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The United States Federal Judiciary should restrict the war powers authority of the President of the United States to detain individuals indefinitely

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#### Reformist measures aimed at regulation of warfare with i-law are grounded in the West’s attempts at define itself as civilized against the savage other. Their impacts can’t be separated from the process of colonial identity formation—turns the case because it causes ineffective modeling that displaces effective local forms of regulating violence

Frédéric MÉGRET, Assistant-Professor of Law at the University of Toronto, 6 [“From ‘savages’ to ‘unlawful combatants’: a postcolonial look at international law’s ‘other’,” http://people.mcgill.ca/files/frederic.megret/Megret-SavagesandtheLawsofWar.pdf]

Far from being merely a perversion, I have sought to show how exclusion and the creation of an ‘other’ may have been at the very foundation of international humanitarian law, a phenomenon bound to re-emerge in times of strain. I have tried to show how the laws of war have always stood for a particular vision of what legitimate warfare is which is almost entirely informed by the European experience. Although the laws of war have accomplished something of a Copernican anthropological revolution over the last fifty years, there is more to practices such as Guantánamo than the mere onslaught of power and violence against the Law: something like the discreet exclusionary work of law itself.

It is this model — putatively universal but profoundly exclusive — that has been expanded the world over, to the point of saturating legal and moral public discourse about war. It is this model that exercises a monopoly over our imaginations about state violence and what can be done about it. In the process of expansion of the laws of war, warfare the world over has become something very much like (if not much worse than) what nineteenth century humanitarians had sought to avert. In that respect, humanitarian lawyers rightly prophesized the danger, but that prophecy also ended up being a startlingly self-realizing one. In many ways, international humanitarian law was the solution to the problem it simultaneously crystallized (something that could be said of much of international law).

It may be that such is the price to pay if one is to ever achieve a modicum of regulation in warfare. It is also important, however, to assess what has been lost in embracing a regulatory model that is so tainted with the ideology that gave rise to it, and so committed to the entrenchment of state power. In the nineteenth Century, one of the already mentioned fathers of international humanitarian law, de Martens, felt it was axiomatic that ‘the mission of European nations is precisely to inculcate oriental tribes and peoples ideas about the law, and to initiate them to the eternal and benevolent principles that have placed Europe at the head of civilization and humanity’.174 The question international humanitarian lawyers should be asking themselves as a matter of some urgency is: how have the laws of war been instrumental in reinforcing the very categories from which they supposedly drew and, with the benefit of hindsight, what is the balance sheet of international humanitarian law’s mediation of the colonial encounter?

Through colonization, did the non-Western world at least get the benefits of forms of regulation which were either unknown to them or in bad need of being updated for the purposes of international interaction? The laws of war beyond the West have been simultaneously enthusiastically embraced as part of the standard baggage of civilization, and routinely trampled. They have often proved far less effective than had been hoped at protecting the victims of armed conflict. The improbability of legal transplants is partly to blame. The laws of war presuppose a number of social ideal-types — the responsible commander, the chivalrous officer, the reliable NCO, the disciplined foot-soldier — that cannot be recreated at a moment’s notice once the laws of war have been cut off from their cultural base. Much of the sustainability of the laws of war relies on these shared assumptions about role-playing to make sense of otherwise enigmatic legal injunctions. By transferring only the thinnest of superstructure, the risk is that non-Western militaries will have inherited legal forms uninhabited by social purpose. The irony of course, is that by the time the non-Western world had committed to some of the archetypes implicit in the laws of war, international humanitarian law turned out to not be very good at restraining warfare at all and, in fact, particularly hopeless in regulating warfare among or within the recent converts.

But perhaps more attention should be paid to what the laws of war have excluded or obscured, instead of simply to what the laws of war have failed or succeeded in doing. Much international humanitarian scholarship over the past thirty years has been devoted to the worthy task of showing how traditions of restraint in warfare have existed in many non- Western cultures.175 This is undeniably a welcome (re)discovery that was long overdue. Maybe the laws of war were indeed merely giving a universal expression to what was otherwise an extremely widespread aspiration, in which case no culture could be said to have been specifically dispossessed of anything.

