## 1NC

### 1NC DA 1

#### Obama will prevail in the debt ceiling battle by maintaining a focused message and strong political image

Dovere and Epstein, 10/1 (EDWARD-ISAAC DOVERE and REID J. EPSTEIN, 10/1/2013, “Government shutdown: President Obama holds the line,” <http://www.politico.com/story/2013/10/government-shutdown-president-obama-holds-the-line-97646.html?hp=f3>)

President Barack Obama started September in an agonizing, extended display of how little sway he had in Congress. He ended the month with a display of resolve and strength that could redefine his presidency.

All it took was a government shutdown.

This was less a White House strategy than simply staying in the corner the House GOP had painted them into — to the White House’s surprise, Obama was forced to do what he so rarely has as president: he said no, and he didn’t stop saying no.

For two weeks ahead of Monday night’s deadline, Obama and aides rebuffed the efforts to kill Obamacare with the kind of firm, narrow sales pitch they struggled with in three years of trying to convince people the law should exist in the first place. There was no litany of doomsday scenarios that didn’t quite come true, like in the run-up to the fiscal cliff and the sequester. No leaked plans or musings in front of the cameras about Democratic priorities he might sacrifice to score a deal.

After five years of what’s often seen as Obama’s desperation to negotiate — to the fury of his liberal base and the frustration of party leaders who argue that he negotiates against himself. Even his signature health care law came with significant compromises in Congress.

Instead, over and over and over again, Obama delivered the simple line: Republicans want to repeal a law that was passed and upheld by the Supreme Court — to give people health insurance — or they’ll do something that everyone outside the GOP caucus meetings, including Wall Street bankers, seems to agree would be a ridiculous risk.

“If we lock these Americans out of affordable health care for one more year,” Obama said Monday afternoon as he listed examples of people who would enjoy better treatment under Obamacare, “if we sacrifice the health care of millions of Americans — then they’ll fund the government for a couple more months. Does anybody truly believe that we won’t have this fight again in a couple more months? Even at Christmas?”

The president and his advisers weren’t expecting this level of Republican melee, a White House official said. Only during Sen. Ted Cruz’s (R-Texas) 21-hour floor speech last week did the realization roll through the West Wing that they wouldn’t be negotiating because they couldn’t figure out anymore whom to negotiate with. And even then, they didn’t believe the shutdown was really going to happen until Saturday night, when the House voted again to strip Obamacare funding.

This wasn’t a credible position, Obama said again Monday afternoon, but rather, bowing to “extraneous and controversial demands” which are “all to save face after making some impossible promises to the extreme right wing of their political party.”

Obama and aides have said repeatedly that they’re not thinking about the shutdown in terms of political gain, but the situation’s is taking shape for them. Congress’s approval on dealing with the shutdown was at 10 percent even before the shutters started coming down on Monday according to a new CNN/ORC poll, with 69 percent of people saying the House Republicans are acting like “spoiled children.”

“The Republicans are making themselves so radioactive that the president and Democrats can win this debate in the court of public opinion” by waiting them out, said Jim Manley, a Democratic strategist and former aide to Senate Majority Leader Harry Reid who has previously been critical of Obama’s tactics.

Democratic pollster Stan Greenberg said the Obama White House learned from the 2011 debt ceiling standoff, when it demoralized fellow Democrats, deflated Obama’s approval ratings and got nothing substantive from the negotiations.

“They didn’t gain anything from that approach,” Greenberg said. “I think that there’s a lot they learned from what happened the last time they ran up against the debt ceiling.”

While the Republicans have been at war with each other, the White House has proceeded calmly — a breakthrough phone call with Iranian President Hassan Rouhani Friday that showed him getting things done (with the conveniently implied juxtaposition that Tehran is easier to negotiate with than the GOP conference), his regular golf game Saturday and a cordial meeting Monday with his old sparring partner Israeli Prime Minister Benjamin Netanyahu.

White House press secretary Jay Carney said Monday that the shutdown wasn’t really affecting much of anything.

“It’s busy, but it’s always busy here,” Carney said. “It’s busy for most of you covering this White House, any White House. We’re very much focused on making sure that the implementation of the Affordable Care Act continues.”

Obama called all four congressional leaders Monday evening — including Boehner, whose staff spent Friday needling reporters to point out that the president hadn’t called for a week. According to both the White House and Boehner’s office, the call was an exchange of well-worn talking points, and changed nothing.

Manley advised Obama to make sure people continue to see Boehner and the House Republicans as the problem and not rush into any more negotiations until public outrage forces them to bend.

“He may want to do a little outreach, but not until the House drives the country over the cliff,” Manley said Monday, before the shutdown. “Once the House has driven the country over the cliff and failed to fund the government, then it might be time to make a move.”

The White House believes Obama will take less than half the blame for a shutdown – with the rest heaped on congressional Republicans.

The divide is clear in a Gallup poll also out Monday: over 70 percent of self-identifying Republicans and Democrats each say their guys are the ones acting responsibly, while just 9 percent for both say the other side is.

If Obama is able to turn public opinion against Republicans, the GOP won’t be able to turn the blame back on Obama, Greenberg said. “Things only get worse once things begin to move in a particular direction,” he said. “They don’t suddenly start going the other way as people rethink this.”

#### Despite Democratic opposition, attempts to control targeted killing will undermine Obama’s agenda

Hughes, 13 (2/6/2013, Brian, “Obama's base increasingly wary of drone program,” <http://washingtonexaminer.com/obamas-base-increasingly-wary-of-drone-program/article/2520787>)

The heightened focus on President Obama's targeted killings of American terror suspects overseas has rattled members of his progressive base who have stayed mostly silent during an unprecedented use of secret drone strikes in recent years.

During the presidency of George W. Bush, Democrats, including then-Sen. Obama, hammered the administration for employing enhanced interrogation techniques, which critics labeled torture.

Liberals have hardly championed the president's drone campaign but have done little to force changes in the practice, even as the White House touts the growing number al Qaeda casualties in the covert war.

The issue grates on some Democrats who backed Obama over Hillary Clinton because of her vote in favor of the war in Iraq, only to see the president ignore a campaign promise to close the detainee holding camp in Guantanamo, Cuba, and mount a troop surge in Afghanistan.

Sign Up for the Politics Today newsletter!

With the confirmation hearing Thursday for John Brennan, Obama's nominee for CIA director -- and the architect of the drone program -- Democrats will have a high-profile opportunity to air their concerns over the controversial killings.

"You watch and see -- the left wing of the party will start targeting Obama over this," said Larry Sabato, a political scientist at the University of Virginia. "It's inevitable. The drumbeat will increase as time goes on, especially with each passing drone strike."

Obama late Wednesday decided to share with Congress' intelligence committees the government's legal reasoning for conducting drones strikes against suspected American terrorists abroad, the Associated Press reported. Lawmakers have long demanded to see the full document, accusing the Obama administration of stonewalling oversight efforts.

Earlier in the day, one Democrat even hinted at a possible filibuster of Brennan if given unsatisfactory answers about the drone program.

"I am going to pull out all the stops to get the actual legal analysis, because with out it, in effect, the administration is practicing secret law," said Sen. Ron Wyden, D-Ore., a member of the Senate Select Intelligence Committee. "This position is no different [than] that the Bush administration adhered to in this area, which is largely 'Trust us, we'll make the right judgments.' "

In a Justice Department memo released this week, the administration argued it could order the killing of a suspected American terrorist even with no imminent threat to the homeland.

White House press secretary Jay Carney insisted on Wednesday that the administration had provided an "unprecedented level of information to the public" about the drone operations. Yet, questions remain about who exactly orders the killings, or even how many operations have been conducted.

"There's been more noise from senators expressing increased discomfort [with the drone program]," said Joshua Foust, a fellow at the American Security Project. "For Brennan, there's going to be more opposition from Democrats than Republicans. It's not just drones but the issue of torture."

Facing concerns from liberals, Brennan had to withdraw his name from the running for the top CIA post in 2008 over his connections to waterboarding during the Bush administration.

Since becoming president, Obama has championed and expanded most of the Bush-era terror practices that he decried while running for the White House in 2008.

It's estimated that roughly 2,500 people have died in drone strikes conducted by the Obama administration.

However, most voters have embraced the president's expanded use of drone strikes. A recent Pew survey found 62 percent of Americans approved of the U.S. government's drone campaign against extremist leaders. And some analysts doubted whether Democratic lawmakers would challenged Obama and risk undermining his second-term agenda.

"Democrats, they're going to want the president to succeed on domestic priorities and don't want to do anything to erode his political capital," said Christopher Preble, vice president for defense and foreign policy studies at the Cato Institute. "It's just so partisan right now. An awful lot of [lawmakers] think the president should be able to do whatever he wants."

#### Obama’s hardline position against GOP negotiating demands key to prevent the GOP from dragging the process out and triggering economic collapse

Lobello, 8/27 --- business editor at TheWeek.com (Carmel, 8/27/2013, “How the looming debt ceiling fight could screw up the U.S. economy; Yup, this is happening — again,” [http://theweek.com/article/index/248775/how-the-looming-debt-ceiling-fight-could-screw-up-the-us-economy)](http://theweek.com/article/index/248775/how-the-looming-debt-ceiling-fight-could-screw-up-the-us-economy%29))

Having two big deadlines fall two weeks apart could be a recipe for disaster. Republicans, led by Speaker John Boehner (R-Ohio), have been musing about the possibility of using the debt ceiling, instead of a government shutdown, as leverage to delay the implementation of ObamaCare.

But as Ezra Klein put it in The Washington Post, "Trading a government shutdown for a debt-ceiling breach is like trading the flu for septic shock":

Anything Republicans might fear about a government shutdown is far more terrifying amidst a debt-ceiling breach. The former is an inconvenience. The latter is a global financial crisis. It’s the difference between what happened in 1995, when the government did shutdown, and what happened in 2008, when global markets realized a bedrock investment they thought was safe (housing in that case, U.S. treasuries in this one) was full of risk. [The Washington Post]

Indeed, a debt ceiling debate in 2011 that went on to the last possible minute had real economic consequences, leading Standard & Poor's to downgrade the United States' credit rating. The move "left a clear and deep dent in US economic and market data," said Matt Phillips at Quartz.

Investors pulled huge amounts of cash from the stock market, and consumer confidence was hurt as well. When the same problem cropped up again in May 2012, because Congress failed to reach a long-term deal, Betsey Stevenson and Justin Wolfers in Bloomberg explained how confidence plummeted the first time around:

[Confidence] went into freefall as the political stalemate worsened through July. Over the entire episode, confidence declined more than it did following the collapse of Lehman Brothers Holdings Inc. in 2008. After July 31, when the deal to break the impasse was announced, consumer confidence stabilized and began a long, slow climb that brought it back to its starting point almost a year later. [Bloomberg]

This morning, Wolfers had this to say:

Treasury Secretary Jack Lew visited CNBC Tuesday morning to reiterate President Obama's promise not to go down he same road. "The president has made it clear: We're not going to negotiate over the debt limit," Lew said.

#### This will destroy the U.S. and global economy and collapse trade

Davidson, 9/10 (Adam - co-founder of NPR’s “Planet Money” 9/10/2013, “Our Debt to Society,” <http://www.nytimes.com/2013/09/15/magazine/our-debt-to-society.html?pagewanted=all&_r=0)>)

This is the definition of a deficit, and it illustrates why the government needs to borrow money almost every day to pay its bills. Of course, all that daily borrowing adds up, and we are rapidly approaching what is called the X-Date — the day, somewhere in the next six weeks, when the government, by law, cannot borrow another penny. Congress has imposed a strict limit on how much debt the federal government can accumulate, but for nearly 90 years, it has raised the ceiling well before it was reached. But since a large number of Tea Party-aligned Republicans entered the House of Representatives, in 2011, raising that debt ceiling has become a matter of fierce debate. This summer, House Republicans have promised, in Speaker John Boehner’s words, “a whale of a fight” before they raise the debt ceiling — if they even raise it at all.

If the debt ceiling isn’t lifted again this fall, some serious financial decisions will have to be made. Perhaps the government can skimp on its foreign aid or furlough all of NASA, but eventually the big-ticket items, like Social Security and Medicare, will have to be cut. At some point, the government won’t be able to pay interest on its bonds and will enter what’s known as sovereign default, the ultimate national financial disaster achieved by countries like Zimbabwe, Ecuador and Argentina (and now Greece). In the case of the United States, though, it won’t be an isolated national crisis. If the American government can’t stand behind the dollar, the world’s benchmark currency, then the global financial system will very likely enter a new era in which there is much less trade and much less economic growth. It would be, by most accounts, the largest self-imposed financial disaster in history.

Nearly everyone involved predicts that someone will blink before this disaster occurs. Yet a small number of House Republicans (one political analyst told me it’s no more than 20) appear willing to see what happens if the debt ceiling isn’t raised — at least for a bit. This could be used as leverage to force Democrats to drastically cut government spending and eliminate President Obama’s signature health-care-reform plan. In fact, Representative Tom Price, a Georgia Republican, told me that the whole problem could be avoided if the president agreed to drastically cut spending and lower taxes. Still, it is hard to put this act of game theory into historic context. Plenty of countries — and some cities, like Detroit — have defaulted on their financial obligations, but only because their governments ran out of money to pay their bills. No wealthy country has ever voluntarily decided — in the middle of an economic recovery, no less — to default. And there’s certainly no record of that happening to the country that controls the global reserve currency.

Like many, I assumed a self-imposed U.S. debt crisis might unfold like most involuntary ones. If the debt ceiling isn’t raised by X-Day, I figured, the world’s investors would begin to see America as an unstable investment and rush to sell their Treasury bonds. The U.S. government, desperate to hold on to investment, would then raise interest rates far higher, hurtling up rates on credit cards, student loans, mortgages and corporate borrowing — which would effectively put a clamp on all trade and spending. The U.S. economy would collapse far worse than anything we’ve seen in the past several years.

Instead, Robert Auwaerter, head of bond investing for Vanguard, the world’s largest mutual-fund company, told me that the collapse might be more insidious. “You know what happens when the market gets upset?” he said. “There’s a flight to quality. Investors buy Treasury bonds. It’s a bit perverse.” In other words, if the U.S. comes within shouting distance of a default (which Auwaerter is confident won’t happen), the world’s investors — absent a safer alternative, given the recent fates of the euro and the yen — might actually buy even more Treasury bonds. Indeed, interest rates would fall and the bond markets would soar.

While this possibility might not sound so bad, it’s really far more damaging than the apocalyptic one I imagined. Rather than resulting in a sudden crisis, failure to raise the debt ceiling would lead to a slow bleed. Scott Mather, head of the global portfolio at Pimco, the world’s largest private bond fund, explained that while governments and institutions might go on a U.S.-bond buying frenzy in the wake of a debt-ceiling panic, they would eventually recognize that the U.S. government was not going through an odd, temporary bit of insanity. They would eventually conclude that it had become permanently less reliable. Mather imagines institutional investors and governments turning to a basket of currencies, putting their savings in a mix of U.S., European, Canadian, Australian and Japanese bonds. Over the course of decades, the U.S. would lose its unique role in the global economy.

The U.S. benefits enormously from its status as global reserve currency and safe haven. Our interest and mortgage rates are lower; companies are able to borrow money to finance their new products more cheaply. As a result, there is much more economic activity and more wealth in America than there would be otherwise. If that status erodes, the U.S. economy’s peaks will be lower and recessions deeper; future generations will have fewer job opportunities and suffer more when the economy falters. And, Mather points out, no other country would benefit from America’s diminished status. When you make the base risk-free asset more risky, the entire global economy becomes riskier and costlier.

#### 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.

### 1NC CP

#### The Executive Branch of the United States federal government should issue an executive order publishing clear guidelines for targeting to be carried out by nonpoliticians, making assassination truly a last resort, stipulating that an outside court review the evidence before placing Americans on a kill list, releasing the legal briefs upon which the targeted killing was based, and prohibiting uninhabited aerial vehicle targeted killings of individual United States citizens when, after being afforded notice and opportunity as well as defense from an independent public advocate, it is proven that the target is not a senior member of Al Qaeda or associated force.

#### The Executive branch of the United States federal government should implement this through self-binding mechanisms including, but not limited to independent commissions to review and ensure compliance with the order and transparency measures that gives journalists access to White House decisionmaking.

#### The Executive branch of the United States federal government should issue a Fact Sheet explaining that the order is designed to make U.S. targeted killing policy consistent with international law.

