishing unwise international legal norms, Johnson argued that the United States “must not make [legal authority] up to suit the moment.”151 The Obama Administration’s global counterterrorism strategy is to “adher[e] to a stricter interpretation of the rule of law as an essential part of the wider strategy” of “turning the page on the past [and rooting] counterterrorism efforts within a more durable, legal foundation.”152 Widely accepted legal arguments also facilitate cooperation from U.S. allies, especially from the United States’ European allies, who have been wary of expansive U.S. legal interpretations.153 Moreover, U.S. strategy vis-à-vis China focuses on binding that nation to international norms as it gains power in East Asia.154 The United States is an international “standard-bearer” that “sets norms that are mimicked by others,”155 and the Obama Administration acknowledges that its drone strikes act in a quasi-precedential fashion.156 Risking the **obsolescence of the AUMF would force** **the U**nited **S**tates **into an “aggressive interpretation” of international legal authority**,157 **not just discrediting its** **own rationale, but facilitating that rationale’s destabilizing adoption by nations around the world**. 158 United States efforts to entrench stabilizing global norms and oppose destabilizing international legal interpretations—a core tenet of U.S. foreign and national security policy159—would undoubtedly be hampered by continued reliance on self defense under the jus ad bellum to authorize military operations against international terrorists. Given the presumption that the United States’s armed conflict with these terrorists will continue in its current form for at least the near term, ongoing authorization at the congressional level is a far better choice than continued reliance on the jus ad bellum. Congress should reauthorize the use of force in a manner tailored to the global conflict the United States is fighting today. Otherwise, the United States will be forced to continue to rely on a statute anchored only to the continued presence of those responsible for 9/11, a group that was small in 2001 and, due to the continued successful targeting of Al Qaeda members, is rapidly approaching zero.

#### Turns drone prolif- broader legal principle of war triggers the impact

Odle, 13 -- Emory International Law Review managing editor

(John, J.D. Candidate, Emory University School of Law (2013); M.A., George Washington University (2007); B.A., Johns Hopkins University (2003), “Targeted Killings in Yemen and Somalia,” http://www.law.emory.edu/fileadmin/journals/eilr/27/27.1/Odle.pdf)

The legal theory the United States uses to justify using drones to target individuals in foreign countries is important for the future of counterterrorism and the law of nations. UAVs are cheaper alternatives to expensive fighter jets; other countries such as China, Russia, and Israel are starting to build their own drones.400 The United States’ justification for using drones against terrorists in countries such as Somalia and Yemen are not made in vacuum and other countries might also use similar justifications to use drones abroad.401

### AUMF Strong Now

#### There’s no extra-AUMF threats- the government is only chasing AQAP and that doesn’t challenge the AUMF

Daskal, 13 -- Georgetown University’s Center on National Security and the Law fellow and professor

[Jennifer, counsel to the Assistant Attorney General for National Security at the Department of Justice from 2009-2011, served on the joint Attorney General and Secretary of Defense-led Detention Policy Task Force, prior to joining DOJ Jen was the senior counterterrorism counsel at Human Rights Watch, and also previously worked as a staff attorney at the Public Defender Service for the District of Columbia, and Steve Vladeck, professor of law and the associate dean for scholarship at American University Washington College of Law, "After the AUMF: A Response to Chesney, Goldsmith, Waxman, and Wittes," Lawfare, 3-17-13, www.lawfareblog.com/2013/03/after-the-aumf/, accessed 8-23-13, mss]

First, it is not clear that any splinter terrorist groups pose the kind of threat to the United States that justify a congressional authorization of military force—or the application of law-of-war tools. In the recently released Intelligence Community Worldwide Threat Assessment, only al Qaeda in the Arabian Peninsula (“AQAP”) is described as having the intent and capacity to launch attacks on the U.S. homeland. But as CGWW themselves acknowledge, AQAP is one group that appears to fall neatly within the definition of “associated forces” that both the Obama Administration and Congress (in the FY2012 National Defense Authorization Act) have deemed covered by the AUMF, i.e., “an organized, armed group that has entered the fight alongside al-Qaeda” and that is a “co-belligerent with al-Qaeda in hostilities against the United States or its coalition partners.” Thus, the threat posed by AQAP appears to be squarely covered by the AUMF as currently interpreted, and it is not clear why any new authorities are needed for them.

