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Text: The United States federal judiciary will rule that all individuals currently detained, or detained in the future, will be expediently tried or released. The federal judiciary will also

#### Judicial action is critical to resolve the Kiyemba decisions and establish legitimate habeas laws

Milko 12

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

In light of the compelling arguments on both sides, several important issues have ambiguous answer, and the Supreme Court has, thus far, not chosen to shine light on the situation. Following the 2010 October Term and the Supreme Court's denial of all Guantanamo detainee petitions, the High Court has sent a message that it does not want to review the D.C. Circuit's interpretation of the procedural and substantive issues which that Circuit has implemented. The Supreme Court has not ruled on any cases relating to Guantanamo detainees since its 2008 decision in Boumediene v. Bush. While the Court settled the issue of whether detainees had the privilege of habeas corpus in that case, the Court left the intricacies of the writ and its scope for the lower courts to define. Though leaving this authority in the hands of the lower courts may have been a been appropriate at the time Boumediene was decided, the number of habeas petitions and the subsequent petitions for certiorari to the Supreme Court indicate that there are important issues that must be clarified, and the Supreme Court [\*194] should grant certiorari to be the final voice on these issues for several reasons. First, the stakes in these habeas petitions are high. The detainees at Guantanamo have already been assured the right to petition the courts for habeas corpus to challenge their detention as unlawful. The scope of the courts' authority to provide a remedy is a critical for those individuals on a personal level as well as for the nation as whole. This country was created with a tripartite system and checks and balances for a reason: the Founding Fathers implemented a governmental structure that would serve to limit the three individual branches in order to protect individual liberty. n142 The writ of habeas corpus has an extensive history and is considered to play an integral role in the protection of individual liberty. n143 Habeas corpus is the Judiciary's tool to check the power of the Executive, and has traditionally allowed courts to provide a remedy to reign in the unbridled power of the Executive. The Court in Boumediene asserted that habeas gave the prisoner a meaningful opportunity to challenge his confinement as unlawful, and "the habeas court must have the power to order conditional release of an individual unlawfully detained - though release need not be the exclusive remedy and is not the appropriate one in every case in which the writ is granted." n144 While the importance of the writ for the preservation of the individual liberty and as a check on Executive power is one aspect of the tripartite system, the Executive's interest in maintaining a unified voice in the realm of foreign policy is another key concern. By allowing the courts to order release of a detainee or to order advance notice of transfer so that the petitioner may present evidence that he would be harmed in a recipient country, the Judiciary would be forced to make determinations about foreign affairs that its judges may not be competent to make. In a time of chaos and intricate foreign relations, the sensitivity and difficulty of forging meaningful diplomatic relations with other nations at this time in history is a key concern of the Executive, and properly within that Branch's authority under the Constitution. Permitting the Judiciary to make determinations from the bench about the appropriateness of human rights or other similar determinations in a judicial proceeding could very well damage the diplo [\*195] matic relations that the Executive is attempting to form with recipient nations. This separation of powers dilemma facing the High Court has no easy solution, but the critical role that the proper allocation of authority plays in the separation of powers system and the lack of substantive guidance on Guantanamo issues since Boumediene in 2008 demands attention from the Supreme Court. Additionally, because the Guantanamo cases have been litigated in the D.C. Circuit, no other appellate courts have had the opportunity to review these issues. n145 Without the opportunity for an opposing view in another judicial circuit and with no final determination by the Supreme Court, the D.C. Circuit Court of Appeals has been free to shape the law of Guantanamo habeas cases as it wishes. Adding to the concern of the lack of a "check" on the D.C. Circuit Court of Appeals is the fact that the trend within the Circuit itself has been inconsistent as the district courts have assumed a greater role for the judiciary, only to be chastised on appeal for failure to defer to the political branches in these cases. With the D.C. Circuit serving as the sole authority on the scope of the courts' habeas power in Guantanamo cases, petitioners' claims that this court has been improperly applying Supreme Court precedent is another concern that the High Court should address. In both release and transfer cases, the petitioners have argued that while Boumediene assures the privilege of habeas corpus, the Kiyemba cases have foreclosed the courts from fashioning a remedy in contradiction to Boumediene. n146 Instead, the D. C. Circuit Court of Appeals has refused to interfere, based on the Munaf proposition that the determinations of the Executive should not be second-guessed, and has accepted the assurances of the Executive Branch that they are working secure release or that they will not send detainees to countries where it is more likely than not that they will face torture. Raising suspicions that the use of Munaf in the Guantanamo habeas cases was perhaps improper, three Supreme Court Justices questioned the role of that decision and the questions it raised. Petitioners have alleged that the circumstances of that case are markedly different than the facts in the Guantanamo cases, and that Munaf should not be read to bar detainees in habeas petitions [\*196] the opportunity to challenge their transfer or the court to enjoin such a transfer. The nature of these Guantanamo issues presents a complex situation that makes the separation of powers issue more difficult. If the courts do traditionally have the power to require notice or order release under its habeas authority, the manner in which that remedy would require inquiry into the Executive Branch's policy decisions may cross the line into a political question. Because of the nature of diplomacy and foreign affairs in contemporary society, the thought may be that it is easier to reduce the rights of the individual in order to provide for the national security of the country as a whole. IV. Conclusion There are valid arguments on both sides in this issue and the nature of the cases and the times in which we live complicate the situation. The Supreme Court is in a difficult situation-if the Court grants certiorari to review the D.C. Circuit Court of Appeals' jurisprudence of the Guantanamo cases, it must settle an issue of vast importance. Separation of powers and the roles of the Executive and Judiciary in the context of Guantanamo litigation impact the individual liberty of the petitioners and the sensitive nature of foreign affairs and the war on terrorism. Because of significance of these issues, the D.C. Circuit should not be the sole voice addressing them. It should be the responsibility of the nation's Highest Court to settle the debate and determine the appropriate balance of power. Without this supreme guidance, the petitioners will continue to present the same issues and questions to the courts, and these cases will continue to be litigated according to the trend that has dominated the D.C. Circuit over the past several years. With a new Supreme Court Term beginning and new Guantanamo cases bearing old issues appearing before the Court again, the Supreme Court should grant certiorari to review the delicate balance between the power of the courts and the authority of the political branches. The Court left the scope of habeas power undefined after Boumediene and has refused to substantively address the issues created in its aftermath. Since that decision, the D.C. Circuit has given great deference to the Executive Branch. Without any supreme guidance, the D.C. Circuit has been free to fashion the law as it sees fit with no further checks and balances on that interpretation as this Circuit is the sole decision-maker re [\*197] garding these habeas petitions. If the current system stays in place, appeals and petitions regarding the same issues for Guantanamo detainees will continue to cycle through the D.C. Circuit. With so many petitions to the High Court on the same subject, it seems only logical that the Supreme Court should finish what it started nearly six years ago and decide whether the courts have a role to play in the release and transfer of detainees. More Guantanamo petitions for certiorari have been filed in the 2011 Term, and one has raised a familiar issue yet again: whether the Guantanamo detainees have the right to challenge transfer to a recipient nation on fear of torture. n147 The Founding Fathers envisioned a system of checks and balances in order to protect the People from oppression and to prevent any one person or entity from hoarding too much power. The struggle for power between the branches of our government is something that will never fade away entirely, and there are times when it is proper for one branch to defer to the judgment of another, but when an issue arises that has raised so many questions and has been the foundation for numerous appeals and petitions to the Supreme Court for clarification, the People deserve at least some guidance on such an unsettled area of the law. As of now, the D.C. Circuit has been trustworthy of the Executive Branch, and, while in the end, such deference in this area may be appropriate, the very nature of habeas corpus is a strong tool in the hands of the judiciary which should be considered by the Supreme Court. The Court should analyze whether allowing deference strips the Judiciary of the important check of habeas corpus because granting the right of habeas corpus to prisoners without giving the courts the subsequent power to remedy the problem has the potential of making this important right just a phrase with no underlying force.

#### The judiciary is key—perception of US provision of habeas rights is critical to US soft power—the vital aspect of US legal jurisprudence—court action is key

Sidhu 11

[2011, Dawinder S. Sidhu, J.D., The George Washington University; M.A., Johns Hopkins University; B.A., University of Pennsylvania, Judicial Review as Soft Power: How the Courts Can Help Us Win the Post-9/11 Conflict”, NATIONAL SECURITY LAW BRIEF, Vol. 1, Issue 1 http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1003&context=nslb]

The “Great Wall” The writ of habeas corpus enables an individual to challenge the factual basis and legality of his detention,91 activating the judiciary’s review function in the separation of powers scheme.92 Because the writ acts to secure individual liberty by way of the judicial checking of unlawful executive detentions, the writ has been regarded as a bulwark of liberty. The Supreme Court has observed, for example, that “There is no higher duty of a court, under our constitutional system, than the careful processing and adjudication of petitions for writs of habeas corpus . . . .”93 The writ is seen as a vital aspect of American jurisprudence, and an essential element of the law since the time of the Framers.94 The United States is a conspicuous actor in the world theater, subject to the interests and inclinations of other players, and possessing a similar, natural desire to shape the global community in a manner most favorable to its own objects. The tendency to attempt to inﬂuence others is an inevitable symptom of international heterogeneity and, at present, the United States is mired in an epic battle with fundamentalists bent on using terrorism as a means to repel,95 if not destroy, America.96 American success in foreign policy depends on the internal assets available to and usable by the United States, including its soft power. The law in America is an aspect of its national soft power. In particular, the moderates in the Muslim world—the intended audience of America’s soft power— may ﬁnd attractive the American constitutional system of governance in which 1) the people are the sovereign and the government consists of merely temporary and recallable agents of the people, 2) federal power is diffused so as to diminish the possibility that any branch of the government, or any of them acting in tandem, can infringe upon the liberty of the people, 3) structural protections notwithstanding, the people are entitled to certain substantive rights including the right to be free of governmental interference with respect to religious exercise, 4) the diversity of interests inherent in its populace is considered a critical safeguard against the ability of a majority group to oppress the minority constituents, 5) the courts are to ensure that the people’s rights to life, liberty, and property are not abridged, according to law, by the government or others, and 6) individuals deprived of liberty have available to them the writ of habeas corpus to invoke the judiciary’s checking function as to executive detention decisions. The Constitution, in the eyes of Judge Learned Hand, is “the best political document ever made.”97 If the aforementioned constitutional principles are part of the closest approximation to a just and reasoned society produced by man, surely they may have some persuasive appeal to the rest of the world, including moderate Muslims who generally live in areas less respectful of minority rights and religious pluralism. Such reverence is to be expected and warranted only if the United States has remained true to these constitutional principles in practice, and in particular, in its behavior in the aftermath of the 9/11 attacks, when national stress is heightened and the option of deviating from such values in favor of an expedient “law of necessity” similarly tempting.98 The extent to which the United States has remained true to itself as a nation of laws—and thus may credibly claim such legal soft power—is the subject of the next section. II. THE COURTS AND SOFT POWER The Judiciary In Wartime The United States has been charged with being unfaithful to its own laws and values in its prosecution of the post-9/11 campaign against transnational terrorism. With respect to its conduct outside of the United States, following 9/11, America has been alleged to have tortured captured individuals in violation of its domestic and international legal obligations,99 and detained individuals indeﬁnitely without basic legal protections.100 Closer to home, the United States is thought to have proﬁ led Muslims, Arabs, and South Asians in airports and other settings,101 conducted immigration sweeps targeting Muslims,102 and engaged in mass preventative detention of Muslims in the United States,103 among other things. These are serious claims. The mere perception that they bear any resemblance to the truth undoubtedly impairs the way in which the United States is viewed by Muslims around the world, including Muslim-Americans, and thus diminishes the United States’ soft power resources.104 The degree to which they are valid degrades the ability of the United States to argue persuasively that it not only touts the rule of law, but exhibits actual ﬁdelity to the law in times of crisis. These claims relate to conduct of the executive and/or the legislature in the aftermath of the 9/11 attacks. This Article is concerned, however, with the judiciary, that is whether the courts have upheld the rule of law in the post-9/11 context—and thus whether the courts may be a source of soft power today (even if the other branches have engaged, or are alleged to have engaged, in conduct that is illegal or unwise). As to the courts, it is my contention that the judiciary has been faithful to the rule of law after 9/11 and as such should be considered a positive instrument of American soft power. Prior to discussing post-9/11 cases supporting this contention, it is important to provide a historical backdrop to relationship between the courts and wartime situations because judicial decision-making in cases implicating the wars in Afghanistan and Iraq does not take occur on a blank slate, despite the unique and modern circumstances of the post-9/11 conﬂ ict.

### DA 1

#### Trade promotion is a top priority and will pass if Obama invests capital --- he can overcome opposition

Schneider, 12/17 (Howard, 12/17/2013, “Obama, to sell trade pacts, will outline the benefits of globalization,” <http://www.stltoday.com/business/local/obama-to-sell-trade-pacts-will-outline-the-benefits-of/article_3bebc586-6ed7-50dd-879c-3f331fd54363.html>))

WASHINGTON • After months of international negotiations over two new trade treaties, the Obama administration is planning a major push to make the case that the agreements will put Americans to work at a decent wage and not further winnow the country's manufacturing base.

European and U.S. negotiators are in Washington this week to continue work on an agreement that would mesh the world's two largest economies more closely together. A second proposed treaty, the 12-nation Trans-Pacific Partnership (TPP), may be finished early next year, creating a trade zone covering 40 percent of world economic output and reaching from Chile to Japan.

The legislation needed for both agreements to clear Congress is expected to be introduced early in 2014, and the administration "is beginning to ramp up" for what could be the most extensive debate in more than a decade over the opportunities and risks of globalization, said an official who was not authorized to speak publicly about the administration's strategy. "We will be mobilizing a whole administration effort to build public and congressional support," the official said.