#### Obama administration should make provisions for an outside court to review evidence before using targeted killing – also making assassination a last resort and publishing legal briefs solves

[--- Court should only review if Americans are placed on a kill list]

NYT, 12 (Editorial, 5/30/2012, “Too Much Power for a President,” <http://www.nytimes.com/2012/05/31/opinion/too-much-power-for-a-president.html?_r=0)>)

It has been clear for years that the Obama administration believes the shadow war on terrorism gives it the power to choose targets for assassination, including Americans, without any oversight. On Tuesday, The New York Times revealed who was actually making the final decision on the biggest killings and drone strikes: President Obama himself. And that is very troubling. Mr. Obama has demonstrated that he can be thoughtful and farsighted, but, like all occupants of the Oval Office, he is a politician, subject to the pressures of re-election. No one in that position should be able to unilaterally order the killing of American citizens or foreigners located far from a battlefield — depriving Americans of their due-process rights — without the consent of someone outside his political inner circle. How can the world know whether the targets chosen by this president or his successors are truly dangerous terrorists and not just people with the wrong associations? (It is clear, for instance, that many of those rounded up after the Sept. 11, 2001, attacks weren’t terrorists.) How can the world know whether this president or a successor truly pursued all methods short of assassination, or instead — to avoid a political charge of weakness — built up a tough-sounding list of kills? It is too easy to say that this is a natural power of a commander in chief. The United States cannot be in a perpetual war on terror that allows lethal force against anyone, anywhere, for any perceived threat. That power is too great, and too easily abused, as those who lived through the George W. Bush administration will remember. Mr. Obama, who campaigned against some of those abuses in 2008, should remember. But the Times article, written by Jo Becker and Scott Shane, depicts him as personally choosing every target, approving every major drone strike in Yemen and Somalia and the riskiest ones in Pakistan, assisted only by his own aides and a group of national security operatives. Mr. Obama relies primarily on his counterterrorism adviser, John Brennan. To his credit, Mr. Obama believes he should take moral responsibility for these decisions, and he has read the just-war theories of Augustine and Thomas Aquinas. The Times article points out, however, that the Defense Department is currently killing suspects in Yemen without knowing their names, using criteria that have never been made public. The administration is counting all military-age males killed by drone fire as combatants without knowing that for certain, assuming they are up to no good if they are in the area. That has allowed Mr. Brennan to claim an extraordinarily low civilian death rate that smells more of expediency than morality. In a recent speech, Mr. Brennan said the administration chooses only those who pose a real threat, not simply because they are members of Al Qaeda, and prefers to capture suspects alive. Those assurances are hardly binding, and even under Mr. Obama, scores of suspects have been killed but only one taken into American custody. The precedents now being set will be carried on by successors who may have far lower standards. Without written guidelines, they can be freely reinterpreted. A unilateral campaign of death is untenable. To provide real assurance, President Obama should publish clear guidelines for targeting to be carried out by nonpoliticians, making assassination truly a last resort, and allow an outside court to review the evidence before placing Americans on a kill list. And it should release the legal briefs upon which the targeted killing was based.

#### Including self-binding mechanisms ensures effective constraints and executive credibility

Posner & Vermeule, 6 --- \*Prof of Law at U Chicago, AND \*\* Prof of Law at Harvard (9/19/2006, Eric A. Posner & Adrian Vermeule, “The Credible Executive,” <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=931501)>)

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

#### Executive can use fact sheet to signal and codify commitment to international law – solves modelling and perception

Nachber, 13 --- Law Professor at Virginia

(Spring, Executive Branch Policy Meets International Law in the Evolution of the Domestic Law of Detention, Virginia Journal of International Law, 53 Va. J. Int'l L. 201, Lexis)

This paper considers the role that the executive branch can play in modifying international law through a specific case: the March, 2011 issuance of Executive Order 13567: Periodic Review of Individuals Detained at Guantanamo Bay Naval Station Pursuant to the Authorization for Use of Military Force. As its title suggests, the Order establishes a system of periodic review for detainees held at Guantanamo Bay, but the release of the Order suggests much more than merely the adoption of new procedures for reviewing detention determinations. In a "Fact Sheet" issued with the Order, the Obama administration suggested some concrete changes to how the United States views the international law of detention, specifically with regard to Additional Protocols I and II of the Geneva Conventions. Those changes, when combined with the content of the Order itself, may signal an even more profound shift in the role of international law in the shaping of the domestic law of detention and in the role of the executive branch in shaping both international and domestic law. The paper proceeds by describing the Order in detail and comparing the procedures adopted in the Order with those that preceded it, namely Combatant Status Review Tribunals and detainee Administrative Review Boards. The paper next analyzes the Order's procedures under Article 75 of Additional Protocol I and Articles 4-6 of Additional Protocol II, as suggested by the Fact Sheet. Finally, the paper considers the broader questions raised by the Order and Fact Sheet's stated approach to the international law of detention. By recognizing an increased role for Additional Protocols I and II, the Order and Fact Sheet go some distance toward providing an avenue for incorporating international human rights norms into the U.S. domestic law of detention, an approach that sharply diverges with previous U.S. positions on the law of armed conflict, and does so through the executive branch operating alone. Introduction On March 7, 2011, President Obama issued Executive Order 13567 (the Order), n1 which established revised detention review procedures for the detainees currently being held at the U.S. Naval Station Guantanamo Bay. The press-release "Fact Sheet" n2 that accompanied the Order expanded upon the topic of the Order, not only touching upon the detention regulated by the Order itself, but also stating the Obama administration's position that it would apply Article 75 of Additional Protocol I of the Geneva Conventions of 1949 (respectively Article 75 and AP I) n3 "out of a sense of legal obligation" and that the United States "expects all other nations to adhere to these principles as well." n4 Additionally, the President urged the Senate to ratify Additional Protocol II of the Geneva Conventions of 1949 (AP II). n5 In this paper, I consider both the immediate and subsidiary effects of this combined revision of binding detention procedures and potentially binding statements of administration policy regarding both Article 75 and AP II in the Order and the accompanying Fact Sheet. Although Article 75 and AP II contain provisions potentially impacting the full range of detainee-related issues (such as conditions of confinement and the trial and punishment of detainees for criminal offenses), the Order itself applies only to detention determinations, and so my detailed analysis of the Order [\*204] is correspondingly limited. The broader impact of the policy shift that the Order and Fact Sheet represent, though, reaches far beyond questions of detention determinations, and the topics covered by my analysis expands accordingly. In the short term, neither the Order nor the President's statement of adherence to Article 75 (which amounts to opinio juris under international law) n6 are likely to affect most detention operations conducted by the U.S. Armed Forces. The Order applies to a very small number of detainees - only those held at Guantanamo Bay - all of whom have already undergone similar reviews pursuant to Executive Order 13492. n7 Moreover, many of the procedures outlined in the Order have direct antecedents in previous executive branch detention determination procedures, such as Combatant Status Review Tribunals (CSRTs) and Administrative Review Boards (ARBs). However, the Order is of a piece with the Obama administration's other longstanding policies on detainee procedures, and the Fact Sheet suggests an increased role for international law in the current conflict. The first-order effects of recognizing Article 75 as having legal force (and even ratifying AP II) are likely to be mild for a variety of reasons, but both Article 75 and AP II are closely tied to international human rights law, especially the International Covenant on Civil and Political Rights (ICCPR). At the same time, the international law applicable to armed conflict has become a major point of litigation in U.S. civilian courts. Adopting substantive positions that implicate the ICCPR and international human rights law generally is likely to provide greater opportunity for courts to read human rights restrictions into the U.S. domestic law of armed conflict. Moreover, the Obama administration's willingness to embrace international law will likely be reflected in the litigation position it takes in cases related to the law of armed conflict in U.S. courts. Conversely, the closer embrace of international law may increase the legitimacy of certain legal positions the United States has taken with regard to international law, both in litigation within U.S. courts and in international legal circles.

### 1NC CP

#### The United States federal judiciary should prohibit targeted killing against United States citizens on the grounds that citizens are not provided due process rights, including but not limited to, being afforded notice and opportunity as well as defense from an independent public advocate, and a requirement of proof that the target is not a senior member of Al Qaeda or associated force.

#### The United States federal judiciary should rule that all habeas corpus hearings of persons detained under the War Powers Authority of the President of the United States be subject to due process guarantees and that such individuals who have won their habeas corpus hearing be released.

#### **Judiciary can apply due process to detainees which solves their aff**

Pereira 8 [Spring 2008, Marcia Pereira is a Civil Litigation &Transactional Attorney and University of Miami School of Law Graduate, “THE "WAR ON TERROR" SLIPPERY SLOPE POLICY: GUANTANAMO BAY AND THE ABUSE OF EXECUTIVE POWER”, 15 U. Miami Int'l & Comp. L. Rev. 389]

Ideally, principles of equality should apply to detainees. Irrespective of their status, race, religion, or the like, they should be entitled to a robust and fair adjudicative process for being "accused" of having potentially committed the same crime against the same sovereignty as the U.S. citizen detainees. In constructing this ideal "world" with an eye toward avoiding a flood of federal habeas petitions by these individuals, it could be possible to provide for an alternate form of legal review. By establishing a doctrinal approach that allows for rational basis review in exchange for jurisdiction, non-U.S. citizens would at least be able to bring the claim before the courts and enable the courts to ensure principles of separations of powers and due process are minimally observed. While it may be plausible that aliens are not entitled to the full panoply of constitutional guarantees under the Constitution, some basic rights should be part of the package in lieu of the U.S. Government's complete control over their freedom. For example, one option would be to extend the types of due process rights discussed in Hamdi to the whole group of detainees as part of their adjudicative process. This model would entail an "adjusted due process" to the effect that it be similar to those rights afforded to U.S. citizens detained. By reducing the gap between domestic law and international law of armed conflict, this approach would be particularly narrow and solely apply to the detainees in times of war. This model would enable detainees to have access to evidence intended to be used against them, claim rights against self-incrimination, and have evidence obtained by means of coercion stricken from the record. Not in the ambiguous sense provided under the MCA, but in the real sense by means of explicit language. The Government's counterargument to allowing any due process rights to alien detainees underlies the notion that it would be deprived of [\*436] critical enemy information. However, since the detainees are mostly held incommunicado, this argument seems unpersuasive. It is of little surprise that many scholars, after long years of studies of constitutional law and criminal procedure, strongly censure how the Executive and the Judiciary have dealt with these detentions. The Supreme Court seems to struggle with the potential desire to do justice and to simply give deference to the current political branches undertakings under the notion that federal courts should refrain from adjudicating matters considered to involve "political questions." n145 As this Article has previously indicated, foreign relations might be envisioned as a matter fitting within the political question doctrine. However, where the fundamental rights of individuals are in question, an exception to the political question doctrine should be made. While both alternatives might be highly speculative, this will not change how poorly reasoned the rulings of these cases have been. Take for instance the treatment of the Reasonableness Clause n146 of the Fourth Amendment as an example. This clause provides for the protection of individuals against unreasonable searches and seizures. In [\*437] that sense, the Fourth Amendment is a restraint on Executive power. n147 While the Executive claims the constitutional shield does not protect alien detainees on the basis that they are not Americans on top of being "enemy-combatants," nothing in the Amendment creates this distinction. Furthermore, it would certainly serve the interest of equality and fairness to replicate the Fourth Amendment principles to adequately adjudicate how these men captured and detained. Nevertheless, a great number of innocent individuals were arrested as Al-Qaeda members. Does this reflect the reasonableness the Framers were expecting to promote? If they were on U.S. soil or were citizens would we think so? Is there anything in the Constitution that allows the Executive to detain aliens abroad without any evidence against them in such an arbitrary manner? It would obviously take some creativity in interpreting sections of the Constitution to give positive answers to at least some of these questions. Given, however, the current state of affairs in this country, this situation might be required. Perhaps, as Joan Hartman has noticed, there is a "widespread perception that suspension of human rights is practically inevitable during periods of acute crisis." n148 However, such presumption of fundamental rights derogation, oftentimes, tends to go beyond the necessary, typically resulting in normalcy rather than exigency. n149 Moreover, the duality between exigency and obligation to abide by international norms is further endangered by instituted principles of balance. On the scale, the balance seems almost inevitably to tilt more to one side than to the other depending on how much power each side holds. n150

### 1NC 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.

#### 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

Paul 2008 - Senior Social Scientist; Professor, Pardee RAND Graduate School Pittsburgh Office Education Ph.D., M.A., and B.A. in sociology, University of California, Los Angeles (September, Christopher, “US Presidential War Powers: Legacy Chains in Military Intervention Decisionmaking\* ,” Journal of Peace Research, Vol. 45, No. 5 (Sep., 2008), pp. 665-679)

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

Li 2009 - J.D. candidate, Georgetown University Law Center, 2009; B.A., political science and history, Yale University (Zheyao, “War Powers for the Fourth Generation: Constitutional Interpretation in the Age of Asymmetric Warfare,” 7 Geo. J.L. & Pub. Pol'y 373 2009 WAR POWERS IN THE FOURTH GENERATION OF WARFARE)

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.

### 1NC Advantage

#### **No HR violation**

Blank 12, Director of the International Humanitarian Law Clinic

(Laurie R. Blank, Emory University School of Law, “After ‘Top Gun’: How Drone Strikes Impact the Law of War”, University of Pennsylvania Journal of International Law, Spring ’12)

Drones are Lawful Weapons¶ ¶ As the United Nations Special Rapporteur on Extrajudicial, Arbitrary or Summary Executions stated in his recent report on targeted killings, "a missile fired from a drone is no different from any other commonly used weapon, including a gun fired by a soldier or a helicopter or gunship that fires missiles. The critical legal question is the same for each weapon: whether its specific use complies with IHL." n34 The first question, addressed in this Section, is whether a particular weapon is prohibited due to its inherent characteristics. Section 2 below will examine whether armed drones are used in accordance with international law principles of distinction, proportionality, and precautions.¶ International law prohibits two categories of weapons in armed conflict: indiscriminate weapons and weapons that cause unnecessary suffering. The first prohibition appears in Article 51(4) of Additional Protocol I, which defines indiscriminate attacks as (1) attacks "not directed at a specific military objective," (2) attacks "which employ a method or means of combat which cannot be directed at a military objective," or (3) attacks "which employ a method or means of combat the effects of which cannot be limited as required by this Protocol." n35 Means of combat generally refers to weapons or weapons systems. Thus, as the International Court of Justice declared in its advisory opinion in the Legality of the [\*684] Threat or Use of Nuclear Weapons, parties to a conflict may not "use weapons that are incapable of distinguishing between civilian and military targets." n36 There is little doubt that any weapon can be used in an indiscriminate way during conflict, such as spraying machine gun fire into a crowd with no regard for the presence of civilians or others who are hors de combat. Such illegal use does not make the machine gun an unlawful weapon, however. One example of inherently indiscriminate weapons is the rockets that Hamas and Hezbollah have fired into Israel for many years. n37¶ The ban on indiscriminate weapons focuses on those weapons that are, by design or other shortcoming, "incapable of being targeted at a military objective only, even if collateral harm occurs." n38 The ban on indiscriminate effects encompasses both these types of indiscriminate weapons and the use of otherwise lawful weapons in an indiscriminate manner. For example, the use of cluster munitions is highly disputed for this reason. n39 As the International Committee of the Red Cross has stated,¶ ¶ "these characteristics [of cluster munitions] raise serious questions as to whether such weapons can be used in populated areas in accordance with the rule of distinction and the prohibition of indiscriminate attacks. The wide area effects of these weapons and the large number of unguided submunitions released would appear to make it [\*685] difficult, if not impossible, to distinguish between military objectives and civilians in a populated target area." n40¶ ¶ Others argue that cluster munitions may well be a more discriminating weapon in certain circumstances because if they were banned, many more missions would be needed to achieve the same effect and cover the same amount of area. By increasing the number of missions, the attacking force consequently would expose more of its force and more civilians to a heightened risk. n41 Further, cluster munitions could reduce collateral damage because of their small detonating impact; otherwise, forces would have to use a more highly explosive weapon to accomplish the same military goal, thereby creating more damage. n42¶ Second, weapons that cause unnecessary suffering or superfluous injury are prohibited. The goal is to minimize harm that is not justified by military utility, either because of a lack of any utility at all or because the utility gained is considerably outweighed by the suffering caused. n43 The international community's first effort at regulating weapons was the St. Petersburg Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight of December 11, 1868, which sought to outlaw "the employment of arms which uselessly aggravate the sufferings of disabled men, or render their death inevitable." n44 Repeated in Article 23(e) of the Annex to the [\*686] 1907 Hague Convention IV, this prohibition is recognized as customary international law. n45 The International Court of Justice emphasized this norm as the second of two cardinal principles of international law, explaining that¶ ¶ it is prohibited to cause unnecessary suffering to combatants: it is accordingly prohibited to use weapons causing them such harm or uselessly aggravating their suffering. In application of that second principle, States do not have unlimited freedom of choice of means in the weapons they use. n46¶ ¶ The basic idea behind the prohibition on weapons that cause unnecessary suffering is that weapons that increase suffering - specifically that of combatants - without increasing military advantage in any way are unlawful. Expanding bullets and blinding lasers offer two examples. Certainly many weapons cause extensive - even horrible - suffering and injury, but that in and of itself is not the key issue. The analysis hinges on two primary factors: "(a) whether an alternative weapon is available, causing less injury or suffering; and ... (b) whether the effects produced by the alternative weapon are sufficiently effective in neutralizing enemy personnel." n47¶ By both measures - indiscriminate weapon or effects and unnecessary suffering - armed drones pass muster. Armed drones fire Hellfire missiles and other similar munitions, all of which are also carried by or are similar to the weapons carried by piloted [\*687] fighter aircraft. n48 These missiles are not banned by any international agreement and do not manifest any characteristics that cause superfluous injury as understood in international law. In fact, the precision-guided munitions that drones carry and their extensive surveillance capabilities make them particularly discriminate weapons. The ability to track a target for hours, even days, before launching an attack facilitates accurate targeting and enhances the protection of civilians by giving drone operators the ability to choose the time and place of attack with an eye towards minimizing civilian casualties or damage. Therefore, armed drones can easily be aimed at only military objectives and have effects that can be limited, as much as possible, to military objects, thus meeting the standards in Article 51(4) of Additional Protocol I. n49¶ The fact that armed drones could be used - and perhaps have been used - in indiscriminate attacks does not make them an inherently unlawful weapon or weapons system. Determinations of legality, such as those required in new weapons reviews under Article 36 of Additional Protocol I, n50 do not mean that states must anticipate any possible unlawful use of a weapon. Rather, as noted at the 1974-1977 Diplomatic Conference that produced the Additional Protocols, the question is "whether the employment of a weapon for its normal or expected use would be prohibited under some or all circumstances. A State is not required to foresee or analyze all possible misuses of a weapon, for almost any weapon can be misused in ways that would be prohibited." n51 The normal or expected use of armed drones falls clearly within the parameters of lawful weapons under international law.