#### The plan drastically narrows the scope of presidential power founded within the AUMF- all drone strikes are legally authorization by the AUMF- the administration has aggressively couched its authority inside the AUMF- that’s Crowley.

**Maxwell 12** - Colonel and Judge Advocate, U.S. Army, 1st Quarter 2012, “TARGETED KILLING, THE LAW, AND TERRORISTS: FEELING SAFE?,” Joint Force Quarterly, p. 123-130, Mark David Maxwell.

Once a state demonstrates membership in an organized armed group, the members can be presumed to be a continuous danger. Because this danger is worldwide, the state can now act in areas outside the traditional zones of conflict. It is the individual’s conduct over time—regardless of location— that gives him the status. Once the status attaches, the member of the organized armed group can be targeted. ¶ Enter Congress ¶ The weakness of this theory is that it is not codified in U.S. law; it is merely the extrapolation of international theorists and organizations. The only entity under the Constitution that can frame and settle Presidential power regarding the enforcement of international norms is Congress. As the check on executive power, Congress must amend the AUMF to give the executive a statutory roadmap that articulates when force is appropriate and under what circumstances the President can use targeted killing. This would be the needed endorsement from Congress, the other political branch of government, to clarify the U.S. position on its use of force regarding targeted killing. For example, it would spell out the limits of American lethality once an individual takes the status of being a member of an organized group. Additionally, statutory clarification will give other states a roadmap for the contours of what constitutes anticipatory self-defense and the proper conduct of the military under the law of war.¶ Congress should also require that the President brief it on the decision matrix of articulated guidelines before a targeted killing mission is ordered. As Kenneth Anderson notes, “[t]he point about briefings to Congress is partly to allow it to exercise its democratic role as the people’s representative.”74¶ The desire to feel safe is understandable. The consumers who buy SUVs are not buying them to be less safe. Likewise, the champions of targeted killings want the feeling of safety achieved by the elimination of those who would do the United States harm. But allowing the President to order targeted killing without congressional limits means the President can manipulate force in the name of national security without tethering it to the law advanced by international norms. The potential consequence of such unilateral executive action is that it gives other states, such as North Korea and Iran, the customary precedent to do the same. Targeted killing might be required in certain circumstances, but if the guidelines are debated and understood, the decision can be executed with the full faith of the people’s representative, Congress. When the decision is made without Congress, the result might make the United States feel safer, but the process eschews what gives a state its greatest safety: the rule of law.

#### We control uniqueness- there’s court deference in counter-terror now- because of congressional signals

Schuck, 13 -- Yale Law School Simeon E. Baldwin law professor

[Peter, "The Courts and National Security: A False Hope," Huffington Post, 7-3-13, www.huffingtonpost.com/peter-h-schuck/national-security\_b\_3543312.html, accessed 9-21-13, mss]

Our federal courts have played a central role in safeguarding our precious constitutional values from encroachments by government and other power centers. But history teaches that where Congress and the president have invoked plausible national security interests, **the courts have almost always deferred** to them, for better and for worse. In the infamous Dred Scott case, the Supreme Court upheld a system of slavery that the Buchanan administration argued was necessary to hold the nation together. During and after World War I, the Court upheld government efforts to suppress criticism; recall that the great defenses of free speech in those cases were written by the losing side. In World War II, the Court upheld the execrable Japanese internment programs. This pattern of deference to national security claims continues to today -- **especially where the president's actions appear grounded in congressional action**, as with FISA and military court prosecution of suspected terrorists. Deference continues even in detention cases, which are closer to traditional judicial functions than the NSA and targeting decisions. The fact that courts have little or no role to play in these latter efforts is no cause for dismay. Placing them at the center of such decisions would tend to tarnish them, as is now occurring with the FISA court. If they could significantly improve that process, the risk might be worth taking, but they cannot.