LIKELY TO BE CONTROVERSIAL

It is likely to be a controversial battle, forcing President Barack Obama to stump for policies that some of his strongest political allies — particularly organized labor and environmental groups — are likely to oppose. It is a debate set against the backdrop of 7 percent unemployment and concern about the loss of U.S. jobs that coincided with the rise of manufacturing power in countries such as China.

The measures under consideration would cover the bulk of global economic activity and reshape economic relations around the globe — setting the first rules for new industries that are thriving thanks to the Internet and renegotiating standards for old ones such as shoemaking.

Obama has focused much of his recent economic policy on boosting trade and global investment. He will now need to make the case that a broad new set of trade agreements will help U.S. workers and not merely shift jobs overseas or benefit a small clique of global corporations, as many trade skeptics argue has happened before.

SETTING 'THE RULES OF THE GAME'

These agreements "will set the rules of the game … in a way that levels the playing field and allows our workers to compete more effectively. If we don't do that, the rules will be set by others," U.S. Trade Representative Michael Froman said Tuesday. Chinese economic influence in Asia is a particular concern.

"At the end of the day, when the deal is done, we will be able to explain to everybody the balances that we struck and we will have support for the substance of it," Froman said.

The countries involved range from long-standing U.S. industrial allies such as Germany and Japan to developing nations such as Vietnam and Malaysia, each posing its own challenges in completing the agreements and winning support in the United States.

A more open Japanese auto market could be of great benefit to U.S. manufacturers, for example, while the administration envisions Vietnam becoming a geopolitically important model of how a government-planned economy can transition to a system of stronger individual rights and more market-based rules for state-run enterprises.

DOMESTIC OPPOSITION

Several major union leaders, as well as some corporate executives and civil society groups, have been skeptical that those benefits will ever be realized and argue that the TPP in particular is being negotiated with such little public disclosure that it is hard to judge the potential effects.

On Capitol Hill, there is ill will to overcome from the recent government shutdown and controversy over the rollout of the health-care law. Unemployment is high and a core group of Democrats feels that prior trade agreements — from Clinton-era treaties with Mexico and Canada to the decision to let China join the World Trade Organization — have helped hollow out America's manufacturing middle class.

Democrats who favor trade — including important figures such as Rep. Sander Levin, D-Mich., — want tougher guarantees in any upcoming treaty, including enforceable rules to ensure that major trading partners don't unfairly manipulate the value of their currencies to gain advantage.

Civil society groups have raised a myriad of complaints, and the usually pro-trade GOP may splinter as members affiliated with the tea party movement argue against providing Obama with the same authority that presidents since Gerald Ford have been given to negotiate trade treaties without fear of congressional amendment.

FIRST BATTLE: 'FAST-TRACK AUTHORITY'

In fact, the first battle will be over not a trade agreement but that "fast-track" authority. Fast-track rules let Congress set negotiating parameters for the administration but requires any subsequent treaty to receive a quick up-or-down vote without amendment — a way to assure negotiating partners that deals will not be returned with a long list of congressional changes to barter over.

The Republican and Democratic chairmen of the House Ways and Means Committee and the Senate Finance Committee are working on a trade promotion authority bill expected to be introduced early in 2014. That will be the forum to work out some of the major fears or complaints lawmakers have voiced over the TPP and the Transatlantic Trade and Investment Partnership with Europe.

Obama "needs to make clear this is important," said Jake Colvin, a vice president of the National Foreign Trade Council, a business lobby. "Potentially there is a significant amount of support in the center among Democrats and Republicans to get it over the line."

Free-trade agreements with South Korea, Colombia and Panama have been approved under Obama. But they originally dated to the Bush administration and were covered by fast-track laws that have since expired.

POLITICALLY FRAUGHT DEBATE

The last debate over trade promotion authority, in 2002, showed how narrow and politically fraught the margins can become: The measure was approved 215 to 212 in the House on a largely party-line vote.

The politics of trade since then have arguably become more intense. The U.S. sway over the world economic system was rocked by the financial crisis, and China's rapid growth has led U.S. unions, politicians and others to insist that future trade agreements not only open markets but also ensure that U.S. workers are not left at a disadvantage.

New "21st century" issues such as the transfer of data across national borders, intellectual property rules for biotechnology, and appropriate regulations for state-owned enterprises are being negotiated for the first time, alongside age-old disputes over agriculture and whether cheese from somewhere other than Roquefort-sur-Soulzon smells just as sweet.

When the latest round of Pacific talks ended this month in Singapore, House Ways and Means Committee Chairman Dave Camp, R-Mich, said there had been "considerable bipartisan and bicameral progress" on a trade promotion bill.

He said he felt legislation could pass "early next year, if we have the administration's active participation."

#### Only this leadership and prioritization by Obama will ensure passage

Business Times Singapore, 12/17 (“Obama must make the case for freer trade,” 12/17/2013, Factiva))

The TPA bill, which is expected to be introduced in January, will face fierce opposition from Democratic legislators affiliated with the labour unions and environmentalist forces who warn that free trade accords such as the TPP encourage American companies to relocate operations to low-wage emerging economies that don't adhere to environmental standards. There will also be pushback from conservative Republican lawmakers with ties to the Tea Party movement who don't want to strengthen the power of President Barack Obama by granting him a new TPA.

So the president now has his work cut out. He must place the goal of liberalising global trade on the top of his policy agenda and exert leadership to ensure that the TPA legislation gets approved by Congress early, before Democrats and Republicans start preparing for next year's midterm Congressional elections. But he must articulate a coherent global trade narrative which highlights the benefits that liberalising trade, especially with Asia, can bring to the American economy - by creating new jobs and investments, while strengthening US global leadership.

#### The plan will ignite a huge political fight and tradeoff with other administration priorities

Hansen, 13 --- associate editor at *America* (was first published in Italian in the January 2013 issue of Popoli magazine, Luke, “A Permanent Prison? Why Guantánamo might outlast the Obama presidency,” [http://americamagazine.org/issue/article/permanent-prison)](http://americamagazine.org/issue/article/permanent-prison%29))

In January 2009 the newly elected president, Barack Obama, sought to change course. As a first step to shuttering the prison, Greg Craig, the top White House lawyer, drew up a plan to release a few Uighur detainees, long cleared of wrongdoing, onto U.S. soil. Mr. Craig announced the plan at a national security meeting on April 17, 2009. Defense Secretary Robert Gates and Secretary of State Hillary Rodham Clinton were on board. “It was a matter of days, not weeks,” until the transfer would take place, a top Defense official told Time magazine. When the move proved successful, the administration hoped that other countries would be more willing to help resettle Guantánamo detainees. Within a month the plan collapsed. Four years later, Guantánamo remains open for business, indefinite detention continues and detainees are prosecuted in military commissions, not federal courts. Now it is not clear whether the prison will ever close—at least until the last prisoner grows old and dies. What caused such a dramatic reversal? Growing Opposition In “The Fall of Greg Craig, Obama’s Top Lawyer” (11/19/2009), Time magazine provides an account of what unfolded inside the White House during those first weeks of the Obama administration as they grappled with closing Guantánamo. Just one day before Mr. Craig pitched his plan to the national security team, President Obama publicly released a series of memos from the U.S. Central Intelligence Agency that detailed the “enhanced interrogation” techniques used by the Bush administration. Michael Hayden, former C.I.A. director, had organized internal opposition to releasing the memos, but Mr. Obama did it anyway—consistent with his promise of greater transparency as well as taking the moral high road in the fight against terrorism. Meanwhile Mr. Craig’s plan of releasing the Uighurs onto U.S. soil became public, and Republican leaders unleashed three weeks of relentless attacks against President Obama’s early foreign policy decisions. They claimed that Mr. Obama had emboldened America’s enemies by releasing the memos, and now he would endanger Americans by transferring prisoners into the United States—for release, further detention or trial. Suddenly it was becoming too costly, politically, to take the moral high road. Time reported that, in late April, “Democratic pollsters charted a disturbing trend: a drop in Obama’s support among independents, driven in part by national-security issues.” Inside the White House, the early optimism and momentum faded. The administration was also concerned that the fight to close Guantánamo might distract from domestic priorities like health care and strengthening the economy.In early May, Mr. Obama decided against releasing the Uighur detainees into the United States. “It was a political decision, to put it bluntly,” an aide told Time. Two weeks later, President Obama sought to address growing public discontent with a major speech on national security. In the speech, he not only announced that he would work with Congress to revamp the Bush-era military commissions, but he also embraced the use of indefinite detention without charges or trials for a group of detainees “who cannot be prosecuted yet who pose a clear danger to the American people.” America’s Prison Problem There are many plausible explanations for why President Obama failed to close the prison in his first term. He did not push hard enough. Conservative leaders successfully played on Americans’ fears. The administration was not prepared—or willing—to respond to the political attacks. Then the Congress, in bipartisan fashion, refused to allocate funds for closing the prison (and still continues to place restrictions on transferring detainees out of Guantánamo). Americans, collectively, are also responsible. If it had been politically popular for Mr. Obama to follow through on his promise to close Guantánamo, he would have.

#### Congressional opposition to transferring detainees and trying them in civilian courts

LAT, 13 (5/1/2013, “Erasing the stain of Guantanamo,” [http://articles.latimes.com/2013/may/01/opinion/la-ed-guantanamo-hunger-strike-20130501)](http://articles.latimes.com/2013/may/01/opinion/la-ed-guantanamo-hunger-strike-20130501%29))

It has been more than four years since the newly inaugurated president issued an executive order promising "promptly to close detention facilities at Guantanamo." Yet the prison remains open (though its population has dwindled from a high of nearly 800 inmates in 2005). Of those remaining, about half have been cleared for release but continue to be detained because of congressional opposition to their repatriation to Yemen and other countries whose authorities might not be able to prevent them from engaging in terrorism. Congress also has used its authority to prevent Obama from transferring detainees to the U.S. mainland, a factor in the decision to try Khalid Shaikh Mohammed and other alleged 9/11 conspirators before a military commission rather than in civilian courts.

#### TPA is key to reverse slow growth and ensure U.S. global competitiveness

Oberhelman, 12/30 --- chairman and CEO of Caterpillar in Illinois and chairman of Business Roundtable’s International Engagement Committee (Doug, 12/30/2013, “Guest: Should Congress give Obama fast-track authority for trade deals? Yes,” [http://seattletimes.com/html/opinion/2022546185\_dougoberhelmanprotradeoped30xml.html)](http://seattletimes.com/html/opinion/2022546185_dougoberhelmanprotradeoped30xml.html%29)

LIKE most Americans, I’m frustrated with the slow rate of economic growth in the United States over the last several years.

Most proposals to fix the problem focus on domestic issues — government spending, taxes and infrastructure projects, to name a few.

As the chairman and chief executive officer of Caterpillar, I particularly like to talk about the need to invest in our nation’s infrastructure, which helps to make America more competitive in the world economy.

But while all of these issues are critically important to the U.S. economy, the opportunity to increase U.S. investment, growth and jobs requires us to go beyond America’s border.

Ninety-six percent of the world’s consumers live outside of the United States. In fact, in the last five years, Caterpillar has exported more than $82 billion in products manufactured at our factories in the United States, supporting tens of thousands of jobs. Creating opportunities for American companies to reach these consumers through new and expanded free-trade agreements can help to get our economy back on track and keep our nation globally competitive.

Today, trade supports more than one in five American jobs. U.S. exports have grown more than twice as fast as GDP since 2002, accounting for 14 percent of GDP in 2012. And workers in U.S. companies that export goods earn on average up to 18 percent more than those in similar jobs in non-exporting companies.

The United States is currently pursuing one of the most ambitious trade agendas in a generation, trade agreements that would open markets in the Asia-Pacific region and in Europe.

Also being negotiated is an agreement aimed at knocking down barriers to boost the global competitiveness of U.S. services companies. But to realize the economic benefits of these pending trade deals, Congress must update and pass Trade Promotion Authority legislation.

A partnership between Congress and the Administration, TPA legislation helps shape a strategic vision for U.S. trade policy and the goals the United States wants to accomplish in trade negotiations.

It provides a framework for Congress and the president to work together to craft that vision, and it helps define the critical constitutional relationship between Congress and the president with respect to foreign commerce.

From the 1930s until 2007, Congress has authorized every president to pursue trade agreements that open markets for U.S. goods and services. Such authority was last passed by Congress in 2002 and expired in 2007.

Updated TPA legislation would provide clear guidance on Congress’ requirements for trade agreements. It would also provide our trade negotiating partners with a degree of comfort that the United States is committed to the international trade negotiating process and the trade agreements we negotiate.

In the coming weeks it is expected that Congress will introduce updated TPA legislation. Congress should seize the opportunity to shore up the benefits of current and future trade agreements — increased U.S. investment, growth and jobs — by passing updated TPA legislation.

Working with the president to do so would ensure that the United States continues to pursue trade agreements that not only would allow companies like Caterpillar to remain globally competitive, but also would benefit America.