**Status quo solves relations**

**Archibold and Shear ‘13** [5/3/13, Randal C. Archibold and Michael D. Shear, “Obama Tells Mexico Audience of New Era in Relations”, http://www.nytimes.com/2013/05/04/world/americas/obama-seeks-to-banish-stereotypical-image-of-mexico.html?\_r=0&pagewanted=print]

MEXICO CITY — President Obama, speaking to an enthusiastic crowd of young people here, on Friday declared a new era in relations with Mexico that will focus on strengthening the countries’ economic ties and that will play down the battle against drug gangs that has dominated the discourse for several years. Hours after a private dinner with President Enrique Peña Nieto of Mexico, who has made an overhaul of laws to foster economic growth the highlight of his five-month-old term, Mr. Obama urged Americans to look past stereotypes of Mexican violence and despair, and embrace the country’s strengthening democracy and economic health. “We agree that the relationship between our nations must be defined not by the threats that we face, but by the prosperity and the opportunity that we can create together,” Mr. Obama said to vigorous applause before an audience of high school and college students at the National Anthropology Museum. After suggesting a few days ago that security relations between the United States and Mexico could be better, Mr. Obama hardly mentioned the subject in his speech or in earlier remarks on Thursday, a sign the topic has given American officials plenty of headaches. Thousands of people have been killed in battles between Mexican drug gangs and the police and military, while the flow of cocaine and marijuana flourishes. Business analysts have said Mexico’s economy would be even further along without its violence. But investment has gone forward, and the economy is a sunnier subject over all; the United States is Mexico’s largest trading partner and Mexico is the United States’ third largest, behind Canada and China. Poverty remains deep here. Mr. Peña Nieto acknowledged this week that three of five Mexicans scrape by on informal jobs and that wages have so stagnated that they are now lower than China’s, contributing to a sense among the members of the public that they are not yet feeling “Mexico’s moment,” as the government slogan would have it. But a surge of investment in manufacturing, technology and other sectors has helped lift the middle class and consumer spending and contributed to growth levels in the national economy that have been double those of the United States in the past two years. Still, economic and trade talks have caused plenty of friction and disagreements, too. Mexican government officials, in private talks with Mr. Obama, homed in on long, costly waits for trucks and workers at the international border in both directions, but far more severe going into the United States. The backups grew significantly with the United States security clampdown on the border after the attacks of Sept. 11, 2001, and budget constraints and the political reality of the mood for tighter border security may inhibit building new or larger stations or adding manpower to them. But senior administration and Mexican officials suggested public-private partnerships could finance renovations. “There was certainly recognition on both sides that this is something that we need to focus on,” said one senior United States official who participated in the meetings. “It brings together the issue of border safety, border security, immigration and trade.”

### 1NC Solvency

#### Major plan flaw as discussed in cross-x – the plan is a conditional ban that does not mandate the condition that it requires – the affirmative creates a court that only gives authority to prohibit targeted killing when the target has been provided a public advocate and advance notification and it is decided that the target is not a member of Al Qaeda and ONLY THEN the drones strikes are banned – there is no part of the plan that mandates that the executive provide advance notice or public advocates to determine that the target is not a member of Al Qaeda, means that the executive would easily navigate through the restriction by simply choosing to not fulfil the condition that ban drone strikes

#### The US will use special ops raids instead of drones after the plan

Masters, Deputy Editor at the Council on Foreign Relations, 5/23/13

(Targeted Killings, [www.cfr.org/counterterrorism/targeted-killings/p9627](http://www.cfr.org/counterterrorism/targeted-killings/p9627))

What methods of targeted killing does the United States employ?

Drone Strikes Targeted attacks launched from unmanned aerial vehicles, or drones, have ballooned under the Obama administration. A study undertaken by the New American Foundation reports that in his first two years of office, President Obama authorized nearly four times the number of strikes in Pakistan as President Bush did in his eight years. The report, which relies solely on media accounts of attacks, claims that some 291 strikes have been launched since 2009, killing somewhere between 1,299 and 2,264 militants, as of January 2013. Alternate reports also document the escalation in drone strikes in recent years, but the accounting of militant and civilian deaths can vary widely depending on the source. Traditionally the CIA has managed the bulk of U.S. drone operations outside recognized war zones, such as in Pakistan, while the Defense Department (DOD) has commanded operations in established theaters of conflict, such as in Iraq, Afghanistan, and Libya. But in some instances, the drone operations of both the CIA and DOD are integrated, as in the covert drone campaign in Yemen. In early 2013, the Obama administration shifted some of the CIA's authority over lethal drone operations to the Defense Department in an effort to streamline counterterrorism operations and increase transparency, analysts say. Kill/Capture Missions Since President Obama assumed office, the Pentagon has also increased the use of special operations raids (aka kill/capture missions) from 675 covert raids in 2009 to roughly 2,200 in 2011. According to the Pentagon, approximately 90 percent of these night raids end without a shot fired. As conventional U.S. forces begin to drawdown, "the role of counterterrorism operations, and in particular these kinds of special missions, will become prominent," says ISAF commander General John Allen. The covert raids are directed by an elite element within the U.S. military known as Joint Special Operations Command (JSOC). The clandestine command draws top personnel from groups like the Navy SEALs and Army Delta Force, and maintains a direct relationship with the executive branch. JSOC has tripled in size since 9/11 and currently operates in a dozen countries. Jeremy Scahill of The Nation writes, "The primacy of JSOC within the Obama administration's foreign policy--from Yemen and Somalia to Afghanistan and Pakistan--indicates that he has doubled down on the Bush-era policy of targeted assassination as a staple of U.S. foreign policy." Civilians and local governments have condemned night raids as culturally offensive, given that U.S. soldiers often enter homes in the dead of night, with women present, and utilize dogs (which are viewed as impure in Muslim culture) in their search. In April 2012, the United States reached a seminal agreement with Afghanistan to give Kabul greater oversight over special operations raids and put Afghan forces in the lead of those activities.

#### Means they can’t solve because no due process protections in special ops targeted killing and special ops raids are more likely to cause the aff advantages

Zenko 2013 (Micah Zenko is the Douglas Dillon fellow in the Center for Preventive Action (CPA) at the Council on Foreign Relations (CFR). Previously, he worked for five years at the Harvard Kennedy School and in Washington, DC, at the Brookings Institution, Congressional Research Service, and State Department's Office of Policy Planning, Council Special Report No. 65, January 2013, “U.S. Drone Strike Policies”, i.cfr.org/content/publications/attachments/Drones\_CSR65.pdf‎)

Compared to other military tools, the advantages of using drones— particularly, that they avoid direct risks to U.S. servicemembers— vastly outweigh the limited costs and consequences. Decision-makers are now much more likely to use lethal force against a range of perceived threats than in the past. Since 9/11, over 95 percent of all nonbattlefield targeted killings have been conducted by drones—the remaining attacks were JSOC raids and AC-130 gunships and offshore sea- or air-launched cruise missiles. And the frequency of drone strikes is only increasing over time. George W. Bush authorized more nonbattlefield targeted killing strikes than any of his predecessors (50), and Barack Obama has more than septupled that number since he entered office (350). Yet without any meaningful checks—imposed by domestic or international political pressure—or sustained oversight from other branches of government, U.S. drone strikes create a moral hazard because of the negligible risks from such strikes and the unprecedented disconnect between American officials and personnel and the actual effects on the ground.14 However, targeted killings by other platforms would almost certainly inflict greater collateral damage, and the effectiveness of drones makes targeted killings the more likely policy option compared to capturing suspected militants or other nonmilitary options.

#### Drone court is just a rubber stamp

Bergen and Rowland 2013 - Director of the National Security Studies Program at the New America Foundation (Summer, Peter and Jennifer, “Drone Wars,” The Washington Quarterly • 36:3 pp. 7-26 <https://csis.org/files/publication/TWQ_13Summer_Bergen-Rowland.pdf>)

Another proposed fix to the drone program that has also received a good deal of attention is the proposal to set up some kind of ‘‘drone court.’’ It would be analogous in some respects to the Foreign Intelligence Surveillance court (or FISA court, taking its acronym from the Foreign Intelligence Surveillance Act) that considers U.S. government requests to allow surveillance measures in the United States for those suspected of terrorism or espionage. The FISA court, however, is hardly much of check on the power of the executive. For example, the Wall Street Journal reports that the FISA court has turned down only 11 of the some 33,900 surveillance requests that were made by the government during the past three decades, which is a near-zero rejection rate.58There is little reason to believe that a drone court would be any less of a rubber stamp on government decisions about who it can kill with a drone.

#### Drone courts are unconstitutional– causes rollback

Vladek 2013 - professor of law and the associate dean for scholarship at American University Washington College of Law (February 10, Steve, “Why a “Drone Court” Won’t Work–But (Nominal) Damages Might…” <http://www.lawfareblog.com/2013/02/why-a-drone-court-wont-work/>)

Although the “drone court” proposals floating around vary to some degree in their (sparse) details, one of the core ideas behind them is that such a body would operate much like the FISC–with the government proceeding ex parte and in camera before the court in order to obtain something tantamount to a warrant prior to engaging in a targeted killing operation. (It would presumably defeat the purpose, after all, if the target of the putative operation had notice and an opportunity to be heard prior to the attack.) The hardest question is what, exactly, the government would be seeking judicial review of at this stage… Some possibilities, among others: Whether the target is in fact a belligerent who can be targeted as part of the non-international armed conflict between the United States and al Qaeda and its affiliates; Whether the target does in fact present an imminent threat to the United States and/or U.S. persons overseas (although the definition of “imminent” may depend on the answer to (1)); and Whether it is in fact impossible to incapacitate the target (including by capturing him) in the relevant time frame with any lesser degree of force. Leaving aside (for the moment) the potential separation of powers issues such review would raise, there’s a more basic problem: the possible absence of a meaningful “case or controversy” for Article III purposes. The Supreme Court has long emphasized, as it explained in Flast v. Cohen, that one of the central purposes of Article III’s “case-or-controversy requirement” is to ensure that “the dispute sought to be adjudicated will be presented in an adversary context and in a form historically viewed as capable of judicial resolution.” That is to say, “adversity” is one of the cornerstones of an Article III case or controversy, and it would be noticeably lacking in a drone court set up along the lines noted above. The standard response to this concern is the observation that the same is true of the FISC–that, in most of its cases, the Foreign Intelligence Surveillance Court operates ex parte and in camera, ruling on a government’s warrant application without any adversarial process whatsoever. And time and again, courts have turned away challenges to the FISA process based upon the same argument–that the FISC violates Article III as so constituted (see, e.g., footnote 19 of the FISA Court of Review’s 2002 decision in In re Sealed Case). But insofar as the FISC operates ex parte, courts have consistently upheld its procedures against any Article III challenge by analogy to the power of Article III judges to issue search warrants–a process defended entirely by reference to the Fourth Amendment, which the Supreme Court has interpreted to require a “prior judicial judgment” (in most cases, anyway) that the government has probable cause to justify a search–that is, as a necessary compromise between effective law enforcement and individual rights. As David Barron and Marty Lederman have explained, the basic idea is “that the court is adjudicating a proceeding in which the target of the surveillance is the party adverse to the government, just as Article III courts resolve warrant applications proceedings in the context of conventional criminal prosecutions without occasioning constitutional concerns about the judicial power.” And part of why those constitutional concerns don’t arise in the context of search warrants is because the subject of the warrant will usually have an opportunity to attack the warrant–and, thus, the search–collaterally, whether in a motion to suppress in a criminal prosecution or a civil suit for damages, both of which would be after-the-fact. (FISA, too, creates a cause of action for “aggrieved persons.”) To be sure, it’s already a bit of a stretch to argue that FISA warrants are obtained in contemplation of future criminal (or civil) proceedings (which is part of why Laurence Silberman testified against FISA’s constitutionality in 1978, and why the 1978 OLC opinion on the issue didn’t rest on this understanding in arguing for FISA’s constitutionality), and it’s even more of a stretch to make this argument in the context of the FISA Amendments Act of 2008 (the merits of which have yet to be reached by any court…). But the critical point for now is that this is the fiction on which every court to reach the issue has relied. In contrast, there is no real argument that a “drone warrant” would be in contemplation of future judicial proceedings–indeed, the entire justification for a “drone court” is to pretermit the need for any subsequent judicial intervention. In such a context, any such judicial process would present a serious constitutional question not raised by FISA, especially the more that the substantive issues under review deviate from questions typically asked by courts at the ancillary search-warrant stage of a criminal investigation (e.g., the second and third questions noted above). Finally, as one footnote to the Article III issue, it also bears emphasizing that these concerns can’t be sidestepped by having a non-Article III federal court hear such ex parte applications. Although the Supreme Court has upheld non-Article III federal courts for cases “arising in the land or naval forces,” it has consistently understood that authority to encompass only those criminal prosecutions that may constitutionally be pursued through court-martial or military commission. The idea that Congress could create a non-Article III federal court to hear entirely civil claims arising out of military action is not only novel, but difficult to square with what little the Court has said in this field.

#### Drone courts fail – no expertise and won’t satisfy concerns about transparency

Groves 2013 – fellow at Heritage Foundation (April 10, Steven, “Drone Strikes: The Legality of U.S. Targeting Terrorists Abroad” <http://www.heritage.org/research/reports/2013/04/drone-strikes-the-legality-of-us-targeting-terrorists-abroad>)

The proponents of a drone court apparently do not appreciate the potential unintended consequences of establishing such an authority. The idea is wrongheaded and raises more questions than it answers. For instance, could the drone court decide as a matter of law that a targeted strike is not justified because the United States is not engaged in an armed conflict with al-Qaeda? Could the drone court rule that members of a force associated with al-Qaeda (e.g., AQAP) may not be targeted because AQAP was not directly involved in the September 11 attacks and therefore the strike is not authorized under the AUMF? The proposed drone court cannot avoid these fundamental questions since the justification for the targeted strikes is dependent on the answers to these questions. Even if the proposed drone court attempts to eschew intervention into foundational questions such as the existence of an armed conflict, it still would not be in a position to rule on the “easy” questions involved in each and every drone strike. Does the target constitute an “imminent threat” to the United States? When civilian casualties may occur as a result of the strike, does the drone court have the authority to overrule the targeting decision as a violation of the principle of proportionality? Is the target an innocent civilian or a civilian “directly participating in hostilities”? Should U.S. forces attempt to capture the target before resorting to a drone strike? Is capture feasible? Any drone court, even if constituted with former military and intelligence officials, is ill suited to weigh all of the competing factors that go into a decision to target an al-Qaeda operative and make a timely decision, particularly when there is often only a short window of time to order a strike. Regardless, creating a judicial or quasi-judicial review process will not ameliorate, much less resolve, objections to U.S. targeted killing practices. Critics will continue to demand more judicial process, including appeals from the proposed drone court, and additional transparency no matter what kind of forum is established to oversee targeting decisions.

#### The drone court is just a rubber stamp

Vladek 2013 - professor of law and the associate dean for scholarship at American University Washington College of Law (February 10, Steve, “Why a “Drone Court” Won’t Work–But (Nominal) Damages Might…” <http://www.lawfareblog.com/2013/02/why-a-drone-court-wont-work/>)

 That brings me to perhaps the biggest problem we should all have with a “drone court”–the extent to which, even if one could design a legally and practically workable regime in which such a tribunals could operate, its existence would put irresistible pressure on federal judges to sign off even on those cases in which they have doubts. As a purely practical matter, it would be next to impossible meaningfully to assess imminence, the existence of less lethal alternatives, or the true nature of a threat that an individual suspect poses ex ante. Indeed, it would be akin to asking law enforcement officers to obtain judicial review before they use lethal force in defense of themselves or third persons–when the entire legal question turns on what was actually true in the moment, as opposed to what might have been predicted to be true in advance. At its core, that’s why the analogy to search warrants utterly breaks down–and why it would hardly be surprising if judges in those circumstances approved a far greater percentage of applications than they might have on a complete after-the-fact record. Judges, after all, are humans.

