## 1

#### The United States Congress should pass and an appropriate number of the states should ratify a constitutional amendment to apply a clear statement principle to presidential war powers authority that the Suspension Clause applies to individuals detained at the will of the United States

#### AND

#### Afghanistan should stop using indefinite detention

#### More solid framework is needed to maintain the constitution on issues like indefinite detention than the courts or congressional legislation—Bush proves

Chemerinsky 6

[Chemerinsky, Erwin: Alston & Bird Professor of Law and Political Science, Duke University. "Assault on the Constitution: Executive Power and the War on Terrorism." *UC Davis Law Review*. 40.1 (2006): n. page. Web. 30 Jul. 2013. <http://heinonline.org/HOL/Page?handle=hein.journals/davlr40&div=7&g\_sent=1&collection=journals>. //Wyo-BF]

Over thirty years ago, during the Nixon presidency, noted historian Arthur M. Schlesinger, Jr., wrote The Imperial Presidency.1 Nothing Schlesinger described begins to approach what has occurred during the presidency of George W. Bush. The Bush administration has claimed the authority to detain American citizens indefinitely as enemy combatants without warrants, grand jury indictments, or trial by jury and proof beyond a reasonable doubt.2 The administration has asserted the power to ignore statutes and treaties prohibiting torture.3 It has maintained that the administration can engage in warrantless electronic eavesdropping in violation of the Fourth Amendment and federal statutes.' The Bush administration has argued that it can detain foreign citizens indefinitely at Guantanamo Bay, Cuba, without judicial review. Together, these actions are an assault on the Constitution. The Bush administration's positions on these and other issues share several characteristics. First, they all aggrandize executive power. In fact, the Bush administration's approach to executive power can be traced back to Republican presidencies over the last forty years. The Nixon administration's efforts to increase presidential powers were intensified during the Reagan and first Bush presidencies and have come to fruition under President George W. Bush. Second, the Bush administration rejects the ability of the courts to review its actions and even of Congress to check its conduct. Its actions and positions cannot be reconciled with a system based on checks and balances. Third, the Bush administration's approach to presidential power is at odds with the traditional, conservative approach to interpreting the Constitution. For decades, conservatives have argued that the meaning of the Constitution should be determined by looking to its text and the framers' intent.6 But if anything is clear about the framers, it is that they deeply distrusted executive power. Unchecked executive authority cannot be reconciled with the text of the Constitution, and the framers accepted significant executive power only as a necessary evil. This essay discusses why the Bush administration's approach to presidential power is an assault on the Constitution. Part I suggests a framework for analyzing claims of presidential power. Part 11 describes some of the claims of executive power made by the Bush administration. Part III explains why this administration's approach to executive power is unprecedented and antithetical to basic constitutional principles.

## 2

#### Deference to the executive now

Bazzle, J.D., Georgetown University Law Center, ‘12

[Timothy, “SHUTTING THE COURTHOUSE DOORS:¶ INVOKING THE STATE SECRETS PRIVILEGE TO THWART¶ JUDICIAL REVIEW IN THE AGE OF TERROR”, Civil Rights Law Journal, Vol. 23, No. 1, 2012, RSR]

The war on terror has led to an increased use of the state secrets¶ privilege by the Executive Branch—to dismiss legal challenges to¶ widely publicized and controversial government actions—ostensibly¶ aimed at protecting national security from terrorist threats.1¶ Faced¶ with complaints that allege indiscriminate and warrantless surveillance,2¶ tortious detention, and torture that flouts domestic and international law,3¶ courts have had to reconcile impassioned appeals for¶ private justice with the government’s unyielding insistence on protecting national security. Courts, almost unanimously, have cast their lot¶ with national security, granting considerable deference to government¶ assertions of the state secrets principle. This deference to state secrets¶ shows no signs of abating; indeed, the growing trend is for courts to¶ dismiss these legal challenges pre-discovery,4¶ even before the private¶ litigants have had the chance to present actual, non-secret evidence to¶ meet their burden of proof. Although many looked optimistically at¶ President Obama’s inauguration as a chance to break decisively from¶ the Bush Administration’s aggressive application of the state secrets privilege,5¶ the Obama Administration has largely disappointed on the¶ state-secrets front, asserting the privilege with just as much fervor—if¶ not as much regularity6¶ —as its predecessor.7¶ Judicial deference to such claims of state secrecy, whether the¶ claims merit privileged treatment, exacts a decisive toll on claimants,¶ permanently shutting the courthouse doors to their claims and interfering with public and private rights.8¶ Moreover, courts’ adoption of a¶ sweeping view of the state secrets privilege has raised the specter of¶ the government disingenuously invoking state secrets to conceal government misbehavior under the guise of national security.9¶ By granting greater deference to assertions of the state secrets privilege, courts¶ share responsibility for eroding judicial review as a meaningful check¶ on Executive Branch excesses. This Article argues for a return to a¶ narrowly tailored state secrets privilege—one that ensures that individuals who allege a credible claim of government wrongdoing retain¶ their due process rights.

#### Court action to limit indefinite detention makes effective warfighting impossible- and undermines deference

Chertoff 11 (Michael was the Secretary, Department of Homeland Security (2005-2009), THE DECLINE OF JUDICIAL DEFERENCE ON NATIONAL SECURITY, Rutgers Law Review, 3 February 2011, http://www.rutgerslawreview.com/wp-content/uploads/archive/vol63/Issue4/Chertoff\_Speech\_PDF.pdf, pg. 1125-1128)

So, where has this left us? It has left us in a puzzling situation. ¶ In a decision called Al-Bihani in the D.C. Circuit in 2010, Judge ¶ Janice Rogers Brown talked about the consequences—practical ¶ consequences—of having habeas review in Guantánamo as it affects ¶ the battlefield.42 And what she said is that the process at the tail end ¶ is now impacting the front end because when you conduct combat ¶ operations, you now have to worry about collecting evidence.43¶ A somewhat darker analysis has been put forward by Ben Wittes ¶ who has recently written a book called Detention and Denial, where ¶ he argues that the courts have now created an incentive system to ¶ kill rather than capture.44 And much of the law of war over the years ¶ was designed to move away from the “give no quarter” theory, where ¶ you killed everybody at the battlefield, into the theory of you would ¶ rather capture than kill. And his point, and you can agree or ¶ disagree with it, is that you have now actually loaded it the other ¶ way; you have pushed it in the direction of kill rather than capture.45 We have complete uncertainty now in the standards to be ¶ applied in the individual cases. If you read Ben Wittes‟s book ¶ Detention and Denial, he will details about ten or twelve district ¶ court cases where literally on the same facts you get different ¶ answers.46 And it is not that the district judges are not doing their ¶ best, but they have no guidance. There is no standard, and no one ¶ has offered them a standard.¶ We now have litigation about Bagram Air Force Base in ¶ Afghanistan.47 It was absolutely predictable when Boumediene was ¶ decided that the next case would be against Bagram Airbase. I do ¶ not know how it is going to come out at the end. I think it is still in ¶ the district court, but I will tell you, the logic—now they may have ¶ stopped the logic of Guantánamo—the logic of Boumediene certainly ¶ raises questions about Bagram. How do you wind up having habeas ¶ in Bagram? And then what is going to happen when you are in a ¶ forward firebase? Are you going to have habeas cases there? No one¶ knows, but the big problem is that the battlefield commanders do not ¶ know either; that is a serious operational problem.¶ In many ways, it is absolutely a great example of what the Court ¶ in Eisentrager predicted.48 When you go down this path, you are ¶ going to actually have real operational problems with warfighting. ¶ But of course, we are not in 1950 now; we are actually in active ¶ operations.¶ Finally, and I find this really to be the most interesting ¶ contemporary question posed by this series of issues, the press ¶ reports—and I cannot verify this, I am not confirming it, but I am ¶ assuming it to be true—the press reports that President Obama has ¶ authorized the killing of Anwar al-Aulaki, the American citizen in ¶ Yemen who is, in my mind for quite good reason, believed to be a ¶ major recruiter and operation leader for al-Qaeda.49 I want to be ¶ clear: I am perfectly okay with that, and I think it is exactly the right ¶ decision, so I do not want to be misunderstood. But I will say that if ¶ you read the decision and logic of Boumediene that is a very puzzling ¶ situation for al-Aulaki. Because if you need court permission to ¶ detain somebody, and if you need court permission to wiretap ¶ somebody, how can you kill that person without court permission? But that is what warfighting is. You cannot fight a war without that. ¶ There is current litigation on this issue where people are purporting ¶ to represent al-Aulaki‟s family.50 It has been tossed out, but we are ¶ just at the early stages. And frankly, I think we are going to see ¶ more of this.51 I have been reading that there are debates taking ¶ place about this. They are holding a moot court, I believe, on this ¶ issue.¶ A lot of interesting comments can be made about where we find ¶ ourselves, where the current administration finds itself if you believe ¶ the al-Aulaki allegations to be true. But to me, what it suggests is ¶ that when you abruptly change the attitude of deference—and I ¶ think you must look at Boumediene as an abrupt change—the ¶ consequences become unpredictable and very serious. And there is a ¶ reason that judges and courts in the past forswore from doing that. ¶ We may be seeing some of this play out. How it ends is difficult to ¶ predict. ¶ Before I take a few minutes of questions, let me conclude by ¶ making sure I do not cast blame only on the Court, because it is not ¶ the Court‟s fault. This is something where everybody was complicit in ¶ putting us in this situation—all three branches of government. The ¶ fact is, I was here about seven or eight years ago in 2003, at Rutgers, ¶ not here in this particular building but across the street where they ¶ have a campus, and I gave a talk. I had just left as head of the ¶ criminal division, and I said we have kind of put a lot of things ¶ together in a jerry-built way. We need to have a sustainable legal ¶ architecture that is going to make this a framework that we are ¶ comfortable with over a long period of time. Congress has to get ¶ involved—the executive branch has to go to Congress. It is seven ¶ years later, and we have not done it. So that, to me, is a failure of ¶ both branches. For the executive branch, the failure to push ¶ Congress on this has been a mistake. It has led to, for example, a lot ¶ of delay in setting up the administrative process for dealing with ¶ these detainees. Frankly, I think that was a strategic error that more ¶ or less baited the Court into doing what the Court did. I come from ¶ the old school of believing that whatever you think the right answer ¶ is, you do not want to test the limit of what you think it is if you can ¶ avoid it. You want to go into court with the strongest possible position, and you want to be the most modest and incremental in ¶ asking for power because that is how you maximize your chance to ¶ win. I do not think the executive branch was wise in pushing the ¶ envelope on this. That included also delaying the process for years. ¶ There was a lot of internal back and forth on that. It is unfortunate ¶ that the delaying impulse won. I think that some of the processes put ¶ in place in the first couple of rounds were overly scanty—it was more ¶ parsimonious than it should have been and than it needed to be. And ¶ this comes to the point: do not tempt fate. So the executive branch, by ¶ delaying and being parsimonious with how it handled these cases, ¶ essentially begged the Court—not literally but functionally—to get ¶ involved and to step into this. And that is historically, of course, ¶ what courts do.¶ Congress has never stepped up to the plate on this—other than ¶ the jurisdiction stripping in the Detainee Treatment Act and the ¶ Military Commissions Act.52 Even there, in terms of looking at what ¶ habeas might be and writing the kind of complex procedures you ¶ would need to really build the process for detaining people, Congress ¶ still has not stepped up to do that. There are people like Senator ¶ Lindsey Graham of South Carolina who are constantly out there ¶ saying that both parties should work together to identify a solution, ¶ but I have not seen the action taken yet. So, in a way, I have to say in ¶ defense of the decision in Boumediene, at some point when the Court ¶ sees that neither branch is addressing the problem, where there is a ¶ serious issue of balancing security and liberty, and where we are ¶ uncomfortable about the idea of just locking people up indefinitely ¶ without having some confidence that we can review it, the courts are ¶ going to step in. And that leads to the old adage that hard cases ¶ make bad law.¶ The best result, in my mind, would be for the executive branch ¶ and Congress to sit down and put together, like they did with the ¶ Debt Commission now, a plan that talks about how we deal with ¶ detaining people when we are not going to put them in a criminal ¶ case or in a military commission. What is the process of review? ¶ What should the procedural rights be? What should the standard be? ¶ And what is the ultimate target that the judge has to find? I would ¶ hope that if we got that kind of comprehensive and robust statute ¶ that the courts would back off and would give the deference that has ¶ traditionally been good both for the executive and for the courts when ¶ dealing with these kinds of sensitive national security issues.

#### Deference is vital to effective executive crisis response

Robert Blomquist 10, Professor of Law, Valparaiso University School of Law, THE JURISPRUDENCE OF AMERICAN NATIONAL SECURITY PRESIPRUDENCE, 44 Val. U.L. Rev. 881

Supreme Court Justices--along with legal advocates--need to conceptualize and prioritize big theoretical matters of institutional design and form and function in the American national security tripartite constitutional system. By way of an excellent introduction to these vital issues of legal theory, the Justices should pull down from the library shelf of the sumptuous Supreme Court Library in Washington, D.C. (or more likely have a clerk do this chore) the old chestnut, The Legal Process: Basic Problems in the Making and Application of Law by the late Harvard University law professors Henry M. Hart and Albert M. Sacks. n7 Among the rich insights on institutional design coupled with form and function in the American legal system that are germane to the Court's interpretation of national security law-making and decision-making by the President are several pertinent points. First, "Hart and Sacks' intellectual starting point was the interconnectedness of human beings, and the usefulness of law in helping us coexist peacefully together." n8 By implication, therefore, the Court should be mindful of the unique [\*883] constitutional role played by the POTUS in preserving peace and should prevent imprudent judicial actions that would undermine American national security. Second, Hart and Sacks, continuing their broad insights of social theory, noted that legal communities establish "institutionalized[] procedures for the settlement of questions of group concern" n9 and regularize "different procedures and personnel of different qualifications . . . appropriate for deciding different kinds of questions" n10 because "every modern society differentiates among social questions, accepting one mode of decision for one kind and other modes for others-e.g., courts for 'judicial' decisions and legislatures for 'legislative' decisions" n11 and, extending their conceptualization, an executive for "executive" decisions. n12 Third, Professors Hart and Sacks made seminal theoretical distinctions between rules, standards, principles, and policies. n13 While all four are part of "legal arrangements [\*884] in an organized society," n14 and all four of these arrangements are potentially relevant in judicial review of presidential national security decisions, principles and policies n15 are of special concern because of the sprawling, inchoate, and rapidly changing nature of national security threats and the imperative of hyper-energy in the Executive branch in responding to these threats. n16

The Justices should also consult Professor Robert S. Summers's masterful elaboration and amplification of the Hart and Sacks project on enhancing a flourishing legal system: the 2006 opus, Form and Function in a Legal System: A General Study. n17 The most important points that [\*885] Summers makes that are relevant to judicial review of American national security presiprudence are three key considerations. First, a "conception of the overall form of the whole of a functional [legal] unit is needed to serve the founding purpose of defining, specifying, and organizing the makeup of such a unit so that it can be brought into being and can fulfill its own distinctive role" n18 in synergy with other legal units to serve overarching sovereign purposes for a polity. The American constitutional system of national security law and policy should be appreciated for its genius in making the POTUS the national security sentinel with vast, but not unlimited, powers to protect the Nation from hostile, potentially catastrophic, threats. Second, "a conception of the overall form of the whole is needed for the purpose of organizing the internal unity of relations between various formal features of a functional [legal] unit and between each formal feature and the complementary components of the whole unit." n19 Thus, Supreme Court Justices should have a thick understanding of the form of national security decision-making conceived by the Founders to center in the POTUS; the ways the POTUS and Congress historically organized the processing of national security through institutions like the National Security Council and the House and Senate intelligence committees; and the ways the POTUS has structured national security process through such specific legal forms as Presidential Directives, National Security Decision Directives, National Security Presidential Decision Directives, Presidential Decision Directives, and National Security Policy Directives in classified, secret documents along with typically public Executive Orders. n20 Third, according to Summers, "a conception of the overall form of the whole functional [legal] unit is needed to organize further the mode of operation and the instrumental capacity of the [legal] unit." n21 So, the Supreme Court should be aware that tinkering with national security decisions of the POTUS--unless clearly necessary to counterbalance an indubitable violation of the text of the Constitution--may lead to unforeseen negative second-order consequences in the ability of the POTUS (with or without the help of Congress) to preserve, protect, and defend the Nation. n22

[\*886] B. Geopolitical Strategic Considerations Bearing on Judicial Interpretation

Before the United States Supreme Court Justices form an opinion on the legality of national security decisions by the POTUS, they should immerse themselves in judicially-noticeable facts concerning what national security expert, Bruce Berkowitz, in the subtitle of his recent book, calls the "challengers, competitors, and threats to America's future." n23 Not that the Justices need to become experts in national security affairs, n24 but every Supreme Court Justice should be aware of the following five basic national security facts and conceptions before sitting in judgment on presiprudential national security determinations.