#### The impact is global nuclear war

Freidberg & Schonfeld, 8 --- \*Professor of Politics and IR at Princeton’s Woodrow Wilson School, AND \*\*senior editor of Commentary and a visiting scholar at the Witherspoon Institute in Princeton (10/21/2008, Aaron and Gabriel, “The Dangers of a Diminished America”, Wall Street Journal, http://online.wsj.com/article/SB122455074012352571.html?mod=googlenews\_wsj)

With the global financial system in serious trouble, is America's geostrategic dominance likely to diminish? If so, what would that mean? One immediate implication of the crisis that began on Wall Street and spread across the world is that the primary instruments of U.S. foreign policy will be crimped. The next president will face an entirely new and adverse fiscal position. Estimates of this year's federal budget deficit already show that it has jumped $237 billion from last year, to $407 billion. With families and businesses hurting, there will be calls for various and expensive domestic relief programs. In the face of this onrushing river of red ink, both Barack Obama and John McCain have been reluctant to lay out what portions of their programmatic wish list they might defer or delete. Only Joe Biden has suggested a possible reduction -- foreign aid. This would be one of the few popular cuts, but in budgetary terms it is a mere grain of sand. Still, Sen. Biden's comment hints at where we may be headed: toward a major reduction in America's world role, and perhaps even a new era of financially-induced isolationism. Pressures to cut defense spending, and to dodge the cost of waging two wars, already intense before this crisis, are likely to mount. Despite the success of the surge, the war in Iraq remains deeply unpopular. Precipitous withdrawal -- attractive to a sizable swath of the electorate before the financial implosion -- might well become even more popular with annual war bills running in the hundreds of billions. Protectionist sentiments are sure to grow stronger as jobs disappear in the coming slowdown. Even before our current woes, calls to save jobs by restricting imports had begun to gather support among many Democrats and some Republicans. In a prolonged recession, gale-force winds of protectionism will blow. Then there are the dolorous consequences of a potential collapse of the world's financial architecture. For decades now, Americans have enjoyed the advantages of being at the center of that system. The worldwide use of the dollar, and the stability of our economy, among other things, made it easier for us to run huge budget deficits, as we counted on foreigners to pick up the tab by buying dollar-denominated assets as a safe haven. Will this be possible in the future? Meanwhile, traditional foreign-policy challenges are multiplying. The threat from al Qaeda and Islamic terrorist affiliates has not been extinguished. Iran and North Korea are continuing on their bellicose paths, while Pakistan and Afghanistan are progressing smartly down the road to chaos. Russia's new militancy and China's seemingly relentless rise also give cause for concern. If America now tries to pull back from the world stage, it will leave a dangerous power vacuum. The stabilizing effects of our presence in Asia, our continuing commitment to Europe, and our position as defender of last resort for Middle East energy sources and supply lines could all be placed at risk. In such a scenario there are shades of the 1930s, when global trade and finance ground nearly to a halt, the peaceful democracies failed to cooperate, and aggressive powers led by the remorseless fanatics who rose up on the crest of economic disaster exploited their divisions. Today we run the risk that **rogue states may choose to become ever more reckless with their nuclear toys**, just at our moment of maximum vulnerability. The aftershocks of the financial crisis will almost certainly rock our principal strategic competitors even harder than they will rock us. The dramatic free fall of the Russian stock market has demonstrated the fragility of a state whose economic performance hinges on high oil prices, now driven down by the global slowdown. China is perhaps even more fragile, its economic growth depending heavily on foreign investment and access to foreign markets. Both will now be constricted, inflicting economic pain and perhaps even sparking unrest in a country where political legitimacy rests on progress in the long march to prosperity. None of this is good news if the authoritarian leaders of these countries seek to divert attention from internal travails with external adventures. As for our democratic friends, the present crisis comes when many European nations are struggling to deal with decades of anemic growth, sclerotic governance and an impending demographic crisis. Despite its past dynamism, Japan faces similar challenges. India is still in the early stages of its emergence as a world economic and geopolitical power. What does this all mean? There is no substitute for America on the world stage. The choice we have before us is between the potentially disastrous effects of disengagement and the stiff price tag of continued American leadership.

### DA 2

#### Obama’s Syria maneuver has maximized presidential war powers because it’s on his terms

Posner 9/3, Law Prof at University of Chicago

(Eric, Obama Is Only Making His War Powers Mightier, www.slate.com/articles/news\_and\_politics/view\_from\_chicago/2013/09/obama\_going\_to\_congress\_on\_syria\_he\_s\_actually\_strengthening\_the\_war\_powers.html)

President Obama’s surprise announcement that he will ask Congress for approval of a military attack on Syria is being hailed as a vindication of the rule of law and a revival of the central role of Congress in war-making, even by critics. But all of this is wrong. Far from breaking new legal ground, President Obama has reaffirmed the primacy of the executive in matters of war and peace. The war powers of the presidency remain as mighty as ever. It would have been different if the president had announced that only Congress can authorize the use of military force, as dictated by the Constitution, which gives Congress alone the power to declare war. That would have been worthy of notice, a reversal of the ascendance of executive power over Congress. But the president said no such thing. He said: “I believe I have the authority to carry out this military action without specific congressional authorization.” Secretary of State John Kerry confirmed that the president “has the right to do that”—launch a military strike—“no matter what Congress does.” Thus, the president believes that the law gives him the option to seek a congressional yes or to act on his own. He does not believe that he is bound to do the first. He has merely stated the law as countless other presidents and their lawyers have described it before him. The president’s announcement should be understood as a political move, not a legal one. His motive is both self-serving and easy to understand, and it has been all but acknowledged by the administration. If Congress now approves the war, it must share blame with the president if what happens next in Syria goes badly. If Congress rejects the war, it must share blame with the president if Bashar al-Assad gases more Syrian children. The big problem for Obama arises if Congress says no and he decides he must go ahead anyway, and then the war goes badly. He won’t have broken the law as he understands it, but he will look bad. He would be the first president ever to ask Congress for the power to make war and then to go to war after Congress said no. (In the past, presidents who expected dissent did not ask Congress for permission.) People who celebrate the president for humbly begging Congress for approval also apparently don’t realize that his understanding of the law—that it gives him the option to go to Congress—maximizes executive power vis-à-vis Congress. If the president were required to act alone, without Congress, then he would have to take the blame for failing to use force when he should and using force when he shouldn’t. If he were required to obtain congressional authorization, then Congress would be able to block him. But if he can have it either way, he can force Congress to share responsibility when he wants to and avoid it when he knows that it will stand in his way.

#### Court intervention in detention decisions jacks the military overall

Yoo 6 – law prof at Cal

(October 19, John, “Congress to Courts: 'Get Out of the War on Terror'” http://online.wsj.com/article/SB116121703953197111.html)

While there may be different ways to strike a balance, this is a decision for the president and Congress, not the courts. The Constitution gives Congress the authority to determine the jurisdiction of federal courts in peacetime, and also declares that habeas corpus can be suspended "in Cases of Rebellion or Invasion" when "the public Safety may require it." Congress's power is even greater when it is correcting the justices' errors. Courts are ill-equipped to decide whether vast resources should be devoted to reviewing military detentions. Or whether military personnel's time should be consumed traveling back to the U.S. for detainee hearings. Or whether we risk revealing information in these hearings that might compromise the intelligence sources and methods that may allow us to win the war.

#### **Statutory restriction of Presidential War Powers makes warfighting impossible**

Yoo 12 – prof of law @ UC Berkeley

(John, War Powers Belong to the President, ABA Journal February 2012 Issue, http://www.abajournal.com/magazine/article/war\_powers\_belong\_to\_the\_president) <we do not endorse the ableist language used in this card, but have left it in to preserve the author’s intent. we apologize for the author’s inappropriate use of the word “paralyze”>

The framers realized the obvious. Foreign affairs are unpredictable and involve the highest of stakes, making them unsuitable to regulation by pre-existing legislation. Instead, they can demand swift, decisive action—sometimes under pressured or even emergency circumstances—that is best carried out by a branch of government that does not suffer from multiple vetoes or is delayed by disagreements. Congress is too large and unwieldy to take the swift and decisive action required in wartime. Our framers replaced the Articles of Confederation, which had failed in the management of foreign relations because they had no single executive, with the Constitution’s single president for precisely this reason. Even when it has access to the same intelligence as the executive branch, Congress’ loose, decentralized structure would paralyze American policy while foreign threats grow. Congress has no political incentive to mount and see through its own wartime policy. Members of Congress, who are interested in keeping their seats at the next election, do not want to take stands on controversial issues where the future is uncertain. They will avoid like the plague any vote that will anger large segments of the electorate. They prefer that the president take the political risks and be held accountable for failure. Congress’ track record when it has opposed presidential leadership has not been a happy one. Perhaps the most telling example was the Senate’s rejection of the Treaty of Versailles at the end of World War I. Congress’ isolationist urge kept the United States out of Europe at a time when democracies fell and fascism grew in their place. Even as Europe and Asia plunged into war, Congress passed the Neutrality Acts designed to keep the United States out of the conflict. President Franklin Roosevelt violated those laws to help the Allies and draw the nation into war against the Axis. While pro-Congress critics worry about a president’s foreign adventurism, the real threat to our national security may come from inaction and isolationism. Many point to the Vietnam War as an example of the faults of the “imperial presidency.” Vietnam, however, could not have continued without the consistent support of Congress in raising a large military and paying for hostilities. And Vietnam ushered in a period of congressional dominance that witnessed American setbacks in the Cold War and the passage of the ineffectual War Powers Resolution. Congress passed the resolution in 1973 over President Richard Nixon’s veto, and no president, Republican or Democrat, George W. Bush or Obama, has ever accepted the constitutionality of its 60-day limit on the use of troops abroad. No federal court has ever upheld the resolution. Even Congress has never enforced it. Despite the record of practice and the Constitution’s institutional design, critics nevertheless argue for a radical remaking of the American way of war. They typically base their claim on Article I, Section 8, of the Constitution, which gives Congress the power to “declare war.” But these observers read the 18th century constitutional text through a modern lens by interpreting “declare war” to mean “start war.” When the Constitution was written, however, a declaration of war served diplomatic notice about a change in legal relations between nations. It had little to do with launching hostilities. In the century before the Constitution, for example, Great Britain—where the framers got the idea of the declare-war power—fought numerous major conflicts but declared war only once beforehand. Our Constitution sets out specific procedures for passing laws, appointing officers and making treaties. There are none for waging war because the framers expected the president and Congress to struggle over war through the national political process. In fact, other parts of the Constitution, properly read, support this reading. Article I, Section 10, for example, declares that the states shall not “engage” in war “without the consent of Congress” unless “actually invaded, or in such imminent danger as will not admit of delay.” This provision creates exactly the limits desired by anti-war critics, complete with an exception for self-defense. If the framers had wanted to require congressional permission before the president could wage war, they simply could have repeated this provision and applied it to the executive. Presidents, of course, do not have complete freedom to take the nation to war. Congress has ample powers to control presidential policy, if it wants to. Only Congress can raise the military, which gives it the power to block, delay or modify war plans. Before 1945, for example, the United States had such a small peacetime military that presidents who started a war would have to go hat in hand to Congress to build an army to fight it. Since World War II, it has been Congress that has authorized and funded our large standing military, one primarily designed to conduct offensive, not defensive, operations (as we learned all too tragically on 9/11) and to swiftly project power worldwide. If Congress wanted to discourage presidential initiative in war, it could build a smaller, less offensive-minded military. Congress’ check on the presidency lies not just in the long-term raising of the military. It can also block any immediate armed conflict through the power of the purse. If Congress feels it has been misled in authorizing war, or it disagrees with the president’s decisions, all it need do is cut off funds, either all at once or gradually. It can reduce the size of the military, shrink or eliminate units, or freeze supplies. Using the power of the purse does not even require affirmative congressional action. Congress can just sit on its hands and refuse to pass a law funding the latest presidential adventure, and the war will end quickly. Even the Kosovo war, which lasted little more than two months and involved no ground troops, required special funding legislation. The framers expected Congress’ power of the purse to serve as the primary check on presidential war. During the 1788 Virginia ratifying convention, Patrick Henry attacked the Constitution for failing to limit executive militarism. James Madison responded: “The sword is in the hands of the British king; the purse is in the hands of the Parliament. It is so in America, as far as any analogy can exist.” Congress ended America’s involvement in Vietnam by cutting off all funds for the war. Our Constitution has succeeded because it favors swift presidential action in war, later checked by Congress’ funding power. If a president continues to wage war without congressional authorization, as in Libya, Kosovo or Korea, it is only because Congress has chosen not to exercise its easy check. We should not confuse a desire to escape political responsibility for a defect in the Constitution. A radical change in the system for making war might appease critics of presidential power. But it could also seriously threaten American national security. In order to forestall another 9/11 attack, or to take advantage of a window of opportunity to strike terrorists or rogue nations, the executive branch needs flexibility. It is not hard to think of situations where congressional consent cannot be obtained in time to act. Time for congressional deliberation, which leads only to passivity and isolation and not smarter decisions, will come at the price of speed and secrecy. The Constitution creates a presidency that can respond forcefully to prevent serious threats to our national security. Presidents can take the initiative and Congress can use its funding power to check them. Instead of demanding a legalistic process to begin war, the framers left war to politics. As we confront the new challenges of terrorism, rogue nations and WMD proliferation, now is not the time to introduce sweeping, untested changes in the way we make war.