#### Court is deferential now because of congressional signals- the plan unravels that

Lederman, 12 -- Department of Justice’s Office of Legal Counsel Deputy Assistant Attorney General

[Martin, "War, Terror and the Federal Courts, Ten Years After 9/11," American University Law Review, Vol 61, 2012, aulawreview.org/pdfs/61/61-5/Conference.website.pdf, accessed 9-21-13, mss]

Marty Lederman: Correct. So this is something to be on the watch for, both what the Executive Branch says and what the courts say in these two areas. You brought up that comment by Justice Kennedy at the end of Boumediene. It reminded me of Justice O’Connor’s similar comment in her plurality opinion in Hamdi. I think the theme of those cases—O’Connor’s and Kennedy’s lesson, as it were, was something like the following. “To the extent you, the Executive Branch and Congress, are acting more or less in accord with the way things have been done in the past and in pursuance of international law norms and practices that the United States has historically engaged in, we will sit to review it but we’re going to be pretty deferential. But to the extent you start deviating and doing things that are unprecedented or seem to be out of step with the international law, in Justice O’Connor’s words, ‘this conclusion may unravel.’” She doesn’t explain whether she means “unravel” as a matter of statutory interpretation, which is nominally what she was doing in Hamdi, or some sort of constitutional limit on the political branches.

#### Obama is restrained now- works solely within the confines of the AUMF

Koh, 13 -- Yale Law School Sterling Professor International Law and former Dean

[Harold Hongju, former Legal Adviser, U.S. Department of State (2009-13); former Assistant Secretary of State for Democracy, Human Rights and Labor (1998-2001), "How to End the Forever War?" 5-7-13, www.lawfareblog.com/wp-content/uploads/2013/05/2013-5-7-corrected-koh-oxford-union-speech-as-delivered.pdf, accessed 9-28-13, mss]