(1) "National security policy . . . is harder today because the issues that are involved are more numerous and varied. The problem of the day can change at a moment's notice." n25 While "[y]esterday, it might have been proliferation; today, terrorism; tomorrow, hostile regional powers" n26, the twenty-first century reality is that "[t]hreats are also more likely to be intertwined--proliferators use the same networks as narco-traffickers, narco-traffickers support terrorists, and terrorists align themselves with regional powers." n27

(2) "Yet, as worrisome as these immediate concerns may be, the long-term challenges are even harder to deal with, and the stakes are higher. Whereas the main Cold War threat--the Soviet Union--was brittle, most of the potential adversaries and challengers America now faces are resilient." n28

(3) "The most important task for U.S. national security today is simply to retain the strategic advantage. This term, from the world of military doctrine, refers to the overall ability of a nation to control, or at least influence, the course of events." n29 Importantly, "[w]hen you hold [\*887] the strategic advantage, situations unfold in your favor, and each round ends so that you are in an advantageous position for the next. When you do not hold the strategic advantage, they do not." n30

(4) While "keeping the strategic advantage may not have the idealistic ring of making the world safe for democracy and does not sound as decisively macho as maintaining American hegemony," n31 maintaining the American "strategic advantage is critical, because it is essential for just about everything else America hopes to achieve--promoting freedom, protecting the homeland, defending its values, preserving peace, and so on." n32

(5) The United States requires national security "agility." n33 It not only needs "to refocus its resources repeatedly; it needs to do this faster than an adversary can focus its own resources." n34

[\*888] As further serious preparation for engaging in the jurisprudence of American national security presiprudence in hotly contested cases and controversies that may end up on their docket, our Supreme Court Justices should understand that, as Walter Russell Mead pointed out in an important essay a few years ago, n35 the average American can be understood as a Jacksonian pragmatist on national security issues. n36 "Americans are determined to keep the world at a distance, while not isolating ourselves from it completely. If we need to take action abroad, we want to do it on our terms." n37 Thus, recent social science survey data paints "a picture of a country whose practical people take a practical approach to knowledge about national security. Americans do not bother with the details most of the time because, for most Americans, the details do not matter most the time." n38 Indeed, since the American people "do know the outlines of the big picture and what we need to worry about [in national security affairs] so we know when we need to pay greater attention and what is at stake. This is the kind of knowledge suited to a Jacksonian." n39

Turning to how the Supreme Court should view and interpret American presidential measures to oversee national security law and policy, our Justices should consider a number of important points. First, given the robust text, tradition, intellectual history, and evolution of the institution of the POTUS as the American national security sentinel, n40 and the unprecedented dangers to the United States national security after 9/11, n41 national security presiprudence should be accorded wide latitude by the Court in the adjustment (and tradeoffs) of trading liberty and security. n42 Second, Justices should be aware that different presidents [\*889] institute changes in national security presiprudence given their unique perspective and knowledge of threats to the Nation. n43 Third, Justices should be restrained in second-guessing the POTUS and his subordinate national security experts concerning both the existence and duration of national security emergencies and necessary measures to rectify them. "During emergencies, the institutional advantages of the executive are enhanced", n44 moreover, "[b]ecause of the importance of secrecy, speed, and flexibility, courts, which are slow, open, and rigid, have less to contribute to the formulation of national policy than they do during normal times." n45 Fourth, Supreme Court Justices, of course, should not give the POTUS a blank check--even during times of claimed national emergency; but, how much deference to be accorded by the Court is "always a hard question" and should be a function of "the scale and type of the emergency." n46 Fifth, the Court should be extraordinarily deferential to the POTUS and his executive subordinates regarding questions of executive determinations of the international laws of war and military tactics. As cogently explained by Professors Eric Posner and Adrian Vermeule, n47 "the United States should comply with the laws of war in its battle against Al Qaeda"--and I would argue, other lawless terrorist groups like the Taliban--"only to the extent these laws are beneficial to the United States, taking into account the likely response of [\*890] other states and of al Qaeda and other terrorist organizations," n48 as determined by the POTUS and his national security executive subordinates.

#### Effective executive response is key to prevent global crises

Ghitis 13 (Frida, world affairs columnist for The Miami Herald and World Politics Review. A former CNN producer and correspondent, she is the author of *The End of Revolution: A Changing World in the Age of Live Television*. “World to Obama: You can't ignore us,” 1/22, http://www.cnn.com/2013/01/22/opinion/ghitis-obama-world)

And while Obama plans to dedicate his efforts to the domestic agenda, a number of brewing international crises are sure to steal his attention and demand his time. Here are a few of the foreign policy issues that, like it or not, may force Obama to divert his focus from domestic concerns in this new term.¶ Syria unraveling: The United Nations says more than 60,000 people have already died in [a civil war t](http://www.cnn.com/2013/01/02/world/meast/syria-civil-war/index.html)hat the West has, to its shame, done little to keep from spinning out of control. Washington[has warned](http://www.nytimes.com/2012/12/04/world/middleeast/nato-prepares-missile-defenses-for-turkey.html?_r=0) that the use of chemical or biological weapons might force its hand. But the regime [may have already used them](http://www.reuters.com/article/2013/01/19/us-syria-chemical-newspaper-idUSBRE90I0JV20130119). The West has failed to nurture a moderate force in the conflict. Now Islamist extremists are growing [more powerful](http://www.al-monitor.com/pulse/originals/2013/01/fighter-syria-aleppo-turkey.html) within the opposition. The chances are growing that worst-case scenarios will materialize. Washington will not be able to endlessly ignore this dangerous war.¶ Egypt and the challenge of democracy: What happens in Egypt strongly influences the rest of the Middle East -- and hence world peace -- which makes it all the more troubling to see liberal democratic forces lose battle after battle for political influence against Islamist parties, and to hear blatantly [anti-Semitic speech](http://www.nytimes.com/2013/01/15/world/middleeast/egypts-leader-morsi-made-anti-jewish-slurs.html) coming from the mouth of Mohammed Morsy barely two years before he became president.¶ Iran's nuclear program: Obama took office promising a new, more conciliatory effort to persuade Iran to drop its nuclear enrichment program. Four years later, he has succeeded in implementing international sanctions, but Iran has continued enriching uranium, leading [United Nations inspectors](http://news.yahoo.com/un-credible-evidence-iran-working-nuke-weapons-153544271.html) to find "credible evidence" that Tehran is working on nuclear weapons. Sooner or later the moment of truth will arrive. If a deal is not reached, Obama will have to decide if he wants to be the president on whose watch a nuclear weapons race was unleashed in the most dangerous and unstable part of the world.¶ North Africa terrorism: A much-neglected region of the world is becoming increasingly difficult to disregard. In recent days, [Islamist extremists](http://edition.cnn.com/2013/01/18/opinion/ghitis-algeria-hostage-crisis/index.html?hpt=op_t1) took American and other hostages in Algeria and France sent its military to fight advancing Islamist extremists in Mali, a country that once represented optimism for democratic rule in Africa, now overtaken by militants who are potentially turning it into a staging ground for international terrorism.¶ Russia repression: As Russian President Vladimir Putin succeeds in [crushing opposition](http://www.france24.com/en/20121027-russian-opposition-leaders-detained-protest-navalny-udaltsov-vladimir-putin) to his [increasingly authoritarian](http://www.freedomhouse.org/report/freedom-world/2013/russia)rule, he and his allies are making anti-American words and policies their favorite theme. A recent ban on adoption of Russian orphans by American parents is only the most vile example. But Washington needs Russian cooperation to achieve its goals at the U.N. regarding Iran, Syria and other matters. It is a complicated problem with which Obama will have to wrestle.¶ Then there are the long-standing challenges that could take a turn for the worse, such as the Israeli-Palestinian conflict. Obama may not want to wade into that morass again, but events may force his hand.¶ And there are the so-called "black swans," events of low probability and high impact. [There is talk](http://www.economist.com/news/asia/21569757-armed-clashes-over-trivial-specks-east-china-sea-loom-closer-drums-war) that China and Japan could go to war over a cluster of disputed islands.¶ A war between two of the world's largest economies could prove devastating to the global economy, just as a sudden and dramatic reversal in the fragile Eurozone economy could spell disaster. Japan's is only the hottest of many territorial disputes between China and its Asian neighbors. Then there's North Korea with its nuclear weapons.¶ We could see regions that have garnered little attention come back to the forefront, such as Latin America, where conflict could arise in a post-Hugo Chavez Venezuela.¶ The president -- and the country -- could also benefit from unexpectedly positive outcomes. Imagine a happy turn of events in Iran, a breakthrough between Israelis and Palestinians, the return of prosperity in Europe, a successful push by liberal democratic forces in the Arab uprising countries, which could create new opportunities, lowering risks around the world, easing trade, restoring confidence and improving the chances for the very agenda Obama described in his inaugural speech.¶ The aspirations he expressed for America are the ones he should express for our tumultuous planet. Perhaps in his next big speech, the State of the Union, he can remember America's leadership position and devote more attention to those around the world who see it as a source of inspiration and encouragement.¶ After all, in this second term Obama will not be able to devote as small a portion of his attention to foreign policy as he did during his inaugural speech.¶ International disengagement is not an option. As others before Obama have discovered, history has a habit of toying with the best laid, most well-intentioned plans of American presidents.

## 3

#### **CIR will pass now; Obama and Boehner on board, but Obama’s PC key**

Kuhnhenn, 1-7

[JIM KUHNHENN, Associated Press, “For Obama, Congress, a Last Grasp at Immigration,” abcnews.com, January 7, 2014, <http://abcnews.go.com/Politics/wireStory/obama-congress-grasp-immigration-21444316> //uwyo-baj]

His agenda tattered by last year's confrontations and missteps, President Barack Obama begins 2014 clinging to the hope of winning a lasting legislative achievement: an overhaul of immigration laws. It will require a deft and careful use of his powers, combining a public campaign in the face of protests over his administration's record number of deportations with quiet, behind-the-scenes outreach to Congress, something seen by lawmakers and immigration advocates as a major White House weakness. In recent weeks, both Obama and House Speaker John Boehner, R-Ohio, have sent signals that raised expectations among overhaul supporters that 2014 could still yield the first comprehensive change in immigration laws in nearly three decades. If successful, it would fulfill an Obama promise many Latinos say is overdue. The Senate last year passed a bipartisan bill that was comprehensive in scope that addressed border security, provided enforcement measures and offered a path to citizenship for 11 million immigrants in the United States illegally. House leaders, pressed by tea party conservatives, demanded a more limited and piecemeal approach. Indicating a possible opening, Obama has stopped insisting the House pass the Senate version. And two days after calling Boehner to wish him happy birthday in November, Obama made it clear he could accept the House's bill-by-bill approach, with one caveat: In the end, "we're going to have to do it all." Boehner, for his part, in December hired Rebecca Tallent, a former top aide to Sen. John McCain and most recently the director of a bipartisan think tank's immigration task force. Even opponents of a broad immigration overhaul saw Tallent's selection as a sign legislation had suddenly become more likely. Boehner also fed speculation he would ignore tea party pressure, bluntly brushing back their criticism of December's modest budget agreement.

**Court ruling will cause Obama defiance – triggers a Constitutional showdown**

**Posner and Vermeule, 10** - \*professor of law at the University of Chicago AND \*\*professor of law at Harvard (Eric and Adrian, The Executive Unbound, p. 207-210)

The **9/11** attack **provided a reminder of just how extensive the president’s power is.** The executive claimed the constitutional authority to, in effect, use emergency powers. Because Congress provided redundant statutory authority, and **the Supreme Court has steadfastly refused to address the ultimate merits of the executive’s constitutional claims**, these claims were never tested in a legal or public forum. But **it is worth trying to imagine what would have happened if Congress had refused to pass the Authorization for Use of Military Force and the Supreme Court had ordered the executive to release detainees** in a contested case. We think that **the executive, backed up as it was by popular opinion, would have refused to obey**. And, indeed, **for just that reason, Congress would never have refused** its imprimatur **and the Supreme Court would never have stood in the executive’s way**. **The major check on the executive’s power to declare an emergency and to use emergency powers is—political**.

#### Immigration reform is key to generate jobs and attract high skilled workers that solves for competitiveness and the econ

Johnson 13

(Simon Johnson, former chief economist of the International Monetary Fund, is the Ronald A. Kurtz Professor of Entrepreneurship at the M.I.T. Sloan School of Management and co-author of “White House Burning: The Founding Fathers, Our National Debt, and Why It Matters to You.” “How Immigration Reform Would Help the Economy” 6-20-13 http://economix.blogs.nytimes.com/2013/06/20/how-immigration-reform-would-help-the-economy//wyoccd)

The assessment is positive. This precise immigration proposal would improve the budget picture (see this helpful chart) and stimulate economic growth. The immediate effects are good and the more lasting effects even better. If anything, the long-run positive effects are likely to be even larger than the C.B.O. is willing to predict, in my assessment. (I’m a member of the office’s Panel of Economic Advisers but I was not involved in any way in this work.)¶ The debate over immigration is emotionally charged and, judging from recent blog posts, the Heritage Foundation in particular seems primed to dispute every detail in the C.B.O. approach – and to assert that it is underestimating some costs (including what happens when illegal immigrants receive an amnesty and subsequently claim government-provided benefits, a point Heritage has emphasized in its own report).¶ There is good reason for the C.B.O.’s careful wording in its analysis; it operates within narrow guidelines set by Congress, and its staff is wise to stick to very well-documented points. Still, as the legislation gains potential traction, it is worth keeping in mind why there could be an even larger upside for the American economy.¶ In 1776, the population of the United States was around 2.5 million; it is now more than 316 million (you can check the real-time Census Bureau population clock, but of course that is only an estimate).¶ Think about this: What if the original inhabitants had not allowed immigration or imposed very tight restrictions – for example, insisting that immigrants already have a great deal of education? It’s hard to imagine that the United States would have risen as an economy and as a country. How many United States citizens reading this column would be here today? (I’m proud to be an immigrant and a United States citizen.)¶ The long-term strength of the United States economy lies in its ability to create jobs. For more than 200 years as a republic (and 400 years in total) immigrants have not crowded together on a fixed amount of existing resources – land (in the early days) or factories (from the early 1800s) or the service sector (where most modern jobs arise). Rather the availability of resources essential for labor productivity has increased sharply. Land is improved, infrastructure is built and companies develop.¶ Most economic analysis about immigration looks at wages and asks whether natives win or lose when more immigrants show up in particular place or with certain skills. At the low end of wage distribution, there is reason to fear adverse consequences for particular groups because of increased competition for jobs. In fact, the C.B.O. does find that income per capita would decline slightly over the next 10 years before increasing in the subsequent 10 years: “Relative to what would occur under current law, S. 744 would lower per capita G.N.P. by 0.7 percent in 2023 and raise it by 0.2 percent in 2033, according to C.B.O.’s central estimates.”¶ And it is reasonable to ask who will pay how much into our tax system – and who will receive what kind of benefits. This is the terrain that the C.B.O. and the Heritage Foundation are contesting. (See, too, a letter to Senator Marco Rubio, Republican of Florida, from Stephen Gross, the chief actuary of the Social Security Administration. Mr. Gross said immigration reform would be a net positive; of the current 11.5 million illegal immigrants, “many of these individuals already work in the country in the underground economy, not paying taxes, and will begin paying taxes” if the immigration legislation are adopted. New illegal immigration would decline but not be eliminated.)¶ But the longer-run picture is most obviously quite different. The process of creating businesses and investing – what economists like to call capital formation – is much more dynamic than allowed for in many economic models.¶ People will save and they will invest. Companies will be created. The crucial question is who will have the ideas that shape the 21st century. (See, for example, the work of Charles I. Jones of Stanford University on this point and a paper he and Paul Romer wrote for a broader audience.)¶ This is partly about education – and the proposed legislation would tilt new visas more toward skilled workers, particularly those in science, technology, engineering, and math (often referred to as STEM).¶ But it would be a mistake to limited those admitted – or those allowed legal status and eventual citizenship – to people who already have or are in the process of getting a university-level education. To be clear, under the new system there may well be more low-wage immigrants than high-wage immigrants, but the transition to a point system for allocating green cards is designed to increase the share of people with more education and more scientific education, relative to the situation today and relative to what would otherwise occur.¶ Many people have good ideas. The Internet has opened up the process of innovation. I don’t know anyone who can predict where the next big technologies will come from. I also don’t know who will figure out how to organize production – including the provision of services – in a more effective manner.¶ We are competing in a world economy based on human capital, and people’s skills and abilities are the basis for our productivity. What we need more than anything, from an economic point of view, is more people (of any age or background) who want to acquire and apply new skills.¶ Increasing the size of our domestic market over the last 400 years has served us well. Allowing in immigrants in a fiscally responsible manner makes a great deal of sense — and the reports from the Joint Committee on Taxation and C.B.O. are very clear that this is now what is on the table. If the children of immigrants want to get more education, we should welcome the opportunity that this presents. When you cut off the path to higher education, you are depriving people of opportunity – and you are also hurting the economy.¶ The deeper political irony, of course, is that if the Heritage Foundation and its allies succeed in defeating immigration legislation, there are strong indications that this will hurt the Republican Party at the polls over the next decade and beyond. Yet, even so, House Republicans seem inclined to oppose immigration reform. That would be a mistake on both economic and political grounds.¶ We are 316 million people in a world of more than 7 billion – on its way to 10 billion or more (read this United Nations report if you like to worry about the future).¶ We should reform immigration along the lines currently suggested and increase the supply of skilled labor in the world. This will both improve our economy and, at least potentially, help ensure the world stays more prosperous and more stable.