#### The plan spills over to broader Congressional decisionmaking

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Legacy Chains

Finegold & Skocpol (1995: 222) describe policy legacies: Past and present policies are connected in at least three different ways. First, past policies give rise to analogies that affect how public officials think about contemporary policy issues. Second, past policies suggest lessons that help us to understand the processes by which contemporary policies are formulated and implemented and by which the conse quences of contemporary policies will be determined. Third, past policies impose limi tations that reduce the range of policy choices available as responses to contemporary problems. All three of the ways in which they connect past policy to present policy can be viewed as changes in the institutional context in which policy is made. These legacies are institutionalized in two different ways: first, through changes in formal rules or procedures, and second, in the 'taken for granteds', 'schemas', and accepted wisdom of policy makers and ordinary citizens alike (Sewell, 1992: 1-29). While a policy or event can leave multiple legacies, it often leaves a single major legacy. For example, the War Powers Resolution for mally changed the relationship between the president and the congress with regard to war-making and the deployment of troops. Subsequent military interventions were influenced by this change and have, in turn, left their own legacy (legal scholars might call it precedent) as a link in that chain. Legacy chains can be modified, trans formed, or reinforced as they step through each 'link' in the chain. As another example, US involvement in Vietnam left a legacy in the sphere of press/military relations which affected the intervention in Grenada in 1983 (the press was completely excluded for the first 48 hours of the operation). The press legacy chain begun in Vietnam also affected the Panama invasion of 1989 (a press pool was activated, in country, but excluded from the action), but the legacy had been trans formed slightly by the Grenada invasion (the press pool system itself grew out of complaint regarding press exclusion in Grenada) (Paul & Kim, 2004). Because of the different ways in which policy legacies are institutionalized, some legacies have unintended institutional conse quences. The War Powers Resolution was intended to curtail presidential war-making powers and return some authority to the con gress. In practice, the joint resolution failed to force presidents to include congressional participation in their intervention decision making, but it had the unintended conse quence of forcing them to change the way they planned interventions to comply with the letter of the law (see the extended ex ample presented later in the article).1

#### Executive control of warmaking is key to avoiding nuclear war and terrorism

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A. The Emergence of Non-State Actors

Even as the quantity of nation-states in the world has increased dramatically since the end of World War II, the institution of the nation-state has been in decline over the past few decades. Much of this decline is the direct result of the waning of major interstate war, which primarily resulted from the introduction of nuclear weapons.122 The proliferation of nuclear weapons, and their immense capacity for absolute destruction, has ensured that conventional wars remain limited in scope and duration. Hence, "both the size of the armed forces and the quantity of weapons at their disposal has declined quite sharply" since 1945.123 At the same time, concurrent with the decline of the nation-state in the second half of the twentieth century, non-state actors have increasingly been willing and able to use force to advance their causes. In contrast to nation-states, who adhere to the Clausewitzian distinction between the ends of policy and the means of war to achieve those ends, non-state actors do not necessarily fight as a mere means of advancing any coherent policy. Rather, they see their fight as a life-and-death struggle, wherein the ordinary terminology of war as an instrument of policy breaks down because of this blending of means and ends.124 It is the existential nature of this struggle and the disappearance of the Clausewitzian distinction between war and policy that has given rise to a new generation of warfare. The concept of fourth-generational warfare was first articulated in an influential article in the Marine Corps Gazette in 1989, which has proven highly prescient. In describing what they saw as the modem trend toward a new phase of warfighting, the authors argued that: In broad terms, fourth generation warfare seems likely to be widely dispersed and largely undefined; the distinction between war and peace will be blurred to the vanishing point. It will be nonlinear, possibly to the point of having no definable battlefields or fronts. The distinction between "civilian" and "military" may disappear. Actions will occur concurrently throughout all participants' depth, including their society as a cultural, not just a physical, entity. Major military facilities, such as airfields, fixed communications sites, and large headquarters will become rarities because of their vulnerability; the same may be true of civilian equivalents, such as seats of government, power plants, and industrial sites (including knowledge as well as manufacturing industries). 125 It is precisely this blurring of peace and war and the demise of traditionally definable battlefields that provides the impetus for the formulation of a new. theory of war powers. As evidenced by Part M, supra, the constitutional allocation of war powers, and the Framers' commitment of the war power to two co-equal branches, was not designed to cope with the current international system, one that is characterized by the persistent machinations of international terrorist organizations, the rise of multilateral alliances, the emergence of rogue states, and the potentially wide proliferation of easily deployable weapons of mass destruction, nuclear and otherwise. B. The Framers' World vs. Today's World The Framers crafted the Constitution, and the people ratified it, in a time when everyone understood that the state controlled both the raising of armies and their use. Today, however, the threat of terrorism is bringing an end to the era of the nation-state's legal monopoly on violence, and the kind of war that existed before-based on a clear division between government, armed forces, and the people-is on the decline. 126 As states are caught between their decreasing ability to fight each other due to the existence of nuclear weapons and the increasing threat from non-state actors, it is clear that the Westphalian system of nation-states that informed the Framers' allocation of war powers is no longer the order of the day. 127 As seen in Part III, supra, the rise of the modem nation-state occurred as a result of its military effectiveness and ability to defend its citizens. If nation-states such as the United States are unable to adapt to the changing circumstances of fourth-generational warfare-that is, if they are unable to adequately defend against low-intensity conflict conducted by non-state actors-"then clearly [the modern state] does not have a future in front of it.' 128 The challenge in formulating a new theory of war powers for fourthgenerational warfare that remains legally justifiable lies in the difficulty of adapting to changed circumstances while remaining faithful to the constitutional text and the original meaning. 29 To that end, it is crucial to remember that the Framers crafted the Constitution in the context of the Westphalian system of nation-states. The three centuries following the Peace of Westphalia of 1648 witnessed an international system characterized by wars, which, "through the efforts of governments, assumed a more regular, interconnected character."' 130 That period saw the rise of an independent military class and the stabilization of military institutions. Consequently, "warfare became more regular, better organized, and more attuned to the purpose of war-that is, to its political objective."' 1 3' That era is now over. Today, the stability of the long-existing Westphalian international order has been greatly eroded in recent years with the advent of international terrorist organizations, which care nothing for the traditional norms of the laws of war. This new global environment exposes the limitations inherent in the interpretational methods of originalism and textualism and necessitates the adoption of a new method of constitutional interpretation. While one must always be aware of the text of the Constitution and the original understanding of that text, that very awareness identifies the extent to which fourth-generational warfare epitomizes a phenomenon unforeseen by the Framers, a problem the constitutional resolution of which must rely on the good judgment of the present generation. 13 Now, to adapt the constitutional warmarking scheme to the new international order characterized by fourth-generational warfare, one must understand the threat it is being adapted to confront. C. The Jihadist Threat The erosion of the Westphalian and Clausewitzian model of warfare and the blurring of the distinction between the means of warfare and the ends of policy, which is one characteristic of fourth-generational warfare, apply to al-Qaeda and other adherents of jihadist ideology who view the United States as an enemy. An excellent analysis of jihadist ideology and its implications for the rest of the world are presented by Professor Mary Habeck. 133 Professor Habeck identifies the centrality of the Qur'an, specifically a particular reading of the Qur'an and hadith (traditions about the life of Muhammad), to the jihadist terrorists. 134 The jihadis believe that the scope of the Qur'an is universal, and "that their interpretation of Islam is also intended for the entire world, which must be brought to recognize this fact peacefully if possible and through violence if not."' 135 Along these lines, the jihadis view the United States and her allies as among the greatest enemies of Islam: they believe "that every element of modern Western liberalism is flawed, wrong, and evil" because the basis of liberalism is secularism. 136 The jihadis emphasize the superiority of Islam to all other religions, and they believe that "God does not want differing belief systems to coexist."' 37 For this reason, jihadist groups such as al-Qaeda "recognize that the West will not submit without a fight and believe in fact that the Christians, Jews, and liberals have united against Islam in a war that will end in the complete destruction of the unbelievers.' 138 Thus, the adherents of this jihadist ideology, be it al-Qaeda or other groups, will continue to target the United States until she is destroyed. Their ideology demands it. 139 To effectively combat terrorist groups such as al-Qaeda, it is necessary to understand not only how they think, but also how they operate. Al-Qaeda is a transnational organization capable of simultaneously managing multiple operations all over the world."14 It is both centralized and decentralized: al-Qaeda is centralized in the sense that Osama bin Laden is the unquestioned leader, but it is decentralized in that its operations are carried out locally, by distinct cells."4 AI-Qaeda benefits immensely from this arrangement because it can exercise direct control over high-probability operations, while maintaining a distance from low-probability attacks, only taking the credit for those that succeed. The local terrorist cells benefit by gaining access to al-Qaeda's "worldwide network of assets, people, and expertise."' 42 Post-September 11 events have highlighted al-Qaeda's resilience. Even as the United States and her allies fought back, inflicting heavy casualties on al-Qaeda in Afghanistan and destroying dozens of cells worldwide, "al-Qaeda's networked nature allowed it to absorb the damage and remain a threat." 14 3 This is a far cry from earlier generations of warfare, where the decimation of the enemy's military forces would generally bring an end to the conflict. D. The Need for Rapid Reaction and Expanded Presidential War Power By now it should be clear just how different this conflict against the extremist terrorists is from the type of warfare that occupied the minds of the Framers at the time of the Founding. Rather than maintaining the geographical and political isolation desired by the Framers for the new country, today's United States is an international power targeted by individuals and groups that will not rest until seeing her demise. The Global War on Terrorism is not truly a war within the Framers' eighteenth-century conception of the term, and the normal constitutional provisions regulating the division of war powers between Congress and the President do not apply. Instead, this "war" is a struggle for survival and dominance against forces that threaten to destroy the United States and her allies, and the fourth-generational nature of the conflict, highlighted by an indiscernible distinction between wartime and peacetime, necessitates an evolution of America's traditional constitutional warmaking scheme. As first illustrated by the military strategist Colonel John Boyd, constitutional decision-making in the realm of war powers in the fourth generation should consider the implications of the OODA Loop: Observe, Orient, Decide, and Act. 44 In the era of fourth-generational warfare, quick reactions, proceeding through the OODA Loop rapidly, and disrupting the enemy's OODA loop are the keys to victory. "In order to win," Colonel Boyd suggested, "we should operate at a faster tempo or rhythm than our adversaries." 145 In the words of Professor Creveld, "[b]oth organizationally and in terms of the equipment at their disposal, the armed forces of the world will have to adjust themselves to this situation by changing their doctrine, doing away with much of their heavy equipment and becoming more like police."1 46 Unfortunately, the existing constitutional understanding, which diffuses war power between two branches of government, necessarily (by the Framers' design) slows down decision- making. In circumstances where war is undesirable (which is, admittedly, most of the time, especially against other nation-states), the deliberativeness of the existing decision-making process is a positive attribute. In America's current situation, however, in the midst of the conflict with al-Qaeda and other international terrorist organizations, the existing process of constitutional decision-making in warfare may prove a fatal hindrance to achieving the initiative necessary for victory. As a slow-acting, deliberative body, Congress does not have the ability to adequately deal with fast-emerging situations in fourth-generational warfare. Thus, in order to combat transnational threats such as al-Qaeda, the executive branch must have the ability to operate by taking offensive military action even without congressional authorization, because only the executive branch is capable of the swift decision-making and action necessary to prevail in fourth-generational conflicts against fourthgenerational opponents.

### Credibility

**Indefinite detention is insufficient—loads of alt causes**

Thomas **Hilde 09**, professor at the University of Maryland School of Public Policy, “Beyond Guantanamo. Restoring U.S. Credibility on Human Rights,” Heinrich Böll Foundation, http://www.boell.org/downloads/hbf\_Beyond\_Guantanamo\_Thomas\_Hilde(2).pdf

 The first step required by law is a formal investigation of abuse. The **investigations** by the U.S. Department of Justice **must be legitimate and comprehensive or the U.S. will be faced with investigations by the governments of other countries**, including the NATO allies, who are obligated to do so by international law. However, as Mark Drumbl writes of international accountability for atrocities, “**the accountability process remains narrowly oriented to incarceration** following liberal criminal trials. **It is not a broader process that is yet comfortable with meaningful restorative initiatives, indigenous values, qualified amnesties, reintegrative shaming, the needs of victims, reparations, collective or foreign responsibilities, distributive justice, or pointed questions regarding the structural nature of violence in the international system**… **With pronouncement of sentence comes a rush to closure, absolution for the acquiescent, and the evaporation of collective responsibility.**”42 A clearer legal understanding of the contours and details of the torture regime is necessary before making concrete policy decisions holding into the indefinite future. The point that Drumbl underscores, however, is that **to render account involves much more than litigation.**

#### No impact to heg – best data goes neg.

Fettweis, Department of Political Science at Tulane University, ‘11

[Christopher, 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 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.

### Modeling

#### Regional hegemony

Ben-Meir 12/10

[Alon, professor of international relations and Middle East studies at the Center for Global Affairs at New York University. Ben-Meir holds a masters degree in philosophy and a doctorate in international relations from Oxford University, “Iran Will Become a Nuclear Power, Unless...”, HuffPost, 2013: <http://www.huffingtonpost.com/alon-benmeir/iran-will-become-a-nuclea_b_4419902.html?utm_hp_ref=world>]

Regional hegemony: There are 72 million Shiites in Iran (representing 89 percent of the population) plus more than 20 million Shiites in Iraq, against a total of 52 million Sunnis in all of the Gulf States combined -- namely Saudi Arabia, Oman, Kuwait, Bahrain, the United Arab Emirates and Qatar.

From the Iranian perspective, the Gulf's overwhelming Shiite majority combined with a long history of cultural and material riches grants Iran the inherent right to become the regional hegemon.

This also explains Iran's determination to continue to wage a proxy war in Syria in support of Assad's Alawite regime (an offshoot of Shiism) against a plethora of Sunni factions and states led by Saudi Arabia in order to secure its influence during and after Assad's reign.

Moreover, Iran's consistent and successful effort to extend its influence over the crescent from the Gulf to the Mediterranean, which includes Iraq, Syria and Lebanon, adds huge strategic advantages to its regional outreach.

A nuclear-armed Iran will not only solidify its regional hegemony and ascendancy over the Sunni Arab states but recapture its historic importance, which was largely lost during the post-World War era and subsequent American dominance. Moreover, a nuclear Iran will allow it to intimidate its Sunni Arab neighbors and subordinate their political agenda to its own while neutralizing the nuclear threat of its archenemy Israel.