Now that I have returned to the academy, I tend to hear three common misperceptions from friends on both the left and the right: first, that what some call the Global War on Terror has become a perpetual state of affairs; second, that “the Obama approach to that conflict has become just like the Bush approach;” and third, that we have no available strategy to bring this conflict to an end in the near future. Tonight, let me reject all three propositions. Let me ask what the real question is that faces us, suggest the right approach to addressing it, and outline three elements of an answer. In a nutshell, our question should be: “How to End the Forever War?” Our Approach should be what I would call: “Translate, not Black Hole.” And our three-part answer should be: “(1) Disengage from Afghanistan, (2) Close Guantanamo, and (3) Discipline Drones.” First and most important, our overriding goal should be to end this Forever War, not to engage in a perpetual “global war on terror,” without geographic or temporal limits. As this Administration has acknowledged, we are not fighting against everyone—past, present, and future—who ever has or will dislike the United States or wish it harm. Instead, ever since Congress passed its Authorization for the Use of Military Force (AUMF) one week after September 11, we have engaged in an armed conflict with a knowable enemy—the Taliban, al-Qaeda, and associated forces—that does not limit its activities to a single country’s borders. 1 Our public declaration “that our enemy consists of those persons who are part of the Taliban, al-Qaeda or associated forces … has been embraced by two U.S. Presidents, accepted by our courts, and affirmed by our Congress.” 2 Second, in conducting this conflict, the United States is bound by law. It is not free and it never has been free to conduct that conflict outside the law. This conflict is not a legal black hole where anything goes. Instead, as this Administration has repeatedly acknowledged, the U.S. must fight this conflict consistent with both domestic and international law.3 But precisely what the legal rules are has been debated. The Geneva Conventions envisioned two types of conflict—first, international armed conflicts between nation-states and second, non-international armed conflicts between states and insurgent groups within a single country—for example, a government versus a rebel faction located within that country. But September 11 made clear that the term “non-international armed conflicts” can include transnational battles that are not between nations: for example, between a nation-state (the United States) and the transnational nonstate armed group (Al Qaeda) that attacked it. As our Supreme Court has instructed, instead of treating this situation as a “black hole” to which no law applies because the Geneva Conventions are considered “quaint,” our task is to translate the existing laws of war to this different type of “noninternational” armed conflict.4 Third, this is not a conflict without end. At this very podium last November, my friend and former colleague Jeh Johnson, then-General Counsel of the United States Department of Defense, gave an important speech called “The Conflict Against Al Qaeda and its Affiliates: How Will It End?” He said, in words with which I agree: “[O]n the present course, there will come a tipping point – a tipping point at which so many of the leaders and operatives of al Qaeda and its affiliates have been killed or captured, and the group is no longer able to attempt or launch a strategic attack against the United States, such that al Qaeda as we know it, the organization that our Congress authorized the military to pursue in 2001, has been effectively destroyed. At that point, we must be able to say to ourselves that our efforts should no longer be considered an “armed conflict” against al Qaeda and its associated forces; rather, a counterterrorism effort against individuals who are the scattered remnants of al Qaeda, or are parts of groups unaffiliated with al Qaeda, for which the law enforcement and intelligence resources of our government are principally responsible, in cooperation with the international community – with our military assets available in reserve to address continuing and imminent terrorist threats.5 As I know Jeh Johnson would acknowledge, the key question going forward will thus be whether or not we treat new groups that rise up to commit acts of terror as “associated forces” of Al Qaeda with whom we are already at war. The U.S. Government has made clear that an “associated force” must be (1) an organized, armed group that (2) has actually entered the fight alongside al Qaeda against the United States, thereby becoming (3) a co-belligerent with al Qaeda in its hostilities against America. Just because someone hates America or sympathizes with Al Qaeda does not make them our lawful enemy. Under both domestic and international law, the United States has ample legal authority to respond to new groups that would attack it without declaring war forever against anyone who is hostile to us. But make no mistake: if we are too loose in who we consider to be “part of” or “associated with” Al Qaeda going forward, then we will always have new enemies, and the Forever War will continue forever. My second point: in reviewing where we have been, it should be clear that the Obama Administration’s approach to these issues has not been just like George W. Bush’s. To state just the three most obvious differences: First, the Obama Administration has not treated the post-9/11 conflict as a Global War on Terror to which no law applies, in which the United States is authorized to use force anywhere, against anyone. Instead, it has acknowledged that its authority under domestic law derives from Acts of Congress, not just the President’s s vague constitutional powers. Under international law, this Administration has expressly recognized that U.S. actions are constrained by the laws of war. So rather than treating this conflict as a Black Hole, this Administration has worked to translate the spirit of those laws and apply them to this new situation. Second, in conducting this more limited conflict, the Obama Administration has shown an absolute commitment to the humane treatment of Al Qaeda suspects. You have not heard claims that this Administration has conducted torture, waterboarding, or enhanced interrogation tactics. To underscore that commitment, this would be an opportune moment, as Vice President Joe Biden pointed out on April 26, to make public the Senate Select Intelligence Committee’s as-yet-unreleased six-thousand-page report regarding the CIA’s former notorious “enhanced interrogation” program. A third critical difference between this Administration and its predecessor is the Obama Administration’s determination not to address Al Qaeda and the Taliban solely through the tools of war. As Secretary Clinton made clear on the tenth anniversary of September 11, in the short term, we have an inescapable need for “precise and persistent force [that] can significantly degrade … al-Qaida. So we will continue to go after its leaders and commanders, disrupt their operations and bring them to justice. … attack its finances, recruitment, and safe havens.” But our longer term objective must be what Secretary Clinton called a “smart power” approach: using force for limited and defined purposes within a much broader nonviolent frame, with our overarcing objective being to use diplomacy, development, education, and people-to-people outreach to challenge Al Qaeda’s “ideology, counter its propaganda, and diminish its appeal, so that every community recognizes the threat that extremists pose to them and … deny them protection and support. [In doing so, she said, w]e need effective international partners in government and civil society who can extend this effort to all the places where terrorists operate.”6 Because force makes up only part of a much broader “smart power” approach, this Administration has not rejected Law Enforcement tools in favor of exclusive use of tools of war. Instead, it has combined a Law of War approach with Law Enforcement and other approaches to bring all available tools to bear against Al Qaeda. Thus, if the United States should encounter an Al Qaeda leader like Obama bin Laden in a remote part of Afghanistan, a law of war approach might be appropriate; but if it should find him in London or New York, a law enforcement approach would obviously be more fitting. In either case, the relevant question would not be one of labels—i.e., “should we call this person an “Enemy Combatant?”— but rather, one of facts: “Do the facts show that this particular person is actually “part of” Al Qaeda or Associated Forces”? The U.S. response to a particular person thus turns critically on who he is and what he has done, not on what label he is given. It is because these decisions are so fact-intensive that I spent a sobering, but crucial, part of my last four years learning not the resumes of promising students like you, but rather, the names of Al Qaeda leaders of roughly your age, learning their life stories, and grasping how their life trajectories led them not to education and political leadership, as yours will, but to desperate terrorist missions of violence and hatred. To be clear, the United States is not at war with any idea or religion, with mere propagandists or journalists, or even with sad individuals—like the recent Boston bombers-- who may become radicalized, inspired by al Qaeda’s ideology, but never actually join or become part of al Qaeda. As we have seen, such persons may be exceedingly dangerous, but they should be dealt with through tools of civilian law enforcement, not military action, because they are not part of any enemy force recognizable under the laws of war. 7