**Nuclear war**

**Harris and Burrows ‘9**

**(**Mathew, PhD European History at Cambridge, counselor in the National Intelligence Council (NIC) and Jennifer, member of the NIC’s Long Range Analysis Unit “Revisiting the Future: Geopolitical Effects of the Financial Crisis” <http://www.ciaonet.org/journals/twq/v32i2/f_0016178_13952.pdf>, AM)

Of course, the report encompasses more than economics and indeed believes the future is likely to be the result of a number of intersecting and interlocking forces. With so many possible permutations of outcomes, each with ample Revisiting the Future opportunity for unintended consequences, there is a growing sense of insecurity. Even so, **history may be more instructive than ever**. While we continue to believe that **the Great Depression** is not likely to be repeated, the **lessons** to be drawn from that period **include the harmful effects on fledgling democracies and multiethnic societies** (think Central Europe in 1920s and 1930s) **and** on the **sustainability of multilateral institutions** (think League of Nations in the same period). **There is no reason to think that this would not be true in the twenty-first as much as in the twentieth century.** For that reason, the ways in which **the potential for greater conflict could grow** would seem to be even more apt **in a constantly volatile economic environment** as they would be if change would be steadier. In surveying those risks, the report stressed the likelihood that terrorism and nonproliferation will remain priorities even as resource issues move up on the international agenda. **Terrorism’s appeal will decline if economic growth continues in the Middle East and youth unemployment is reduced.** For those terrorist groups that remain active in 2025, however, the diffusion of technologies and scientific knowledge will place some of the world’s most dangerous capabilities within their reach. **Terrorist groups** in 2025 **will** likely be a combination of descendants of long established groups\_inheriting organizational structures, command and control processes, and training procedures necessary to conduct sophisticated attacks\_and newly emergent collections of the angry and disenfranchised that **become self-radicalized, particularly in the absence of economic outlets that would become narrower in an economic downturn. The most dangerous casualty of any economically-induced drawdown of U.S. military presence would** almost certainly **be the Middle East**. Although Iran’s acquisition of nuclear weapons is not inevitable, **worries** about a nuclear-armed Iran **could lead states in the region to develop new security arrangements with external powers, acquire additional weapons, and consider pursuing their own nuclear ambitions**. It is not clear that the type of stable deterrent relationship that existed between the great powers for most of the Cold War would emerge naturally in the Middle East with a nuclear Iran. Episodes of low intensity **conflict** and terrorism taking place under a nuclear umbrella **could lead to an** unintended escalation **and broader conflict** if clear red lines between those states involved are not well established. **The close proximity of potential nuclear rivals** combined with underdeveloped surveillance capabilities and mobile dual-capable Iranian missile systems also **will produce inherent difficulties** in achieving reliable indications and warning of an impending nuclear attack. The lack of strategic depth in neighboring states like Israel, **short warning and missile flight times, and uncertainty** of Iranian intentions **may place more focus on preemption** rather than defense, potentially **leading to** escalatingcrises**.** 36 Types of **conflict** that the world continues to experience, such as **over resources, could reemerge**, particularly if **protectionism grows and there is a resort to neo-mercantilist practices. Perceptions** of renewed energy scarcity will drive countries to take actions to assure their future access to energy supplies. In the worst case, this **could result in interstate conflicts if government leaders deem assured access to energy resources,** for example, to be **essential for** maintaining domestic stability and the **survival of their regime**. Even actions short of war, however, will have important geopolitical implications. Maritime security concerns are providing a rationale for naval buildups and modernization efforts, such as China’s and India’s development of blue water naval capabilities. **If** the **fiscal stimulus focus for** these **countries indeed turns inward, one of the most obvious funding targets may be military. Buildup of regional** naval **capabilities could lead to increased tensions, rivalries, and counterbalancing moves**, but it also will create opportunities for multinational cooperation in protecting critical sea lanes. **With water** also **becoming scarcer in Asia and the Middle East, cooperation to manage changing water resources is likely to be increasingly difficult both within and between states in a more dog-eat-dog world.**

## Legitimacy

#### The aff can’t solve—outrage over wiretapping

Jordans and DiLorenzo 2013(Frank and Sarah, Boston Globe Staff, July 1, "Kerry tries to quell European outrage over NSA eavesdropping", http://www.bostonglobe.com/news/world/2013/07/01/kerry-tries-quell-european-outrage-over-nsa-eavesdropping/i53kOnIwOOfb9BGM5fzkmM/story.html)

French President Francois Hollande demanded on Monday that the United States immediately stop its alleged eavesdropping on European Union diplomats and suggested that the widening surveillance scandal could derail negotiations for a free-trade deal potentially worth billions.¶ The Obama administration is facing a breakdown in confidence from key allies over secret programs that reportedly installed covert listening devices in EU offices. Many European countries had so far been muted about revelations of the wide net cast by US surveillance programs aimed at preventing terrorist attacks, but their reaction to the latest reports indicate Washington’s allies are unlikely to let the matter drop without at least a strong show of outrage.¶ The White House wouldn’t comment on the new reports, but officials said President Barack Obama has not spoken to his counterparts in Europe about the revelations since they were published Sunday in a German weekly.¶ US Secretary of State John Kerry said Monday he didn’t know the details of the allegations, but tried to downplay them, maintaining that many nations undertake various activities to protect their national interests. He failed to quell the outrage from allies, including France, Germany and Italy.¶ ‘‘We cannot accept this kind of behavior from partners and allies,’’ Hollande said on French television on Monday.¶ He insisted the US explain its practices and end the eavesdropping immediately. And he issued a veiled threat that France would dig in its heels on sensitive negotiations to ink a free-trade deal that would link countries that make up nearly half of the global economy. The deal would likely serve as a model for all future such agreements worldwide.¶ ‘‘We can only have negotiations, transactions, in all areas, once we have obtained these guarantees for France, but that goes for the whole European Union and I would say for all partners of the United States,’’ he said.¶ Europe’s outage was triggered by a Sunday report by German news weekly Der Spiegel that the US National Security Agency bugged diplomats from friendly nations — such as the EU offices in Washington, New York and Brussels. The report was partly based on an ongoing series of revelations of US eavesdropping leaked by former NSA contractor Edward Snowden.

#### **Drone Strikes are an Alt Cause—Pakistan**

Afzal 13

[Madiha, nonresident fellow Brookings Institute, Brookings Institute, “Drone Strikes and Anti-Americanism in Pakistan”, 02.07.2013. <http://www.brookings.edu/research/opinions/2013/02/07-drones-anti-americanism-pakistan-afzal>//wyo-hdm]

What is getting overlooked in the debate is that drone strikes are infuriating the more moderate and liberal segments of Pakistani society, those who have traditionally been more sympathetic toward the United States. Imagine a group of well-educated people, many of whom attended English-language schools, are widely exposed to American and Western media, and like and embrace many aspects of American culture. These people have probably had some sort of personal interaction with the West, through tourism, attending college abroad, or through family members or friends who live in the U.S. What bothers this group about U.S. drone strikes, more than the attack on Pakistan’s sovereignty, is the perceived American hypocrisy toward the importance of Pakistani lives and deaths. Following the horrific school shooting at Sandy Hook Elementary in December, a piece in the U.K. newspaper The Guardian titled “In the U.S., mass child killings are tragedies. In Pakistan, mere bug splats” went viral among educated Pakistanis. In addition, coverage of a recent report on drone strikes in Pakistan by researchers at NYU and Stanford law schools, which recounts the daily terror facing those who live in areas where drones strike, gained wide circulation in Pakistan. Few cared to note that this report had been written by an advocacy group and that some of its statistics were suspect. While the New America Foundation, the Long War Journal, and the London Bureau of Investigative Journalism all compile statistics on drone strikes, the numbers differ, and it bothers this liberal, educated group of Pakistanis that the U.S. government does not release its own data on drone strikes. One of the only public acknowledgments on this issue was in a 2012 speech by John Brennan when he stated that there were barely any civilian deaths as a consequence of these strikes. This struck many as implausible, further angering Pakistanis. Why does anger against America from this group of liberal, educated Pakistanis matter? After all, it is highly unlikely that any of these people will turn radical. These people matter because they form the heart of an active civil society in Pakistan, which the U.S. counts on to serve as a counterweight to the radical segments of Pakistani society. They work in the Pakistani government, media and business sectors, and drone strikes are driving these people toward a constant distrust of the U.S. and hardening their attitudes against America. It undermines all the positive work the United States is doing in Pakistan, all the aid dollars it spends there, and drastically undercuts U.S. soft power in the region. If America loses these hearts and minds, it will lose the battle for Pakistan. Where does this group of Pakistanis get its information? It buys into the only narrative out there, offered up by the outspokenly anti-American Pakistani media, which argues that drone strikes are callously undertaken without any regard for civilian casualties. This view overinflates the number of civilians killed by drone strikes, especially women and children, and underreports the number of militants killed. And without an official account of events from the U.S. government, this narrative can easily be exploited and promoted. Let’s take a look at some empirical evidence for the above statements. According to the 2011 Pew Global Attitudes poll, a representative survey of almost 2,000 Pakistanis, 55 percent of respondents had heard (a lot or a little) about drone attacks, up from 36 percent in 2010. A simple cross-tabulation of education and knowledge of drone strikes reveals that the percentage of Pakistanis with some knowledge about drone strikes increases by education. In particular, more than 80 percent of the highly educated with graduate or post-graduate degrees say they have heard about drone strikes. Also according to the Pew 2011 poll, of those Pakistanis with some knowledge about drone strikes, 95 percent think that drones are “a bad or very bad thing”. In addition, 69 percent of these respondents disagree that drone strikes are necessary to defend Pakistan from extremist groups, and 91 percent agree with the statement that they kill too many innocent people.

**No spillover — lack of credibility in one commitment doesn’t affect others at all**

Paul K. **MacDonald 11**, Assistant Professor of Political Science at Williams College, and Joseph M. Parent, Assistant Professor of Political Science at the University of Miami, Spring 2011, “Graceful Decline?: The Surprising Success of Great Power Retrenchment,” International Security, Vol. 35, No. 4, p. 7-44

Second, **pessimists** **overstate** **the extent to which a policy of retrenchment can** **damage a great power's capabilities or prestige**. Gilpin, in particular, assumes that a great power's commitments are on equal footing and interdependent. **In practice**, however, **great powers make commitments of varying degrees that are** **functionally independent** of one another. **Concession in one area need not be seen as** **influencing a commitment in another area**.25 **Far from being perceived as interdependent**, **great power commitments are often** **seen as** being **rivalrous**, **so that** **abandoning commitments in one area may actually** **bolster the strength of a commitment in another area**. During the Korean War, for instance, President Harry Truman's administration explicitly backed away from total victory on the peninsula to strengthen deterrence in Europe.26 **Retreat in an area of lesser importance** **freed up resources** **and** **signaled a strong commitment to an area of greater significance**.

#### Legitimacy is not key to heg

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

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

#### Data disproves hegemony impacts

Fettweis, 11

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

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

## Warfighting

#### Continued indefinite detention key to winning the war on terror

Hodgkinson ‘12

[Sandra L. Hodgkinson, former Chief of Staff for Deputy Secretary of Defense William J. Lynn, III and Deputy Assistant Secretary of Defense for Detainee Affairs and Distinguished Visiting Research Fellow at National Defense University, “Executive Power in a War Without End: Goldsmith, the Erosion of Executive Authority on Detention, and the End of the War on Terror,” CASE WESTERN RESERVE JOURNAL OF INTERNATIONAL LAW VOL. 45, Fall 2012, [http://law.case.edu/journals/JIL/Documents/45CaseWResJIntlL1&2.pdf //](http://law.case.edu/journals/JIL/Documents/45CaseWResJIntlL1&2.pdf%20//) wyo-ch]

There is no such thing as a war without end. All wars come to an end, even though it may be hard to predict when that end will be. When President Woodrow Wilson first coined the phrase “the war to end all wars” when speaking to Congress about World War I39 or when President Roosevelt referred to World War II as the “Long War,”40 neither president could easily predict when the war would end. At some level of destruction, some level of defeat, or some level of fighting fatigue, one way or another, wars end. In a classic state on-state conflict, the typical ways to end a war are through a peace treaty, defeat, or surrender.41 World War I ended with the Treaty of Versailles,42 while World War II ended with Germany and Japan surrendering.43 Generally, upon conclusion of the war, it is presumed that most, if not all, members of the country’s regular armed forces will lay down their arms and comply with the outcome of the war. This, however, is not always the case. Many modern conflicts have evolved into protracted insurgencies when non-government controlled forces are not ready to give up the fight, and are able to continue to fight. The recent example of Iraq is illustrative, as Iraqi insurgents have continued to destabilize the country long after the official war has ended.44 Northern Ireland is another example of a country where the fighting continued long after the peace process was in place.45 There is a path to victory for the United States in this war against the transnational non-state actor al-Qaeda, even if every member of al-Qaeda does not lay down his arms in surrender or acknowledge defeat. There are four steps on this path to victory. First, the United States and its allies must kill or capture the senior al-Qaeda leadership. We are doing that. The point regarding kill or capture is critical, as a state cannot have a policy that requires it to kill an enemy who surrenders.46 There must always be a detention option available, which is why military detention must remain a legitimate tool for use in this and future wars.47 Drone strikes are a principal tool being used to kill senior al-Qaeda leadership who are not encountered directly on the traditional kinetic battlefield and are a legitimate use of force under the law of armed conflict.48 Second, the United States and its allies must cut off al-Qaeda’s methods of travel. We have been working with allies consistently on this issue since September 11, 2001, through a vast array of terrorist watch lists, which identify terrorists and prevent them from traveling, particularly to areas where they may pose a threat to United States, allied forces, or other personnel.49 Third, the United States and its allies must cut off al-Qaeda’s funding sources. We have been working with allies to freeze assets associated with terrorism in banks around the world, while at the same time creating new laws that criminalize financial support to terrorists.50 The United Nations has called on countries to cut off terrorist means and methods of travel, and their funding.51 Lastly, the United States and NATO allies will have to continue efforts to “win the peace” in Afghanistan and elsewhere through continued counter-insurgency efforts, rehabilitation and reintegration programs, and developmental assistance and funding.52 Achieving these objectives will not make every member of al Qaeda and their affiliated groups lay down their weapons, but it will make their ability to act on a global scale in the way that they did on 9/11 and the years following much more difficult. They will become, in essence, splintered or localized terrorist groups, with the ability to certainly carry out harm and terrorist threats on a more localized scale, but not on the same global scale on which al-Qaeda has operated. As a result, they will be more similar to the other terrorist groups in the world that the United States is currently not at war with, such as Hamas, Hezbollah, and FARC, despite the fact that al Qaeda could continue to be a threat, as these groups have been for decades and continue to be.53 However, the organization will no longer be a terrorist organization which behaves like a state actor engaged in a military conflict, and as a result, the United States will no longer be at war. As a matter of law and policy, the United States has been at war with al-Qaeda, the Taliban, and their affiliates and associates responsible for the attacks of 9/11.54 The early policy statements of the Bush Administration that we were in a “War on Terror” were policy statements, rather than statements of a legal nature,55 as the war was always confined to the groups that “planned, authorized, committed or aided” the 9/11 attacks as per the AUMF.56 Some have argued that both the Bush and Obama Administrations have fairly liberally interpreted this authority.57 It is the “warlike” characteristic of al-Qaeda’s attack and the AUMF that supported the U.S. response that gave both administrations the legitimacy that they did have to treat members of these forces as enemy combatants, killing them on the battlefield and in other types of targeted strikes. When al-Qaeda is no longer behaving like a military enemy, we should continue to treat them as we treat other terrorist groups around the world—using traditional methods of law enforcement. Achieving this military victory over al-Qaeda has another extremely significant implication for the United States. It will have to begin an orderly drawdown of the detainees remaining at Guantanamo Bay, consistent with the international law of war.58 In Iraq, during 2008–2009, the United States was able to drawdown nearly 25,000 detainees predominantly from the facilities in Camp Bucca and Camp Cropper over the course of about eighteen months as the conflict was ending.59 While it was a challenging process, it was achieved in an orderly and timely manner consistent with the laws of war. There are some people that would argue that we should keep the detainees at Guantanamo Bay locked away forever, or at least as long as one or every one of these detainees poses a threat to us.60 The detainees at Guantanamo Bay are not being held under a security detention framework, which would make their individual threat level relevant to an individualized determination. Instead, they are held under the law of war, so when that war is over, they must be repatriated or released.61 They may be tried for crimes they committed during the war, either at military commissions, Article III courts, or by host nations.62 Unless some new security detention framework is developed, which seems unlikely at present, the detainees who have not been tried and convicted must be repatriated or released consistent with every other war in history.

**US-EU ties resilient**

**Dennison 13** -- fellow at the London-based think tank, the European Council on Foreign Relations (Susi, 2/22/2013, "Kerry's first trip gives clues on EU-US relations," http://euobserver.com/opinion/119168)

When US leader Barack Obama first announced, in autumn 2011, that he was to intensify the US' role in the Asia-Pacific region, it prompted much hand-wringing in Europe. But it is unclear whether EU-US relations suffered as a result. The European Council on Foreign Relations' (ECFR) latest "scorecard," which tracks the effectiveness of European foreign policy year on year, found that in 2012 **EU-US ties were resilient**. We cited as evidence the success of the G8 summit at Camp David and the Nato summit in Chicago in May 2012, compared with the G20 summit in Los Cabos a month later, which delivered little and drew precious little attention. Whatever the intention may have been with regard to continuing or reducing US resources in MENA, throughout 2012, American attention kept being drawn to the region. From supporting Arab transitions, most notably in Egypt, to the ongoing conflict in Syria, to the Iranian nuclear programme and Israel's Operation Pillar of Defence in Gaza in autumn, the US remained watchful. In the majority of these dossiers **co-ordination with the EU has remained close**, on the E3+3 process on Iran, through the Friends of Syria Group and at the UN. As a result, the European External Action Service (EEAS) delegation in Washington is one of a select few EEAS missions which has begun to play a serious negotiation and co-ordination role in advancing EU policy.

## Afghanistan

#### Cooperation prevents Afghan war

**Hadar 11**

former prof of IR at American U and Mount Vernon-College. PhD in IR from American U (1 July 2011, Leon, Saving U.S. Mideast Policy, http://nationalinterest.org/commentary/saving-us-policy-the-mideast-5556)

Indeed, contrary to the warning proponents of U.S. military intervention typically express, **the withdrawal of** American **troops from** Iraq and **Afghanistan would not** necessarily **lead to more chaos** and bloodshed in those countries. **Russia, India and Iran—which supported the Northern Alliance that helped Washington topple the Taliban—and Pakistan** (which once backed the Taliban) **all have close ties to various** ethnic and tribal **groups** in that country **and now have a common interest in stabilizing Afghanistan and containing the rivalries.**

#### No impact to failure in Afghanistan— The Taliban won’t take over the whole country and they wont support Al Qaeda

Innocent and Carpenter 9

[Malou, foreign policy analyst on Pakistan and Afghanistan at Cato; Ted Galen, Vice President for defense and foreign policy at Cato; “Escaping the Graveyard of Empires,” http://www.cato.org/pubs/wtpapers/escaping-graveyard-empires-strategy-exit-afghanistan.pdf]

Moreover, the worst-case scenario—the resurrection of the Taliban’s fundamentalist regime—does not threaten America’s sovereignty or physical security. Many policymakers who call for an indefinite military presence in Afghanistan conflate bin Laden’s network—a transnational jihadist organization—with the Taliban—an indigenous Pashtun-dominated movement. But the Taliban and other parochial fighters pose little threat to the sovereignty or physical security of the United States. The fear that the Taliban will take over a contiguous fraction of Afghan territory is not compelling enough of a rationale to maintain an indefinite, large-scale military presence in the region, especially since the insurgency is largely confined to predominately Pashtun southern and eastern provinces and is unlikely to take over the country as a whole, as we saw in the 1990s. Even if the Taliban were to reassert themselves amid a scaled down U.S. presence, it is not clear that the Taliban would again host al Qaeda. In The Looming Tower: Al-Qaeda and the Road to 9/11, Lawrence Wright, staff writer for New Yorker magazine, found that before 9/11 the Taliban was divided over whether to shelter Osama bin Laden.14 The terrorist financier wanted to attack Saudi Arabia’s royal family, which, according to Wright, would have defied a pledge Taliban leader Mullah Omar made to Prince Turki al-Faisal, chief of Saudi intelligence (1977–2001), to keep bin Laden under control. The Taliban’s reluctance to host al Qaeda’s leader means it is not a foregone conclusion that the same group would provide shelter to the same organization whose protection led to their overthrow. America’s claim that the Taliban is its enemy, and its preoccupation with the group’s admittedly reprehensible practices, seems less than coherent. After all, although some U.S. officials issued toothless and perfunctory condemnations of the Taliban when it controlled most of Afghanistan from September 1996 through October 2001, during that time the United States never once made a substantive policy shift toward or against the Taliban despite knowing that it imposed a misogynistic, oppressive, and militant Islamic regime onto Afghans. For Washington to now pursue an uncompromising hostility toward the Taliban’s eye-for-an-eye brand of justice can be interpreted as an opportunistic attempt to cloak U.S. strategic ambitions in moralistic values.