#### Drone courts are unconstitutional under Article III – causes Supreme Court rollback

Vladek 2013 - professor of law and the associate dean for scholarship at American University Washington College of Law (February 10, Steve, “Why a “Drone Court” Won’t Work–But (Nominal) Damages Might…” <http://www.lawfareblog.com/2013/02/why-a-drone-court-wont-work/>)

Although the “drone court” proposals floating around vary to some degree in their (sparse) details, one of the core ideas behind them is that such a body would operate much like the FISC–with the government proceeding ex parte and in camera before the court in order to obtain something tantamount to a warrant prior to engaging in a targeted killing operation. (It would presumably defeat the purpose, after all, if the target of the putative operation had notice and an opportunity to be heard prior to the attack.) The hardest question is what, exactly, the government would be seeking judicial review of at this stage… Some possibilities, among others: Whether the target is in fact a belligerent who can be targeted as part of the non-international armed conflict between the United States and al Qaeda and its affiliates; Whether the target does in fact present an imminent threat to the United States and/or U.S. persons overseas (although the definition of “imminent” may depend on the answer to (1)); and Whether it is in fact impossible to incapacitate the target (including by capturing him) in the relevant time frame with any lesser degree of force. Leaving aside (for the moment) the potential separation of powers issues such review would raise, there’s a more basic problem: the possible absence of a meaningful “case or controversy” for Article III purposes. The Supreme Court has long emphasized, as it explained in Flast v. Cohen, that one of the central purposes of Article III’s “case-or-controversy requirement” is to ensure that “the dispute sought to be adjudicated will be presented in an adversary context and in a form historically viewed as capable of judicial resolution.” That is to say, “adversity” is one of the cornerstones of an Article III case or controversy, and it would be noticeably lacking in a drone court set up along the lines noted above. The standard response to this concern is the observation that the same is true of the FISC–that, in most of its cases, the Foreign Intelligence Surveillance Court operates ex parte and in camera, ruling on a government’s warrant application without any adversarial process whatsoever. And time and again, courts have turned away challenges to the FISA process based upon the same argument–that the FISC violates Article III as so constituted (see, e.g., footnote 19 of the FISA Court of Review’s 2002 decision in In re Sealed Case). But insofar as the FISC operates ex parte, courts have consistently upheld its procedures against any Article III challenge by analogy to the power of Article III judges to issue search warrants–a process defended entirely by reference to the Fourth Amendment, which the Supreme Court has interpreted to require a “prior judicial judgment” (in most cases, anyway) that the government has probable cause to justify a search–that is, as a necessary compromise between effective law enforcement and individual rights. As David Barron and Marty Lederman have explained, the basic idea is “that the court is adjudicating a proceeding in which the target of the surveillance is the party adverse to the government, just as Article III courts resolve warrant applications proceedings in the context of conventional criminal prosecutions without occasioning constitutional concerns about the judicial power.” And part of why those constitutional concerns don’t arise in the context of search warrants is because the subject of the warrant will usually have an opportunity to attack the warrant–and, thus, the search–collaterally, whether in a motion to suppress in a criminal prosecution or a civil suit for damages, both of which would be after-the-fact. (FISA, too, creates a cause of action for “aggrieved persons.”) To be sure, it’s already a bit of a stretch to argue that FISA warrants are obtained in contemplation of future criminal (or civil) proceedings (which is part of why Laurence Silberman testified against FISA’s constitutionality in 1978, and why the 1978 OLC opinion on the issue didn’t rest on this understanding in arguing for FISA’s constitutionality), and it’s even more of a stretch to make this argument in the context of the FISA Amendments Act of 2008 (the merits of which have yet to be reached by any court…). But the critical point for now is that this is the fiction on which every court to reach the issue has relied. In contrast, there is no real argument that a “drone warrant” would be in contemplation of future judicial proceedings–indeed, the entire justification for a “drone court” is to pretermit the need for any subsequent judicial intervention. In such a context, any such judicial process would present a serious constitutional question not raised by FISA, especially the more that the substantive issues under review deviate from questions typically asked by courts at the ancillary search-warrant stage of a criminal investigation (e.g., the second and third questions noted above). Finally, as one footnote to the Article III issue, it also bears emphasizing that these concerns can’t be sidestepped by having a non-Article III federal court hear such ex parte applications. Although the Supreme Court has upheld non-Article III federal courts for cases “arising in the land or naval forces,” it has consistently understood that authority to encompass only those criminal prosecutions that may constitutionally be pursued through court-martial or military commission. The idea that Congress could create a non-Article III federal court to hear entirely civil claims arising out of military action is not only novel, but difficult to square with what little the Court has said in this field.

## 2NC

### 2NC CP Solvency

### Solvency

#### Ordering habeas release key to meeting international human rights law commitments and legitimacy

Hathaway 09, International Law Prof at Yale

(Oona, BRIEF OF INTERNATIONAL LAW EXPERTS AS AMICI CURIAE IN SUPPORT OF PETITIONERS, www.americanbar.org/content/dam/aba/publishing/preview/publiced\_preview\_briefs\_pdfs\_09\_10\_08\_1234\_PetitionerAmCuIntlLawExperts.authcheckdam.pdf)

The United States has accepted two international legal obligations that require that the court reviewing Petitioners’ habeas petitions have the authority to order release. First, the International Covenant on Civil and Political Rights, which the United States ratified in 1992, provides that every detainee has a right to judicial review of his detention by a competent court that may “order his release if the detention is not lawful.” International Covenant on Civil and Political Rights art. 9(4), Dec. 19, 1966, 999 U.N.T.S. 171 [hereinafter Covenant] (emphasis added). Second, the Geneva Conventions’ Common Article 3 provides that in a time of war, a civilian detainee must be “treated humanely.” E.g., Geneva Convention Relative to the Protection of Civilian Persons in Time of War art. 3, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287 [hereinafter Common Article 3]. This requirement, in turn, should be interpreted in light of customary international law that requires the release of detainees when the reason for their detention has ceased. In addition to these two binding international legal obligations, human rights law and humanitarian law reflect the universal norm that prompt release is the proper remedy where there is no lawful justification for detention. This widely accepted principle of international law does not control the outcome of this case, but it can provide confirmation for this Court’s own conclusions. In this case, the District Court found that Petitioners present no threat to the United States and that there is no justification for their detention. World opinion supports a conclusion that the District Court’s order of release is the appropriate remedy for this unlawful detention.

The United States has repeatedly criticized other countries for failing to release detainees whose detention is unlawful. It has made clear that international law requires that habeas review be not only available but effective – meaning that it results in release when the detention is found to be unlawful. If the United States fails to live up to the standards to which it has held the rest of the world, this will breed resentment and will undermine the ability of the United States to encourage other countries to follow basic principles of international law in the future.

### 2NC AT: Perm – CP

#### Only congress can setup a new court

Engdahl 99, Law Prof at Seattle (www.heritage.org/constitution/#!/articles/1/essays/47/inferior-courts)

The latter vote was very close, however; James Madison moved as a compromise "that the National Legislature be empowered to institute inferior tribunals." Madison repeated his earlier argument that "unless inferior tribunals were dispersed throughout the Republic with final jurisdiction in many cases" [the words are emphasized in Madison's own notes], there would be docket overload and oppressive expense. The delegates' approval of this compromise resulted in three separate but related constitutional provisions: the Inferior Courts Clause in Article I, granting Congress power (and discretion) to constitute "inferior" tribunals; the phrase in Article III, alluding to "such inferior Courts as the Congress may from time to time ordain and establish"; and the Appellate Jurisdiction Clause in Article III, Section 2, Clause 2, which provides that judgments may be excluded by Congress from Supreme Court review

### 2NC Doesn’t Link to Politics

Doesn’t link

Stimson 9

[09/25/09, Cully Stimson is a senior legal fellow at the Heritage Foundation and an instructor at the Naval Justice School former American career appointee at the Pentagon. Stimson was the Deputy Assistant Secretary of Defense for Detainee Affairs., “Punting National Security To The Judiciary”, http://blog.heritage.org/2009/09/25/punting-national-security-to-the-judiciary/]

So what is really going on here? To those of us who have either served in senior policy posts and dealt with these issues on a daily basis, or followed them closely from the outside, it is becoming increasingly clear that this administration is trying to create the appearance of a tough national-security policy regarding the detention of terrorists at Guantanamo, yet allow the courts to make the tough calls on releasing the bad guys. Letting the courts do the dirty work would give the administration plausible cover and distance from the decision-making process. The numbers speak for themselves. Of the 38 detainees whose cases have been adjudicated through the habeas process in federal court in Washington, 30 have been ordered released by civilian judges. That is close to an 80 percent loss rate for the government, which argued for continued detention. Yet, how many of these decisions has this administration appealed, knowing full well that many of those 30 detainees should not in good conscience be let go? The answer: one. Letting the courts do it for him gives the president distance from the unsavory release decisions. It also allows him to state with a straight face, as he did at the Archives speech, “We are not going to release anyone if it would endanger our national security, nor will we release detainees within the United States who endanger the American people.” No, the president won’t release detainees; he’ll sit back and let the courts to do it for him. And the president won’t seek congressional authorization for prolonged detention of the enemy, as he promised, because it will anger his political base on the Left. The ultra-liberals aren’t about to relinquish their “try them or set them free” mantra, even though such a policy threatens to put terrorists back on the battlefield. Moreover, the president would have to spend political capital to win congressional authorization for a prolonged detention policy. Obviously, he would rather spend that capital on other policy priorities. Politically speaking, it is easier to maintain the status quo and let the detainees seek release from federal judges. The passive approach also helps the administration close Gitmo without taking the heat for actually releasing detainees themselves.

More ev

Keith E. Whittington- Prof of Politics @ Princeton- Nov., 2005, "Interpose Your Friendly Hand": Political Supports for the Exercise of Judicial Review by theUnited States Supreme Court, The American Political Science Review, Vol. 99, No. 4

The establishment and maintenance of judicial review is a way of delegating some kinds of political decisions to a relatively politically insulated institution. This del- egation aspect of judicial review drives the entrench- ment thesis, as current political majorities attempt to insulate their policy preferences from future political majorities by empowering sympathetic judges who will endure through the electoral transition. This is only one of the potential uses to which such an institution may be put, however. Political majorities may effec- tively delegate a range of tasks to a judicial agent that the courts may be able to perform more effectively or reliably than the elected officials can acting directly. It is well recognized that explicit or implicit "delegation" of political tasks to differently situated institutions and actors can be valuable in a range of political contexts (see generally, Voigt and Salzberger 2002). Legislative party leaders can solve collective ac- tion problems and protect the value of party labels (Cox and McCubbins 1993; Kiewiet and McCubbins 1991). Legislative committees can develop expertise and provide the information needed to make good policy (Krehbiel 1991). Central banks and indepen- dent judiciaries can allow legislators to credibly commit to policies valued by key constituencies (Landes and Posner 1975; Maxfield 1997). Interest groups can develop cheap information on the performance of bureaucracies or the preferences of the electorate (Hansen 1991; McCubbins and Schwartz 1984). At the same time, it should be recognized that apparent legislative delegations may be better understood as the exploitation of available political resources and legislative weaknesses by other actors, such as execu- tive branch officials, to enhance their own institutional position (Whittington and Carpenter 2003). Thus, we should be sensitive to the interaction between courts exploiting political opportunities and legislative lead- ers managing political risk. The courts exercising a power of judicial review may be a vehicle for overcoming political barriers that hamper a governing coalition. There are two preconditions for this possibility to be reasonable. The first is that courts often be ideologically friendly to the govern- ing coalition. Political majorities are unlikely to benefit from supporting courts that are ideologically divergent from them and are unlikely often to be able to work in tandem with them to achieve common political goals. There are reasons to believe that this precondition is often met in the American context, with the selection of individual judges (Dahl 1957), the departure of current judges (Spriggs and Wahlbeck 1995), the expansion of the judiciary as a whole (Barrow, Zuk, and Gryski 1996; De Figueiredo and Tiller 1996), and the struc- ture of court jurisdiction (Gillman 2002) all facilitating the creation of a sympathetic judiciary. This is not to say that presidents and parties are never surprised by their judicial appointments or by judicial decisions, but merely that the Court often shares the constitutional and ideological sensibilities of political leaders. The second precondition is that judicial review is actually useful to current political majorities. The usefulness to legislators of other judicial powers, such as the power to interpret statutes and enforce the law, is fairly evident. The utility of the power of judicial review to current legislators is less immediately evident, but it is easy to see once we note that judicial review may be used to void statutes passed by previous govern- ing coalitions, thus displacing the current legislative baseline. When governing coalitions are unable or un- willing to displace the legislative baseline themselves, then the courts may usefully do this work for them. Those invested in the status quo have less to gain from judicial review (Graber 2000), and so judicial review is likely to be more useful to some political coalitions than others, depending in part on their substantive agenda and in part on the extent to which they have been able to define the status quo. Nonetheless, as is illustrated in the following, it is unrealistic to assume that only political actors currently out of power stand to benefit from an active judiciary. We can expect that there will be additional supports for the active exercise of judicial review by an ideologically friendly judiciary to the extent that there are political barriers that hamper the realization of a governing coalition's agenda. In essence, allied elected officials would stand to benefit from an active judi- ciary if the ability of those elected officials to reach their preferred policy position on their own is limited. The resort to judges by displaced elected officials or minority interests is merely a special case of a larger class of cases in which political actors allied with the courts cannot control the legislative baseline. Political leaders who are still part of the governing coalition may nonetheless find their ability to implement their preferred policy hampered by difficulties other than simple electoral defeat. In a federal system, for ex- ample, ideological and partisan opponents may con- trol policymaking jurisdictions that are insulated from direct national legislative control. In the context of heterogeneous and cross-pressured political coalitions, political leaders may be unable to mobilize legislative allies behind a given policy that nonetheless is viewed sympathetically by judicial allies. Political leaders in such a situation will have reason to support or, at minimum, tolerate the active exer- cise of judicial review. In the American context, the presidency is a particularly useful site for locating such behavior. The Constitution gives the president a pow- erful role in selecting and speaking to federal judges. As national party leaders, presidents and presidential can- didates are both conscious of the fragmented nature of American political parties and sensitive to policy goals that will not be shared by all of the president's putative partisan allies in Congress. We would expect political support for judicial review to make itself apparent in any of four fields of activity: (1) in the selection of "ac- tivist" judges, (2) in the encouragement of specific judi- cial action consistent with the political needs of coali- tion leaders, (3) in the congenial reception of judicial action after it has been taken, and (4) in the public expression of generalized support for judicial supremacy in the articulation of constitutional commitments. Although it might sometimes be the case that judges and elected officials act in more-or-less explicit concert to shift the politically appropriate decisions into the judicial arena for resolution, it is also the case that judges might act independently of elected officials but nonetheless in ways that elected officials find conge- nial to their own interests and are willing and able to accommodate. Although Attorney General Richard Olney and perhaps President Grover Cleveland thought the 1894 federal income tax was politically un- wise and socially unjust, they did not necessarily there- fore think judicial intervention was appropriate in the case considered in more detail later (Eggert 1974, 101- 14). If a majority of the justices and Cleveland-allies in and around the administration had more serious doubts about the constitutionality of the tax, however, the White House would hardly feel aggrieved. We should be equally interested in how judges might exploit the political space open to them to render controversial decisions and in how elected officials might anticipate the utility of future acts of judicial review to their own interests. It should be emphasized that the possibility of friendly judicial review does not mean that the Court will simply do the bidding of political leaders. Politi- cians do not know with certainty what the justices will do if presented with a given piece of legislation. Al- though presidents may hope that the Court will act in a given case, they may well be disappointed. When signing campaign finance reform, President George W. Bush virtually drew a roadmap of the statutory pro- visions that he hoped the Court would strike down, but a majority of the justices imposed only modest constraints on the congressional authority to regulate political campaigns (Bush 2002, 517; McConnell v. Fed- eral Election Commission 2003). Striking down that statute might have won favor from the president who had signed it, but the Court merely behaved in the po- litically conventional manner by lending its legitimacy to the law. At other times, the justices might well act on their own constitutional understandings even when those understandings are not shared by political leaders or when their expression is not desired. The political logic for such instances of unfriendly and unwelcome judi- cial review will have to be rather different from those described here. If the obstruction is relatively minor, as when the Court struck down Theodore Roosevelt's Employers' Liability Act as being drafted too broadly while indicating that the law's aims were constitution- ally legitimate, then the Court's accumulated political capital might encourage leaders to simply yield to or work around the Court's rules (Employers' Liability Cases 1907; Pickerill 2004). If the obstruction is more serious, as when the Hughes Court blocked major com- ponents of the New Deal or when the early Warren Court extended the constitutional protections of sus- pected Communists, then the political reaction might be more severe and the strength of the Court's diffuse support might be tested. Not all episodes of judicial review take the collaborative form described here. The possibility of friendly judicial review, however, gives political leaders reason not only to tolerate the Court when it behaves in politically difficult ways but also to actively support the Court and help build a reservoir of public goodwill when it behaves