But typically this scholarship may well end up overemphasizing the similarities between such traditions, at the expense of what was specific about the development of the contemporary laws of war. That traditions of restraint in the use of violence by social entities against each other have existed almost universally is quite clear. The modern version of the laws of war, however, that which became globalized, is clearly, as I hope to have demonstrated, about more than a simple intuition that not all is permitted in times of war. The particular way that fundamental idea was expressed (through international law, through the language of statehood) for example will often have been as important as the message (the disincarnated idea that restraint in warfare is an obligation).

One fruitful and so far hardly pursued avenue of research, therefore, would try to assess the extent to which the contemporary laws of war ended up displacing existing, richly situated traditions for the benefit of a relatively decontextualised universalism. A history of how the laws of war have consequently impoverished cultural registers to deal with organized violence is still to be written, but it might shed light on the devastating consequences of conflicts in places like Africa for example.

In the meantime, it is tempting to think that the universalization of the laws of war has often left the non-Western world in the worst of places: one where existing traditions have been sufficiently destabilized to be discredited, but where the promise of ‘civilization’, hailed as the prize for massive societal transformation along Western lines, has failed to materialize.

The (missed) encounter between colonialism and the laws of war has also had implications for the ‘civilized world’ itself and our understanding of the emergence and development of international law. The exclusion of the non-civilized was obviously a consequence of international law’s prescriptions. But it was also a cause of the tonality of these prescriptions, part of a complex dialectical process of constitution (in the sense of ‘coming into being’) of international law, which conferred it its particular civilizational hue. The relation of public international law to the problem of war was never, needless to say, that of an already constituted set of norms to be applied to a novel and, to a degree, extraneous social problem. Instead, international law became what it eventually became by upholding itself as a vision of ‘civilization’ against the simultaneously constituted ‘savagery’, fantasized or not, of the non-Western warrior, so that this contrast, recycled through the ages and the endless echo of repetition, would be received as the original matrix through which international law ‘saw the world’. As such, the emergence of the modern laws of war was as much about identity as it was about norms.176 The ‘law of humanity’, as Ruti Teitel put it, ‘did the work of drawing the line between the ‘civilized’ and the ‘barbarians’’ and ‘supplied the sense that there was such a thing as international law’.177 Indeed, because of the centrality of the problem of war to international relations, the laws of war became central to international law’s self-image and still retain a unique place in the framing of a distinct reformist sensitivity, not to mention the discipline’s relatively good conscience.

#### Security-driven lawfare create the enabling conditions for war and executive overreach—means it’s try or die and we turn the case

Vivienne JABRI, Director of the Centre for IR and Senior Lecturer at the Department of War Studies, King’s College London, 6 [March 2006, “War, Security and the Liberal State,” *Security Dialogue*, 37 (1), p. 47-64, Accessed through Emory Libraries]

Any scholarly take on the present juncture of history, any analysis of the dynamics of the present, must somehow render the narrative in measured tones, taking all factors into account, lest the narrator is accused of exaggeration at best and particular political affiliations at worst. When the late modern condition of the West, of the European arena, is one of camps, one of the detention of groups of people irrespective of their individual needs as migrants, one of the incarceration without due process of suspects, one of overwhelming police powers to stop, search and detain, one of indefinite detention in locations beyond law, one of invasion and occupation, then language itself is challenged in its efforts to contain the description of what is. The critical scholarly take on the present is then precisely to reveal the conditions of possibility in relation to how we got here, to unravel the enabling dynamics that led to the disappearance of distinctions between war and criminality, war and peace, war and security. When such distinctions disappear, impunity is the result, accountability shifts beyond sight, and violence comes to form the linchpin of control. We can reveal the operations of violence, but far more critical is the revelation of power and how power operates in the present. As the article argues, such an exploration raises fundamental questions relating to the relationship of power and violence, and their mutual interconnection in the complex interstices of disrupted time and space locations. Power and violence are hence separable analytical categories, separable practices; they are at the same time connected in ways that work on populations and on bodies – with violence often targeted against the latter so that the former are reigned in, governed. Where Michel Foucault sought, in his later writings, to distinguish between power and violence, to reveal the subtle workings of power, now, in the present, this article will venture, perhaps the distinction is no longer viable when we witness the indistinctions I highlight above.