**Their impacts are empirically denied and instability is inevitable**

**Innocent and Carpenter ‘9**

(Malau, Foreign Policy – Cato Institute, and Ted Galen, VP for Defense and Foreign Policy Studies – Cato, “Escaping the "Graveyard of Empires": A Strategy to Exit Afghanistan"”, 9-14, <http://www.cato.org/pubs/wtpapers/escaping-graveyard-empires-strategy-exit-afghanistan.pdf>)

Some analysts, including Carnegie Endowment senior associate Robert Kagan, insist that were the United States to evacuate Afghanistan, the political and military vacuum left by our departure would lead to serious instability throughout the region.19 But instability, in the sense of a perpetually anarchic state of nature dominated by tribal warlords and pervasive bloodshed, has characterized the region for decades—even centuries. Thus, the claim that Afghanistan would be destabilized if the United States were to decrease its presence is misleading, since Afghanistan will be chronically unstable regardless. Most Americans are simply oblivious to the region’s history. Numerous tribes along the border of northwest Pakistan and southern and eastern Afghanistan have a long history of war-making and rebellion, now erroneously branded as “Talibanism.”20 King’s College London professor Christian Tripodi, an expert on British colonial-era tribal policy, explains what British administrators confronted when dealing with Pashtun tribes along what is today the frontier between Afghanistan and Pakistan: What the British refused to grasp was that tribal raiding and violence was not necessarily a product of poverty or lack of opportunity. The tribes viewed raiding as honourable and possibly quite fun, an activity that was centuries old, rooted in their culture and one of those things that defined a man in a society that placed a premium upon independence and aggression.21

Instability is inevitable but wont escalate

Finel 9 [Dr. Bernard I. Finel, an Atlantic Council contributing editor, is a senior fellow at the American Security Project, “Afghanistan is Irrelevant,” Apr 27 http://www.acus.org/new\_atlanticist/afghanistan-irrelevant]

It is now a deeply entrenched conventional wisdom that the decision to “abandon” Afghanistan after the Cold War was a tragic mistake. In the oft-told story, our “abandonment” led to civil war, state collapse, the rise of the Taliban, and inevitably terrorist attacks on American soil. This narrative is now reinforced by dire warnings about the risks to Pakistan from instability in Afghanistan. Taken all together, critics of the Afghan commitment now find themselves facing a nearly unshakable consensus in continuing and deepen our involvement in Afghanistan. The problem with the consensus is that virtually every part of it is wrong. Abandonment did not cause the collapse of the state. Failed states are not always a threat to U.S. national security. And Pakistan’s problems have little to do with the situation across the border. First, the collapse of the Afghan state after the Soviet withdrawal had little to do with Western abandonment. Afghanistan has always been beset by powerful centrifugal forces. The country is poor, the terrain rough, the population divided into several ethnic groups. Because of this, the country has rarely been unified even nominally and has never really had a strong central government. The dominant historical political system in Afghan is warlordism. This is not a consequence of Western involvement or lack thereof. It is a function of geography, economics, and demography. Second, there is no straight-line between state failure and threats to the United States. Indeed, the problem with Afghanistan was not that it failed but rather that it “unfailed” and becameruled by the Taliban. Congo/Zaire is a failed state. Somalia is a failed state. There are many parts of the globe that are essentially ungoverned. Clearly criminality, human rights abuses, and other global ills flourish in these spaces. But the notion that any and all ungoverned space represents a core national security threat to the United States is simply unsustainable. Third, the problem was the Taliban regime was not that it existed. It was that it was allowed to fester without any significant response or intervention. We largely sought to ignore the regime — refusing to recognize it despite its control of 90% of Afghan territory. Aside from occasional tut-tutting about human rights violations and destruction of cultural sites, the only real interaction the United States sought with the regime was in trying to control drugs. Counter-drug initiatives are not a sound foundation for a productive relationship for reasons too numerous to enumerate here. Had we recognized the Taliban and sought to engage the regime, it is possible that we could have managed to communicate red lines to them over a period of years. Their failure to turn over bin Laden immediately after 9/11 does not necessarily imply an absolute inability to drive a wedge between the Taliban and al Qaeda over time. Fourth, we are now told that defeating the Taliban in Afghanistan is imperative in order to help stabilize Pakistan. But, most observers seem to think that Pakistan is in worse shape now — with the Taliban out of power and American forces in Afghanistan — than it was when the Taliban was dominant in Afghanistan. For five years from 1996 to 2001, the Taliban ruled Afghanistan and the Islamist threat to Pakistan then was unquestionably lower. This is not surprising actually. Insurgencies are at their most dangerous — in terms of threat of contagion — when they are fighting for power. The number of insurgencies that actually manage to sponsor insurgencies elsewhere after taking power is surprising low. The domino theory is as dubious in the case of Islamist movements as it was in the case of Communist expansion. There is a notion that “everything changed on 9/11.” We are backing away as a nation from that concept in the case of torture. Perhaps we should also come to realize that our pre-9/11 assessment of the strategic value and importance of Afghanistan was closer to the mark that our current obsession with it. We clearly made some mistakes in dealing with the Taliban regime. But addressing those mistakes through better intelligence, use of special forces raids, and, yes, diplomacy is likely a better solution than trying to build and sustain a reliable, pro-Western government in Kabul with control over the entire country.

#### Instability inevitable – factionalism and corruption and no US plan

David Wood, Huffington Post, “Leon Panetta On Afghanistan War Withdrawal: 'We're Not Gonna Walk Backward'”, 1/10/2013

"Afghanistan is hurtling toward a devastating political crisis," the International Crisis Group reported this fall, concluding, "Plagued by factionalism and corruption, Afghanistan is far from ready to assume responsibility for security when U.S. and NATO forces withdraw in 2014."¶ In an equally glum assessment, Anthony Cordesman, a senior fellow at the Center for Strategic and International Studies in Washington, writes that "there has been no meaningful military progress since the end of 2010." With Afghan presidential elections scheduled for April, 2014, Cordesman said he worries that there are "no public U.S. plans that show how the Obama administration will deal with either the civil or military aspects of this transition between now and the end of 2014, or in the years that follow."

#### No one models US courts

Verseeg 13

[Mila Versteeg, Associate Professor at the University of Virginia School of Law. Model, Resource, or Outlier? What Effect Has the U.S. Constitution Had on the Recently Adopted Constitutions of Other Nations?, 29 May 2013, [www.heritage.org/research/lecture/2013/05/model-resource-or-outlier-what-effect-has-the-us-constitution-had-on-the-recently-adopted-constitutions-of-other-nations](http://www.heritage.org/research/lecture/2013/05/model-resource-or-outlier-what-effect-has-the-us-constitution-had-on-the-recently-adopted-constitutions-of-other-nations), \\wyo-bb]

Unsurprisingly, attempting to gauge one constitution’s “influence” on another involves various conceptual and methodological challenges. To illustrate, a highly generic constitution may be generic because others have followed its lead, because it has modeled others, or simply by coincidence. That said, if two constitutions are becoming increasingly dissimilar, by definition, one cannot be following the other. That is, neither is exerting influence on the other (at least not in a positive way).¶ This is the phenomenon we observed in comparing the U.S. Constitution to the rest of the world; based on the rights index, the U.S. has become less similar to the world since 1946 and, with a current index of 0.30, is less similar now than at any point during the studied period. This phenomenon has occurred even among current American allies; among countries in regions with close cultural and historic ties to the U.S. (namely, Latin America and Western Europe); and among democracies. Only among common law countries is constitutional similarity higher than it was after World War II, but even that similarity has decreased since the 1960s.¶ Rights provisions are not the only constitutional elements that have lost favor with the rest of the world; structural provisions pioneered by American constitutionalism—such as federalism, presidentialism, and judicial review—have also been losing their global appeal.¶ For instance, in the early 20th century, 22 percent of constitutions provided for federalistic systems, while today, just 12 percent do.¶ A similar trend has occurred for presidentialism, another American innovation. Since the end of World War II, the percentage of countries employing purely presidential systems has declined, mainly in favor of mixed systems, which were a favorite of former Soviet bloc countries.¶ Finally, though judicial review is not mentioned in the U.S. Constitution, it has proved the most popular American structural innovation. But though the popularity of judicial review in general has exploded over the past six decades, most countries have opted for the European style of review (which designates a single, constitutional court which alone has the power to nullify laws inconsistent with the constitution) over the American model (in which all courts are empowered to strike unconstitutional laws). In 1946, over 80 percent of countries exercised American-style constitutional review; today, fewer than half do.¶ Reasons for the Decline¶ It appears that several factors are driving the U.S. Constitution’s increasing atypicality. First, while in 2006 the average national constitutions contained 34 rights (of the 60 we identify), the U.S. Constitution contains relatively few—just 21—and the rights it does contain are often themselves atypical.¶ Just one-third of constitutions provide for church and state separation, as does the U.S. Establishment Clause, and only 2 percent of constitutions (including, e.g., Mexico and Guatemala) contain a “right to bear arms.” Conversely, the U.S. Constitution omits some of the most globally popular rights, such as women’s rights, the right to social security, the right to food, and the right to health care.¶ These peculiarities, together with the fact that the U.S. Constitution is both old and particularly hard to amend, have led some to characterize the Constitution as simply antiquated or obsolete.

#### Fourth, Too many alt causes to solve

GALSTON ‘10

[William, Senior Fellow, Governance Studies, Brookings Institute, “A Question of Life and Death: U.S. Policy in Afghanistan,” http://www.brookings.edu/opinions/2010/0615\_afghanistan\_galston.aspx]

The fact that I feel compelled to pose this question so soon after the completion of President Obama’s painstaking review reflects the mounting evidence that the results of that policy have fallen far short of expectations. Let’s begin at the beginning, with Marja. The holy trinity of modern counterinsurgency is clear, hold, and build. Coalition forces are stalled at step one. After the initial military thrust, many Taliban fighters, including mid-level commanders, swooped back in to the area to intimidate local inhabitants who might otherwise be inclined to cooperate with the coalition and Afghan government. Many other Afghanis sympathize with the core Taliban message that we intend to occupy their country for the long-term with the aim of imposing alien cultural, religious, and political values. It is hard to see what will tip this stalemate in our favor, even harder to see how we can hand over governance and security function to the Afghans in Marja any time soon. Brigadier General Frederick Hodges, one of the leading commanders in southern Afghanistan, puts it this way: “You’ve got to have the governance part ready to go. We talked about doing that in Marja but didn’t realize how hard it was to do. Ultimately, it’s up to the Afghans to step forward.” It’s clear that Hodges is not holding his breath. The next shoe to drop was Kandahar. Ever since this Taliban stronghold was identified as a key target, the tension between the U.S. and Afghan governments on this issue has been palpable—so much so that the coalition is now hesitant to call what it has in mind an “offensive.” Just last week, we learned that the operation scheduled to begin in the spring would fall even farther behind schedule. As The New York Times reports, “The Afghan government has not produced the civilian leadership and trained security forces it was to contribute to the effort, U.S. officials said, and the support from Kandaharis that the United States was counting on Karzai to deliver has not materialized.” Stanley McChrystal, the top commander in Afghanistan, has been admirably frank about a core difficulty: the residents of Kandahar are far from sure that they want the protection we claim to be offering them. On to Kabul, where President Karzai has reportedly lost faith in the coalition’s ability (and that of his own government) to defeat the Taliban and is secretly maneuvering to strike a separate deal with them. If these reports are correct—and Susan Rice, our UN ambassador, disputed them on Sunday (though, notably, she offered no new evidence in support of her assertion that Karzai remains a committed partner)—two events appear to be fueling his growing disenchantment: senior American officials’ claims that his reelection lacked legitimacy, and President Obama’s December announcement that he intended to begin reducing the number of American troops by July 2011. One might be tempted to chalk up the extent of our difficulties in Afghanistan to tendentious reporting. I was skeptical myself—that is, until I stumbled across a stunning NATO/ISAF report completed in March. This report summarizes the results of an in-depth survey conducted in nine of the 16 districts in Kandahar Province to which researchers could safely gain access. Here are some of the findings: \* Security is viewed everywhere as a major problem. When asked to name the top dangers experienced while traveling on the roads, far more respondents named Afghan National Army and Police checkpoints than roadside bombs, Taliban checkpoints, or criminals. And the Taliban were rated better than ISAF convoys and checkpoints as well. \* Corruption is viewed as a widespread problem and is experienced by respondents on a regular basis. In fact, 84 percent say that corruption is the main reason for the current conflict. Corruption erodes confidence in the Afghan government, and fully two-thirds of respondents believe that this corruption forces them to seek alternatives to government services and authority. Chillingly, 53 percent regard the Taliban as “incorruptible.” \* The residents of Kandahar overwhelmingly prefer a process of reconciliation to the prospect of continued conflict. Ninety-four percent say that it is better to negotiate with the Taliban than to fight with them, and they see grounds for believing that these negotiations will succeed. Eighty-five percent regard the Taliban as “our Afghan brothers” (a phrase President Karzai repeated word for word in his address to the recent jirga), and 81 percent say that the Taliban would lay down their arms if given jobs. Our military commanders in Afghanistan talk incessantly about the need to “shape” the political context in a given area before beginning activities with a significant military component—but if their own research is correct, our chances of “shaping” Kandahar any time soon range from slim to none. Based on General McChrystal’s own logic, then, we cannot proceed there because a key requirement for success is not fulfilled. And if we can’t prevail in Kandahar, then we’re stuck with the Taliban as a long-term military presence and political force in Afghanistan. And finally, on to Pakistan. Despite skeptical reports from our own intelligence services, U.S. government officials have taken recently to praising the authorities in Islamabad for their stepped-up cooperation in the fight against the Taliban. But a report from the London School of Economics made public over the past weekend questions the basis for this optimism. Based on interviews with nine current Taliban field commanders and ten former senior Taliban officials as well as dozens of Afghan leaders, the report argues that relations between the Taliban and the Pakistani intelligence (the ISI) are dense and ongoing. One senior southern Taliban leader said: “Every group commander knows the reality—which is obvious to all of us—that the ISI is behind the Taliban, they formed and are supporting the Taliban. … Everyone sees the sun in the sky but cannot say it is the sun.” Worse, the report offers credible though not conclusive evidence that Pakistani President Zadari has been personally involved in the release of numerous Taliban prisoners from Pakistani jails, reportedly telling them that they had been arrested only because of American pressure. Surveying the evidence, Matt Waldman, the report’s author, concludes that “Pakistan appears to be playing a double-game of astonishing magnitude” and that “without a change in Pakistani behaviour it will be difficult if not impossible for international forces and the Afghan government to make progress against the insurgency.”

#### Too many alt causes for them to resolve for an instability impact:

#### Allied forces can’t prevent recruitment or fighting

David Wood, Huffington Post, “Leon Panetta On Afghanistan War Withdrawal: 'We're Not Gonna Walk Backward'”, 1/10/2013

Despite hard fighting by U.S., allied and Afghan forces and the sacrifices to which Panetta referred, "the insurgency has nevertheless retained its capability to carry out attacks at almost the same level as last year," the Pentagon acknowledged.¶ The Pentagon said the insurgents are able to recruit fighters to replace battlefield losses and will continue to fight with "high profile attacks, assassinations of officials, insider attacks and IEDs."

#### Taliban power too high

The Hindu, 13

(“Figuring out Afghanistan” January 11, 2013 <http://www.thehindu.com/opinion/editorial/figuring-out-afghanistan/article4295391.ece>) KH

The big question about the scheduled 2014 departure of American troops from Afghanistan is whether the country is going to descend again, as it did after the Soviet departure, into ferocious fighting between warlords until the Taliban emerged supreme, or if the semblance of government that exists now can stave off such a scenario. This is the question that Afghan President Hamid Karzai and United States President Barack Obama will seek to answer at their meeting on Friday. The realisation, two years ago, that defeating the Taliban was impossible triggered cautious efforts at exploring ways to deal with them politically. As 2014 approaches, those efforts have picked up speed, with the Obama administration keen to leave behind an arrangement that can help it claim a semblance of political achievement from the military intervention. Through the facilitation of a French think-tank, representatives of the Karzai government’s High Peace Council met Taliban representatives in France last month. The position that the Taliban representatives took at the meeting contained no surprises. They denounced the Constitution, do not want the 2014 elections to be held, and believe their Islamic Emirate, ousted by U.S. forces after 9/11, was the best thing that happened to Afghanistan. There was no renouncing of ties with al-Qaeda. With the underlying tone one of contempt towards the Karzai government, it is hard to escape the impression that the Taliban are not so much interested in negotiation with Kabul as a deal with the U.S. for a return to power. Given this, the High Council’s “Peace Process Roadmap to 2015” sounds unrealistic. It visualises a deal based on respect for the Constitution — a ceasefire with the Taliban and other armed groups by the end of 2013, their transformation into political parties and participation in the following year’s elections. In reality, it makes a huge pragmatic concession to the Taliban by envisaging “non-elected” positions in the “power structure.” This has already raised concern within and outside Afghanistan, not least because it is no secret that Pakistan has been working both sides of the table. Pakistan’s stakes are understandable: post-2014, any instability in Afghanistan is most likely to first wash across the Durand Line, adding to its existing woes. But it is not clear if it realises that any attempt to use its influence with the Taliban to create instability in the neighbourhood after 2014 would rebound on it. Locked out of the process after all the talk of a ‘regional’ solution, India’s primary worry would be Pakistan’s intentions. New Delhi, which has not yet articulated an official response to the Chantilly talks, must flag its concerns.