### 2NC AT: PQD DA

#### The Zivotofsky case killed PQD

Skinner 8/23, Professor of Law at Willamette

(13, Gwynne, Misunderstood, Misconstrued, and Now Clearly Dead: The 'Political Question Doctrine' in Cases Arising in the Context of Foreign Affairs, papers.ssrn.com/sol3/papers.cfm?abstract\_id=2315237)

In case there was any doubt, the Supreme Court in 2012 once and for sounded the death knell for the “political question doctrine” as a nonjusticiability doctrine - even in cases involving foreign policy – in Zivotofsky v. Clinton. In Zivotofsky, the Court adopted the analysis articulated in this article – finding that the question was justiciable, and that the proper analysis was whether Congress or the President acted within their powers. In an 8-1 decision, the Supreme Court in reversed the lower courts’ dismissal based on political question grounds of the Zivotofsky’s lawsuit requesting that because he was born in Jerusalem, Israel be listed as his place of birth on his passport. The Court found that the “political question doctrine” did not bar the lawsuit. In so finding, the Court called into question the continued existence of the “political question doctrine” as a nonjusticiability doctrine in individual rights claims, even in the area of foreign policy. Moreover, the case serves as a model for how courts should approach the “political question doctrine” in the future – deciding which branch of government has the authority and discretion to act under the Constitution in the area of contention. In 2002, Congress enacted a statute that part of the Foreign Relations Authorization Act of 2003 providing that “[f]or purposes of the registration of birth, certification of nationality, or issuance of a passport of a United States citizen born in the city of Jerusalem, the Secretary shall, upon the request of the citizen or the citizen’s legal guardian, record the place of birth as Israel.” 308 When President Bush signed the Act into law, he protested that § 214 “impermissibly interferes with the President's constitutional authority to conduct the Nation's foreign affairs and to supervise the unitary executive branch.” Zivotofsky was born shortly after that, and when his parents requested that Jerusalem, Israel be listed as his place of birth, the State Department, citing State Department long-standing policy that prohibits recording “Israel” as the place of birth for those born in Jerusalem, refused to do.310 The parents sued for declaratory judgment and a permanent injunction.311 The Secretary of State moved to dismiss the case, arguing that it presented a nonjusticiable political question.312 Both lower courts dismissed the case under the “political question doctrine”.313 The District Court explained that “[r]esolving [Zivotofsky's] claim on the merits would necessarily require the Court to decide the political status of Jerusalem.”314 Concluding that the claim therefore presented a political question, the District Court dismissed the case for lack of subject matter jurisdiction. 315 The D. C. Court of Appeals, also dismissing the case on political question grounds, reasoned that the Constitution gives the Executive the exclusive power to recognize foreign sovereigns, and that the exercise of that power cannot be reviewed by the courts.316 It rejected the argument that Congress’ attempt to take a position on the matter did not change the analysis.317 Judge Edwards, however, in a notable opinion concurring in judgment, found that the “political question doctrine” did not preclude determination of the case since it involved “commonplace issues of statutory and constitutional interpretation” plainly within the constitutional authority of the Judiciary to decide.”318 Judge Edwards then opined that the Act unconstitutionally infringed on the power of the President’s recognition power, and that the plaintiff had no viable cause of action.319 The Supreme Court rejected the argument that the case required it to define U.S. policy, and criticized the court of appeals for finding that because the executive had the exclusive authority over the issue, the claim presented a nonjusticiable judicial question.320 Rather, the Court found, the suit simply required that the Court adjudicate whether Zivotofsky “can vindicate his statutory right under § 214(d) to choose to have Israel recorded as his place of birth on his passport,” by determining whether the statute was constitutional.321 The Court noted that “this is a familiar judicial exercise,” and further noted that it is the province and duty of the Court to determine the constitutionality of a statute – the only real issue in the case – something the court has the province and duty to do. 322 The Court noted it cannot refrain from this simply because the determination has political implications. The Court reasoned that if the statute impermissibly intruded upon the President’s constitutional powers, then the claim would need to be dismissed for “failure to state a claim” – not as a nonjusticiable question or for lack of standing.324 If the statute is constitutional, then the Secretary of State must be ordered to comply with the statute and issue the passport with Israel listed.325 Either way, the Court noted that no political question is involved.326 The Court then remanded the case for determination on the Constitutional question. In reaching its decision, the Court framed the “political question doctrine” quite narrowly. First, it began its analysis by citing Cohens v. Virginia328 for the proposition that “the Judiciary has a responsibility to decide cases properly before it, even those it ‘would gladly avoid,’” and noting that the Court has created a “very narrow exception” to the “political question doctrine.”329 Interestingly, rather than reiterate the six factors outlined in Baker, it suggested a narrowing test, looking at two basic factors: whether there is ‘a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it.’330 The Court rejected the argument that there was a constitutional commitment of the question about recognition of governments to the Executive, finding instead that question was one of constitutional interpretation of a statute and, thus, belonged with the Court. 331 The Court noted that it was its role to determine the powers of Congress and the Executive under the Constitution. The Court also rejected the argument that it lacked judicially manageable standards in reaching any such decision by outlining all the various arguments and principals available in order for a court to adjudicate the matter. At the end of the day, Court’s opinion reaffirmed the judiciary’s role over certain foreign affairs issues. Thus, it is fair to say that this case indicates that the Court is signaling a serious retreat in the use of the “political question doctrine” to find that individual rights cases are off-limits to the judiciary, even where those cases affect national security or foreign policy.

## 1NR

### 2NC O/V

Economic collapse causes explosive global conflict with China and Russia.

Auslin, History Professor at Yale, ‘9 (Michael, March 6, “The Global Economy Unravels” http://www.forbes.com/2009/03/06/global-economy-unravels-opinions-contributors-g20.html)

Conversely, global policymakers do not seem to have grasped the downside risks to the global economy posed by a deteriorating domestic and international political environment. If the past is any guide, the souring of the political environment must be expected to fan the corrosive protectionist tendencies and nationalistic economic policy responses that are already all too much in evidence. After spending much of 2008 cheerleading the global economy, the International Monetary Fund now concedes that output in the world's advanced economies is expected to contract by as much as 2% in 2009. This would be the first time in the post-war period that output contracted in all of the world's major economies. The IMF is also now expecting only a very gradual global economic recovery in 2010, which will keep global unemployment at a high level. Sadly, the erstwhile rapidly growing emerging-market economies will not be spared by the ravages of the global recession. Output is already declining precipitously across Eastern and Central Europe as well as in a number of key Asian economies, like South Korea and Thailand. A number of important emerging-market countries like Ukraine seem to be headed for debt default, while a highly oil-dependent Russia seems to be on the cusp of a full-blown currency crisis. Perhaps of even greater concern is the virtual grinding to a halt of economic growth in China. The IMF now expects that China's growth rate will approximately halve to 6% in 2009. Such a growth rate would fall far short of what is needed to absorb the 20 million Chinese workers who migrate each year from the countryside to the towns in search of a better life. As a barometer of the political and social tensions that this grim world economic outlook portends, one needs look no further than the recent employment forecast of the International Labor Organization. The ILO believes that the global financial crisis will wipe out 30 million jobs worldwide in 2009, while in a worst case scenario as many as 50 million jobs could be lost. What do these trends mean in the short and medium term? The Great Depression showed how social and global chaos followed hard on economic collapse. The mere fact that parliaments across the globe, from America to Japan, are unable to make responsible, economically sound recovery plans suggests that they do not know what to do and are simply hoping for the least disruption. Equally worrisome is the adoption of more statist economic programs around the globe, and the concurrent decline of trust in free-market systems. The threat of instability is a pressing concern. China, until last year the world's fastest growing economy, just reported that 20 million migrant laborers lost their jobs. Even in the flush times of recent years, China faced upward of 70,000 labor uprisings a year. A sustained downturn poses grave and possibly immediate threats to Chinese internal stability. The regime in Beijing may be faced with a choice of repressing its own people or diverting their energies outward, leading to conflict with China's neighbors. Russia, an oil state completely dependent on energy sales, has had to put down riots in its Far East as well as in downtown Moscow. Vladimir Putin's rule has been predicated on squeezing civil liberties while providing economic largesse. If that devil's bargain falls apart, then wide-scale repression inside Russia, along with a continuing threatening posture toward Russia's neighbors, is likely. Even apparently stable societies face increasing risk and the threat of internal or possibly external conflict. As Japan's exports have plummeted by nearly 50%, one-third of the country's prefectures have passed emergency economic stabilization plans. Hundreds of thousands of temporary employees hired during the first part of this decade are being laid off. Spain's unemployment rate is expected to climb to nearly 20% by the end of 2010; Spanish unions are already protesting the lack of jobs, and the specter of violence, as occurred in the 1980s, is haunting the country. Meanwhile, in Greece, workers have already taken to the streets. Europe as a whole will face dangerously increasing tensions between native citizens and immigrants, largely from poorer Muslim nations, who have increased the labor pool in the past several decades. Spain has absorbed five million immigrants since 1999, while nearly 9% of Germany's residents have foreign citizenship, including almost 2 million Turks. The xenophobic labor strikes in the U.K. do not bode well for the rest of Europe. A prolonged global downturn, let alone a collapse, would dramatically raise tensions inside these countries. Couple that with possible protectionist legislation in the United States, unresolved ethnic and territorial disputes in all regions of the globe and a loss of confidence that world leaders actually know what they are doing. The result may be a series of small explosions that coalesce into a big bang.

Economic decline crushes relations

Sanders, ’90 [Jerry W. Sanders 90, Prof. Peace and Conflict Studies, UC, Berkeley [“Global Ecology and World Economy: Collision Course or Sustainable Future”, Bulletin of Peace Proposals Vol. 21 (4) p. 395-401]

Circumstances of looming catastrophe like these call for a maximum of world order and international cooperation. Historically, however, it is in just such times that the political will for global governance is in shortest supply. In a period of economic stagnation and trade competition, a declining hegemonic power will think less about maintaining world order than about shoring up its position relative to new challengers and upstarts. Multilateral cooperation will run up against similar constraints, due to suspicions that others may gain at one’s own expense by ‘free riding’ on the ‘public goods’ provided by environmental protection, trade regulation, or collective security regimes. The tendency will be for states to withhold the resources and the legitimacy required for supranational structures to work. And left to fend for themselves in a climate of economic stagnation, individual nations will be little able and even less inclined to end their destabilizing environ mental practices. Thus the groundwork will be laid for a chain reaction of conflicts across a spectrum of relations, with one nation after another forced into escalating confrontation along several fronts.

Turns democracy

Seita, Law Professor at Albany, ’97 (Alex, “Globalization and the Convergence of Values” Cornell International Law Journal, lexis)