The article provides an analysis of the place of war in late modern politics. In particular, it concentrates on the implications of war for our conceptions of the liberty–security problematique in the context of the modern liberal state. The first section of the article argues the case for the figure of war as analyser of the present. The second section of the article reveals the conditions of possibility for a distinctly late modern mode of war and its imbrications in politics. The final section of the article concentrates on the political implications of the primacy of war in late modernity, and in particular on possibilities of dissent and articulations of political agency. The aim throughout is to provide the theoretical and conceptual tools that might begin to meet the challenges of the present and to open an agenda of research that concentrates on the politics of the present, the capacities or otherwise of contestation and accountability, and the institutional locations wherein such political agency might emerge.

The Figure of War and the Spectre of Security

The so-called war against terrorism is constructed as a global war, transcending space and seemingly defiant of international conventions. It is distinguished from previous global wars, including the first and the second world wars, in that the latter two have, in historiography, always been analysed as interstate confrontations, albeit ones that at certain times and in particular locations peripherally involved non-state militias. Such distinctions from the old, of course, will be subject to future historical narratives on the present confrontation and its various parameters. What is of interest in the present discussion is the distinctly global aspect of this war, for it is the globality1 of the war against terrorism that renders it particularly relevant and pertinent to investigations that are primarily interested in the relationship between war and politics, war and the political processes defining the modern state. The initial premise of the present article is that war, rather than being confined to its own time and space, permeates the normality of the political process, has, in other words, a defining influence on elements considered to be constitutive of liberal democratic politics, including executive answerability, legislative scrutiny, a public sphere of discourse and interaction, equal citizenship under the law and, to follow liberal thinkers such as Habermas, political legitimacy based on free and equal communicative practices underpinning social solidarity (Habermas, 1997). War disrupts these elements and is a time of crisis and emergency. A war that has a permanence to it clearly normalizes the exceptional, inscribing emergency into the daily routines of social and political life. While the elements of war – conflict, social fragmentation, exclusion – may run silently through the assemblages of control in liberal society (Deleuze, 1986), nevertheless the persistent iteration of war into politics brings these practices to the fore, and with them a call for a rethinking of war’s relationship to politics.

The distinctly global spatiality of this war suggests particular challenges that have direct impact on the liberal state, its obligations towards its citizenry, and the extent to which it is implicated in undermining its own political institutions. It would, however, be a mistake to assume that the practices involved in this global war are in any way anathema to the liberal state. The analysis provided here would argue that while it is crucial to acknowledge the transformative impact of the war against terrorism, it is equally as important to appreciate the continuities in social and political life that are the enabling conditions of this global war, forming its conditions of possibility. These enabling conditions are not just present or apparent at global level, but incorporate local practices that are deep-rooted and institutionalized. The mutually reinforcing relationship between global and local conditions renders this particular war distinctly all-pervasive, and potentially, in terms of implications, far more threatening to the spaces available for political contestation and dissent.

Contemporary global politics is dominated by what might be called a ‘matrix of war’2 constituted by a series of transnational practices that variously target states, communities and individuals. These practices involve states as agents, bureaucracies of states and supranational organizations, quasi-official and private organizations recruited in the service of a global machine that is highly militarized and hence led by the United States, but that nevertheless incorporates within its workings various alliances that are always in flux. The crucial element in understanding the matrix of war is the notion of ‘practice’, for this captures the idea that any practice is not just situated in a system of enablements and constraints, but is itself constitutive of structural continuities, both discursive and institutional. As Paul Veyne (1997: 157) writes in relation to Foucault’s use of the term, ‘practice is not an agency (like the Freudian id) or a prime mover (like the relation of production), and moreover for Foucault, there is no agency nor any prime mover’. It is in this recursive sense that practices (of violence, exclusion, intimidation, control and so on) become structurated in the routines of institutions as well as lived experience (Jabri, 1996). To label the contemporary global war as a ‘war against terrorism’ confers upon these practices a certain legitimacy, suggesting that they are geared towards the elimination of a direct threat. While the threat of violence perpetrated by clandestine networks against civilians is all too real and requires state responses, many of these responses appear to assume a wide remit of operations – so wide that anyone interested in the liberties associated with the democratic state, or indeed the rights of individuals and communities, is called upon to unravel the implications of such practices.