# 2NC

## CP

### 2NC Solvency Extension

**Lack of clarity is inevitable with the plan – only a constitutional amendment solves**

**Omestad 8** (Thomas, Senior Writer – U.S. Institute of Peace, “Clearing Up a President's War-Making Powers,” US News, 7-9, <http://www.usnews.com/news/articles/2008/07/09/clearing-up-a-presidents-war-making-powers>)

**The report represents one of the more practical attempts to deal with the accumulation of presidential power**—at Congress's expense—that started with the Cold War and the nuclear age. It actively shuns the deal-breaking big questions that would tip power in either direction on Pennsylvania Avenue: "We do not resolve the ambiguity of the Constitution," says former Democratic Rep. Lee Hamilton, a commission member. Adds Baker, "**What we have designed here is a practical solution to a debate that is not going to be resolved** unless the Supreme Court of the United States decides to resolve it or **unless we have a constitutional amendment**."

**The current system is marked by confusion**—**and de facto disregard for the law**. **The War Powers Resolution** of 1973 was written in the bitter aftermath of escalation and deception by administrations of both parties during the Vietnam War. But its **provisions are essentially ignored**. **No president has ever formally complied with its requirement to report on a conflict** in a way that would trigger its time limits on military action. "There was always a feeling that it was unconstitutional," said Edwin Meese, an attorney general in the Reagan years and a commission member.

Yet **many in Congress have been reluctant to press their role in deciding on war**, even as they score partisan points about putting soldiers in harm's way or incompetent war planning.

Though a constant of recent decades, **the lack of clarity over war powers could well shoot back to the fore in times of crisis**. The House and Senate are considering hard-hitting resolutions on Iran that critics contend could be cited by the Bush administration as providing legal standing for initiating a war.

**The latest effort to bring reform to the war powers question wouldn't block a president from acting, but it would demand that he or she consult**—and that Congress take a clear stand—on future wars.

**The system is inherently confusing – ONLY amendments solve, the aff CAN’T**

**Goldstein 88** (Yonkel, J.D. – Stanford Law School, “The Failure of Constitutional Controls over War Powers in the Nuclear Age: The Argument for a Constitutional Amendment,” Stanford Law Review, July, 40 Stan. L. Rev. 1543, Lexis)

CONCLUSION

The **control of nuclear weapons is an issue of paramount importance**. This control is grounded in the United States system of civilian control over the military. Historically, **confusion has existed about precisely how the system works**. The system of civilian control virtually broke down during the Truman Administration, although it had shown signs of strain even before that time. The Vietnam War and events in the post-Vietnam era substantiate the conclusion that the original constitutional system for controlling the country's war powers is defunct. It is past time to develop a new control system.

The amendment I propose attempts to develop such a system in the context of the nuclear age. **Any legal solution less drastic than a constitutional amendment will not have sufficient** **force to overcome the conflicting past practice**. **Any proposal** which just focuses on one or two particular nuclear scenarios **will provide inadequate control**. Although my proposal leaves a great number of specific questions to be answered, it provides a solid framework in which answers to those questions can begin to take shape.

### Amendments CPs Good

#### Amendment CPs are good:

#### Key to test the agent of the judicial restriction agent-the Supreme Court

#### Comparative institutional analysis refers to comparisons between the three branches of government

**Schuck, 05**  (Peter, professor of law at Yale, Suing the Gun Industry: A Battle at the Crossroads of Gun Control and Mass Torts, ed: Timothy Lytton, <http://www.press.umich.edu/pdf/gun_litigation-ch9.htm>)

Institutional comparison is rooted historically in the legal process school of jurisprudence strongly identi‹ed with the work of Henry Hart and Albert Sacks at Harvard Law School in the 1950s.18 The methodological premises of the legal process approach are well established in a rich literature with linkages to work in political science, public administration, and economics. At the most foundational level, this approach is concerned with the structure and behavior of institutions. Political theorists have recently elaborated a deep conceptual understanding of the nature of institutions,19 but such abstraction is unnecessary for my purposes. The institutions of chief interest here are the **three standard structures** of political governance and policy development—legislatures, courts, and administrative agencies—as well as the less formal institutions that surround them: the plaintiffs’ and defense bars, the media, the gun industry, gun control groups, and the market.

#### Advocacy: comparative insitutional analysis is vital to participatory activism for social justice

**Komesar, 94** (Neil, professor of law at the University of Wisconsin, Imperfect Alternatives: Choosing Institutions in Law, Economics, and Public Policy, p. 41-42)

Even the constitutions of totalitarian states have contained high-sounding announcements of rights. The welfare of the populace depends on the presence of institutions capable of translating high-sounding principles into substance. Issues of institutional representation and participation seem especially important for the least advantaged, who almost by definition have had difficulties with representation and participation in existing institutional processes. If representation and participation are important for resolving the simpler version of the difference principle, they would seem even more important in confronting the more complicated standard that Michelman derives from Rawls. They would seem more important yet when society faces the immense task of fulfilling a measure of justice that seeks to integrate this difference principle with the concepts of equal opportunity and liberty. Determining the character of the legislature or agency given the task of this integration seems **central** here. The real content of Rawlsian justice depends on such a determination. Any theory of justice capable of even minimally capturing our basic sensibilities has many loosely defined components. Because such loosely defined elements and complicated standards are inherent in goal choice and articulation, the character of institutions that will define and apply these goals becomes an essential – perhaps ***the* essential** – component in the realization of the just society. The more complex and vaguely defined the conception of the good, the more central becomes the issue of who decides – the issue of instiutional choice. The discussion of *Boomer* showed that these questions of institutional choice dominate issues of resource allocation efficiency—a definition of the social good more confined and better defined than broader conceptions of the good such as Rawls’s theory of justice. The lessons about the importance and complexity of institutional choice derived from *Boomer* are even more appropriate with more complex definitions of the good.

#### That is key to testing the overall education on the two agents of the resolution

#### CP is predictable-one of the most generic CPs on the topic. Predictability is the key internal link to fairness

#### Our counterplan is predictable and good for debate.

Forsythe and Presser ‘06

[Clarke D. Director of the Project in Law & Bioethics @ American United for Life and Stephen B., Prof of Legal History @ Northwestern U School of Law, 10 Tex. Rev. Law & Pol. 301, ln]

Our constitutional system provides only two ways to overturn a Supreme Court holding interpreting the Constitution: an overruling decision by the Court itself or a constitutional amendment. Obviously, constitutional amendments are among the most difficult political goals to achieve in our constitutional system. This article is unique in its explanation of the legal effect and implications of a federalism amendment on abortion. Because no previous legal analysis of this kind exists, this article is limited to evaluating the legal impact of a federalism [\*341] amendment. It is beyond the scope of this article to evaluate fully the political obstacles or implications involved in the passage of such an amendment. For those who believe, as we do, that Roe has poisoned our political and judicial discourse, the political obstacles facing such an amendment ought to be weighed against the political obstacles to changing the Court's membership in the coming years to accomplish the same goal. Given that these political obstacles have resulted in a situation where there are only two publicly-declared Justices remaining on the Supreme Court who advocate the overturning of Roe thirty-three years after Roe, the obstacles to a constitutional amendment, while severe, may be less formidable than attempting to overrule Roe by changing the membership of the Court. Even if an amendment is impossible to accomplish, we do believe that legal and strategic dialogue and debate on abortion is healthy for its own sake. It is also possible that the arguments, public education, and political support involved in advocating a federalism amendment, even if Congress fails to consider an amendment, might move future Justices closer to the point of finally overturning this tragic decision.

#### Object fiat not bad- forces you to defend the reasons why your model is good and that your mechanism is necessarily better.

#### At best it is reject the argument not the team

### 1NC- N/L Deference

#### Amendments avoid the link – prior, congressional guidance is key to resolve issues of justiciability – the plan and perm violate SOP by ruling on a political question

Miksha 3 (Andre, Chief Deputy Prosecuting Attorney – Hamilton County Prosecutor's Office (24th Judicial Circuit), “Declaring War on the War Powers Resolution,” Valparaiso University Law Review, 37 Val. U. L. Rev. 651, <http://scholar.valpo.edu/cgi/viewcontent.cgi?article=1264&context=vulr>)

III. THE INFIRMITIES OF THE WAR POWERS RESOLUTION

Given almost thirty years of history, the War Powers Resolution has been criticized as a dead letter and a total failure. n120 Not only has the Resolution been a total failure in fulfilling its stated purposes, but the [\*676] Resolution also suffers from inherent constitutional failings. n121 This Note argues that these ills result from several factors.

First, the Resolution fails to meet the demands of the Constitution because it designs a new system of war powers inconsistent with principles of separation of powers and accountability. n122 Second, the Resolution has been a total failure due to its weak construction of enforcement mechanisms. n123 Third, the necessities of military command and execution require a more strict and swift system. n124 This Note further argues that the solution to the Resolution's ills and to the necessities of American civilian-military decision-making is a constitutional amendment. n125

A. Constitutional Concerns

Although the Resolution began with genuine and virtuous aspirations, it created a system of powers inconsistent with the Constitution in several ways. The Resolution sought to rearrange the separation of the powers held by two major institutions of American government in which the third branch of government has remained reticent regarding this breach of constitutional principles. n126 The Resolution also defies the constitutional value of discourse and accountability by allowing the President to act unilaterally. n127

1. Separation of Powers and Delegation

The Constitution is the document that established the separation of powers and the structure of the federal government. n128 The Resolution reconceived one part of the separation of powers through a simple act of [\*677] Congress. n129 The reconception was improper because it was inconsistent with principles set forth explicitly in the document and with the principle of delegation of power. On the other hand, a constitutional amendment is appropriate because its subject is the determination of the separation of powers, and it sets the rights and responsibilities of the branches in relation to each other. An amendment would help to solidify the limits and responsibilities of the branches of government in a manner consistent with the Constitution itself.

a. General Constitutional Construction

The Constitution gives to Congress the enumerated power to declare war and to the President the power and responsibility to conduct those operations as Commander in Chief. n130 The Framers' make/declare debate shows that they wished Congress to hold the power to initiate hostilities. n131 The early courts were also clear that the President's role was the prosecution of war. n132

The Resolution allows the President to initiate hostilities in some circumstances, but the Resolution's permission is too broad to be considered a declaration because it does not contemplate an actual situation facing the United States. n133 Thus, by granting the President this power, the Resolution rewrites the separation of powers as conceived by the Constitution. Such a rewrite may not be conducted in violation of the principles laid forth in the Constitution because the Supremacy [\*678] Clause states that federal laws must be made in accordance with the Constitution. n134

Some commentators, however, argue that the Framers purposely left the war powers in a cloudy, uncertain arrangement. n135 It is hard to think that the Framers left this great potential for tyranny and abuse to a purely political process without guidance as to how the balance was to be stricken. n136 Some scholars also argue that the power of the purse was a sufficient check on the President; however, this contention is not valid today. n137 Congressional implied consent, which is argued to flow from the unused power of the purse, cannot be constitutionally sufficient either, although it may be supported by recent history. n138 The Supreme Court has only upheld a claim of implied consent in cases involving a proper delegation of power, and the Resolution does not represent a proper delegation. n139

[\*679] b. Improper Delegation of Power

Congress may delegate limited powers that it has been given by the Constitution. n140 The courts have become increasingly willing to uphold delegation against constitutional attack, especially when foreign affairs issues are involved. n141 In accordance with the Star-kist Foods test for proper delegation of power, Congress must provide (1) an "intelligible principle" for the executive to follow, (2) a specific policy or objective, and (3) limits circumscribing that power. n142 One may argue that the War Powers Resolution fit these requirements fully and represented a proper delegation of power. However, based on the historical and political developments, a closer legal analysis reveals that the Resolution was not a proper delegation.

The War Powers Resolution states a purpose and policy but does not provide any guidance as to when the President may introduce forces into hostilities. n143 Section 2(a) of the Resolution states the purpose as an effort to "fulfill the intent of the Framers of the Constitution" and "insure that the collective judgment of both Congress and the President will apply to the introduction of United States Armed Forces into hostilities." n144 Although the purpose is allegedly to guarantee the collective judgment of both the Congress and the President, the provisions of the War Powers Resolution are very weak. n145

Section 2(b) states that Congress has the power to make all laws necessary and proper for carrying into execution its own powers and all other constitutional powers. n146 However, Congress may not wholly delegate legislative powers. n147 The courts have allowed Congress some [\*680] leeway in this area, but only where Congress has provided sufficient guidance that the President is not working in a vacuum.

Section 2(c) states that the President may only act pursuant to a declaration of war, specific statutory authorization, or a national emergency created by an attack upon the United States. n148 This section approaches the sort of guidance that the courts have contemplated; however, this construction relies on specific congressional action in two situations and an attack upon the United States in the third. n149 Given the post-Resolution activities of the President, this paragraph seems to have had no import to the Executive. n150 Thus, through the Resolution's application, presidents have failed to comply with this section by claiming a general unilateral right to take action.

Through these provisions, the Resolution does not create an "intelligible principle" by which the President is guided to decide whether to introduce forces. The President has unbridled discretion. In addition, apart from the three specific situations described in section 2(c), the statute lacks a policy for when the President may act. The only prong of the Star-kist Foods test that may actually be satisfied by the Resolution is the limit on the power delegated because the President is allowed to act only within certain but broad circumstances. However, the Resolution does not suggest to the President how he or she must make the determination to introduce armed forces into hostilities. A proper delegation of power requires no less.

c. Impossible Delegation of Legislative Power

Nevertheless, Congress generally lacks the constitutional ability to delegate legislative powers. n151 Article I of the Constitution makes it clear that all enumerated legislative powers are vested in Congress. n152 In 1892, the Supreme Court recognized the principle that Congress cannot [\*681] constitutionally delegate legislative power to the President. n153 As recently as 1989, the Court reaffirmed that mandate. n154 The war powers are indeed legislative powers and may not be delegated in whole. n155 However, the courts have allowed Congress to delegate purely legislative powers under some circumstances, such as the Federal Sentencing Guidelines, but those delegations involved only a part of the legislative power as Congress merely used the agencies to work out the minute details. n156 This is not the case with the Resolution because Congress neither provided clear guidance nor limited the actual role of the subordinate.

d. The Courts

The courts have been very reserved in foreign affairs matters, but an amendment may make the interpretation of war powers a clear constitutional issue requiring the Supreme Court's analysis. The courts have avoided adjudication of disputes arising under the War Powers Resolution because of the justiciability doctrines of impasse, ripeness, standing, and political question. n157

#### The CP causes enforcement lawsuits – that reigns in deference and results in judicial enforcement. That solves every court advantage and avoids the political question doctrine DA

**Goldstein 88** (Yonkel, J.D. – Stanford Law School, “The Failure of Constitutional Controls over War Powers in the Nuclear Age: The Argument for a Constitutional Amendment,” Stanford Law Review, July, 40 Stan. L. Rev. 1543, Lexis)

V. THE PROPOSED AMENDMENT

**None of the proposals to control nuclear weapons** discussed **above provide the kind of** clarity and definitiveness **which one would hope would characterize the rules governing the initiation and prosecution of a nuclear war. These proposals are grounded not in a line of clear precedent, but in a soggy morass of conflicting principles**. Equally important, there is the perception, by people who regard themselves as hardened realists, that to adhere religiously to orthodox principles of congressional war declaration would be to render the entire nuclear defense deterrence system virtually worthless. [\*1587] **Because of these considerations**, a constitutional amendment concerning the appropriate distribution of war powers should be adopted. **More than any other legislative or rulemaking device, a constitutional amendment has a chance of commanding sufficient authority to be credible**, **especially in time of crisis**. Because the constitutional problems associated with the control of nuclear weapons are so closely related to the war powers in general, **the amendment must deal with war powers generally**. Because technical capabilities of weapons and defense systems can change relatively rapidly, it is important that the amendment does not rigidly lock the nation into any specific procedure which is sure to become obsolete. Finally, **the amendment ought to account for the recent congressional tendency to avoid taking stands on controversial issues until public opinion has** clearly **been discerned**. Although the desire of members of Congress to see how their constituencies regard an issue is understandable, **following massive public sentiment is not a viable option in many nuclear scenarios**. Analogous to this congressional hesitancy is the Judiciary's reluctance to involve itself in questions of this kind. If my characterization of the problem is correct, namely that the Executive, aided by judicial acquiescence, has expanded its powers at the expense of congressional power, only one additional source of power on the federal level remains -- that is, of course, the people. The amendment proposed below attempts to take all of the above considerations into account. Congress shall be required to supervise and oversee military planning, capabilities, and readiness. Congress, as part of its ordinary legislative powers and its extraordinary power to declare war, shall have absolute authority to govern, control, and direct all aspects of the structure and functioning of the armed forces. This power includes the right to issue orders to the Commander in Chief, as well as subordinate civilian and military authorities. This power shall be delegable in whatever way Congress sees fit including, but not limited to, congressional committees and subcommittees, the Executive department, or to technical systems. **The** failure of Congress to provide adequate oversight to war-planning shall be a **justiciable** cause of action against Congress as a whole. **If the court hearing such a complaint finds that Congress has not adequately** **discharged** its **responsibility** to **consider** fully **all the requisite factors related to military planning**, capabilities, and readiness, **the court may grant an injunction directing Congress to consider the particular factors at issue** and to **come to a rationally based plan**. No substantive outcome may be ordered by the court**.** The court's final order shall be appealable through normal judicial channels. **The** first paragraph of this **amendment clarifies that** Congress is the highest authority **in the military chain of command**. Inasmuch as the President has a role in the "normal" legislative process, the President continues to have an important voice, subject to Congressional veto. For [\*1588] most purposes the first paragraph returns to the original constitutional distribution of war powers. **It** potentially **infringes on the presidential power to retaliate**, however, should Congress enact restrictive legislation. Likewise, **the presidential ability to present Congress with faits accomplis might potentially be restricted**. Neither of these situations, however, is very likely, absent some overwhelming crisis which would motivate Congress to take such action. **Under this proposal Congress** **will be motivated to design a system** that allows for realistic military responses by the Executive, **lest it face the threat of lawsuits**.