Law has been important in managing economic globalization and may become as important with respect to political globalization. 7 The ideology of globalization can be broadly divided into substantive and procedural components. The most important procedural element is the rule of law - the idea that disputes will be settled and agreements negotiated through the observance of established principles rather than the use of force or the intimidation of power. 8 In turn, the substantive principles, what the rule of law seeks to enforce, are those that nations have selected to settle disputes and negotiate agreements. The rule of law can be a way of resolving conflicts effectively, peacefully, and cooperatively. Furthermore, globalization enhances the perceived importance of distant international problems relative to local problems. Thus, protection of the environment beyond national borders has attracted strong international support, and the conflict between environment protection and economic development created the global issue of sustainable development. 9 [\*431] On the downside, technology together with economic and political globalization can facilitate the movement of criminal and terrorist activities across national boundaries and help criminals and terrorists to operate like efficient international businesses. 10 Most significantly for this Article, however, globalization is an important source of common economic and political values for humanity. Globalization is simultaneously a cause and a consequence of the convergence of basic economic and political systems among nations. As the activities of globalization help to converge economic and political systems, their existence reciprocally facilitates the expansion of globalization. Momentously, the convergence of these systems is leading to the convergence of fundamental values - deeply held beliefs about what is right and wrong. 11 There is a widespread, though not universal, acceptance among nations of the basic values of liberal democracy: a market economy (or free markets), a democratic government, and the protection of human rights. Although particular details may differ from country to country, the general nature of these values is the same. The convergence of basic economic and political values among nations is a pivotal event because it is a necessary, though not sufficient, condition for the eventual emergence of a consensus among human beings that there is but one human race. 12 This Article argues that the United States and the other industrialized democracies (e.g., the members of the European Union, Japan, and Canada), collectively referred to as the "West," 13 should vigorously support and substantially guide the process of globalization. As it is currently emerging, globalization fosters desirable common national values by advancing general forms of market economies, democracy, and human rights. 14 It is precisely those general characteristics of liberal democracy that constitute the foundational pillars and shared values of the United States and the other industrialized democracies. 15 Because the exact form of globalization is not a fixed certainty, the United States and the other industrialized democracies should aggressively configure globalization to be consistent with and to promote the values of liberal democracy. The industrialized democracies must also ensure that the path of globalization fairly balances the values of free market economics, democracy, and human rights, while accommodating such vital concerns as the protection of the environment, concerns that do not yet generate as strong a global consensus as the three convergent values. 16 The mechanism for configuring globalization to conform to and to balance the values of liberal democracy consists of events and policies that, while difficult to achieve, are not unrealistic and have, to a degree, already been occurring. 17 A particularly useful event might be a catharsis that would place the world into the next millennium without the baggage of the past. Perhaps by the year 2001, the representatives of oppressors, victims, victors, losers, and adversaries could assemble on a world stage in a therapeutic ceremony to put the past behind. 18 Given their economic preeminence in the world, by acting in unison the industrialized democracies should be able to determine the specific content of globalization. Action from the industrialized democracies is needed because a humane globalization will increase human wealth and reduce human suffering. 19 Morally, the promotion of liberal democratic values and the perspective of a single human race would serve to repay the historic debts that the industrialized countries have incurred over the past centuries. 20 At the same time, the industrialized democracies must be careful to use their influence responsibly and sensitively, for the wisest ideas pursued for the best motives may be rejected when unilaterally imposed upon the rest of the world. Perceived economic and political "imperialism," though much less malevolent than military imperialism, will not be warmly greeted. The primary vehicle for the industrialized democracies should be the "rule of law" - assuming that they have a substantial, if not commanding voice in determining its underlying principles. An enlightened globalization will not lead to the establishment of a world government. It could, however, create a new attitude among human beings and serve the interests of the United States. 21 More profoundly, advancing globalization will facilitate an event barely begun that holds the great potential of constructing, in the distant future, the perspective that the human race matters more than its component divisions along race, religion, or ethnicity. The vision of a common humanity is reason enough to embrace globalization. I. The Background of Globalization Today, more than ever, the events of foreign lands have important economic and political consequences for local inhabitants. To be sure, foreign events have had significant ramifications in the past. Centuries ago, seminal inventions in China revolutionized the culture, science, and warfare of Europeans; the opening of American borders to European immigrants from the 19th through the mid-20th centuries gave millions a new home; and the conflicts in Europe during WorldWarI eventually brought the United States onto the European battleground. 23 But these events were of sporadic importance. For example, after World War I ended, the United States isolated itself in a number of respects from international politics and trade; America declined membership in the League of Nations and enacted the Smoot-Hawley tariffs in 1931 which drastically reduced imports. 24 By contrast, transnational activities and affairs now have continuous importance, repeatedly affecting not just distant countries, but also the entire global community at times. The continuous importance of international events is a defining characteristic of globalization. Another feature of globalization with potentially profound implications is the convergence of basic economic and political values among nations towards the liberal democratic values of the industrialized democracies, the "West." 25 For the West, the liberal, democratic values of market [\*434] economies, democracy, and human rights are fundamental. 26 Given the arguably shallow roots of liberal democratic values in a number of countries and the absence of democracy and human rights in many others, this process may perhaps be too incomplete to be described as a convergence of [\*435] fundamental values. Nevertheless, today there are greater similarities between the economic and political systems of nations than at any other time in the short history of globalization. 27 With careful and generous support from the West, this similarity of systems may evolve into a similarity of fundamental values. A. Globalization's Beginning Identifying the birth of globalization is an elusive task, but one possible date is the year 1945, when the United States led the Allied powers in creating the United Nations and its companion international organizations, the International Monetary Fund (IMF) and the International Bank for Reconstruction and Development (World Bank). 28 Later in 1948, the United States and its democratic allies established the General Agreement on Tar- [\*436] iffs and Trade (GATT), another important economic institution for globalization along with the IMF and the World Bank. 29 The motivations for creating these international institutions were at once noble and selfish. After the devastating experience of World War II, the victorious Allies were determined to prevent any reoccurrence of similar world wars. Their motivating hope was that a collegial body of nations would ensure the peaceful resolution of conflicts and provide a collective defense against wrongful aggression. 30 Thus, the United Nations was the focus of political attempts to prevent future acts of aggression. Further, unlike the League of Nations, the United Nations made the promotion of human rights one of its basic purposes. 31 Toward that end, the United Nations created various human rights institutions and generated human rights conventions and [\*437] declarations. 32 At the same time, the Allies thought it critical to lay the foundations for the economic prosperity of the international community. 33 Prosperous countries, it was thought, would be less inclined to wage wars. Thus, the Allies promoted activities that would raise the standard of living among peaceful countries. For example, the Allies established international economic institutions which were in part created to promote international monetary cooperation (the IMF), to foster economic development in less developed countries (the World Bank), and to increase international trade (the GATT). 34 [\*438] The creation of the United Nations, the IMF, the World Bank, and the GATT were key moments in globalization. These institutions signaled the start of an era of cooperative behavior, however imperfect, among nations. While the number of nations involved was limited, their cooperation required the development and formal recognition of common interests. The GATT and the United Nations, in particular, were critical components in the genesis of globalization. 35 In seeking to reduce barriers to trade of goods, the GATT contained free market principles that favored lower tariffs, banned quotas, and prohibited discrimination against foreign goods. 36 The United Nations, at least on paper, championed the principles of human rights and democratic forms of government. 37 As these principles [\*439] gained international acceptance, economic and political norms developed. That is, common values emerged. B. Economic Globalization In current usage, the term globalization refers primarily to economic globalization. As barriers to trade, investment, financial flows, and technology transfers have fallen, there has been an expansion of markets for goods, services, financial capital, and intellectual property to transnational, regional, and even global dimensions. 38 There are several hallmarks of economic globalization. First, it increases opportunities for sellers as well as buyers. Second, economic globalization simultaneously creates new competition. Third, it develops interdependency among nations. Finally, economic globalization spreads the ideology of the free market economy model because the industrialized nations, the major promoters of globalization, advocate free market policies. The enlargement of markets beyond national boundaries means that both sellers and buyers have greater choices. More firms issue equity [\*440] securities in, or obtain financing from, international markets. 39 They also find it profitable to sell their goods and services in, or buy their raw materials or components from, international markets. Worldwide trade now amounts to an astonishingly large figure, six trillion dollars in 1995, more than 80% the size of the gross domestic product of the United States, the world's largest economy. 40 The existence of greater choice also extends to investment opportunities. Companies are investing in foreign countries, buying assets such as securities, businesses, facilities, and land, and have shifted production to [\*441] foreign factories. 41 Concurrently, sellers of such domestic assets now have [\*442] more buyers to choose from. The liberalization of investment opportunities - the removal of barriers - contributes to the liberalization of trade, and vice versa. 42 Expanding markets simultaneously generates more competition along with more opportunities; 43 domestic firms must compete not only with domestic but also foreign rivals. While benefiting domestic consumers, foreign competition may threaten domestic businesses and employees. 44 Whether the foreign competition comes from imports or the local subsidiaries of foreign corporations, employees of domestic firms may lose their jobs as these firms lay off surplus employees in order to become more competitive. 45 Where local subsidiaries of foreign corporations provide competition, however, these subsidiaries will create new jobs that replace, in [\*443] part, jobs lost at domestic firms. 46 One of the major consequences of increased foreign competition and the domestic drive for efficiency is that countries have become more willing to privatize and deregulate. 47 By making foreign countries important sources of consumers, investors, and suppliers, globalization creates interdependence. When domestic businesses buy from and sell to foreign markets, their financial welfare becomes linked to those markets. More domestic companies have evolved into multinational corporations, firms that have economic interests in several countries. Businesses set up partnerships with foreign firms, to share technology and risk, in order to create new products. 48 Because customers as well as suppliers are foreign, firms in one country become economically dependent upon firms in other countries. When foreign firms likewise become dependent upon domestic markets, interdependence is established as the economic prosperity of one nation becomes connected to that of other countries. For virtually all countries, transnational trade is important, if not vital, to their economic prosperity. 49 As economic globalization integrates various national markets into regional or world-wide markets, it also promotes general free market prin- [\*444] ciples, such as the quintessential concept of the market mechanism to allocate resources, 50 reduce protectionism in international trade, 51 and [\*445] privatize and deregulate. 52 Well before the collapse of the Soviet Union or even the end of the Cold War, the market economy (free market) paradigm of the West emerged as the decisive winner in the economic contest with the command (or planned) economy paradigm of the Soviet bloc. 53 Since globalization is being led by the corporations and governments in the capitalist economies of the industrialized democracies, it naturally advocates the ideology of the winners rather than the losers. Thus, the rules underlying globalization seek to expand markets among market economy rather than command economy principles. 54 For example, the WTO espouses the implementation of free-market ground rules to cover international trade and trade-related aspects of [\*446] investment and intellectual property. 55 n55. The IMF and the World Bank, too, have promoted market economy principles. See, e.g., James supra note 28, at 323 (IMF conditionality, the terms on which it will lend, has often required budgetary and domestic credit restraints, as well as trade liberalization); World Bank, The East Asian Miracle: Economic Growth and Public Policy 10 (1993) [hereinafter East Asian Miracle] (advocating a "market friendly" strategy in which "the appropriate role of government is to ensure adequate investments in people, provide a competitive climate for private enterprise, keep the economy open to international trade, and maintain a stable macroeconomy"); Barend A. de Vries, Remaking the World Bank 6, 56-58 (1987) (describing how the World Bank has encouraged decentralized planning rather than command-type central planning, and has made substantial loans to help borrowing nations increase their economies' efficiency and competitiveness, such as by liberalizing trade); cf. John Williamson, Introduction, in IMF Conditionality, supra note 34, at xiii (stating that one complaint of borrowing countries is that the IMF is "ideologically biased in favor of free markets and against socialism"). At this time, however, the WTO is the most important of the international economic institutions in carrying out the implementation of free market principles, primarily the idea of opening markets (liberalizing trade) among countries. The WTO agreements have gone beyond the GATT in covering trade in services as well as trade-related aspects of intellectual property and trade-related investment measures. See General Agreement on Trade in Services, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1B, 33 I.L.M. 44 (1994); Agreement on The Trade-Related Aspects of Intellectual Property, Including Trade in Counterfeit Goods, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 33 I.L.M. 81 (1994); Agreement on Trade-Related Investment Measures, Agreements on Trade in Goods, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, available in <http://itl.irv.uit.no/trade law/documents/freetrade> (visited Mar. 29, 1997). Further, the WTO agreements address more meaningfully the subjects of agriculture, textiles, and apparel. See Agreement on Agriculture, Agreements on Trade in Goods, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, available in <http://itl.irv.uit.no/trade law/documents/freetrade> (visited Mar. 29, 1997); Agreement on Textiles and Clothing, Agreements on Trade in Goods, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, available in <http://itl.irv.uit.no/trade law/documents/freetrade> (visited Mar. 29, 1997). Its rules go further than those of the GATT, its predecessor in carrying out the free market principle of comparative advantage by stamping out protectionism among nations. 56 When tools of protectionism - such as tariffs, quotas, or domestic subsidies - are reduced, foreign imports can better enter a domestic market, creating more competition for local firms. n56. For instance, the WTO makes a member's subsidy to its domestic industry actionable by another member if its effect "is to displace or impede the imports of a like product of another Member into the market of the subsidizing Member." Agreement on Subsidies and Countervailing Measures, Agreements on Trade in Goods, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, art. 6.3(a), available in <http://itl.irv.uit.no/trade law/documents/freetrade> (visited Mar. 29, 1997). The presence of increased competition contributes to the development of more efficient local firms as only the fittest firms will survive in a competitive marketplace. The use of a market and consumer choice, rather than a bureaucracy, to determine the survival of firms and products is the essence of a free market. 57 Not surprisingly, the various WTO agreements are expected to substantially [\*447] increase global income. 58 C. Political Globalization As economic globalization expands, it has been accompanied by a somewhat lesser degree of political globalization in that there are now substantial numbers of elected governments. 59 Also, the rhetoric of human rights has gained universal acceptance, and more nations than ever before have pledged to protect human rights. 60 With political globalization, there is [\*448] more than just the existence of elected governments and the recognition of human rights by governments. Political globalization has also tended to cause a convergence in political values, with the genuine acceptance of democracy and human rights in a greater number of countries. Compared to the convergence in economic values, the convergence of political values has had a more difficult path. The growth of economic globalization was championed by countries that realized they would gain economically by increased foreign trade. Even the command-economy communist nations sought trade with the capitalist economies of the West. 61 Well before the end of the Cold War, some communist nations even embraced capitalism to an extent. As events in China have clearly shown, dictatorship and a dismal human rights record have not been incompatible with free market policies. 62 Unlike economic globalization, the support for political globalization historically has been weak, perhaps because its benefits were not as obvious or immediate. Despite their long history predating free market principles, the political values of democracy and human rights have been more dishonored by breach than honored by observance. 63 Most countries did [\*449] not espouse them, and those that did applied these concepts selectively. 64 For decades after the end of World WarII, the spread of humanitarian political values had to contend with severe obstacles. 65 For much of the [\*450] existence of the United Nations, the most important international organization devoted to the promotion of democracy and human rights, many of its leading members either did not observe democratic values or human rights domestically, or subordinated these values to other priorities in foreign affairs. 66 Despite initial obstacles, however, these political values slowly developed roots in non-western countries. Even before the end of the Cold War, the past two decades saw the emergence of a greater number of countries with democratic governments and protective of human rights. 67 These countries offer political rights and [\*451] civil liberties that make them different in kind from past authoritarian regimes. With the end of the Cold War, many of the former Soviet-allied countries established popularly elected governments. Earlier, elected governments emerged from dictatorships in Latin America, Asia, and Africa. 68 As the transformation of South Africa - the former bastion of apartheid - into a democratic country shows, the unbelievable can happen. The outlook today is promising for the values of democracy and, to a lesser extent, human rights. First, with the triumph of liberal democracy over communism in the Cold War, 69 the United States and its allies can now more vigorously pursue humanitarian rather than security objectives. Second, the commonality of democracy and human rights in nations has provided more reason for these nations to cooperate among themselves in trade, humanitarian, and security matters, as well as in trying to nurture the qualities of democracy and human rights in authoritarian countries. The remaining authoritarian strongholds face pressures to democratize, and to recognize some level of human rights. 70 Democracy has been easier to achieve than the protection of human rights, perhaps because the implementation of democracy is technically more easily accomplished (e.g., a popularly elected government), while there may be disagreement over which rights are basic human rights and how these basic rights are to be protected. 71 Furthermore, elected governments need not necessarily protect human rights, especially in nascent [\*452] democracies which may have problems of illiteracy, corruption, authoritarian traditions, ethnic or religious conflicts, and a winner-takes-all political system. 72 The value of democratic governments is that their actions reflect the desires of a majority of the people rather than the wishes of a tyrant or a select few. Democracy is arguably the most basic human right because it recognizes the sovereignty of the people in that a government pursues policies which the majority of the people support through their freely elected representatives. The preferences of at least a majority of its population, rather than the desires of a select few, influence democratic governments. Democratic governments are much more likely to respect human rights, at least those of the majority, than authoritarian regimes which are unaccountable to an electorate. Of course, democracy is not itself a sufficient condition for a humane society, since a majority may persecute or subjugate a minority in a democratic society. 73 A practical benefit of mature democracies, those having democratic governments for a long period of time, is that they substantially protect a wide variety of human rights and are much less likely to use military force to resolve conflicts. 74 [\*453] Despite disagreement over the extent to which human rights should be protected, some level of human rights protection exists for a substantial percentage, if not the majority, of the world's population. 75 For an increasing number of countries, there seems to be a real, as opposed to a rhetorical, acceptance of some form of human rights. While inadequate and imperfect, this is an enormous improvement over the past. While outrageous examples of inhumanity still occur, such as in Rwanda, they are universally condemned. In an indirect way, the cultural impact of economic globalization stimulates political globalization. Economic globalization has long introduced aspects of foreign cultures - especially American culture - either directly by the sale of merchandise such as movies and musical recordings, or indirectly through exposure to foreigners. 77 More than in the past, the opening of new markets through economic globalization has brought a flood of people and companies into foreign lands. Personal contact, always so important in understanding other human beings, has made foreigners less inscrutable. More business personnel are assigned to overseas offices, more consumers travel abroad as tourists, and more students study in foreign countries. 78 Local residents are more likely than ever before to work for, do business with, or personally know foreigners. In some cases, this transnational encounter may lead to a personal affinity with or an in-depth understanding of foreign cultures. 79 [\*455] Further, economic globalization has generated an interest in learning foreign languages, primarily English. Perhaps irreversibly, English has become the international language of business and science, with a broader usage than any other language. 80 At the same time, the ability to speak a foreign language other than English gives one a competitive advantage in doing business in nonEnglish-speaking countries. 81 Doing business with foreigners, in their country or in one's own, requires that one communicate with them, cooperate with them, and be exposed to their political and business values. 82 The political values of democracy and human rights, as well as aspects of foreign cultures, are often inseparable (though secondary) components of economic globalization. Thus, countries that seek to benefit from economic globalization must frequently tolerate political globalization and exposure to foreign cultures. As people know more about foreign cultures, some familiarity with foreign political values is bound to arise. II. Technology's Vital Role in Converging Values The advanced communication technology that links much of the world together continues to be crucial to the convergence of economic and political values. This technology is utilized primarily by business entities to facilitate economic globalization. 83 Modern technology has also tended to promote democracy and human rights by making it easier and cheaper for [\*456] people to communicate without censorship across national boundaries. Communication technology not only exposes a national population to foreign ideas, but also concurrently exposes domestic conditions to a global audience. qThis has occurred because economic globalization involves communication technologies with multiple uses. The same technology that transmits a business proposal may also communicate politically embarrassing or other non-business information. These multiple uses of advanced technology cannot easily be separated from each other, making it difficult to restrict the technology to purely business purposes. A country that wishes to participate in international business cannot isolate itself from all uses of communication technologies unrelated to business dealings. 84 The internet 85 is a recent communication medium with tremendous potential for linking people across national boundaries, furthering mutual interests of the international community, and a myriad of other uses. 86 The internet will become, or may already be, an important or even critical technological medium for business, as well as for scientific research and consumer enjoyment. 87 The internet is the essential part of the "informa- [\*457] tion superhighway," a source of information that promises to change fundamentally human lives. 88 E-mail and computer file transmission on the internet can potentially provide a more powerful (e.g., faster, cheaper, more convenient) business tool than such conventional devices as the postal service, telephones, and faxes. Internet users can transmit and download data, articles, images, movies, speeches, sound recordings, and other information. 89 By providing a forum for the transfer of such information, the internet will help protect the freedoms of expression and choice for followers of any ideological persuasion. 90 Unfortunately, however, it may shield criminal, obscene, [\*458] racist, and terrorist activities as well. 91 A government might attempt to control the content of information transfers. It could screen large numbers of telephone calls, faxes, or computer data; it could restrict access to or intercept messages on the internet. Total censorship, however, would bring a halt to international business. 92 Firms might object if government surveillance is too pervasive. For example, companies might not want government officials to be privy to proprietary information. 93 A certain amount of freedom of communication is therefore assured if a country wishes to be part of a global economy: international firms will leave a nation if censorship prohibitively increases the cost of doing business. This will remain true even if governments attempt to censor communications using the most advanced and cost-effective surveillance technology available. 94 [\*459] Communication technologies not essential to international business transactions also serve to bolster humanitarian political values. International news reporting utilizes communication technologies to broadcast major domestic events of all types on a worldwide screen. There are numerous journalists, broadcasters, and commentators whose professional livelihood depends upon bringing newsworthy stories to a foreign, if not international, audience. While most publicized stories may not involve political events, many do. The competitive members of the news media are unlikely to let stories of outrageous acts completely escape the attention of the international public. Furthermore, these news articles may be read by anyone in the world who has access to the internet. 95 At the same time, news stories alone would not generate international repercussions against repressive governments if purely theoretical political values were involved. There must be influential constituencies that place high priority on the existence of democracy and human rights, that seek to spread those values, and that are galvanized into action upon news of deplorable political conditions. Neither value would flourish unless there were constituencies, either domestic or abroad, that strongly supported it. The presence of democratic governments and strong protections for human rights in the industrialized countries means that these values are expressed to some degree in their business transactions with other countries. 96 Sizable populations in the industrialized countries also attempt to support democracy and human rights abroad through private means. 97 Moreover, as the living standards of developing countries improve, the citizenry of these countries seem to expect more democratization (first) and [\*460] human rights (later). 98 III. The Importance of Globalization Because globalization promotes common values across nations and can make foreign problems, conditions, issues, and debates as vivid and captivating as national, state, and local ones, it contributes to a sense of world community. 99 It develops a feeling of empathy for the conditions of people abroad, enlarging the group of human beings that an individual will identify with. Globalization thus helps to bring alive persons in foreign lands, making them fellow human beings who simply live in different parts of the world rather than abstract statistics of deaths, poverty, and suffering. The convergence of basic political and economic values is thus fundamentally important because it helps to establish a common bond among people in different countries, facilitating understanding and encouraging cooperation. All other things being equal, the commonality among countries - whether in the form of basic values, culture, or language - enhances their attractiveness to each other. 100 In addition, convergence increases the possibility that a transformation of attitude will take place for those who participate in transnational activities. People will begin to regard foreigners in distant lands with the same concern that they have for their fellow citizens. 101 They will endeavor to help these foreigners obtain basic political rights even though the status of political rights in other countries will have no tangible beneficial impact at home. 102 Convergence does not mean that there is a single model of a market economy, a single type of democracy, or a single platform of human rights. They exist in different forms, and nations may have different combinations of these forms. 103 [\*462] A. The Perspective of One Human Race The convergence of fundamental values through globalization has profound consequences because it increases the chance that a new perspective will develop, one which views membership in the human race as the most significant societal relationship, except for nationality. 104 A person owes his or her strongest collective loyalties to the various societies with which he or she most intensely identifies. Today, this societal identification can be based on numerous factors, including nationality, race, religion, and ethnic group. 105 While it is unlikely that nationality will be surpassed as the most significant societal relationship, globalization and the convergence of values may eventually convince people in different countries that the second most important social group is the human race, and not a person's racial, religious, or ethnic group. 106 One of the first steps in the formation of a society is the recognition by prospective members that they have common interests and bonds. An essential commonality is that they share some fundamental values. A second is that they identify themselves as members belonging to the same community on the basis of a number of common ties, including shared fundamental values. A third commonality is the universality of rights - the active application of the "golden rule" - by which members expect that all must be entitled to the same rights as well as charged with the same responsibilities to ensure that these rights are protected. Globalization promotes these three types of commonalities. Globalization establishes common ground by facilitating the almost universal acceptance of market economies, the widespread emergence of democratic governments, and the extensive approval of human rights. The most visible example is economic. With the end of the Cold War, the free market economy has clearly triumphed over the command economy in the battle of the [\*463] economic paradigms. Because some variant of a market economy has taken root in virtually all countries, there has been a convergence of sorts in economic systems. 107 Further, because it often requires exposure to and pervasive interaction with foreigners - many of whom share the same fundamental values - globalization can enlarge the group that one normally identifies with. Globalization makes many of its participants empathize with the conditions and problems of people who in earlier years would have been ignored as unknown residents of remote locations. This empathy often leads to sympathy and support when these people suffer unfairly. Finally, the combination of shared values and identification produce the third commonality, universality of rights. 108 Citizens of one country will often expect, and work actively to achieve, the same basic values in other countries. They will treat nationals of other nations as they would wish to be treated. The effects of shared values, identification, and universality of rights in globalization could have a pivotal long-term effect - the possibility that a majority of human beings will begin to believe that they are truly part of a single global society - the human race. This is not to say that people disbelieve the idea that the human race encompasses all human beings. Of course, they realize that there is only one human species. Rather, the human race does not usually rank high on the hierarchy of societies for most people. Smaller societies, especially those based on nationality, race, religion, or ethnicity, command more loyalty. 109 The idea of the human race, the broadest and all-inclusive category of the human species, is abstract and has little, if any, impact on the lives of human beings. To believe in the singular importance of the human race requires an attitudinal shift in which a person views the human race seriously. [\*464] This may occur because the convergence of values does not only mean that the people of different countries will share the same basic values. It may also lead to the greater promotion of these values for the people of other countries. Historically and certainly today, America and the other industrial democracies have attempted to foster democracy and human rights in other countries. 110 While some part of this effort has been attributable to "self interest," it has also been due to the empathy that the industrialized democracies have had for other countries. 111 The magnitude of these efforts in the future, as in the past, will depend not solely upon the available financial and human resources of the industrialized democracies. It will also depend upon their national will - a factor undoubtedly influenced by the intensity with which the people of the industrialized democracies identify with people in foreign lands. The perspective that the human race matters more than its component divisions would accelerate cooperative efforts among nations to attack global problems that adversely affect human rights and the quality of human life. 112 Obviously, there is no shortage of such problems. Great suffering still occurs in so many parts of the world, not just from internal armed conflicts, 113 but also from conditions of poverty. 114 There are severe health problems in much of the world which can be mitigated with relatively little cost. 115 There are the lives lost to the AIDS epidemic, and [\*465] the deaths and disabilities caused by land mines. 116 Russia, a nuclear superpower that could end life on this planet, has severe social, economic, and political problems. 117 Making the human race important would not just promote liberal democratic values but would also reduce human suffering and perhaps eliminate completely the risk of nuclear war.. B. General Convergence of Values Assuming that the formation of a single human society is a possible outcome, two broad questions should be answered: what kind of human society is being created, and is this society desirable. The answer to the latter question will depend on an evaluator's subjective judgment of the society that is being formed. Undoubtedly, the great majority of human beings would abhor a world society that was being created by the conquests of a totalitarian government. Presumably, most Americans (and many citizens of other countries) would reject even a benevolent, democratic global society in which a world government dominated by other countries dictated laws that governed the lives of all human beings. If either outcome were present, many would call for a halt to globalization. Thus the direction that globalization follows is critical for assessing its appeal. What globalization has brought is a general convergence of fundamental economic and political systems among many nations. These systems are not identical. There are still innumerable differences among countries with market economies, democratic governments, and respectful of human rights. n118 The practices of one country may be intolerable to another coun- [\*466] try. n119 Furthermore, it is unlikely and probably undesirable that economic and political systems will ever exactly converge. Nor is it foreseeable that the nations of the world will coalesce into one. Even among the industrialized democracies, there are enough dissimilarities in market economies, democratic governments, and attitudes towards human rights that make some believe that the differences between these nations outweigh the similarities. For example, Japan is frequently characterized as having a producer-oriented market economy, as compared with the consumer-oriented market economy of the United States. n120 In general, the members of the European Union more extensively regulate their economies than the United States, engaging at times in social engineering that seems contrary to market principles as interpreted by Americans. n121 In the area of criminal justice, the United States is virtually alone in permitting the death penalty and imprisons a much higher percentage [\*467] of its population than other industrialized democracies. n122 Nonetheless, the basic economic and political systems of different countries clearly share more similarities than ever before. When asked to characterize their existing economic and political systems, more people in more countries than ever before will respond that they have a "market" economy, that their government is "democratic," and that they protect "human rights." Importantly, the convergence of values seems to be accompanying the convergence of systems. Certainly, most people in the industrialized democracies would view their existing economic and political systems as expressing the foundational values of their societies - the values that define their society. n123 The convergence of values along liberal demo- [\*468] cratic lines means that nations are better situated to negotiate wealth-maximizing trade agreements and to resolve political disputes peacefully. But in countries in transition from authoritarian to liberal democracy, many people may not yet fully accept their newly established economic and political systems as reflecting fundamental values of what is correct, proper, or right. Whether these transitional countries continue to establish or possess liberal democracies will depend upon how well the systems of liberal democracy work, an outcome that the industrialized democracies should strive vigorously to achieve. Workable systems can evolve into entrenched values. Obviously, the implantation of the values of liberal democracy in Russia is of paramount concern. n124 Nurturing a democratic Russia is in the vital national interest of the United States (and the rest of the world) for very practical reasons - only Russia and the United States possess sufficient nuclear weapons to end human civilization. n125 Whether by unilateral or multilateral extensions of financial assistance or political inclusion, the industrialized democracies should do their utmost to make Russia a strong liberal democracy. Economic aid should be generous, and Russia should be incorporated into the activities of the industrialized democracies as much as possible. n126 Not all basic values are converging and nor, perhaps, should they. Religious values are not converging in the sense that the same general religion, such as Christianity, is taking root in a preponderance of countries. n127 Nevertheless, the convergence of economic and political values means that there is a greater basis for cooperation. For that reason, the [\*469] "West" n128 - that is, the United States and the other industrialized democracies - should support the process of value convergence. Sharing the same values creates similar expectations and a common ground for understanding. The more prevalent reliance upon market forces to direct production and consumption means that nations are more likely to trade with and invest in each other. The relative sameness of political values, for example, the prevelant use of negotiation rather than military force in settling disputes, means that nations can have greater trust in and less to fear from each other.The similarity of basic values also means that the different peoples of humanity are one step closer to viewing themselves primarily as part of one human society - the human race - though represented by different governments.