#### National pride

Ben-Meir 12/10

[Alon, professor of international relations and Middle East studies at the Center for Global Affairs at New York University. Ben-Meir holds a masters degree in philosophy and a doctorate in international relations from Oxford University, “Iran Will Become a Nuclear Power, Unless...”, HuffPost, 2013: <http://www.huffingtonpost.com/alon-benmeir/iran-will-become-a-nuclea_b_4419902.html?utm_hp_ref=world>]

National Identity: What has further deepened Iran's convictions to acquire nuclear weapons is its newly-born national identity as the Islamic Republic of Iran. Although Iran (Persia) has had a long history with a recognized national identity, it has not been ruled before by an Islamic clergy. As such, Iran's national identity remains vulnerable because it is still in its formative stages and on the defensive as it has not, as yet, struck deep roots in a population with a considerable Western orientation.

The clergy's intransigence, be it aggressive (Ahmadinejad) or smiling (Rouhani) reflects the protective cover for a consolidating national identity, and thus at heart a psychologically-based resistance to external pressure. Under these conditions, the nature of the discord between them and the US will carry an "us versus them" turn in a prejudiced and selective way.

For the Ayatollahs, the acquisition of nuclear weapons under the aegis of an Islamic Shiite regime would solidify, strengthen and allay the still-vulnerable national identity through direct association with the awesome power and prestige of having nuclear weapons.

Even though the Ayatollahs have insisted that their nuclear program is peaceful, they have made it a common cause as an integral component of national identity and have successfully mobilized the public to stand united behind the regime and defy Western powers, especially the US.

#### Multiple checks prevent the use of force in Asia even when tensions rise

Alagappa 9 Director East-West Center

(Muthiah-, The Long Shadow: Nuclear Weapons and Security in 21st Century Asia, P. 70-71)

Despite this, the role of force in Asian international politics is becoming more limited due to a number of developments. First, the traditional need for force to protect the territorial integrity of states has declined in importance. With few exceptions (Taiwan. North Korea, and South Korea) state survival is not problematic. The Asian political map is for the most part internationally accepted, although some boundaries arc still in dispute. Such disputes are being settled through negotiations or shelved in the interest of promoting better bilateral relations (Wang 2003).

Second, the political, diplomatic, strategic, military, and economic cost of using force has increased dramatically. Over the past several decades, a normative framework has developed in Asia that delegitimizes the use of force to invade and occupy another country or to annex territory that is internationally recognized as belonging to another state. The use of force to invade and occupy another country or to annex territory will incur high costs. For example, if China were to invade Taiwan without serious provocation, it can expect civil and military resistance in Taiwan, U.S. military intervention, international condemnation, and a setback to its image as a responsible power. Such action would also incur huge economic costs resulting from international and domestic disruptions. Unless military action were swift and surgical, it would also result in substantial physical damage that would only increase as Asian countries continued to modernize and urbanize. Further, military action that is not successful can have negative domestic political consequences as well.

Third, most Asian countries benefit from participation in the regional and global capitalist marketplace. The 1997-98 financial crisis sensitized Asian countries to the vagaries and negative consequences of globalization but did not turn them away from liberalization and participation in the global economy. Preserving international stability has become a key goal of major powers. Economic growth, modernization, and growing economic interdependence have increased the cost of the force option and restrained the behavior of states even when major political issues are at stake, as for example in cross-Strait relations. Economic interdependence does not close the force option in all cases, but the high costs of economic disruption can restrain military action. Further, force is no longer relevant for the attainment of economic goals such as access to resources, labor, and markets. Energy security, for example, is sought through the market, national stockpiling, and sourcing arrangements.

Finally, resolution of existing disputes through the use of force is not practical. Except for the United States, none of the Asian states can marshal the necessary military power to impose a settlement by force. The experience in Iraq and Afghanistan suggests that even the United States suffers limitations and that the use of force carries much risk. These considerations explain the reluctance of the United States to undertake preventive action against North Korea, the reluctance of China to carry out its threat of using force to unify Taiwan with the PRC, and the continuing stalemate in the India-Pakistan conflict over Kashmir. Force may still be used in these cases, but the attendant strategic, political, diplomatic, and economic costs and risks are high.

### Solvency

#### The CP undermine US legitimacy

Glazier 8 [Spring, 2008, David Glazier is an Associate Professor, Loyola Law School Los Angeles. J.D., University of Virginia School of Law, “A SELF-INFLICTED WOUND: A HALF-DOZEN YEARS OF TURMOIL OVER THE GUANTANAMO MILITARY COMMISSIONS”, 12 Lewis & Clark L. Rev. 131]

A proposal that gained some support in mid-2007 is to create a dedicated "National Security Court" to conduct trials of suspected terrorists incorporating some mix of regular military and/or federal court standards with the secrecy permitted the Federal Intelligence Surveillance Court (FISC) considering intelligence surveillance warrants. n516 President Bush's new Attorney General, Michael Mukasey, urged serious consideration of this approach in a pre-appointment op-ed. n517 While specifics obviously differ among these various proposals, the general consensus seems to be the need to obtain convictions while protecting evidence from disclosure, presumably from the accused as well as from the terrorist organizations - and hence the American public as well. n518 [\*198] Two leading proponents of this approach, Andrew C. McCarthy and Alykhan Velshi, argue in their paper that the United States needs to do a better job in obtaining intelligence cooperation from other nations and that risk of disclosing evidence chills this cooperation. n519 Yet they ignore the fact that the perceived unfairness of the military commission process has caused other nations to restrict law enforcement cooperation with the United States and to demand that their nationals be exempt from trial. So it is hard to see how creating a new court deliberately structured to accord a lesser standard of due process to aliens and permitting use of secret evidence - a practice already rejected for the military commissions - can possibly overcome the taint associated with the military tribunals. Given that the security redactions evident in the CSRT transcripts released to date from Guantanamo seem intended to conceal only the specific interrogation techniques employed on the detainees, it seems clear that the primary "classified" evidence in the war on terror is simply coerced statements. Whether true or not, it seems almost certain that any conviction based on "secret" evidence will be generally assumed to be based on such grounds and will never enjoy any credibility in world public opinion. If convictions cannot be obtained in open court, it is far better to simply detain an individual preventively than to lose any residual American high ground by compromising the integrity of the U.S. justice system.

#### 2) NSC’s relaxed procedural and evidentiary rules undermine commitment to the rule of law – turns the aff

Cole 08, Professor of Law at Georgetown

(David, A CRITIQUE OF “NATIONAL SECURITY COURTS, www.constitutionproject.org/pdf/Critique\_of\_the\_National\_Security\_Courts.pdf)

Most importantly, there is the intrinsic and inescapable problem of definition. Whereas the argument for specialized courts for tax and patent law is that expert judges are particularly necessary given the complex subject-matter, proposals for specialized courts for terrorism trials are based on the asserted need for relaxed procedural and evidentiary rules and are justified on the ground that terrorists do not deserve full constitutional protections. This creates two fundamental constitutional problems. First, justifying departures from constitutional protections on the basis that the trials are for terrorists undermines the presumption of innocence for these individuals. Second, if a conviction were obtained in a national security court using procedural and evidentiary rules that imposed a lesser burden on the government, then the defendant would be subjected to trial before a national security court based upon less of a showing than would be required in a traditional criminal proceeding. The result would be to apply less due process to the question of guilt or innocence, which, by definition, would increase the risk of error. And, if the government must make a preliminary showing that meets traditional rules of procedure and evidence in order to trigger the jurisdiction of a national security court, such a showing would also enable it to proceed via the traditional criminal process.

#### 3) NSC due process deprivations spillover to the rest of the judicial system – magnifies rule of law degradation

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(David, A CRITIQUE OF “NATIONAL SECURITY COURTS, www.constitutionproject.org/pdf/Critique\_of\_the\_National\_Security\_Courts.pdf)

National security courts for criminal prosecutions are not just unnecessary; they are also dangerous. They run the risk of creating a separate and unequal criminal justice system for a particular class of suspects, who will be brought before such specialized courts based on the very allegations they are contesting. Such a system undermines the presumption of innocence for these defendants, and risks a broader erosion of defendants’ rights that could spread to traditional Article III trials. It was Justice Frankfurter who wrote that “It is a fair summary of history to say that the safeguards of liberty have frequently been forged in controversies involving not very nice people.” Committee members strongly believe that the shadow of terrorism must not be the basis for abandoning these fundamental tenets of justice and fairness.

alone can here protect the values of democratic government.”

#### Evidentiary standards mean trials and habeas hearings will always go against the detainees—means they can’t solve

Ajuha and Tutt 12 [Fall, 2012, Jasmeet K. Ahuja and Andrew Tutt “Evidentiary Rules Governing Guantanamo Habeas Petitions: Their Effects and Consequences”, 31 Yale L. & Pol'y Rev. 185]

Beginning in 2001, the United States began transporting hundreds of persons captured overseas in the "War on Terror" to the U.S. Naval Base at Guantanamo Bay, Cuba. n1 They were kept at Guantanamo specifically to insulate from judicial review the military's decision to detain them. n2 Seven years later, the Supreme Court in Boumediene v. Bush granted Guantanamo detainees the right to petition for the writ of habeas corpus in the Court of Appeals for the D.C. Circuit. n3 The Court held that detainees must have "a meaningful opportunity to demonstrate that [they are] being held pursuant to the erroneous application or interpretation of relevant law." n4 The Court's central concern was with the habeas court's power to admit and consider relevant exculpatory evidence, a power necessary "for the writ of habeas corpus, or its substitute, to function." n5 But while the Court's central preoccupation was with a habeas court's power to independently review the evidence, the Court did not enumerate any specific procedural requirements. The Court - hesitant to place burdens on the military and cognizant of the need to protect classified information - sketched only the broad outlines of what the Constitution requires. n6 In so doing, it left "the extent of the showing required of the Government in these cases ... a matter to be determined" n7 and charged the district courts with the task of balancing the government's legitimate interests against each detainee's right to have a court assess the lawfulness of his detention. n8 [\*187] Since Boumediene, the courts within the D.C. Circuit have heard over sixty habeas petitions from detainees at Guantanamo Bay. n9 At first, many writs were granted. The lower courts applied a functional framework for determining the admissibility, credibility, and probity of evidence, holding the government to the ordinary burden of preponderance of the evidence. n10 However, as the government and detainees began to appeal habeas decisions on the basis of adverse evidentiary rulings, the Court of Appeals announced binding evidentiary rules limiting the district courts' discretion to admit, exclude, weigh, and consider evidence as the district courts saw fit. n11 This Note argues that these evidentiary rules deny detainees a "meaningful opportunity" to contest the factual basis of their detention. n12 The D.C. Circuit maintains that it holds the government to a preponderance standard n13 and has cast its reversals of the District Court's grants of habeas corpus as mere corrections in judging evidentiary probity. n14 However, in substance, the Court of Appeals' evidentiary rules have quietly but significantly eroded the evidentiary burden. [\*188] The way in which the evidentiary standard and the evidentiary rules interact to weaken Boumediene has, for the most part, escaped scrutiny. n15 Many have praised the D.C. Circuit for striking an appropriate balance between the needs of national security and the rights of those wrongfully detained. n16 But this underestimates the combined significance of the D.C. Circuit's evidentiary rulings. Boumediene's central purpose was to withhold from the executive branch the unchecked power to detain whomever it deems a threat. n17 Yet the D.C. Circuit's evidentiary rules have empowered the government to detain upon so little evidence that the habeas hearing no longer serves the checking role the Boumediene Court intended. n18 The D.C. Circuit has tacitly reduced the amount and quality of evidence necessary to establish the lawfulness of detention through three powerful mechanisms: (1) all but eliminating corroboration requirements and restrictions on the admissibility of hearsay evidence, no matter how unreliable; n19 (2) establishing that courts consider the evidence in the "whole record" when determining whether a petitioner meets the requirements for detention - a determination that often reduces to the Court of Appeals' deciding that the District Court [\*189] wrongly refused to credit sufficient government evidence; n20 and (3) developing irrefutable presumptions of detainability in which a single fact once established - such as a stay at an al-Qaeda affiliated guesthouse - is dispositive on the question of detention, even when other facts in the record point strongly in the opposite direction. n21

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### Modeling

#### Asian wars not likely

Bitzinger and Desker, Rajaratnam School of International Studies, 8 (Richard A., sr. fellow @ the school of international studies @ Nanyang Technological University, and Barry, Dean of the [S Rajaratnam School of International Studies](http://en.wikipedia.org/wiki/S_Rajaratnam_School_of_International_Studies), Survival, Volume 50, Issue 6, December, Informaworld)

Yet despite all these potential crucibles of conflict, the Asia-Pacific, if not an area of serenity and calm, is certainly more stable than one might expect. To be sure, there are separatist movements and internal struggles, particularly with insurgencies, as in Thailand, the Philippines and Tibet. Since the resolution of the East Timor crisis, however, the region has been relatively free of open armed warfare. Separatism remains a challenge, but the break-up of states is unlikely. Terrorism is a nuisance, but its impact is contained. The North Korean nuclear issue, while not fully resolved, is at least moving toward a conclusion with the likely denuclearisation of the peninsula. Tensions between China and Taiwan, while always just beneath the surface, seem unlikely to erupt in open conflict any time soon, especially given recent Kuomintang Party victories in Taiwan and efforts by Taiwan and China to re-open informal channels of consultation as well as institutional relationships between organisations responsible for cross-strait relations. And while in Asia there is no strong supranational political entity like the European Union, there are many multilateral organisations and international initiatives dedicated to enhancing peace and stability, including the Asia-Pacific Economic Cooperation (APEC) forum, the Proliferation Security Initiative and the Shanghai Co-operation Organisation. In Southeast Asia, countries are united in a common geopolitical and economic organisation - the Association of Southeast Asian Nations (ASEAN) - which is dedicated to peaceful economic, social and cultural development, and to the promotion of regional peace and stability. ASEAN has played a key role in conceiving and establishing broader regional institutions such as the East Asian Summit, ASEAN+3 (China, Japan and South Korea) and the ASEAN Regional Forum. All this suggests that war in Asia - while not inconceivable - is unlikely.