### 2NC A2 Can’t Solve Precedent-Based Advantages

**Amendments institutionalize US position on war powers – solves the signal**

**White 4** (William W., Lecturer in Public and International Affairs and Senior Special Assistant to the Dean at Woodrow Wilson School of Public and International Affairs – Princeton University, “Human Rights and National Security: The Strategic Correlation,” Harvard Human Rights Journal, Spring, 17 Harv. Hum. Rts. J. 249, Lexis)

C. Addressing Aggressor States: Human Rights and Interstate Signaling

**A foreign policy which accounts for the linkage between human rights** and interstate aggression **would view a state's human rights record as a potential signaling device** for its international intentions. Traditionally, it is very difficult for a state to send a signal to other states that it does not have aggressive international intentions. Asymmetric information in any international negotiation presents a significant challenge. One side rarely fully understands the interests and intent of the other. n118 Signaling offers a means by which states can overcome the problems of incomplete information by revealing their intentions to others. **The difficulty with signaling**, however, **is that states often send misleading signals or they are misinterpreted** by their audiences. n119 **For signaling to be effective it is necessary to identify a clear indicator** that can not easily be manipulated by the sending state or misinterpreted by the receiving state. **Lasting institutionalized changes in human rights policy can provide such a signaling mechanism**.

**Significant improvements in** a previously repressive state's **human rights policy can signal** an **intent** not to engage in international aggression. **For such a signal to be credible the state must clearly do more** than release a few political prisoners or offer pro-human rights rhetoric. But **institutionalized changes in human rights policies**--**such as** new legislation or **constitutional amendments** that are actually practiced, genuine limits on police and military power over citizens, or the independence of the judiciary to review the executive's human rights policies--**offer credible signals** that the state is less likely to engage in international aggression. n120 States of concern can utilize the linkage between human rights and international aggression as a means to send unambiguous signals of the lack of aggressive intent through institutionalized improvements in human rights practices. A foreign policy informed [\*273] by human rights would closely monitor human rights developments so as to properly read such signals and potentially improve relations with states that institutionalize human rights protections.

**The institutionalization of human rights protections is not only a means of signaling benign intent**, but is also inversely correlated with a state's ability to engage in aggressive conduct. As a state embeds human rights protections in its domestic system--even without democratization--a number of structural changes occur within the society that limit aggressive potential. First, as Thomas Risse and Kathryn Sikkink have argued, a culture of human rights may develop within the population and become institutionalized domestically. n121 Such a human rights culture would reject international aggression as a threat to the human rights of citizens in other states. Second, **institutionalization of human rights protections expands the ability of citizens to voice opposition to aggressive state policy through freedoms of belief, speech, and assembly**. Third, institutionalization erodes the ability of the state to coerce its citizens into providing the resources and human capital necessary for aggressive war. n122

A brief example is illustrative of the use of human rights policy as a signaling device. Iran is currently a state of considerable concern to U.S. foreign policy because of alleged WMD programs and links to terrorists. n123 Obviously, it is difficult for Iran to show that it does not seek WMD or links with terrorist organizations. One powerful means for Iran to escape its current categorization as a member of the "axis of evil" is to signal benign international intent through institutionalization of human rights protections. If Iran, for example, were to greatly expand its de jure and de facto freedoms of speech, assembly, and belief, the United States should read that as a signal of potentially benign international intent and seek to improve bilateral relations. This is not to say that WMD and terrorism should be ignored, but where allegations are hard to prove and impossible to falsify, human rights policy offers a good proxy of a state's international intentions and should be responded to as such. If, on the other hand, significant denigration of human rights policy, such as the January 2004 disqualification of nearly half the parliamentary candidates by the Guardian Council, were to continue in Iran, [\*274] that would signal a greater likelihood of international aggression and provide sound reason for a firmer U.S. policy. n124

**The institutionalization** of human rights protections **also provides a way for a current government to prevent future governments from aggressive international behavior**. **By locking in human rights protections now through constitutional changes** or judicial review, a **present government can limit the hand of future governments, denying them the institutional or political ability to engage in aggressive war or impinge on human rights**.

**Amendments send a GLOBAL signal**

**Herlihy 6** (Sarah P., J.D. – Chicago-Kent College of Law, “Amending the Natural Born Citizen Requirement: Globalization as the Impetus and the Obstacle,” Chicago-Kent Law Review, 81 Chi.-Kent L. Rev. 275, Lexis)

7. **The Signal this Amendment Would Send to the Rest of the World**

Americans may oppose a Constitutional amendment because of the international perception that it would create. Even though the increase of globalization dictates that America should amend the natural born citizen requirement, Americans may oppose a Constitutional amendment because this type of change would signal to the rest of the world that America is willing to be one country of many and that Americans are interested in becoming part of a global world culture. **Commentators refer to the symbolic nature of the law** as the "expressive function of law" **and recognize that Constitutional amendments may have a dual effect**. n78 For example, a Constitutional amendment to ban flag burning may not only deter people from burning American flags but also signal how important patriotism is to America. n79 Similarly, opponents of a Constitutional amendment to amend the natural born citizen clause may believe that such an amendment would have dual effects. In addition to allowing naturalized citizens to become president, **this amendment would signal to the global community that Americans want to become integrated with the rest of the world and that Americans no longer feel the need to be the leading country in the world but are content in being on equal footing with every other country**. Although some Americans may believe that **the expressive function of a Constitutional amendment is a positive signal to send**, United States foreign [\*296] policy indicates otherwise. Specifically, the United States government, led by the President who is elected by the people, takes great care in preserving its position as the world's only superpower. n80 In light of this consistent policy, it is doubtful that Americans will support an amendment to the presidential eligibility clause because this could send the wrong signal to the rest of the world.

## Legitimacy

#### Squo expansion of drone warfare undermines U.S. moral standing, breeds Anti-Americanism, and undermines our credibility

Brooks 13

Rosa Brooks, Prof of Law @ Georgetown University Law Center and Bernard Schwartz Senior Fellow at the New America Foundation, Statement for the Record Submitted the Senate Committee on Armed Services, May 16, 2013.

Former vice-chair of the Joint Chiefs of Staff General James Cartwright recently ¶ expressed concern that as a result of U.S. drone strikes, the U.S. may have “ceded some of our ¶ moral high ground.”35 Retired General Stanley McChrystal has expressed similar concerns:¶ “The resentment created by American use of un~~manned~~ strikes… is much greater than the ¶ average American appreciates. They are hated on a visceral level, even by people who’ve never ¶ seen one or seen the effects of one,” and fuel “a perception of American arrogance.” 36 Former ¶ Director of National Intelligence Dennis Blair agrees: the U.S. needs to “pull back on unilateral ¶ actions… except in extraordinary circumstances,” Blair told CBS news in January. U.S. drone ¶ strikes are “alienating the countries concerned [and] …threatening the prospects for long-term ¶ reform raised by the Arab Spring…. [U.S. drone strategy has us] walking out on a thinner and ¶ thinner ledge and if even we get to the far extent of it, we are not going to lower the fundamental ¶ threat to the U.S. any lower than we have it now.”37¶ Mr. Chairman, Senator Inhofe, I believe it is past time for a serious overhaul of U.S.¶ counterterrorism strategy. This needs to include a rigorous cost-benefit analysis of U.S. drone ¶ strikes, one that takes into account issues both of domestic legality and international legitimacy, ¶ and evaluates the impact of targeted killings on regional stability, terrorist recruiting, extremist ¶ sentiment, and the future behavior or powerful states such as Russia and China. If we undertake ¶ such a rigorous cost-benefit analysis, I suspect we may come to see scaling back on kinetic ¶ counterterrorism activities less as an inconvenience than as a strategic necessity—and we may¶ come to a new appreciation of counterterrorism measures that don’t involve missiles raining ¶ from the sky.¶ This doesn’t mean we should never use military force against terrorists. In some ¶ circumstances, military force will be justifiable and useful. But it does mean we should ¶ rediscover a long-standing American tradition: reserving the use of exceptional legal authorities ¶ for rare and exceptional circumstances. ¶ Thank you for the opportunity to testify today.

**Credibility can’t affect the structural reasons why heg solves war**

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

**The U**nited **S**tates **should start planning** now for **the inevitable decline of its preeminent position** in world politics. By taking steps now, the United States will be able to position itself to exercise maximum influence beyond its era of preponderance. This will be America’s fourth attempt at world order. The first, following World War I and the creation of the League of Nations, was a disaster. The second and third, coming in 1945 and 1989-1991, respectively, should be considered significant achievements of U.S. foreign policy and of creating world order. This fourth attempt at world order will go a long way in determining the basic shape and character of world politics and international history for the twenty-first century. The most fundamental necessity for the United States is to create a stable political order that is likely to endure, and that provides for stable relations among the great powers. The United States and other global stakeholders must prevent a return to the 1930s, an era defined by open trade conflict, power competition, and intense nationalism. Fortunately, the United States is in a good position to do this. **The global political order that now exists is largely of American creation. Moreover, its** forward **presence** **in Europe and East Asia will** likely **persist for decades** to come, **ensuring that the U**nited **S**tates **will remain a major player in these regions**. **The disparity in military power between the U**nited **S**tates **and the rest of the world is profound, and this gap will not close in the next several decades at least**. In creating a new global political order for twenty-first century world politics, the United States will have to rely on both the realist and liberal traditions of American foreign policy, which will include deterrence and power balancing, but also using international institutions to shape other countries’ preferences and interests. Adapt International Institutions for a New Era of World Politics. The United States should seek to ensure that the global rules, institutions, and norms that it took the lead in creating---which reflect basic American preferences and interests, thus constituting an important element of American power---outlive American preeminence. We know that institutions acquire a certain ‘‘stickiness’’ that allow them to exist long after the features or forces at the time of their creation give way to a new landscape of global politics. **The transaction costs of creating a whole new international**---**or even regional**--- **institutional architecture that would compete with the American post-World** **War II vintage would be enormous. Institutions** **such as the** International Monetary Fund (**IMF), World Bank, and** World Trade Organization (**WTO), all reflect** basic **American preferences for an open trading system and**, with a few exceptions, **have near-universal membership and overwhelming legitimacy**. **Even states with which the U**nited **S**tates **has significant** political, economic, or diplomatic **disagreement**---China, Russia, and Iran---**have strongly desired membership in these ‘‘Made in USA’’ institutions. Shifts in the global balance of power will be reflected in these institutions**---such as the decision at the September 2009 Pittsburgh G-20 summit to increase China’s voting weight in the IMF by five percentage points, largely at the expense of European countries such as Britain and France. **Yet these institutions**, if their evolution is managed with deftness and skill, **will disproportionately benefit the U**nited **S**tates **long after the demise of its** **unparalleled position in world politics.** **In this sense, the U**nited **S**tates **will be able to ‘‘lock in’’ a durable international order that will continue to reflect its** own basic **interests** and values.Importantly, the United States should seek to use its vast power in the broad interest of the world, not simply for its own narrow or parochial interests. During the second half of the twentieth century the United States pursued its own interests but also served the interests of the world more broadly. And there was intense global demand for the collective goods and services the United States provided. The United States, along with Great Britain, are history’s only two examples of liberal empires. Rather than an act of altruism, this will improve America’s strategic position. States and societies that are prosperous and stable are less likely to display aggressive or antagonistic behavior in their foreign policies. There are things the United States can do that would hasten the end of American preeminence, and acting in a seemingly arbitrary, capricious, and unilateral manner is one of them. The more the rest of the world views the American-made world as legitimate, and as serving their own interests, the less likely they will be to seek to challenge or even transform it.19 Cultivate Balance of Power Relationships in Other Regions. **The U**nited **S**tates **enjoys better relations with most states than these states do with their regional neighbors**. South and East Asia are regions in which distrust, resentment, and outright hostility abound. **The U**nited **S**tates **enjoys** relatively **strong** (if far from perfect) strategic **relationships with** most of the **major states in Asia**, including Japan, India, Pakistan, and South Korea. The United States and China have their differences, and a more intense strategic rivalry could develop between the two. However, right now the relationship is generally stable. With the possible exception of China (but perhaps **even Beijing views the American military presence** in East Asia **as an assurance against Japanese revanchism**), these **countries prefer a U.S. presence in Asia**, **and** in fact **view** good **relations with the U**nited **S**tates **as indispensable for their own security.**

#### No spillover – Crumbling reputation in one area doesn’t affect other areas like security

Brooks and Wohlforth, Assistant Professor and Professor in Government at Dartmouth, 5 (Stephen G. and William C., “International Relations Theory and the Case against Unilateralism,” Perspectives on Politics, Vol. 3, No. 3, September)

This argument that the institutional order is imperiled if the United States does not strongly invest in maintaining a multilateral reputation is a potentially powerful caution against succumbing to the unilateral temptation, but it ultimately rests on weak theoretical foundations. Despite the fact that reputation “now stands as the linchpin of the dominant neoliberal institutionalist theory of decentralized cooperation,” it remains woefully underdeveloped as a concept.64 In the most detailed theoretical analysis to date of the role that reputation plays within international institutions, George Downs and Michael Jones decisively undermine the institutionalist conception of reputation. As they note, institutionalist theory rests on the notion that “states carry a general reputation for cooperativeness that determines their attractiveness as a treaty partner both now and in the future . . . A defection in connection with any agreement will impose reputation costs that affect all current and future agreements.”65 But, they object, no theoretical justification has been provided in the literature to back up this institutionalist view that a state possesses “a single reputation for cooperation that characterizes its expected reliability in connection with every agreement to which it is party.”66 Drawing on rational choice theory, Downs and Jones show that a far more compelling theoretical case can be made that states have multiple reputations—each particular to a specific agreement or issue area. For this reason, they find that “the reputational consequences of defection are usually more bounded” than institutionalist scholarship currently presumes.” 67 If America has, for example, one reputation associated with the UN and another regarding the WTO, then lack of compliance with the former organization will in no way directly undercut its ability to gain cooperation in the latter. As Downs and Jones note, viewing states as having multiple reputations “helps to explain why, despite the prevalence of the unitary reputation assumption, examples of a state’s defection from an agreement in one area (for example, environment) jeopardizing its reputation in every other area (for example, trade and security) are virtually nonexistent in the literature.”68 This conclusion is consistent with the two most detailed studies of reputation in IR, which decisively undercut the notion that states have a general reputation that will strongly influence how other states relate across different issue areas.69 In the end, the current lack of an empirical or theoretical justification for the notion that states carry a single reputation means that we have no basis for accepting the institutionalists’ argument that America must endorse multilateralism across the board because to do otherwise has consequences that endanger the entire institutional order. That, together with theory’s lack of purchase on the issues of coordination costs and bargaining power, invalidates the institutionalist argument about the high cost of unilateralism.

**Alliances solve their impact, not hegemony**

**Friedman 10** Ben, research fellow in defense and homeland security, Cato. PhD candidate in pol sci, MIT, Military Restraint and Defense Savings, 20 July, http://www.cato.org/testimony/ct-bf-07202010.html

Another argument for high military spending is that U.S. military hegemony underlies global stability. Our forces and alliance commitments dampen conflict between potential rivals like China and Japan, we are told, preventing them from fighting wars that would disrupt trade and cost us more than the military spending that would have prevented war. The theoretical and empirical foundation for this claim is weak. It overestimates both the American military's contribution to international stability and the danger that instability abroad poses to Americans. In Western Europe, U.S. forces now contribute little to peace, at best making the tiny odds of war among states there slightly more so.7 Even in Asia, where there is more tension, the history of international relations suggests that without U.S. military deployments potential rivals, especially those separated by sea like Japan and China, will generally achieve a stable balance of power rather than fight. In other cases, as with our bases in Saudi Arabia between the Iraq wars, U.S. forces probably create more unrestthan they prevent. Our force deployments can also generate instability by prompting states to develop nuclear weapons. Even when wars occur, their economic impact is likely to be limited here.8 By linking markets, globalization provides supply alternatives for the goods we consume, including oil. If political upheaval disrupts supply in one location, suppliers elsewhere will take our orders. Prices may increase, but markets adjust. That makes American consumers less dependent on any particular supply source, undermining the claim that we need to use force to prevent unrest in supplier nations or secure trade routes.9 Part of the confusion about the value of hegemony comes from misunderstanding the Cold War. People tend to assume, falsely, that our activist foreign policy, with troops forward supporting allies, not only caused the Soviet Union's collapse but is obviously a good thing even without such a rival. Forgotten is the sensible notion that alliances are a necessary evil occasionally tolerated to balance a particularly threatening enemy. The main justification for creating our Cold War alliances was the fear that Communist nations could conquer or capture by insurrection the industrial centers in Western Europe and Japan and then harness enough of that wealth to threaten us — either directly or by forcing us to become a garrison state at ruinous cost. We kept troops in South Korea after 1953 for fear that the North would otherwise overrun it. But these alliances outlasted the conditions that caused them. During the Cold War, Japan, Western Europe and South Korea grew wealthy enough to defend themselves. We should let them. These alliances heighten our force requirements and threaten to drag us into wars, while

## Warfighting

#### Second, Detention is only a small part of terrorist recruitment—the aff can’t solve

Lynch 2010(Marc, Associate Professor of Political Science and the Director of the Institute for Middle East Studies at the George Washington University Elliot School of International Affairs, June, "Rhetoric and Reality: Countering Terrorism in the Age of Obama", http://www.cnas.org/files/documents/publications/CNAS\_Rhetoric%20and%20Reality\_Lynch.pdf)

The nature of the threat posed by al Qaeda has changed significantly in the years since 9/11. There are at least three interlocking dimensions to the al Qaeda challenge: the central organization, often termed al Qaeda Central; a network of affiliated movements; and a decentralized network of like- minded groups and individuals. Al Qaeda in any variant is no longer capable of attracting mass Arab support as it may have appeared back in 2001 and 2002. Its ability to appeal to mainstream Muslims as the avatar of resistance to the United States has dramatically declined since peaking mid-decade. However, its ideology and networks have taken root in several capable and resilient local affiliates, and in an increasingly active Western milieu. Despite years of pressure and the recent escalation of drone strikes that have reportedly decimated its leadership, the core of the organization remains intact – presumably in Pakistan – as does its ability to craft and disseminate narratives attractive to specific populations susceptible to radicalization. Recent plots against the American homeland sug - gest the possibility of a new strategy. U.S. strategy has begun to adapt, and should continue, to adapt to the evolving nature of the threat. Al Qaeda’s reduced mass appeal should not be taken for granted. In the months after 9/11, even as American forces were destroying al Qaeda’s sanctuary in Afghanistan, many feared that it was the vanguard of a mass movement capable of uniting Muslims against the West. Many Muslims who knew little about al Qaeda or bin Laden found the narrative it presented – of an America leading a global campaign against Islam – plausible. While al Qaeda was motivated by a distinctive salafi-jihadist ideology, bin Laden’s public rhetoric and the propaganda videos directed toward mainstream Arab audiences focused on issues of widely-shared Arab and Muslim concern: Palestine, Iraq, domestic corruption and American hegemony. After 9/11, this narrative gained strength even as al Qaeda’s core leadership was scattered and damaged by the American invasion of Afghanistan. Israel’s bloody re-occupation of the West Bank in April 2002, the invasion of Iraq, Abu Ghraib, Guantanamo and American rhetoric all fueled al Qaeda’s narrative. Its propaganda wove such developments together to argue that the United States was in fact at war with Islam – a belief that became alarmingly widespread across the Muslim world – and that al Qaeda represented the authentic leader of the Islamic world in that struggle.