### Turns U.S. Leadership

#### Guts U.S. leadership

Bhat, 9/29 (Devika, 9/29/2013, thetimes.co.uk, “US Government shutdown looms: Pentagon warns of national security threat,” Factiva))

Chuck Hagel slammed the congressional impasse as “an astoundingly irresponsible way to govern". “When you look at the greatest democracy in the world, the largest economy in the world, and we’re putting our people through this — that’s not leadership, that’s abdication of responsibilities," the Defence Secretary said. As both sides traded insults, observers warned that the stalemate boded ill for an even more alarming looming fiscal crisis. The US is expected to run out of its ability to meet its debts on October 17 unless the limit is increased.

### AT: Obama Will Raise Debt Ceiling Unilaterally

#### Constitutional experts disagree

Market Watch, 9/25 (“If all else fails, Obama will raise debt ceiling himself: analyst,” 9/25/2013, [http://blogs.marketwatch.com/capitolreport/2013/09/25/if-all-else-fails-obama-will-raise-debt-ceiling-himself-analyst/)](http://blogs.marketwatch.com/capitolreport/2013/09/25/if-all-else-fails-obama-will-raise-debt-ceiling-himself-analyst/%29))

Laurence Tribe, a noted professor of constitutional law at Harvard, tried at the time to throw cold water on such arguments. In an op-ed in the Times, Tribe said that only Congress has the power to borrow money on the credit of the United States. Arguments that the president may do whatever is necessary to avoid default “has no logical stopping point,” Tribe noted. In addition, a legal cloud would hang over any newly issued bonds, Tribe said, because of the risk that the government might refuse to honor those debts as legitimate.

#### Will still wreck U.S. economic leadership

Drum, 9/25 --- political blogger for Mother Jones (9/25/2013, Kevin, “If We Reach the Debt Limit, Obama Will Probably Just Break Through It Anyway,” [http://www.motherjones.com/kevin-drum/2013/09/obama-debt-ceiling-bond-auction)](http://www.motherjones.com/kevin-drum/2013/09/obama-debt-ceiling-bond-auction%29))

What laws does the executive branch follow and which does it break? What litigation will result from any decision, and who will prevail? I think the conventional wisdom actually somewhat overstates the odds of this leading to a total financial meltdown. Worst comes to worst, you pay people with IOUs for a week and then organize an "illegal" debt auction where bonds will sell at a modest premium to currently prevailing rates and ultimately the courts legitimize the option. But that will definitely be a kind of constitutional meltdown that will permanently shake confidence in the American financial and political system. I don't know if this is exactly how things will unfold, but it's in the right ballpark. I realize that a lot of people are still pushing the platinum coin thing, but keep in mind that even if you don't buy any of the arguments for why it's illegal, it only works if you can deposit the coin at the Fed. And the Fed has already said it wouldn't accept it. So it's not a live option no matter how passionately you believe it's legal. But if the debt ceiling showdown lasts more than a couple of weeks, it's likely that President Obama will simply order the Treasury to start auctioning bonds regardless. Maybe under the authority of the 14th Amendment, maybe under his authority as commander-in-chief. Maybe he'll declare a state of emergency of some kind. Who knows? But eventually this is how things will work out, with Obama acting because he has to, and because he knows that courts will be loathe to intervene in a political dispute between the executive and legislative branches. In any case, it would be a helluva mess. Republicans really need to grow up and stop treating the livelihoods of millions of workers and the good faith of the United States as mere partisan chew toys. It's long past time for the business community to stage an intervention.

#### Obama won’t act unilaterally

Boak, 9/23 --- the Washington Deputy Bureau Chief (Josh, 9/23/2013, “Obama Could Raise the Debt Ceiling…But He Won’t,” <http://www.thefiscaltimes.com/Articles/2013/09/23/Obama-Could-Raise-Debt-Ceiling-He-Won-t>))

Here’s the hot new idea: President Obama raises the $16.7 trillion debt ceiling on his own, scorning the need for congressional approval. It’s an option because House Republicans are using the government’s borrowing authority—which must be lifted by mid-October—as a bargaining chip to delay Obamacare. GOP lawmakers see the debt ceiling as their best opportunity to pressure the president into surrendering to their agenda on spending cuts and taxes—while the administration has repeatedly taken a hard line against any negotiations over the government’s ability to borrow. Potomac Research Group’s chief political strategist Greg Valliere predicted on Monday that Obama could simply raise the debt ceiling in November by executive order and deal with the ensuing litigation challenging the move in the months that follow. House Minority Leader Nancy Pelosi (D-CA) claims Obama has the mandate to raise the debt ceiling on his own because of the 14th Amendment. This averts the possibility of a default, while showing that even a seemingly weak White House can still trump the gridlock on Capitol Hill. “Obama is not shy about using executive authority, and he surely has heard from Constitutional scholars who believe he has the authority to raise the debt ceiling on his own,” Valliere said in a note. Here are the arguments for and against this possibility: \* YES – Obama does take executive actions on issues that involve long-term U.S. interests. He outlined this principle in his second inaugural address. At the president’s request, the Environmental Protection Agency on Friday issued strict limits on carbon emissions from new power plants. The president defied the threat of a Senate veto in 2012—and named Richard Cordray as the director of the Consumer Financial Protection Bureau, a legally questionable move. The debt ceiling would be a much broader use of executive authority than what the administration has exercised on other domestic issues. \* NO – The president could benefit politically if a cratering economy—due to the debt ceiling stalemate—causes Republican opposition to melt away. Congress is notoriously unpopular with the American people, who tend to be much more forgiving of Obama. Both the president and Congress should take a further beating in their favorability ratings if the debt ceiling crisis happens. But if Obama sees a chance to break the spine of House Republicans—and do more to enact his agenda—it is a distinct possibility that he lets the drama play out. When saying that he won’t negotiate with Republicans, Obama notes that his successors should not have basic government functions held hostage to Congress. This could be a way to enshrine that philosophy.

### 2NC AT Impact D

**Studies prove!**

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

Less intuitive is how periods of economic decline may **increase the likelihood of external conflict**. Political science literature has contributed a moderate degree of attention to the impact of economic decline and the security and defence behaviour of interdependent stales. Research in this vein has been considered at systemic, dyadic and national levels. Several notable contributions follow. First, on the systemic level. Pollins (20081 advances Modclski and Thompson's (1996) work on leadership cycle theory, finding that rhythms in the global economy are associated with the rise and fall of a pre-eminent power and the often bloody **transition** from one pre-eminent leader to the next. As such, exogenous shocks such as economic crises could usher in a redistribution of relative power (see also Gilpin. 19SJ) that leads to uncertainty about power balances, increasing the risk of **miscalculation** (Fcaron. 1995). Alternatively, even a relatively certain **redistribution** of power could lead to a permissive environment for conflict as a rising power may seek to challenge a declining power (Werner. 1999). Separately. Pollins (1996) also shows that global economic cycles combined with parallel leadership cycles impact the likelihood of conflict among major, medium and small powers, although he suggests that the causes and connections between global economic conditions and security conditions remain unknown. Second, on a dyadic level. Copeland's (1996. 2000) theory of trade expectations suggests that 'future expectation of trade' is a significant variable in understanding economic conditions and security behaviour of states. He argues that interdependent states arc likely to gain pacific benefits from trade so long as they have an optimistic view of future trade relations. However, if the expectations of future trade decline, particularly for difficult to replace items such as energy resources, the likelihood for conflict increases, as states will be inclined to use force to gain access to those resources. Crises could potentially be the trigger for decreased trade expectations either on its own or because it triggers protectionist moves by interdependent states.4 Third, others have considered the link between economic decline and external armed conflict at a national level. Mom berg and Hess (2002) find a **strong correlation** between internal conflict and external conflict, particularly during periods of economic downturn. They write. The linkage, between internal and external conflict and prosperity are strong and mutually reinforcing. Economic conflict lends to spawn internal conflict, which in turn returns the favour. Moreover, the presence of a recession tends to amplify the extent to which international and external conflicts self-reinforce each other (Hlomhen? & Hess. 2(102. p. X9> Economic decline has also been linked with an increase in the likelihood of terrorism (Blombcrg. Hess. & Wee ra pan a, 2004). which has the capacity to spill across borders and lead to external tensions. Furthermore, crises generally reduce the popularity of a sitting government. "Diversionary theory" suggests that, when facing unpopularity arising from economic decline, sitting governments have increased incentives to fabricate external military conflicts to create a 'rally around the flag' effect. Wang (1996), DcRoucn (1995), and Blombcrg. Hess, and Thacker (2006) find supporting evidence showing that economic decline and use of force arc at least indirecti) correlated. Gelpi (1997). Miller (1999). and Kisangani and Pickering (2009) suggest that Ihe tendency towards diversionary tactics arc greater for democratic states than autocratic states, due to the fact that democratic leaders are generally more susceptible to being removed from office due to lack of domestic support. DeRouen (2000) has provided evidence showing that periods of weak economic performance in the United States, and thus weak Presidential popularity, are statistically linked lo an increase in the use of force.