When security becomes the overwhelming imperative of the democratic state, its legitimization is achieved both through a discourse of ‘balance’ between security and liberty and in terms of the ‘protection’ of liberty.3 The implications of the juxtaposition of security and liberty may be investigated either in terms of a discourse of ‘securitization’ (the power of speech acts to construct a threat juxtaposed with the power of professionals precisely to so construct)4 or, as argued in this article, in terms of a discourse of war. The grammars involved are closely related, and yet that of the latter is, paradoxically, the critical grammar, the grammar that highlights the workings of power and their imbrications with violence. What is missing from the securitization literature is an analytic of war, and it is this analytic that I want to foreground in this article.

The practices that I highlight above seem at first hand to constitute different response mechanisms in the face of what is deemed to be an emergency situation in the aftermath of the events of 11 September 2001. The invasion and occupation of Iraq, the incarceration without due process of prisoners in camps from Afghanistan to Guantánamo and other places as yet unidentified, the use of torture against detainees, extra-judicial assassination, the detention and deportation – again without due process – of foreign nationals deemed a threat, increasing restrictions on refugees, their confinement in camps and detention centres, the construction of the movement of peoples in security terms, and restrictions on civil liberties through domestic legislation in the UK, the USA and other European states are all represented in political discourse as necessary security measures geared towards the protection of society. All are at the same time institutional measures targeted against a particular other as enemy and source of danger.

It could be argued that the above practices remain unrelated and must hence be subject to different modes of analysis. To begin with, these practices involve different agents and are framed around different issues. Afghanistan and Iraq may be described as situations of war, and the incarceration of refugees as encompassing practices of security. However, what links these elements is not so much that they constitute a constructed taxonomy of differentiated practices. Rather, what links them is the element of antagonism directed against distinct and particular others. Such a perspective suggests that the politics of security, including the production of fear and a whole array of exclusionary measures, comes to service practices that constitute war and locates the discourse of war at the heart of politics, not just domestically, but, more crucially in the present context, globally. The implications for the late modern state and the distinctly liberal state are monumental, for a perpetual war on a global scale has implications for political structures and political agency, for our conceptions of citizenship and the role of the state in meeting the claims of its citizens,5 and for the workings of a public sphere that is increasingly global and hence increasingly multicultural.

The matrix of war is centrally constituted around the element of antagonism, having an association with existential threat: the idea that the continued presence of the other constitutes a danger not just to the well-being of society but to its continued existence in the form familiar to its members, hence the relative ease with which European politicians speak of migrants of particular origins as forming a threat to the ‘idea of Europe’ and its Christian origins.6 Herein lies a discourse of cultural and racial exclusion based on a certain fear of the other. While the war against specific clandestine organizations7 involves operations on both sides that may be conceptualized as a classical war of attrition, what I am referring to as the matrix of war is far more complex, for here we have a set of diffuse practices, violence, disciplinarity and control that at one and same time target the other typified in cultural and racial terms and instantiate a wider remit of operations that impact upon society as a whole.