#### Expansive use of targeted killing causes blowback, collateral damage, and operational errors— new guidelines key

Guiora, 2012

[Amos, Professor of Law, S.J. Quinney College of Law, University of Utah, Targeted killing: when proportionality gets all out of proportion, Case Western Reserve Journal of International Law. 45.1-2 (Fall 2012): p235., Academic onefile] /Wyo-MB

Morality in armed conflict is not a mere mantra: it imposes significant demands on the nation state that must adhere to limits and considerations beyond simply killing "the other side." For better or worse, drone warfare of today will become the norm of tomorrow. Multiply the number of attacks conducted regularly in the present and you have the operational reality of future warfare. It is important to recall that drone policy is effective on two distinct levels: it takes the fight to terrorists directly involved, either in past or future attacks, and serves as a powerful deterrent for those considering involvement in terrorist activity. (53) However, its importance and effectiveness must not hinder critical conversation, particularly with respect to defining imminence and legitimate target. The overly broad definition, "flexible" in the Obama Administration's words, (54) raises profound concerns regarding how imminence is applied. That concern is concrete for the practical import of Brennan's phrasing is a dramatic broadening of the definition of legitimate target. It is also important to recall that operators--military, CIA or private contractors--are responsible for implementing executive branch guidelines and directives. (55) For that very reason, the approach articulated by Brennan on behalf of the administration is troubling. This approach, while theoretically appealing, fails on a number of levels. First, it undermines and does a profound injustice to the military and security personnel tasked with operationalizing defense of the state, particularly commanders and officers. When senior leadership deliberately obfuscates policy to create wiggle room and plausible deniability, junior commanders (those at the tip of the spear, in essence) have no framework to guide their operational choices. (56) The results can be disastrous, as the example of Abu Ghraib shows all too well. (57) Second, it gravely endangers the civilian population. What is done in the collective American name poses danger both to our safety, because of the possibility of blow-back attacks in response to a drone attack that caused significant collateral damage, and to our values, because the policy is loosely articulated and problematically implemented.(58) Third, the approach completely undermines our commitment to law and morality that defines a nation predicated on the rule of law. If everyone who constitutes "them" is automatically a legitimate target, then careful analysis of threats, imminence, proportionality, credibility, reliability, and other factors become meaningless. Self-defense becomes a mantra that justifies all action, regardless of method or procedure.

through coercive interrogation, involves hearsay, or is otherwise inadmissible.

#### The aff releases all these terrorists

Taylor 2009

(Stuart Taylor, January 30, 2009, “Obama's Dangerous Detainees,” National Journal, http://www.nationaljournal.com/njmagazine/or\_20090117\_2727.php)

News reports suggest that the Obama transition team may be pushing for an approach that could mean releasing within a year as many as 100 (or perhaps even more) Guantanamo detainees who appear to be dangerous but may not be prosecutable for any crimes.¶ In particular, a New York Times front-pager reported on January 13 that sources "said the incoming administration appeared to have rejected a proposal to seek a new law authorizing indefinite detention inside the United States" of any of the approximately 250 Guantanamo detainees.¶ This seems to imply that Obama will either continue to rely on Bush's legal arguments for continued detention without charges -- arguments that many Obama supporters have assailed -- or yield to the demands of left-leaning human-rights groups that he release any and all Guantanamo detainees who cannot be criminally prosecuted.¶ But the president-elect said on January 11, on ABC's This Week , that he wants "a process that adheres to [the] rule of law [but] doesn't result in releasing people who are intent on blowing us up." He also said that "many" detainees who "may be very dangerous" present special problems because "some of the evidence against them may be tainted even though it's true." And Eric Holder testified on Thursday, during the Senate confirmation hearing on his nomination to be attorney general, that "I don't think . . . we can release" people known to be dangerous.¶ What kind of process does Obama have in mind? If seeking a new detention law has been ruled out -- a scoop that The Times attributed somewhat shakily to "people who have conferred with transition officials" -- Obama would have only two options for dealing with the 100 or so apparently-dangerous-but-perhaps-not-prosecutable detainees.¶ The first option would be to continue Bush's military detention of these men as "enemy combatants," presumably in the mainland United States. But doing so would open Obama to accusations of simply relocating Bush's Guantanamo prison camp in the guise of closing it. It also would risk continuing Bush's losing streak in the courts, which are now hearing petitions for release by many Guantanamo detainees and also by some of the hundreds of U.S. prisoners in Afghanistan.¶ The second option would be to release or transfer to other countries all of those who cannot be prosecuted. That group could include men such as these:¶ \* Abd al Rahman al Zahri, who the government claims had prior knowledge of the 9/11 attacks and who declared at a military hearing: "I'm not one of [Osama bin Laden's] men and not one of his individuals. I am one of his sons. I will kill myself for him and will also give my family and all of my money to him.... With the help of God, we will stand mujahedeen and terrorists against Americans."¶ \* Mohammed al Qahtani, who, the public evidence strongly suggests, was sent by Al Qaeda from London to Orlando, Fla., to be the 20th hijacker in the 9/11 suicide attacks. He was turned back by an alert immigration agent at the Orlando airport on August 4, 2001, while Mohamed Atta was waiting to meet him. Qahtani has become a cause celebre among human-rights groups because he was subjected in 2002 to what many call torture. Susan Crawford, the senior official in charge of deciding whether to bring Guantanamo detainees to trial, dismissed all charges against him last May. She recently told The Washington Post's Bob Woodward that she would not allow any new charges to go forward because "we tortured Qahtani." But she added: "He's a very dangerous man. What do you do with him now if you don't charge him and try him? I would be hesitant to say, 'Let him go.' " The left-leaning Center for Constitutional Rights, which represents Qahtani, has said that he "should be sent back to Saudi Arabia's highly successful custodial rehabilitation program."¶ \* Mohammad Ahmed Abdullah Saleh al Hanashi, who is probably more typical of the apparently-dangerous-but-perhaps-not-prosecutable group. He was Taliban cannon fodder. He admitted during a military hearing, "I was with the Taliban" and said he fought on the front lines against the Northern Alliance. Men such as him may be unlikely recruits for terrorist attacks against the U.S. but might well, if released, rejoin Taliban attacks on U.S. forces in Afghanistan.

#### Second, No risk of terror attack—organizations weak

Zenko and Cohen 2013(Micah, Fellow in the Center for Preventive Action at the Council on Foreign Relations, and Michael, Fellow at the Century Foundation, March 14, "Clear and Present Safety", Foreign Affairs, Accessed from http://yaleglobal.yale.edu/content/clear-and-present-safety)

None of this is meant to suggest that the United States faces no major challenges today. Rather, the point is that the problems confronting the country are manageable and pose minimal risks to the lives of the overwhelming majority of Americans. None of them -- separately or in combination -- justifies the alarmist rhetoric of policymakers and politicians or should lead to the conclusion that Americans live in a dangerous world.¶ Take terrorism. Since 9/11, no security threat has been hyped more. Considering the horrors of that day, that is not surprising. But the result has been a level of fear that is completely out of proportion to both the capabilities of terrorist organizations and the United States’ vulnerability. On 9/11, al Qaeda got tragically lucky. Since then, the United States has been preparing for the one percent chance (and likely even less) that it might get lucky again. But al Qaeda lost its safe haven after the U.S.-led invasion of Afghanistan in 2001, and further military, diplomatic, intelligence, and law enforcement efforts have decimated the organization, which has essentially lost whatever ability it once had to seriously threaten the United States. ¶ According to U.S. officials, al Qaeda’s leadership has been reduced to two top lieutenants: Ayman al-Zawahiri and his second-in-command, Abu Yahya al-Libi. Panetta has even said that the defeat of al Qaeda is “within reach.” The near collapse of the original al Qaeda organization is one reason why, in the decade since 9/11, the U.S. homeland has not suffered any large-scale terrorist assaults. All subsequent attempts have failed or been thwarted, owing in part to the incompetence of their perpetrators. Although there are undoubtedly still some terrorists who wish to kill Americans, their dreams will likely continue to be frustrated by their own limitations and by the intelligence and law enforcement agencies of the United States and its allies.

#### Third, al Qaida now weakened

Sigger, 10 (Jason, Defense Policy Analyst focusing on Chemical, Biological, Radiological and Nuclear Defense issues, “Terrorism Experts Can Be Alarmists, Too”, http://armchairgeneralist.typepad.com/my\_weblog/2010/01/terrorism-experts-can-be-alarmists-too-1.html)

You find the famous bin Laden 1998 quote about WMDs, references from George "slam dunk" Tenet's book on al Qaeda intentions and actions in the desert, meetings between Muslim scientists and suppliers, statements by terrorists that were obtained under "interrogations," and yes, even Jose Padilla's "dirty bomb" - a charge which people may remember the US government dropped because it had no evidence on this point. And no discussion about AQ would be complete without the "mobtaker" device that never really emerged in any plot against the West. That is to say, we have a collection of weak evidence of intent without any feasible capability and zero WMD incidents - over a period of fifteen years, when AQ was at the top of their game, they could not develop even a crude CBRN hazard, let alone a WMD capability. Mowatt-Larsen doesn't attempt to answer the obvious question - why didn't AQ develop this capability by now? He points to a June 2003 article where the Bush administration reported to the UN Security Council that there was a "high probability" that al Qaeda would attack with a WMD within two years. The point that the Bush administration could have been creating a facade for its invasion into Iraq must have occurred to Mowatt-Larsen, but he dodges the issue. This is an important report to read, but not for the purposes that the author intended. It demonstrates the extremely thin thread that so many terrorist experts and scientists hang on when they claim that terrorists are coming straight at the United States with WMD capabilities.

# 1NR – Deference

#### Turns aff-Crises inevitably cause rollback of the plan

Laura **Young 13**, Ph.D., Purdue University Associate Fellow, June 2013, Unilateral Presidential Policy Making and the Impact of Crises, Presidential Studies Quarterly, Volume 43, Issue 2

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

#### And Outweighs their mechanism

Laura **Young 13**, Ph.D., Purdue University Associate Fellow, June 2013, Unilateral Presidential Policy Making and the Impact of Crises, Presidential Studies Quarterly, Volume 43, Issue 2

**During** periods of **crisis**, the **time** **available to make decisions is limited**. Because the decision-making process is often arduous and slow in the legislative branch, it is not uncommon for the executive branch to receive deference during a crisis because of its ability to make swift decisions. The **White House centralizes policies during this time**, **and presidents seize these opportunities to expand their power** to meet policy objectives. Importantly, **presidents do so with limited opposition** from the public or other branches of government (Howell and Kriner 2008). In fact, despite the opposition presidents often face when centralizing policies, research shows policies formulated via centralized processes during times of crisis receive more support from Congress and the American people (Rudalevige 2002, 148-49). For several reasons, **a crisis allows a president to promote his agenda through unilateral action**. First, a critical **exogenous shock shifts attention and public opinion** (Birkland 2004, 179). This shift is a phenomenon known as **the “rally round the flag” effect** (Mueller 1970). The rally effect occurs because of the public's increase in “its support of the president in times of crisis or during major international events” (Edwards and Swenson 1997, 201). Public support for the president rises because he is the leader and, therefore, the focal point of the country to whom the public can turn for solutions. Additionally, **individuals are more willing to support the president unconditionally during such times**, hoping a “united front” will increase the chance of success for the country (Edwards and Swenson 1997, 201). **As a result, a crisis** or focusing event **induces an environment that shifts congressional focus, dispels gridlock and partisanship, and increases positive public opinion**—**each of which is an important determinant for successful expansion of presidential power** (Canes-Wrone and Shotts 2004; Howell 2003). In other words, a crisis embodies key elements that the institutional literature deems important for presidential unilateral policy making. The president's ability to focus attention on a particular issue is also of extreme importance if he wishes to secure support for his agenda (Canes-Wrone and Shotts 2004; Edwards and Wood 1999; Howell 2003; Neustadt 1990). The role the media play is pivotal in assisting a president in achieving such a result because of its ability to increase the importance of issues influencing the attention of policy makers and the priorities of viewers. Although it is possible a president can focus media attention on the policies he wishes to pursue through his State of the Union addresses or by calling press conferences, his abilities in this regard are limited, and the media attention he receives is typically short lived (Edwards and Wood 1999, 328-29). High-profile events, on the other hand, are beneficial because they allow the president to gain focus on his agenda. This occurs because the event itself generates attention from the media without presidential intervention. Thus, the ability of crises to set the agenda and shift media and public attention provides another means for overcoming the constraints placed upon the president's ability to act unilaterally. Finally, Rudalevige finds support that **a crisis increases the success of presidential unilateral power** even if the policy process is centralized. A crisis allows little time to make decisions. As a result, “the president and other elected officials are under pressure to ‘do something’ about the problem at hand” (2002, 89, 148). Because swift action is necessary, presidents rely on in-house advice. As a result, **the policy formation process is centralized, and the president receives deference to unilaterally establish policies** to resolve the crisis. During a crisis, the president has greater opportunity to guide policy because **the event helps him overcome the congressional and judicial obstacles** **that typically stand in his way**.2 **This affords the president greater discretion in acting unilaterally** (Wildavsky 1966). It is possible the institutional make-up of the government will align so that the president will serve in an environment supportive of his policy decisions. It is also likely a president will have persuasive powers that enable him to gain a great deal of support for his policy agenda. **An event** with the right characteristics, however, **enhances the president's ability to act unilaterally, regardless of the institutional** make-up of **government** or his persuasive abilities.

#### Turns Terror- Judicial deference to the executive is key to prevent global risks of terrorism and nuclear disasters

Gelev ‘11

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of the Australian State of Victoria, “Checks and balances of risk management: precautionary logic and the judiciary,” 10.14.2011. //wyo-hdm]

In the early 21st century governments across the world have gone further than ever before in taking measures to prevent catastrophic events because to react after an event is seen as inadequate: governments proscribe organisations and blacklist individuals, increase border controls and surveillance within national borders, impose control orders and detain people without trial.1 Most International Relations (IR), and some legal, scholars have strongly criticised such government practices. They have either ignored the judiciary or put their faith in a judiciary acting as a check on the other two branches of government. On the basis of the history of judicial deference during earlier periods of crisis, as chronicled by other legal scholars, the author’s hypothesis is that it is naïve to expect that in the period since 11 September 2001 the judiciary will take on a role to curb executive power in all or even in most cases. The courts may have the power but not necessarily the willingness to restrict executive or parliamentary excesses. Since the publication of Ulrich Beck’s book Risk Society discussions of risk have become ubiquitous in many diﬀerent disciplines.9 According to Beck, today we live in a ‘risk society’ characterised by uncontrollable risks, which are human-made and beyond boundaries,10 global and universal.11 Nobody is safe against risk society’s ‘bads’ carrying potentially catastrophic or irremediable eﬀects:12 pollution, global pandemics, or nuclear disasters.13 One of risk society’s key ideas is that decision-makers should take precautionary measures to prevent or minimise harm where there is uncertainty about the nature and extent of the relevant risk.14 After 9/11 Beck added terrorism to the list of ‘dimensions’ of risk society.15 The principles of precaution should now apply to decisions relating to terrorism. When taken to its extreme, this logic dictates that decision-makers should act based on nothing more than ‘actionable suspicion’, or a 1 per cent chance, that a disaster may occur.