#### Presence of tensions *proves* Asia is stable – haven’t escalated to a hot war in two decades

ALAGAPPA 2003 – DIRECTOR EAST-WEST CENTER WASHINGTON , ASIAN SECURITY ORDER, PAGE 2-4

It is undeniable that Asia faces serious security challenges and that some ri­valry and competition feature in the still-evolving strategic picture. It is not a foregone conclusion, however, that Asia is a dangerous place characterized by capricious interaction and instability. Contemporary Asia is a far more stable and predictable place than during the early postindependence era that coincided with the height of the Cold War. That period witnessed, among others, the Korean War (1950-53), the French (1946-54) and American (1964-75) wars in Indochina, the Indonesian confrontation against Malaysia and Singapore (1963-65), Soviet-, Chinese-, and Vietnamese-supported communist insurgencies in several South­east Asian countries (approximately 1948-81), North Vietnam's conquest of South Vietnam (1975), Vietnam's invasion and occupation of Cambodia and Laos (1978-89), the three Indo-Pakistani wars (1947, 1965, 1971), the Sino-Indian bor­der war (1962), and the Sino-Soviet military confrontation (1969) over their dis­puted boundary. For the better part of three decades, Asia was truly a region in turmoil. Asia has now enjoyed relative peace for more than two decades. There has been no major war since the Vietnamese invasion of Cambodia in 1978 and the Chinese punitive attack on Vietnam in 1979. Despite periodic tensions, there has not been a war across the Taiwan Strait or in the Korean peninsula. The Kashmir conflict has witnessed much greater military activity and casualties, and the prob­ability of overt military clash is higher than in the other two acute conflicts. How­ever, even here, despite and in some ways because of the acquisition of nuclear capabilities by India and Pakistan, the actual use of force has been limited and confined largely to the areas adjacent to the line of control in Kashmir. Although it had the potential, the 1999 Kargil conflict did not escalate to full-scale war, let alone trigger a nuclear exchange. The crisis precipitated by the December 13, 2001, attack on the Indian parliament by militant Islamic groups based in Pakistan, continued Pakistani support for militant infiltration and terrorist activities in India, and the resulting massive Indian and Pakistani military mobilization along the line of control have generated much tension between the two countries, moving them to the brink of war. While a war cannot be ruled out, it is equally important to acknowledge the increasing constraints on the unlimited use of force. In the event that a war does occur, it is likely to be limited and confined to the conventional level. The many other territorial disputes on land and at sea in Asia have resulted only in occasional military clashes. The nuclear crisis in the Korean peninsula was defused through an agreed framework in 1994 to freeze North Korea's nuclear development. The Indian and Pakistani nuclear tests have not had the feared chain reaction, and despite the periodic crisis between these two states, the nuclear threshold has not been breached. The apprehensions among the Asian powers (rooted in old memories and contemporary concerns), as well as widespread concern with the predominant position of the United States and the rise of China, have contributed to the development of certain military capabilities (both conventional and nuclear) and redeployment of forces, but they have not resulted in unrestrained competition and arms racing. Asia has not become an arena of incessant rivalry. Nor has it become a hotbed of wars where the survival of states is deeply problematic and states are constantly jockeying for power. With very few exceptions, Asian states do not fear for their survival. Even when survival is at stake as in the case of Taiwan, international interaction is not always governed by considerations of survival and threat of force. The international political, economic, and social interaction of most states occurs in the context of a stable and predictable environment and generally is in accord with internationally accepted principles and norms. International power and position ire important, but these are long-range considerations, not immediate triggers of behavior. Contemporary Asia is much more stable than the Asia of the past and indeed more stable than several other regions of the world today (Eastern Europe, the Middle East, Africa). There is little likelihood that such stability will be undermined quickly.

### Credibility

#### Hegemony doesn’t create influence; Cold War communism, Vietnam and Korean war, and Castro prove.

Nye 11

[Joseph S., professor at Harvard, “American power after bin Laden”, CNN, May 5: <http://globalpublicsquare.blogs.cnn.com/2011/05/05/american-power-after-bin-laden/>]

UNITED KINGDOM – When one state is preponderant in power resources, observers often refer to the situation as hegemonic. Today, many pundits argue that other countries’ rising power and the loss of American influence in a revolutionary Middle East point to the decline of “American hegemony.”

But the term is confusing. For one thing, possession of power resources does not always imply that one can get the outcomes one prefers. Even the recent death of Osama bin Laden at the hands of United States special forces does not indicate anything about American power one way or the other.

To see why, consider the situation after World War II. The U.S. accounted for more than one-third of global product and had an overwhelming preponderance in nuclear weapons. Many considered it a global hegemon. Nonetheless, the U.S. was unable to prevent the “loss” of China, “roll back” communism in Eastern Europe, prevent stalemate in the Korean War, defeat Vietnam’s National Liberation Front, or dislodge the Castro regime in Cuba.

Even in the era of alleged American hegemony, studies show that only one-fifth of America’s efforts to compel change in other countries through military threats were successful, while economic sanctions worked in only half of all cases. Yet many believe that America’s current preponderance in power resources is hegemonic, and that it will decline, like that of Britain before it. Some Americans react emotionally to that prospect, though it would be ahistorical to believe that the U.S. will have a preponderant share of power resources forever.

But the term “decline” conflates two different dimensions of power: absolute decline, in the sense of decay or loss of ability to use one’s resources effectively, and relative decline, in which the other states’ power resources become greater or are used more effectively.

For example, in the seventeenth century, the Netherlands flourished domestically but declined in relative power as other states grew in strength. Conversely, the Western Roman Empire did not succumb to another state, but instead to internal decay and swarms of barbarians. Rome was an agrarian society with low economic productivity and a high level of internecine strife.

While the U.S. has problems, it hardly fits the description of absolute decline in ancient Rome, and the analogy to British decline, however popular, is similarly misleading. Britain had an empire on which the sun never set, ruled more than a quarter of humankind, and enjoyed naval supremacy.

But there are major differences in the relative power resources of imperial Britain and contemporary America. By World War I, Britain ranked only fourth among the great powers in terms of military personnel, fourth in GDP, and third in military spending. The costs of defense averaged 2.5-3.4% of GDP, and the empire was ruled in large part with local troops.

In 1914, Britain’s net export of capital gave it an important financial kitty to draw upon (though some historians consider that it would have been better to have invested the money in domestic industry). Of the 8.6 million British forces in WWI, nearly one-third were provided by the overseas empire.

With the rise of nationalism, however, it became increasingly difficult for London to declare war on behalf of the empire, the defense of which became a heavier burden.

By contrast, America has had a continental-scale economy immune from nationalist disintegration since 1865. For all the loose talk of American empire, the U.S. is less tethered and has more degrees of freedom than Britain ever had. Indeed, America’s geopolitical position differs profoundly from that of imperial Britain: while Britain faced rising neighbors in Germany and Russia, America benefits from two oceans and weaker neighbors.

### Warfighting

#### Terrorists can steal nuclear material

Jaspal 12

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 The increasing reliance on the nuclear energy to decrease the dependence on the carbon fuels and steady deterioration of the twentieth century nuclear nonproliferation regime enhance the possibility of nuclear/radiological terrorism. The general perception is that the nuclear weapon states’ enriched uranium, weapon grade plutonium and atomic devices could be misused by the terrorist group for nuclear/radiological terrorism. Nevertheless, the non-nuclear weapon states’ nuclear programs built for peaceful application of nuclear technology are equally vulnerable to terrorist nefarious designs because many of these states nuclear facilities are not adequately guarded. In addition, the terrorist could purchase nuclear material from the global black market. (O’Neill, 1997: 1) The weak-security apparatus and nuclear non- proliferation regimes inability to prevent the illicit nuclear trade is in the advantage of transnational terrorist groups that are determined to use nuclear/radiological terrorism to accomplish their perilous design.

#### Terrorism risks global nuclear war

Ayson 10, Professor of Strategic Studies

[Robert Ayson, Professor of Strategic Studies and Director of the Centre for Strategic Studies: New Zealand at the Victoria University of Wellington, 2010 (“After a Terrorist Nuclear Attack: Envisaging Catalytic Effects”, Studies in Conflict & Terrorism, Vol. 33, Issue 7, July 2010, Available Online on InformaWorld]

A terrorist nuclear attack, and even the use of nuclear weapons in response by the country attacked in the first place, would not necessarily represent the worst of the nuclear worlds imaginable. Indeed, there are reasons to wonder whether nuclear terrorism should ever be regarded as belonging in the category of truly existential threats. A contrast can be drawn here with the global catastrophe that would come from a massive nuclear exchange between two or more of the sovereign states that possess these weapons in significant numbers. Even the worst terrorism that the twenty-first century might bring would fade into insignificance alongside considerations of what a general nuclear war would have wrought in the Cold War period. And it must be admitted that as long as the major nuclear weapons states have hundreds and even thousands of nuclear weapons at their disposal, there is always the possibility of a truly awful nuclear exchange taking place precipitated entirely by state possessors themselves. But these two nuclear worlds—a non-state actor nuclear attack and a catastrophic interstate nuclear exchange—are not necessarily separable. It is just possible that some sort of terrorist attack, and especially an act of nuclear terrorism, could precipitate a chain of events leading to a massive exchange of nuclear weapons between two or more of the states that possess them. In this context, today’s and tomorrow’s terrorist groups might assume the place allotted during the early Cold War years to new state possessors of small nuclear arsenals who were seen as raising the risks of a catalytic nuclear war between the superpowers started by third parties. These risks were considered in the late 1950s and early 1960s as concerns grew about nuclear proliferation, the so-called n+1 problem. It may require a considerable amount of imagination to depict an especially plausible situation where an act of nuclear terrorism could lead to such a massive inter-state nuclear war. For example, in the event of a terrorist nuclear attack on the United States, it might well be wondered just how Russia and/or China could plausibly be brought into the picture, not least because they seem unlikely to be fingered as the most obvious state sponsors or encouragers of terrorist groups. They would seem far too responsible to be involved in supporting that sort of terrorist behavior that could just as easily threaten them as well. Some possibilities, however remote, do suggest themselves. For example, how might the United States react if it was thought or discovered that the fissile material used in the act of nuclear terrorism had come from Russian stocks, FN 40 and if for some reason Moscow denied any responsibility for nuclear laxity? The correct attribution of that nuclear material to a particular country might not be a case of science fiction given the observation by Michael May et al. that while the debris resulting from a nuclear explosion would be “spread over a wide area in tiny fragments, its radioactivity makes it detectable, identifiable and collectable, and a wealth of information can be obtained from its analysis: the efficiency of the explosion, the materials used and, most important … some indication of where the nuclear material came from.”41 Alternatively, if the act of nuclear terrorism came as a complete surprise, and American officials refused to believe that a terrorist group was fully responsible (or responsible at all) suspicion would shift immediately to state possessors. Ruling out Western ally countries like the United Kingdom and France, and probably Israel and India as well, authorities in Washington would be left with a very short list consisting of North Korea, perhaps Iran if its program continues, and possibly Pakistan. But at what stage would Russia and China be definitely ruled out in this high stakes game of nuclear Cluedo? In particular, if the act of nuclear terrorism occurred against a backdrop of existing tension in Washington’s relations with Russia and/or China, and at a time when threats had already been traded between these major powers, would officials and political leaders not be tempted to assume the worst? Of course, the chances of this occurring would only seem to increase if the United States was already involved in some sort of limited armed conflict with Russia and/or China, or if they were confronting each other from a distance in a proxy war, as unlikely as these developments may seem at the present time. The reverse might well apply too: should a nuclear terrorist attack occur in Russia or China during a period of heightened tension or even limited conflict with the United States, could Moscow and Beijing resist the pressures that might rise domestically to consider the United States as a possible perpetrator or encourager of the attack? Washington’s early response to a terrorist nuclear attack on its own soil might also raise the possibility of an unwanted (and nuclear aided) confrontation with Russia and/or China. For example, in the noise and confusion during the immediate aftermath of the terrorist nuclear attack, the U.S. president might be expected to place the country’s armed forces, including its nuclear arsenal, on a higher stage of alert. In such a tense environment, when careful planning runs up against the friction of reality, it is just possible that Moscow and/or China might mistakenly read this as a sign of U.S. intentions to use force (and possibly nuclear force) against them. In that situation, the temptations to preempt such actions might grow, although it must be admitted that any preemption would probably still meet with a devastating response. As part of its initial response to the act of nuclear terrorism (as discussed earlier) Washington might decide to order a significant conventional (or nuclear) retaliatory or disarming attack against the leadership of the terrorist group and/or states seen to support that group. Depending on the identity and especially the location of these targets, Russia and/or China might interpret such action as being far too close for their comfort, and potentially as an infringement on their spheres of influence and even on their sovereignty. One far-fetched but perhaps not impossible scenario might stem from a judgment in Washington that some of the main aiders and a betters of the terrorist action resided somewhere such as Chechnya, perhaps in connection with what Allison claims is the “Chechen insurgents’ … long-standing interest in all things nuclear.”42 American pressure on that part of the world would almost certainly raise alarms in Moscow that might require a degree of advanced consultation from Washington that the latter found itself unable or unwilling to provide. There is also the question of how other nuclear-armed states respond to the act of nuclear terrorism on another member of that special club. It could reasonably be expected that following a nuclear terrorist attack on the United States, both Russia and China would extend immediate sympathy and support to Washington and would work alongside the United States in the Security Council. But there is just a chance, albeit a slim one, where the support of Russia and/or China is less automatic in some cases than in others. For example, what would happen if the United States wished to discuss its right to retaliate against groups based in their territory? If, for some reason, Washington found the responses of Russia and China deeply underwhelming, (neither “for us or against us”) might it also suspect that they secretly were in cahoots with the group, increasing (again perhaps ever so slightly) the chances of a major exchange. If the terrorist group had some connections to groups in Russia and China, or existed in areas of the world over which Russia and China held sway, and if Washington felt that Moscow or Beijing were placing a curiously modest level of pressure on them, what conclusions might it then draw about their culpability? If Washington decided to use, or decided to threaten the use of, nuclear weapons, the responses of Russia and China would be crucial to the chances of avoiding a more serious nuclear exchange. They might surmise, for example, that while the act of nuclear terrorism was especially heinous and demanded a strong response, the response simply had to remain below the nuclear threshold. It would be one thing for a non-state actor to have broken the nuclear use taboo, but an entirely different thing for a state actor, and indeed the leading state in the international system, to do so. If Russia and China felt sufficiently strongly about that prospect, there is then the question of what options would lie open to them to dissuade the United States from such action: and as has been seen over the last several decades, the central dissuader of the use of nuclear weapons by states has been the threat of nuclear retaliation. If some readers find this simply too fanciful, and perhaps even offensive to contemplate, it may be informative to reverse the tables. Russia, which possesses an arsenal of thousands of nuclear warheads and that has been one of the two most important trustees of the non-use taboo, is subjected to an attack of nuclear terrorism. In response, Moscow places its nuclear forces very visibly on a higher state of alert and declares that it is considering the use of nuclear retaliation against the group and any of its state supporters. How would Washington view such a possibility? Would it really be keen to support Russia’s use of nuclear weapons, including outside Russia’s traditional sphere of influence? And if not, which seems quite plausible, what options would Washington have to communicate that displeasure? If China had been the victim of the nuclear terrorism and seemed likely to retaliate in kind, would the United States and Russia be happy to sit back and let this occur? In the charged atmosphere immediately after a nuclear terrorist attack, how would the attacked country respond to pressure from other major nuclear powers not to respond in kind? The phrase “how dare they tell us what to do” immediately springs to mind. Some might even go so far as to interpret this concern as a tacit form of sympathy or support for the terrorists. This might not help the chances of nuclear restraint. FN 40. One way of reducing, but probably not eliminating, such a prospect, is further international cooperation on the control of existing fissile material holdings.