### 2nc Uniqueness / 2nc Focus Tradeoff Link \*\*\*

#### Obama will prevail in the debt ceiling battle because he emerged from the shutdown with the political upper hand and he is maintaining focus –this ratchets up PUBLIC PRESSURE making it IMPOSSIBLE for the GOP to continue – that’s Dovore – this is an independent [conceded] focus link

#### Maintaining a CONSTANT FOCUS on his fiscal battles with Republicans will ensure a successful outcome

Millbank, 9/27 (Dana, 9/27/2013, “Obama should pivot to Dubya’s playbook,” <http://articles.washingtonpost.com/2013-09-27/opinions/42446718_1_president-obama-house-republicans-debt-limit>))

If President Obama can stick to his guns, he will win his October standoff with Republicans.

That’s an awfully big “if.”

This president has been consistently inconsistent, predictably unpredictable and reliably erratic. Consider the events of Thursday morning:

Obama gave a rousing speech in suburban Washington, in defense of Obamacare, on the eve of its implementation. “We’re now only five days away from finishing the job,” he told the crowd.

But before he had even left the room, his administration let slip that it was delaying by a month the sign-up for the health-care exchanges for small businesses. It wasn’t a huge deal, but it was enough to trample on the message the president had just delivered.

Throughout his presidency, Obama has had great difficulty delivering a consistent message. Supporters plead for him to take a position — any position — and stick with it. His shifting policy on confronting Syria was the most prominent of his vacillations, but his allies have seen a similar approach to the Guantanamo Bay prison, counterterrorism and climate change. Even on issues such as gun control and immigration where his views have been consistent, Obama has been inconsistent in promoting his message. Allies are reluctant to take risky stands, because they fear that Obama will change his mind and leave them standing alone.

Now come the budget showdowns, which could define the rest of his presidency. Republican leaders are trying to shift the party’s emphasis from the fight over a government shutdown to the fight over the debt-limit increase, where they have more support. A new Bloomberg poll found that Americans, by a 2-to-1 margin, disagree with Obama’s view that Congress should raise the debt limit without any conditions.

But Obama has a path to victory. That poll also found that Americans think lawmakers should stop trying to repeal Obamacare. And that was before House Republicans dramatically overplayed their hand by suggesting that they’ll allow the nation to default if Obama doesn’t agree to their laundry list of demands, including suspending Obamacare, repealing banking reforms, building a new oil pipeline, easing environmental regulations, limiting malpractice lawsuits and restricting access to Medicare.

To beat the Republicans, Obama might follow the example of a Republican, George W. Bush. Whatever you think of what he did, he knew how to get it done: by simplifying his message and repeating it, ad nauseam, until he got the result he was after.

Obama instead tends to give a speech and move along to the next topic. This is why he is forever making “pivots” back to the economy, or to health care. But the way to pressure Congress is to be President One Note.

In the debt-limit fight, Obama already has his note: He will not negotiate over the full faith and credit of the United States. That’s as good a theme as any; it matters less what the message is than that he delivers it consistently.

The idea, White House officials explained to me, is to avoid getting into a back-and-forth over taxes, spending and entitlement programs. “We’re right on the merits, but I don’t think we want to argue on the merits,” one said. “Our argument is not that our argument is better than theirs; it’s that theirs is stupid.”

This is a clean message: Republicans are threatening to tank the economy — through a shutdown or, more likely, through a default on the debt — and Obama isn’t going to negotiate with these hostage-takers.

Happily for Obama, Republicans are helping him to make the case by being publicly belligerent. After this week’s 21-hour speech on the Senate floor by Sen. Ted Cruz (R-Tex.), the publicity-seeking Texan and Sen. Mike Lee (R-Utah) objected to a bipartisan request to move a vote from Friday to Thursday to give House Republicans more time to craft legislation avoiding a shutdown. On the Senate floor, Sen. Bob Corker (R-Tenn.) accused them of objecting because they had sent out e-mails encouraging their supporters to tune in to the vote on Friday. The Post’s Ed O’Keefe caught Cruz “appearing to snicker” as his colleague spoke — more smug teenager than legislator.

Even if his opponents are making things easier for him, Obama still needs to stick to his message. As in Syria, the president has drawn a “red line” by saying he won’t negotiate with those who would put the United States into default. If he retreats, he will embolden his opponents and demoralize his supporters.

#### Cancelled Asia trip proves the uniqueness and importance of focus

Cohen, et. al, 10/4 (Tom Cohen. Deirdre Walsh and Ed Payne, 10/4/2013, CNN Wire, “Hope for debt limit deal rises while shutdown standoff remains mired,” Factiva))

Obama out of APEC meeting

Meanwhile, with his focus on the brewing domestic crisis, Obama canceled his trip to the Asia-Pacific Economic Cooperation summit in Bali, Indonesia.

"The president made this decision based on the difficulty in moving forward with foreign travel in the face of a shutdown, and his determination to continue pressing his case that Republicans should immediately allow a vote to reopen the government," a statement from the White House said.

Instead, Secretary of State John Kerry will lead the U.S. delegation in Asia.

### AT: Boehner Doesn’t Really Want to Cooperate

#### Key indicators prove Boehner’s flexible

Sargent, 10/4 (Greg, 10/4/2013, Washington Post.com, “John Boehner gives away the game (a bit),” Factiva))

Multiple reports today inform us that John Boehner is privately telling colleagues that in the end, he won't allow default and will even let a debt ceiling hike pass with mostly Dem votes if it comes down to it. Plenty of folks are rightly skeptical about this development. But it's not entirely without significance.

The Post's account points out that this may be a trial balloon designed to gauge how this will play with conservatives. Meanwhile, a spokesman for Boehner has been reiterating that Boehner does not intend to allow default, even as that spokesman is simultaneously reiterating that he will expect concessions in exchange for raising the debt limit, anyway. Why? Because a "clean" debt limit cannot pass the House.

This is a variation on the glaring absurdity that's been at the heart of Boehner's position for some time, i.e, the simultaneous insistence that he knows the debt limit hike must happen -- and that the contrary is not an option -- even as he asks us to grant the presumption that the prospect of default gives him leverage. The twist added here is that this leverage is derived from the fact that only way to avert default is for Dems to give up enough in concessions so a high enough number of Republicans will vote to raise the debt limit to get it through. The game is that Boehner knows it must be raised -- wink, wink -- but all those crazies in his caucus will need some goodies to get them to go along.

Note these details from the Post's write up:

In a series of small-group meetings in his office suite, Boehner has told fellow Republicans that he will not permit a vote on a "clean" short-term spending bill that does not end or delay parts of the new federal health-care law. But the aides indicated that Boehner is willing to risk infuriating some of the most conservative House GOP lawmakers by relying on a majority of Democratic votes — and less than a majority of Republicans — to pass a debt-ceiling increase.

What still needs to be nailed down is whether Boehner is prepared to allow a vote on a "clean" debt ceiling increase. Quotes from his spokespeople suggest not, but on the other hand, if a debt ceiling increase is going to pass with mostly Dems, it would have to be clean. More clarification here would be useful.

More broadly, what seems to be going on here is that this is Boehner's "big give," as one Dem aide put it to me sarcastically. Boehner is signaling flexibility in the sense that he just may be willing to give Dems the "clean" debt ceiling increase they want, but only in a larger context where Dems will be expected to make concessions in exchange for keeping the government open. In other words, whether or not Boehner ends up being open to a "clean" debt ceiling vote, the larger picture will remain that Democrats will still have to hand over a series of concessions in exchange for GOP cooperation in returning us to something resembling governing normalcy.

So in one sense, this isn't much of a concession. On the other hand, the mere fact that Boehner sees a need to telegraph nominal flexibility to begin with could be a key tell. With Obama warning that Wall Street should take the possibility of default seriously, Boehner seems to see a need to underscore, again, that he will not allow default under any circumstances, and that keeping alive any doubts about this is politically untenable. Dems will look at this and probably only be even more encouraged to hold to a hard line on both the government shutdown and the debt limit. Boehner's trial balloon is also useful in the sense that it makes the glaring absurdity that's always been at the heart of his position even more glaringly absurd.

The twin warnings came from a Treasury Department report and a muscularly worded speech from President Obama, who said that unless Congress acted soon, ‘‘the whole world will have problems.’’

### AT: PC Fails

#### Not responsive to our DA --- the only way for Obama to win the debt ceiling battle is to stay on message --- the plan clearly diverts his attention and makes him look weak by having his authority stripped away.

#### Obama using time and influence to get business groups to help build support with GOP

Sink, 9/17 (Justin, 9/17/2013, “Amid fiscal fights, Obama courting business leaders,” <http://thehill.com/homenews/administration/322883-amid-fiscal-fights-obama-courting-business-leaders>))

President Obama will address the Business Roundtable (BRT) on Wednesday as he works to get corporate leaders on his side during this fall’s fiscal showdowns with the GOP. The White House is hoping that Obama can rally the influential organization, made up of conservative chief executives from the nation’s largest corporations, to help build pressure on congressional Republicans. The sell will not be an easy one — the association’s officials have been critical of the president, and members of the group are wary of the administration’s aggressive regulatory push on labor and environmental issues. White House press secretary Jay Carney said Tuesday that Obama is looking forward to the meeting. “The president’s focus, as is always the case when he meets with this group, is what we can do together to keep the American economy growing,” Carney said. “What we can do to make it grow in a way that creates more good-paying jobs for middle-class Americans.” The president has leaned on the organization in the past. Shortly after the president’s last visit in December for a speech and closed-door discussion, the CEOs sent a letter to congressional leaders arguing all options — including tax increases — should be on the table as negotiators sought a “fiscal-cliff” deal. That gesture, a reversal from the group’s stance just five months earlier, ratcheted up pressure on congressional Republicans. The GOP subsequently stumbled, and Obama struck a deal that many Democrats embraced. The group has also proven a valuable ally on immigration reform, voicing support for a plan championed by the White House as it wove its way through the Senate. Earlier this summer, Motorola chief executive Greg Brown sent a letter to every member of the House imploring them “to make successful consideration of immigration reform a top priority.” Carney said Tuesday that, during the meeting, the president would solicit ideas for how the White House and business community could work together “to move forward on comprehensive immigration reform, which has enormous economic benefits for the country and for the middle class in which, I think, many of those affiliated with the Business Roundtable would support.” Recruiting the business community, a core constituency of the Republican Party, to help lobby for a budget deal is a shrewd move on the part of the White House, said Princeton University Professor Julian Zelizer. “A lot of business has not been happy with the constant use of the debt ceiling as a political weapon. They certainly want stability in the economy and see how it undermines that,” Zelizer said. “It enables Obama to pit business against the Republican Party.”

### 2NC Link Wall

#### **Congressional drone proposals causes massive fights.**

Munoz 13

(Carlo Munoz, National Security writer, “Turf battle builds quietly in Congress over control of armed drone program”, The Hill, 4/9/13, http://thehill.com/homenews/administration/292501-turf-battle-builds-quietly-over-control-of-armed-drone-program)

A turf war is quietly building between congressional defense and intelligence committees over who will oversee the Obama administration’s controversial armed drone program. ¶ Lawmakers are scrambling to make their case for or against a White House proposal that would hand control of the drones to the Pentagon. ¶ Gordon Adams, a senior defense analyst at the Stimson Center, called the looming battle a “turf fight in the [disguise] of a policy debate.”¶ The Pentagon and CIA operate their own armed drone programs, which are both geared toward eliminating senior al Qaeda leaders and other high-level terror targets around the world. Under the Obama administration’s proposal, the CIA would continue to supply intelligence on possible targets, but actual control over the drone strikes would fall to the Pentagon. ¶ Senate Intelligence Committee Chairwoman Dianne Feinstein (D-Calif.) publicly questioned whether the Defense Department (DOD) would be able to shoulder the program alone. ¶ “We’ve watched the intelligence aspect of the drone program, how they function, the quality of the intelligence, watching the agency exercise patience and discretion,” Feinstein told reporters in March. “The military [armed drone] program has not done that nearly as well.” ¶ Sen. John McCain and other defense lawmakers say the drone program would be better off being run by the Pentagon. ¶ “It’s not the job of the Central Intelligence Agency. ... It’s the military’s job,” the Arizona Republican said in March. ¶ The fight is a typical battle over who on Capitol Hill will retain power over the program, according to several analysts, who described it as predictable. ¶ “There is always going to be a turf battle” when dealing with congressional oversight, said Lawrence Korb, a former DOD official and defense analyst at the liberal-leaning Center for American Progress. ¶ But that battle could become particularly heated, given the high-profile nature of the drone program, which since the Sept. 11, 2001, attacks has become a huge factor in shaping counterterrorism policy, given its success, Korb said. ¶ For congressional panels, the fight over who will control the drone program will have a say in the relevancy of the two committees. ¶ Korb, for example, noted that national security spending on unmanned aircraft and special operations forces will likely increase, even as the budget for defense spending overall is expected to trend downward. ¶ Ironically, Pentagon officials pushed back against using armed drones in the late 1990s, fearing they would replace fighter jets as the weapon of choice in future wars, Korb said. ¶ That decision essentially handed control of the armed drone program to the CIA, he said. Early versions of the unmanned aircraft flown during the 2001 invasion of Afghanistan belonged to the agency, not the Defense Department, according to Korb. ¶ Taking that influence away from Langley and intelligence lawmakers was bound to spark a fight, he said.

### AT: No PC / Low Approval Ratings

#### Even if approval’s low, Obama will win THIS FIGHT by staying on message – that’s Dovere

#### Obama’s approval ratings still comparatively higher than Congress

Steinhauser, 9/26 --- CNN Political Editor (Paul, 9/26/2013, “Obama's support slips; controversies, sluggish economy cited,” <http://www.cnn.com/2013/09/26/politics/cnn-poll-of-polls-obama/?hpt=po_c2>))

The president's numbers may be nothing to brag about, but his polling still soars over that of Congress. The approval rating Congress ranges from 13% to 24% in five national polls conducted earlier this month, with the approval for congressional Democrats slightly higher than their GOP counterparts.

While the president's approval rating doesn't afford him much leverage, as Crowley points out, "it's not anything Congressional Republicans can take to the bargaining table. Their approval ratings are consistently far worse than anything the president has posted."

The new CNN Poll of Polls averages four non-partisan, live operator, national surveys that asked the approval rating question: Gallup daily tracking poll (September 22-24); Bloomberg National Poll (September 20-23); CBS News/New York Times (September 19-23); and American Research Group (September 17-20). Since it is an average of multiple surveys, the Poll of Polls does not have a sampling error.

#### Obama still has comparatively more capital than Congress

Koring, 9/16 (Paul, 9/16/2013, The Globe and Mail, “Obama faces fall showdown with Congress; Despite averting military action in Syria, U.S. President fights plunging approval ratings and hostility on Capitol Hill,” Factiva))

But even as Mr. Obama’s approval ratings have dropped sharply, they still remain well above the abysmal levels recorded by Congress.

Karlyn Bowman, a senior fellow at the American Enterprise Institute, said Mr. Obama added to the public disaffection with Washington with his handling of Syria. “Nobody in Washington,” she added, “looks very good these days.”

## 2NR

#### GOP will cave

Cohen, et. al, 10/4 (Tom Cohen. Deirdre Walsh and Ed Payne, 10/4/2013, CNN Wire, “Hope for debt limit deal rises while shutdown standoff remains mired,” Factiva))

WASHINGTON (CNN) -- House Speaker John Boehner and fellow GOP lawmakers meet to discuss the government shutdown Friday, a day after the Republican leader reportedly told fellow legislators that he won't allow the United States to default on its debt.

Congressional Republicans remain divided over how to structure legislation to raise the nation's borrowing level, and with only two weeks before the debt ceiling deadline, there is still no plan to avoid a default.

But at a meeting Wednesday with House GOP members, Boehner said he would not allow a default to happen, even if it means getting help from Democrats, according to a Republican House member who requested anonymity to talk about the private meeting.

A Boehner aide said Thursday that the speaker "has always said the United States will not default on its debt, so that's not news."

Democratic Sen. Charles Schumer of New York cheered the prospect of the GOP leader refusing to block at least this measure, which President Barack Obama and his fellow Democrats strongly support.

"This could be the beginnings of a significant breakthrough," Schumer said in a statement. "Even coming close to the edge of default is very dangerous, and putting this issue to rest significantly ahead of the default date would allow everyone in the country to breathe a huge sigh of relief."

#### Boehner is willing to compromise

Lowrey & Parker, 10/4 (Annie Lowrey and Ashley Parker, 10/4/2013, International Herald Tribune, “Republican said to soften stance on debt limit; Speaker signals openness to deal as Obama steps up push for resolution,” Factiva))

As the Obama administration on Thursday sharply stepped up the volume in its tense fiscal battle with Republicans, with warnings from the president and the Treasury that a debt default could have a catastrophic global impact, a key Republican sent a message that he would not let that happen.

The twin warnings came from a Treasury Department report and a muscularly worded speech from President Obama, who said that unless Congress acted soon, ‘‘the whole world will have problems.’’

But in a potentially critical development, the speaker of the House, Representative John A. Boehner of Ohio, told colleagues in a closed-door meeting that he was determined to prevent a federal default and was willing to pass a measure through a combination of Republican and Democratic votes, according to a lawmaker who was there. Other Republicans said they had the same sense of his intentions.