#### Turns their military readiness advantage- Non-deferential judicial review kills military readiness

Chensey 9 (Robert M. is a Professor at University of Texas School of Law, NATIONAL SECURITY FACT DEFERENCE, VIRGINIA LAW REVIEW, 17 September 2009, http://www.virginialawreview.org/content/pdfs/95/1361.pdf, pg. 1426-1428)

Advocates of deference at times also emphasize the collateral ¶ consequences that non-deferential judicial review of executive ¶ branch factual judgments might have on related government operations or activities. On this view, the benefits of judicial review—¶ measured in terms of enforcement of separation of powers values ¶ or even enhancement of accuracy—in some circumstances may be ¶ outweighed by collateral costs entailed by the very process of nondeferential, or insufficiently deferential, review. ¶ When precisely does this argument come into play? Advocates ¶ of deference do not contend that collateral costs outweigh potential benefits in all national security related litigation. Indeed, the ¶ argument played no significant role in most of the examples surveyed in Part I. Most if not all judicial review of government action, after all, entails some degree of disruption to government operations. Government personnel, for example, often are obliged to ¶ spend some amount of time and resources participating, directly or ¶ indirectly, in the process of litigation, whether by serving as witnesses in a formal sense, gathering and reviewing documents, ¶ speaking informally with attorneys or investigators, and so forth. ¶ These litigation related activities to some extent are bound to disrupt the performance of ordinary government functions. ¶ But some such disruptions are more serious than others. Disruption of military activity, for example, may impose unusually high ¶ costs. So said Justice Jackson in Johnson v. Eisentrager,¶ 218 a postWorld War II decision denying habeas rights to a group of Ger-[page 1427] mans convicted of war crimes and detained in a U.S. controlled facility in Germany. Jackson gave many reasons for the decision, but ¶ placed particular emphasis on the undesirable practical consequences that would, in his view, follow from permitting any judicial ¶ review in this setting. These included: disruption of ongoing military operations, expenditure of scarce military resources, distraction of field commanders, harm to the prestige of commanders, and ¶ comfort to armed enemies.219 The government not surprisingly emphasized such concerns in the Hamdi litigation as well, though with ¶ much less success; and similar arguments continue to play a significant role today as courts grapple with still unresolved questions regarding the precise nature of habeas review of military determinations of enemy combatant status.220¶ But even in the enemy combatant setting, where disruption concerns arguably are near their zenith, this argument does not necessarily point in the direction of fact deference as the requisite solution. It did not persuade the Supreme Court in Hamdi to defer to ¶ the government’s factual judgment, nor did it do so in the more recent decision in Boumediene v. Bush dealing with noncitizen detainees held at Guantánamo. The impact of the argument in those ¶ cases instead was to prompt the Court to accept procedural innovations designed to ameliorate the impact of judicial review, rather ¶ than seeking to avoid that impact via deference.221 This is a useful ¶ reminder that even when the executive branch raises a legitimate ¶ concern in support of a fact deference argument, it does not follow ¶ automatically that deference is the only mechanism by which the ¶ judiciary can accommodate the concern. ¶ This leaves the matter of secrecy. Secrecy relates to the collateral consequences inquiry in the sense that failure to maintain secrecy with respect to national security information can have extralitigation consequences for government operations—as well as for [page 1428] individuals or even society as a whole—ranging from the innocuous ¶ to the disastrous. Without a doubt this is a significant concern. But, ¶ again, it is not clear that deference is required in order to address ¶ it. Preservation of secrecy is precisely the reason that the state secrets privilege exists, of course, and it also is the motive for the ¶ Classified Information Procedures Act, which establishes a process ¶ through which judges work with the parties to develop unclassified ¶ substitutes for evidence that must be withheld on secrecy ¶ grounds.222

### UQ

#### Detention cases haven’t derailed deference

(Entin 12) Jonathan L. Entin, Associate Dean for Academic Affairs (School of Law), David L. Brennan Professor of Law, and Professor of Political Science, Case Western Reserve University., “WAR POWERS, FOREIGN AFFAIRS, AND THE COURTS: SOME INSTITUTIONAL CONSIDERATIONS” CASE WESTERN RESERVE JOURNAL OF INTERNATIONAL LAW - VOL. 45 2012, <http://heinonline.org.proxy.library.umkc.edu/HOL/Page?collection=journals&handle=hein.journals/cwrint45&type=Text&id=451>

Although these procedural and jurisdictional barriers to judicial review can be overcome, those who seek to limit what they regard as executive excess in military and foreign affairs should not count on the judiciary to serve as a consistent ally. The Supreme Court has shown substantial deference to the president in national security cases. Even when the Court has rejected the executive's position, it generally has done so on relatively narrow grounds. Consider the Espionage Act cases that arose during World War I. Schenck v. United States,' which is best known for Justice Holmes's 58. Id. (citing U.S. CONST. art. I, § 7, cl. 2 ("If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress, by their adjournment prevent its return, in which Case it shall not be a Law. announcement of the clear and present danger test, upheld a conviction for obstructing military recruitment based on the defendant's having mailed a leaflet criticizing the military draft although there was no evidence that anyone had refused to submit to induction as a result. Justice Holmes almost offhandedly observed that "the document would not have been sent unless it had been intended to have some effect, and we do not see what effect it could be expected to have upon persons subject to the draft except to influence them to obstruct the carrying of it out.""4 The circumstances in which the speech took place affected the scope of First Amendment protection: "When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight and that no Court could regard them as protected by any constitutional right."@6 A week later, without mentioning the clear and present danger test, the Court upheld the conviction of the publisher of a German-language newspaper for undermining the war effort6 and of Eugene Debs for a speech denouncing the war.67 Early in the following term, Justice Holmes refined his thinking about clear and present danger while introducing the marketplace theory of the First Amendment in Abrams v. United States,68 but only Justice Brandeis agreed with his position.69 The majority, however, summarily rejected the First Amendment defense on the basis of Holmes's opinions for the Court in the earlier cases.70 Similarly, the Supreme Court rejected challenges to the government's war programs during World War II. For example, the Court rebuffed a challenge to the use of military commissions to try German saboteurs.7 Congress had authorized the use of military tribunals in such cases, and the president had relied on that authorization in directing that the defendants be kept out of civilian courts.71 In addition, the Court upheld the validity of the Japanese internment program.73 Of course, the Court did limit the scope of the program by holding that it did not apply to "concededly loyal" citizens.74 But it took four decades for the judiciary to conclude that some of the convictions that the Supreme Court had upheld during wartime should be vacated.5 Congress eventually passed legislation apologizing for the treatment of Japanese Americans and authorizing belated compensation to internees.76 The Court never directly addressed the legality of the Vietnam War. The Pentagon Papers case, for example, did not address how the nation became militarily involved in Southeast Asia, only whether the government could prevent the publication of a Defense Department study of U.S. engagement in that region." The lawfulness of orders to train military personnel bound for Vietnam gave rise to Parker v. Levy,78 but the central issue in that case was the constitutionality of the provisions of the Uniform Code of Military Justice that were the basis of the court-martial of the Army physician who refused to train medics who would be sent to the war zone.79 The few lower courts that addressed the merits of challenges 1 to the legality of the Vietnam War consistently rejected those challenges. The picture in the post-2001 era is less clear. In three different cases the Supreme Court has rejected the executive branch's position, but all of those rulings were narrow in scope. For example, Hamdi v. Rumsfeld" held that a U.S. citizen held as an enemy combatant must be given a meaningful opportunity to have a neutral decision-maker determine the factual basis for his detention. There was no majority opinion, however, so the implications of the ruling were ambiguous to say the least. Justice O'Connor's plurality opinion for four members of the Court concluded that Congress had authorized the president to detain enemy combatants by passing the Authorization for Use of Military Force" and that the AUMF satisfied the statutory requirement of congressional authorization for the detention of U.S. citizens.' Justice Souter, joined by Justice Ginsburg, thought that the AUMF had not in fact authorized the detention of American citizens as required by the statute," which suggested that Hamdi should be released. But the Court would have been deadlocked as to the remedy had he adhered to his view of how to proceed. This was because Justices Scalia and Stevens also believed that Hamdi's detention was unlawful and that he should be released on habeas corpus," whereas Justice Thomas thought that the executive branch had acted within its authority and therefore would have denied relief."6 This alignment left four justices in favor of a remand for more formal proceedings, four other justices in favor of releasing Hamdi, and one justice supporting the government's detention of Hamdi with no need for a more elaborate hearing. To avoid a deadlock, therefore, Justice Souter reluctantly joined the plurality's remand order.87 Hamdi was atypical because that case involved a U.S. citizen who was detained. The vast majority of detainees have been foreign nationals. In Hamdan v. Rumsfeld," the Supreme Court ruled that the military commissions that the executive branch had established in the wake of the September 11 attacks had not been authorized by Congress and therefore could not be used to try detainees.9 A concurring opinion made clear that the president could seek authorization from Congress to use the type of military commissions that had been established unilaterally in this case.' Congress responded to that suggestion by enacting the Military Commissions Act of 2006,91 which sought to endorse the executive's detainee policies and to restrict judicial review of detainee cases. In Boumediene v. Bush," the Supreme Court again rejected the government's position. First, the statute did not suspend the writ of habeas corpus.93 Second, the statutory procedures for hearing cases involving detainees were constitutionally inadequate." At the same time, the Court emphasized that the judiciary should afford some deference to the executive branch in dealing with the dangers of terrorism 15 and should respect the congressional decision to consolidate judicial review of detainee cases in the District of Columbia Circuit.96 Detainees who have litigated in the lower federal courts in the District of Columbia have not found a sympathetic forum. The U.S. Court of Appeals for the D.C. Circuit has not upheld a single district court ruling that granted any sort of relief to detainees, and the Supreme Court has denied certiorari in every post-Boumediene detainee case in which review was sought.97 In only one case involving a detainee has the D.C. Circuit granted relief, and that case came up from a military commission following procedural changes adopted in the wake of Boumediene.9" About a month after this symposium took place, in Hamdan v. United States" the court overturned a conviction for providing material support for terrorism. The defendant was the same person who successfully challenged the original military commissions in Hamdan v. Rumsfeld.100 This very recent ruling emphasized that the statute under which he was prosecuted did not apply to offenses committed before its enactment.'01 It remains to be seen how broadly the decision will apply. Meanwhile, other challenges to post-2001 terrorism policies also have failed, and the Supreme Court has declined to review those rulings as well. For example, the lower courts have rebuffed claims asserted by foreign nationals who were subject to extraordinary rendition. In Arar v. Ashcroft,'02 the U.S. Court of Appeals for the Second Circuit affirmed the dismissal of constitutional and statutory challenges brought by a plaintiff holding dual citizenship in Canada and the United States. 103 And in Mohamed v. Jeppesen Dataplan, Inc.,"'0 the U.S. Court of Appeals for the Ninth Circuit held that the state-secrets privilege barred a separate challenge to extraordinary rendition brought by citizens of Egypt, Morocco, Ethiopia, Iraq, and Yemen.' Unlike Arar, in which the defendants were federal officials,'o this case was filed against a private corporation that allegedly assisted in transporting the plaintiffs to overseas locations where they were subjected to torture.10 Although at least four judges on the en banc courts dissented from both rulings,0 the Supreme Court declined to review either case.109

### Link

#### [2] Link is specifically true in the context of detention.

Vaughns 13 (B.A. (Political Science), J.D., University of California, Berkeley, School of Law. Professor of Law, University of Maryland Francis King Carey School of Law.Of Civil Wrongs and Rights: Kiyemba v. Obama and the Meaning of Freedom, Separation of Powers, and the Rule of Law Ten Years After 9/11 ASIAN AMERICAN LAW JOURNAL [Volume 20:7])

After being reversed three times in a row in Rasul, Hamdan, and then Boumediene, the D.C. Circuit finally managed in Kiyemba to reassert, and have effectively sanctioned, its highly deferential stance towards the Executive in cases involving national security. In particular, the D.C. Circuit concluded that an order mandating the Uighurs’ release into the continental United States would impermissibly interfere with the political branches’ exclusive authority over immigration matters. But this reasoning is legal ground that the Supreme Court has already implicitly—and another three-judge panel of the D.C. Circuit more explicitly—covered earlier. As such, the Bush administration’s strategy in employing the “war” paradigm at all costs and without any judicial intervention, while unsuccessful in the Supreme Court, has finally paid off in troubling, and binding, fashion in the D.C. Court of Appeals, where, national security fundamentalism reigns supreme and the Executive’s powers as “Commander-in-Chief” can be exercised with little, if any, real check; arguably leading to judicial abstention in cases involving national security. The consequences of the Kiyemba decision potentially continue today, for example, with passage of the National Defense Authorization Act of 2012,246 which President Obama signed, with reservations, into law on December 31, 2011.247 This defense authorization bill contains detainee provisions that civil liberties groups and human rights advocates have strongly opposed.248 The bill’s supporters strenuously objected to the assertion that these provisions authorize the indefinite detention of U.S. citizens.249 In signing the bill, President Obama later issued a statement to the effect that although he had reservations about some of the provisions, he “vowed to use discretion when applying” them.250 Of course, that does not mean another administration would do the same, especially if courts abstain from their role as protectors of individual rights. In the years after 9/11, the Supreme Court asserted its role incrementally, slowly entering into the debate about the rights of enemy combatant detainees. This was a “somewhat novel role” for the Court.251 Unsurprisingly, in so doing, the Court’s intervention “strengthened detainee rights, enlarged the role of the judiciary, and rebuked broad assertions of executive power.”252 Also unsurprisingly, the Court’s decisions in this arena “prompted strong reactions from the other two branches.”253 This may be so because, as Chief Justice Rehnquist noted, the Court had, in the past, recognized the primacy of liberty interests only in quieter times, after national emergencies had terminated or perhaps before they ever began.254 However, since the twentieth century, wartime has been the “normal state of affairs.”255 If perpetual war is the new “normal,” the political branches likely will be in a permanent state of alert. Thus, it remains for the courts to exercise vigilance and courage about protecting individual rights, even if these assertions of judicial authority come as a surprise to the political branches of government.256 But courts, like any other institution, are susceptible to being swayed by influences external to the law. Joseph Margulies and Hope Metcalf make this very point in a 2011 article, noting that much of the post-9/11 scholarship mirrors this country’s early wartime cases and “envisions a country that veers off course at the onset of a military emergency but gradually steers back to a peacetime norm once the threat recedes, via primarily legal interventions.”257 This model, they state, “cannot explain a sudden return to the repressive wilderness just at the moment when it seemed the country had recovered its moral bearings.”258 Kiyemba is very much a return to the repressive wilderness. In thinking about the practical and political considerations that inevitably play a role in judicial decisionmaking (or non-decisionmaking, as the case may be), I note that the Court tends to be reluctant to decide constitutional cases if it can avoid doing so, as it did in Kiyemba. Arguably, this doctrine of judicial abstention is tied to concerns of institutional viability, in the form of public perception, and to concerns about respecting the separation of powers.259 But, as Justice Douglas once famously noted, when considering the separation of powers, the Court should be mindful of Chief Justice Marshall’s admonition that “it is a constitution we are expounding.”260 Consequently, “[i]t is far more important [for the Court] to be respectful to the Constitution than to a coordinate branch of government.”261 And while brave jurists have made such assertions throughout the Court’s history, the Court is not without some pessimism about its ability to effectively protect civil liberties in wartimes or national emergencies. For example, in Korematsu—one of the worst examples of judicial deference in times of crisis—Justice Jackson dissented, but he did so “with explicit resignation about judicial powerlessness,” and concern that it was widely believed that “civilian courts, up to and including his own Supreme Court, perhaps should abstain from attempting to hold military commanders to constitutional limits in wartime.”262 Significantly, even when faced with the belief that the effort may be futile, Justice Jackson dissented. As I describe in the following section, that dissent serves a valuable purpose. But, for the moment, I must consider the external influences on the court that resulted in that feeling of judicial futility.

#### (3) Detention upholds judicial deference

Rives 7 (Jack L., Major General, The Judge Advocate General of the Air Force, The Bill of Rights and the Military, Introduction: Chief Justice Warren on the Bill of Rights and the Military, The Air Force Law Review, Vol. 60, <http://www.afjag.af.mil/shared/media/document/AFD-081009-007.pdf>, p. 3) ap

The final principle Chief Justice Warren identified – judicial deference to claims of military necessity – has received considerable attention in recent years. When he reviewed the Court’s scrutiny of “attempts of our civilian Government to extend military authority into other areas,”14 the Chief Justice contrasted the Court’s tendency to defer to claims of military necessity during wartime with the more active judicial role during what he called the “recent years of peacetime tension.”15 The World War II-era cases of Hirabayashi v. United States16 and Korematsu v. United States,17 sustained the detention of Japanese nationals and American citizens of Japanese descent living in the United States. In contrast, the Eisenhower-era case of Reid v. Covert18 rejected the extension of court-martial jurisdiction over civilian dependents and employees of the Armed Forces overseas. In his lecture, Chief Justice Warren concluded that “[w]hile situations may arise in which deference by the Court is compelling, the cases in which this has occurred demonstrate that such a restriction upon the scope of review is pregnant with danger to individual freedom.”19

#### [4] Despite need for reforms, courts should still defer in military and prison issues

Solove 96 (Daniel J., George Washington University Law School, Faith Profaned: The Religious Freedom Restoration Act and Religion in the Prisons, The Yale Law Journal, <http://docs.law.gwu.edu/facweb/dsolove/files/RFRA-Prisons.pdf>, p. 481) ap

In creating RFRA, Congress attempted to establish a balance that would provide robust protection of prisoners' religious rights yet respect the judgment of prison officials. Thus, while elevating the level of scrutiny for prisoners' religious rights, Congress also instructed courts to maintain the deference traditionally afforded to prison officials. The Senate Report declared that under RFRA, the courts should still give "due deference to the experience and expertise of prison and jail administrators.'' 177 According to the House Report, "examination of such regulations in light of a higher standard does not mean the expertise and authority of military and prison officials will be necessarily undermined." 178

#### (5) Lack of court ruling in detention issues key to upholding deference

Solove 96 (Daniel J., George Washington University Law School, Faith Profaned: The Religious Freedom Restoration Act and Religion in the Prisons, The Yale Law Journal, <http://docs.law.gwu.edu/facweb/dsolove/files/RFRA-Prisons.pdf>, p. 479 - 480) ap

Deference is the decision not to second guess the judgment of an institution out of respect for its authority and specialization. Judges lack the expertise of those ensconced in the day-to-day exigencies of prison life. Prison officials are more capable of anticipating dangers and costs and must bear the potential perils of a judge's decision to accommodate religion. As the Supreme Court has noted, "[C]ourts are ill equipped to deal with the increasingly urgent problems of prison administration and reform."164

#### (6) Prison detention upholds deference

Solove 96 (Daniel J., George Washington University Law School, Faith Profaned: The Religious Freedom Restoration Act and Religion in the Prisons, The Yale Law Journal, <http://docs.law.gwu.edu/facweb/dsolove/files/RFRA-Prisons.pdf>, p. 468) ap

In the decade following Cruz, the Supreme Court upheld regulations infringing on prisoners' other First Amendment rights if the regulations were a "rational response"77 or "rationally related"78 to the penological interest. Consistent across these cases was the Court's high level of deference to prison administrators. In Pell v. Procunier79 the Court rejected a First Amendment challenge to a ban on prisoners' rights to interview with the media because decisions about penological interests were "within the province and professional expertise of corrections officials."80 Unless the record contained "substantial evidence" that administrators exaggerated these interests, "courts should ordinarily defer to their expert judgment in such matters."81 The Court used similar deferential language in Bell v. Wolfish82 when it upheld a regulation prohibiting prisoners from obtaining hardback books not mailed directly from publishers, book clubs, or bookstores. 83 Thus, the Supreme Court was beginning to fashion a minimal scrutiny standard for prisoners' First Amendment liberties.