#### Spillover – Judicial intrusion into war powers sets a precedent that undermines overall military power

Chesney et al 10 – Senior Fellow of Governance Studies @ Brookings

(Robert, Benjamin Wittes – Senior Fellow of Governance Studies @ Brookings, Rabea Benhalim – Legal Fellow of Governance Studies @ Brookings, The Emerging Law of Detention: The Guantánamo Habeas Cases as Lawmaking, http://www.brookings.edu/research/papers/2010/01/22-guantanamo-wittes-chesney)

It is hard to overstate the resulting significance of these cases. They are more than a means to decide the fate of the individuals in question. They are also the vehicle for an unprecedented wartime law-making exercise with broad implications for the future. The law established in these cases will in all likelihood govern not merely the Guantánamo detentions themselves but any other detentions around the world over which American courts acquire habeas jurisdiction. What’s more, to the extent that these cases establish substantive and procedural rules governing the application of law-of-war detention powers in general, they could end up impacting detentions far beyond those immediately supervised by the federal courts. They might, in fact, impact superficially-unrelated military activities, such as the planning of operations, the selection of interrogation methods, or even the decision to target individuals with lethal force.

#### 2) Expertise – the judiciary doesn’t have it – ensures ineffective warfighting

Hudson 99 – Major in US Army

(Walter, March, Racial Extremism in the Army, Military Law Review (159 Mil. L. Rev. 1)

Where Brennan’s argument may appear to be the most persuasive is where the potential “penalties” cut into the interests that the adjudicative process is best suited to protect–namely, constitutional protections. In dealing with constitutional protections, individual rights often trump majority concerns. Discerning whether individuals should be granted these protections may not be particularly complex, on the surface.234 When viewing the grant of constitutional protections in relation to the military’s goal–successful combat operations–this argument loses force. This is because “simplicity” as defined in civilian contexts often does not have the same meaning in the military context. Clausewitz, the Prussian general and author of the military classic, On War, once famously stated: “Everything in war is very simple, but the simplest thing is difficult.”235 Clausewitz terms all the uncertainties and problems that accompany wartime operations as “friction.”236 Friction can be defined as the “realm of uncertainty and chance, even more [is] it the realm of suffering, confusion, exhaustion, and fear”237 that accompanies military wartime operations. All these exist to a much higher degree in war, because, as Clausewitz points out, in war, not only is chance and uncertainty a constant, 238 but also one side is trying to impose its will on its opponent, which is an “animate object that reacts.”239 In other words, in war, you are seeking to overcome an opponent who is reacting to (and may be anticipating) your movements, who is trying not only to defeat but to destroy you, and who may not be constrained by your own laws, customs, and behavior. It is not thus simply the lack of judicial competence in military affairs, but the effects that the lack of competence may have that is an additional “friction” in the military environment. The problem in applying a standard of review similar to the kind used for civilian society is not just that the court may err, but the ramifications of such an error given the uncertainty of conflict.240 An error in military policy making could impede military effectiveness and thereby jeopardize national security.241 These judicial decisions put the courts squarely into the political arena. Judges unwittingly become “strategists”–unelected and ill-equipped officials deciding matters of potentially ultimate importance. Judicial deference, therefore, is generally appropriate to military decision-making, and in particular, a unit commander’s decision-making on extremism. Extremism’s disproportionate impact on the community where it occurs is an impact that can only be magnified in a military unit. The best way to appreciate that impact is to look at the gravest danger posed by racial extremists–the violent hate crime.

#### 3) Flexibility – deference gives the president the freedom needed to successfully wage war

Yoo 3 – prof of law @ UC Berkeley

(John, December, George Washington Law Review, “Judicial Review and the War on Terrorism,” 72 Geo. Wash. L. Rev. 427)

Nonetheless, courts continue to play a role in war by hearing cases involving the domestic ramifications of a decision that the United States is in a state of war. Yet, as we have seen with cases involving the surveillance and detention of terrorists, courts have adopted a deferential standard of scrutiny that provides the political branches with the flexibility to conduct war successfully. By doing so, the exercise of judicial review is playing more than its usual role as a check and balance on the actions of the other branches. Rather, judicial review presents the President and Congress with new weapons with which to fight the war on terrorism. In the case of FISA surveillance, for example, deferential judicial review allows the executive branch to intercept terrorist communications under a standard similar to that which applies to military surveillance, all the while preserving the possibility of the use of the evidence in a federal prosecution. With its deferential review toward the detention of enemy combatants, federal courts not only provide the executive with a different way of holding terrorists, but they also present the option, perhaps, of later moving the detainees into the federal court system for prosecution. In both cases, the more deferential standard of scrutiny allows the political branches to undertake immediate wartime actions under the more flexible rules of the laws of war, without forsaking later use of the federal criminal justice system as means of sanctioning and incapacitating members of al Qaeda. By presenting more options to the war fighting branches of government, the courts act not merely as a traditional check on government, but as a potential weapon that can assist the United States’ war on terrorism.

#### 4) Confidentiality – judicial involvement in war powers will publish sensitive military information which kills deterrence

Green 97 – BS @ Univ of South Carolina

(Tracey Colton Green, South Carolina Environmental Law Journal, Fall, 1997, 6 S.C Envtl. L.J. 137, Providing for the Common Defense versus Promoting the General Welfare: the Conflicts Between National security and National Environmental Policy, lexis)

The judiciary abstains from playing a role in matters of national security because the Constitution commits responsibility for national security to the elected branches of the United States government, especially the President as Commander-in-Chief. n4 Also, the judiciary has no real standards with which it may evaluate combat decisions. Thus, there is not an explicit provision that the judiciary should render decisions that would have the effect of controlling the armed forces in combat. n5 But the armed forces take many actions that, while short of actual combat, comprise a strategy of achieving the maximum deterrent effect possible. Some of these acts are more crucial to national security than steps taken in combat, because deterrent acts are designed to avoid actual battle. Other actions, however, are peripheral to maintaining a deterrent force. The judiciary can and should rule on actions taken by the armed forces that are peripheral to national security. The problem is defining these peripheral actions. Regardless of its role in national security, the judiciary has a very important and often primary function in Congressional policy development. The Constitutional framework contemplates that Congress will maintain its control over domestic policy. n6 To direct domestic policy toward a desired end, Congress enacts laws for either the President or private individuals to enforce through the judicial branch. Environmental laws are part of this domestic policy, and are designed to be enforced through judicial review. However, the judicial review process is highly public while elements of national security are often, by necessity, confidential. This inherent dichotomy results in difficulties for courts reviewing actions taken by DoD that are challenged for some environmental impact or for the failure to include any consideration of environmental factors.

#### Military readiness provides highly visible disaster relief – that’s the centerpiece of soft power and overwhelms any alt causes

Harman 11/18

[Jane, Director, President and CEO of the Woodrow Wilson Center, graduated from Harvard Law School, “The Military's Invaluable 'Soft' Power”, 2013: <http://www.huffingtonpost.com/rep-jane-harman/the-militarys-invaluable_b_4297452.html?utm_hp_ref=world>

Just as in Pakistan after devastating floods and earthquakes, Thailand after the tsunami and the worst flood in a century, and Haiti after an earthquake leveled its major city, America's military is once again doing a masterful job of staging relief supplies into an area devastated by a catastrophic natural disaster.¶ In the Philippine islands where barely a tree is left standing and as many as 10,000 are feared dead, U.S. soldiers are on the ground.¶ As Americans, it is natural for us to display generosity and compassion in response to natural disasters. These are truly American values. In fact, our generosity and compassion -- combined with the U.S. military's unparalleled ability to deliver disaster relief -- may be our most effective foreign policy tools.¶ Our military's complete focus can't be overseeing rescue and recovery efforts after a typhoon. However, our extraordinary competence at staging disaster relief gives the U.S. the ability to show the world our better angels. It's a side that -- unfortunately -- many otherwise won't see.¶ Speaking on a panel on security resilience at the World Economic Forum in Bangkok last year, I pointed out that the United States has a proven record in providing aid after disasters, including the 2004 Indian Ocean earthquake and tsunami, the Thai floods, the 2005 earthquake in Pakistan, and the Fukushima, Japan, nuclear disaster.¶ We have the opportunity to again provide more than just "hard" assistance--relief designed to save lives. We also have the opportunity to show the world American generosity and compassion. Coming to the aid of the people of the Philippines is the right thing to do as human beings. It is also the right thing for the U.S. to do to improve relations with other countries.¶ Relief efforts have a real and measurable impact on how others view us. After the Fukushima nuclear disaster, Japanese Cabinet office polls registered record levels of public goodwill towards the U.S. Eighty-five percent of Japanese viewed the United States positively in Pew's annual Global Attitude Project survey in 2011 -- up from 66 percent the year before.¶ Indonesia may be the best example of what our humanitarian aid -- and our military's ability to stage relief efforts and deliver crucial supplies -- can mean for America's image. After the Iraq War began, only 15 percent of Indonesians had a favorable view of the U.S. A few months after relief efforts began in regions in Indonesia devastated by tsunami, 38 percent of Indonesians said they had a favorable view of the U.S. By 2011, 54 percent of Indonesians say they had a favorable view of the U.S.¶ To be sure, there are other factors that helped improve America's favorability in Indonesia. However, Indonesians saw with their own eyes our military delivering food, medicine, and supplies to their neighbors. This made a real impact in how they feel about Americans -- an especially important development considering that Indonesia is primarily a Muslim nation.¶ The devastating tsunami that hit Indonesia also pounded Thailand in 2004. In relief efforts, Americans and Thais worked side-by-side to deliver food and supplies. Americans lined up to donate blood. U.S. humanitarian assistance helped build trust with Thailand's government and the Thai people. Building this relationship played an important part in facilitating the capture of the terrorist Hambali by Thai authorities in Bangkok in 2005.¶ Building trust both with citizens and governments is an invaluable foreign policy tool. At a time when too many see U.S. foreign policy in kinetic terms, like drones or special ops, the "soft power diplomacy" of disaster relief delivers life-saving help to desperate people, and improves their image of America.

Democracy increases war – democratic regime change spurs global conflict.

Henderson, Associate Professor of Political Science at Wayne State University, 2002 (Errol, *Democracy and War: The End of an Illusion?* pp.68-70)

My findings refute the monadic level DPP, which suggests that democracies are more peaceful than nondemocracies, and they reveal that democracies are more likely than nondemocracies to be involved in—and to initiate—interstate wars and MIDs. Wedding these findings to those in Chapter 2, it appears that the spread of democracy may precipitate an increase in the likelihood of wars as individual states become democratic and, subsequently, more war-prone. Further, casting these findings in the light of recent studies of the DPP highlights some daunting prospects for global peace. For example, recent empirical findings indicate that regime changes are much more likely to occur during or following wars and that losing states are much more likely to experience regime change (Bueno de Mesquita et al., 1992). Since democracies are more likely to win wars as compared to nondemocracies (Lake, 1992; Stam, 1996; Reiter and Stam, 1998a), it follows that nondemocracies are more likely to experience regime change, which in some cases may result in their full democratization. The result is that war involvement may actually increase the proportion of democratic states in the system and, subsequently, increase the likelihood of warfare for those newly democratic states. From this perspective, the spread of democracy will create more of the most war-prone states, thereby increasing the likelihood of war involvement and initiation for those states. These relationships hardly encourage a sanguine view of the prospects for peace with a democratic enlargement strategy.

No empirical proof of the democratic peace – their evidence is based on a structural bias in the literature.

Layne, Professor of International Affairs at the George Bush School of Government and Public Service at Texas A&M University, 2006 (Christopher, The Peace of Illusions: American Grand Strategy from 1940 to the Present, pp.121-2)

As a theory of international politics, the democratic peace theory carries little weight. 20 It rests on dubious grounds methodologically. 21 More important, it is not valid empirically. Democratic states have gone to war with other democracies, and in crises democracies are just as prone to making military threats against other democracies as they are against nondemocracies. 22 However, democratic peace theory has a lot of clout in policymaking because it plays to the Wilsonian predispositions of U.S. strategists and provides the United States a handy pretext for intervening in the internal affairs of regimes it considers troublemakers. Thus, far from being a theory of peace, democratic peace theory causes the United States to act like a “crusader state.” 23 America’s crusader mentality springs directly from liberalism’s intolerance of competing ideologies and the concomitant belief that—merely by existing—nondemocratic states threaten America’s security and the safety of liberalism at home. According to Wilsonian precepts, the best way to deal with such states is to use American power to bring about regime change. 24 The belief that the United States can only be safe in a world of liberal democracies creates real, and often otherwise avoidable, friction between the United States and nondemocratic states.

No democratic peace – spread of democracy will increase intra-bloc conflict – their evidence doesn’t assume changes to the international system.

Erik Gartzke and Alex Weisiger, Associate Professor of Political Science at University of California San Diego and Assistant Professor of Political Science at University of Pennsylvania, March 15, 2010, “Permanent Friends? Dynamic Difference and the Democratic Peace,” http://dss.ucsd.edu/~egartzke/papers/impermanent\_012010.pdf

We can go farther in assessing implications of regime similarity in varied circumstances. As with any cue or motive for cooperation, regime type relies on the presence of a threat to ally against. When a cue becomes ubiquitous, it loses much of its informational value. The proliferation of democracy means that democracy is less of a distinguishing characteristic, even as other cues, identities, or actual determinants of preference variability tend to increase in salience. One can no longer be sure that democracies will cooperate when there is a diminishing \other." As democratization progresses, this logic implies that some democracies will form alignments that exclude other democracies, or even that some democratic coalitions will come into conflict with other democratic coalitions. Combining the affinity of regime types, the dynamic nature of natural allies, and the demand for security, we must imagine that the impact of regime type on conflict and cooperation might change over time. Initially, the scarcity of democracies in the world meant that there were few opportunities for direct conflict. Even more important, in a world full of threats, democracies had enough in common that cooperating, or at least not opposing one another, was prudent. As democracy has proliferated, however, preferred policies of democratic countries have become more diverse even as the threat from non-democracies has declined. While autocratic threats remain, many of the most powerful countries are democracies. Differences that were patched over, or overlooked, in fighting fascism and communism have now begun to surface. These differences are certainly not major or fundamental, but they appear more salient today than in the past. This process appears likely to continue in the future; nations with similar regime types but different preferences may increasingly find that they are unable to justify glossing over their differences.

# 1NR

### Solvency

#### The NSC establishes emergency violations of human rights as legitimate and hurts US soft power

Shulman 09, Law Prof at Pace

(Mark, NATIONAL SECURITY COURTS: STAR CHAMBER OR SPECIALIZED JUSTICE?, ssrn.com/abstract=1328427)

National security or terrorist courts in other countries offer troubling lessons, mostly because of their implications for the respect for civil liberties generally—not only of the accused, but of the wider population. Existing proposals to create such a court in the United States inadequately account for this risk, or explain how it would be minimized or mitigated. Emergency systems in other countries have invariably reduced civil liberties for the general population. It is understandable that governments wish to be seen to be responding to the urgent threats posed by those who use violence to affect policy. However, it is important to recognize that these emergency systems in such diverse jurisdictions as Great Britain, Malaysia, and South Africa have diminished freedoms for society as a whole. This principle lesson derived of foreign experiences is not particularly surprising. Examples abound of domestic emergency measures taken to promote national security that have undermined the base norm presumption of innocence that lies at the center of America’s constitutional order. The largescale internment of Japanese-Americans during the Second World War provides a notorious example. In that case, the federal courts deferred to the Executive’s misguided policy and thereby created a new and heinous rule allowing for internment, displacement, and forced sales of property based on no more than the notion that citizens of a given race might seek to harm the United States. Although the United States has officially apologized for this shameful episode, Korematsu has not been overruled in the two generations since the Supreme Court handed down its 6-3 decision. The Korematsu precedent may have given some legal cover for the large scale detention of Americans of Moslem, Arab, or Middle-Eastern background in the months following September 11.62 These discriminatory policies undermine the soft power America otherwise derives from its role as a leader in promoting respect for human rights. In other countries, emergency powers have had a similarly deleterious effect on civil liberties. In the United Kingdom, in order to address violence originating in troubled Northern Ireland, the government revoked the right to trial by jury for criminal offenses; denied access to legal counsel; held prisoners without charge; and allowed coercive interrogation techniques and admitted confessions elicited because of them, among other measures. In Malaysia, the government transferred judges from their positions to avoid judicial review of its decisions or release of suspects arrested without even probable cause—in violation of well-established constitutional law. In apartheid South Africa, judicial review was revoked for interrogation purposes. These extra-judicial detentions lasted weeks. In addition to radical nationalists, they swept up completely harmless nuns and pastors urging more widespread equality and access to education. Three cases, of course, do not constitute a comprehensive survey or prove the point. Even the Akin Gump survey of 123 domestic cases can lead only to limited conclusions. However, these three examples do offer insights into the threats to liberty posed by special purpose terrorism courts. IV. QUO VADIS? Would a system of national security courts offer the kind of specialized justice necessary for addressing the threat posed by radical Islamists or others who seek to use terrorist means? Or, in a tragic parallel to the Stuart kings’ infamous Star Chamber, would these courts ultimately undermine the nation’s security by degrading both its legal system and the soft power derived from its cherished reputation as a model for justice? On the eve of the inauguration of Barack Obama, these critical questions remain unresolved in the court of “public opinion which alone can here protect the values of democratic government.”

### PTX

#### Slow growth risks global nuclear war

**Heinberg 12** – Senior Fellow-in-Residence of Post Carbon Institute [Richard Heinberg, “Conflict and Change in the Era of Economic Decline: Part 2: War and peace in a shrinking economy,” [Post Carbon Institute](http://www.postcarbon.org/article/1345757-conflict-and-change-in-the-era)  | Dec 12, 2012, pg. http://tinyurl.com/cxytpjh]

But there is a problem with Pinker’s implied conclusion that global violence will continue to decline. The Long Peace we have known since World War II may well turn out to be shorter than hoped as world economic growth stalls and as American hegemony falters—in John Michael Greer’s words, as “the costs of maintaining a global imperial presence soar and the profits of the imperial wealth pump slump.” Books and articles predicting the end of the American empire are legion; while some merely point to the rise of China as a global rival, others describe the looming failure of the essential basis of the U.S. imperial system—the global system of oil production and trade (with its petro-dollar recycling program) centered in the Middle East. There are any number of scenarios describing how the end of empire might come, but few credible narratives explaining why it won’t. When empires crumble, as they always do, the result is often a free-for-all among previous subject nations and potential rivals as they sort out power relations. The British Empire was a seeming exception to this rule: in that instance, the locus of military, political, and economic power simply migrated to an ally across the Atlantic. A similar graceful transfer seems unlikely in the case of the U.S., as economic decline during the 21st century will be global in scope. A better analogy to the current case might be the fall of Rome, which led to centuries of incursions by barbarians as well as uprisings in client states. Disaster per se need not lead to violence, as Rebecca Solnit argues in her book A Paradise Built in Hell: The Extraordinary Communities that Arise in Disaster. She documents five disasters—the aftermath of Hurricane Katrina; earthquakes in San Francisco and Mexico City; a giant ship explosion in Halifax, Canada; and 9/11—and shows that rioting, looting, rape, and murder were not automatic results. Instead, for the most part, people pulled together, shared what resources they had, cared for the victims, and in many instances found new sources of joy in everyday life. However, the kinds of social stresses we are discussing now may differ from the disasters Solnit surveys, in that they comprise a “long emergency,” to borrow James Kunstler’s durable phrase. For every heartwarming anecdote about the convergence of rescuers and caregivers on a disaster site, there is a grim historic tale of resource competition turning normal people into monsters. In the current context, a continuing source of concern must be the large number of nuclear weapons now scattered among nine nations. While these weapons primarily exist as a deterrent to military aggression, and while the end of the Cold War has arguably reduced the likelihood of a massive release of these weapons in an apocalyptic fury, [it is still possible to imagine several scenarios in which a nuclear detonation could occur as a result of accident](http://www.carolmoore.net/nuclearwar/alternatescenarios.html), aggression, pre-emption, or retaliation. We are in a race—but it’s not just an arms race; indeed, it may end up being an arms race in reverse. In many nations around the globe the means to pay for armaments and war are starting to disappear; meanwhile, however, there is increasing incentive to engage in international conflict as a way of re-channeling the energies of jobless young males and of distracting the general populace, which might otherwise be in a revolutionary mood. We can only hope that historical momentum can maintain The Great Peace until industrial nations are sufficiently bankrupt that they cannot afford to mount foreign wars on any substantial scale.

#### More ev

AFP, 12/16 (Agence France Presse, 12/16/2013, “Obama highlights desire for vast Pacific trade deal,” Factiva))

The White House sent a strong signal Monday of its desire to create a huge Pacific free trade area, despite the slippage of its year-end deadline for the 12-nation project.

President Barack Obama gathered senior trade advisors in the Oval Office and invited news photographers to document the meeting, in the wake of the latest ministerial talks last week on the Trans-Pacific Partnership (TPP) in Singapore.

"This remains a top priority of the president because of the positive economic benefits that come from it," White House spokesman Jay Carney said.

"Congress and the American public have high expectations for the TPP.

"The administration is determined to get the best deal possible, and we are pleased with the progress made towards achieving an ambitious, comprehensive, high-standard agreement."

Ministers gave up last week on meeting the year-end goal of concluding the TPP, but US Trade Representative Michael Froman, who was in Singapore, and in Obama's Oval Office consultations on Monday, said significant progress had been made.

#### TPA will pass early this year but only with Obama’s involvement

Truitt, 12/12 (Gary, 12/12/2013, “TPA Bill Could Move in Congress Early 2014,” <http://www.hoosieragtoday.com/tpa-bill-could-move-in-congress-early-2014/>))

According to House Ways and Means Chair Dave Camp, lawmakers have made considerable progress in pulling together a Trade Promotion Authority bill. In fact, he expects Congress to pass a bill within the first few months of the new year as long as the Administration actively participates. The Obama Administration has been calling on Congress to approve TPA, which would allow any trade deal to move through Congress swiftly as lawmakers can only vote them up or down. The Administration needs TPA to secure the Trans-Pacific Partnership and the Transatlantic Trade and Investment Partnership. Camp said concluding those negotiations, and other trade agreements, will require Congressional passage of Trade Promotion Authority legislation.

#### Will pass --- Obama is pushing, it’s a top priority, and preliminary deal has been reached

Mauldin, 12/16 (William, 12/16/2013, “Obama Huddles With Trade Team,” [http://blogs.wsj.com/washwire/2013/12/16/obama-huddles-with-trade-team/)](http://blogs.wsj.com/washwire/2013/12/16/obama-huddles-with-trade-team/%29))

President Obama convened 17 of his top advisers, including his liaisons to Capitol Hill, Monday to discuss trade policy, a sign the White House is focusing more attention on wrapping up talks to form a Pacific trade bloc and pushing through legislation to ease the passage of trade agreements.

U.S. officials failed to achieve a year-end goal of wrapping up talks to form the Trans-Pacific Partnership with 11 other Asia-Pacific nations, but they’re hoping to negotiate an agreement next year. Meanwhile, to smooth the passage of the potential deal and other agreements in Congress, the administration is backing the renewal of legislation known as “fast track” or “trade promotion authority.”

“This remains a top priority of the president because of the positive economic benefits that come from it,” White House spokesman Jay Carney told reporters Monday.

Supporters of free-trade deals, including many Republicans, have said Mr. Obama hasn’t done enough personally to promote fast-track legislation in Congress, leaving U.S. Trade Representative Michael Froman and other officials to sell the administration’s trade policy.

“Ambassador Froman – we have a great relationship with him; he’s very, very good. But you know he can’t do it all on his own,” Rep. Devin Nunes (R., Calif.), the leader of a House trade subcommittee, said in an interview last week.

Business leaders also said Mr. Obama’s absence from a gathering of Asia-Pacific leaders during the government shutdown may have hindered progress there in October.

Monday’s meeting included Vice President Joe Biden, Mr. Froman and several cabinet secretaries, along with senior advisers to Mr. Obama, the administration’s economic experts and officials who handle communications and legislative affairs.

“To call a meeting of this cast of characters to talk about the trade agenda is a positive signal that the president and his team are ready to make the case,” said Michael Smart, a former trade adviser on the National Security Council and consultant at Rock Creek Global Advisors LLC.

Mr. Biden recently met top officials in Japan, the second-biggest economy in the trade talks, as well as officials in Korea, which has expressed interest in joining the trade framework. Mr. Froman held recent meetings in Japan and negotiations among the 12 countries involved in Singapore, another country engaged in the talks.

Basic issues on tariffs and access to overseas markets appeared to be holding up a deal this year, according to experts following the talks, with the most attention focused on Japan’s politically sensitive agricultural and car markets.

In Congress, aides in recent days said top negotiators have reached a deal on renewing fast-track authority, which sets the ground rules for how the administration gets congressional approval for trade agreements, only allowing lawmakers an up-or-down vote at the end.

A Republican congressional aide said the public announcement of the meeting shows the Obama administration wants to send a message out more broadly that it’s working to achieve trade policy goals.