The practices of warfare taking place in the immediate aftermath of 11 September 2001 combine with societal processes, reflected in media representations and in the wider public sphere, where increasingly the source of threat, indeed the source of terror, is perceived as the cultural other, and specifically the other associated variously with Islam, the Middle East and South Asia. There is, then, a particularity to what Agamben (1995, 2004) calls the ‘state of exception’, a state not so much generalized and generalizable, but one that is experienced differently by different sectors of the global population. It is precisely this differential experience of the exception that draws attention to practices as diverse as the formulation of interrogation techniques by military intelligence in the Pentagon, to the recent provisions of counter-terrorism measures in the UK,8 to the legitimizing discourses surrounding the invasion of Iraq. All are practices that draw upon a dis- course of legitimization based on prevention and pre-emption. Enemies constructed in the discourses of war are hence always potential, always abstract even when identified, and, in being so, always drawn widely and, in consequence, communally. There is, hence, a ‘profile’ to the state of exception and its experience. Practices that profile particular communities, including the citizens of European states, create particular challenges to the self-understanding of the liberal democratic state and its capacity, in the 21st century, to deal with difference.

While a number of measures undertaken in the name of security, such as proposals for the introduction of identity cards in the UK or increasing surveillance of financial transactions in the USA, might encompass the population as a whole, the politics of exception is marked by racial and cultural signification. Those targeted by exceptional measures are members of particular racial and cultural communities. The assumed threat that underpins the measures highlighted above is one that is now openly associated variously with Islam as an ideology, Islam as a mode of religious identification, Islam as a distinct mode of lifestyle and practice, and Islam as a particular brand associated with particular organizations that espouse some form of a return to an Islamic Caliphate. When practices are informed by a discourse of antagonism, no distinctions are made between these various forms of individual and communal identification. When communal profiling takes place, the distinction between, for example, the choice of a particular lifestyle and the choice of a particular organization disappears, and diversity within the profiled community is sacrificed in the name of some ‘precautionary’ practice that targets all in the name of security.9 The practices and language of antagonism, when racially and culturally inscribed, place the onus of guilt onto the entire community so identified, so that its individual members can no longer simply be citizens of a secular, multicultural state, but are constituted in discourse as particular citizens, subjected to particular and hence exceptional practices. When the Minister of State for the UK Home Office states that members of the Muslim community should expect to be stopped by the police, she is simply expressing the condition of the present, which is that the Muslim community is particularly vulnerable to state scrutiny and invasive measures that do not apply to the rest of the citizenry.10 We know, too, that a distinctly racial profiling is taking place, so that those who are physically profiled are subjected to exceptional measures.

Even as the so-called war against terrorism recognizes no boundaries as limits to its practices – indeed, many of its practices occur at transnational, often indefinable, spaces – what is crucial to understand, however, is that this does not mean that boundaries are no longer constructed or that they do not impinge on the sphere of the political. The paradox of the current context is that while the war against terrorism in all its manifestations assumes a boundless arena, borders and boundaries are at the heart of its operations. The point to stress is that these boundaries and the exclusionist practices that sustain them are not coterminous with those of the state; rather, they could be said to be located and perpetually constructed upon the corporeality of those constructed as enemies, as threats to security. It is indeed the corporeal removal of such subjects that lies at the heart of what are constructed as counter-terrorist measures, typified in practices of direct war, in the use of torture, in extra-judicial incarceration and in judicially sanctioned detention. We might, then, ask if such measures constitute violence or relations of power, where, following Foucault, we assume that the former acts upon bodies with a view to injury, while the latter acts upon the actions of subjects and assumes, as Deleuze (1986: 70–93) suggests, a relation of forces and hence a subject who can act. What I want to argue here is that violence is imbricated in relations of power, is a mode of control, a technology of governmentality. When the population of Iraq is targeted through aerial bombardment, the consequence goes beyond injury and seeks the pacification of the Middle East as a political region.

When legislative and bureaucratic measures are put in place in the name of security, those targeted are categories of population. At the same time, the war against terrorism and the security discourses utilized in its legitimization are conducted and constructed in terms that imply the defence or protection of populations. One option is to limit policing, military and intelligence efforts through the targeting of particular organizations. However, it is the limitless construction of the war against terrorism, its targeting of particular racial and cultural communities, that is the source of the challenge presented to the liberal democratic state. In conditions constructed in terms of emergency, war permeates discourses on politics, so that these come to be subject to the restraints and imperatives of war and practices constituted in terms of the demands of security against an existential threat. The implications for liberal democratic politics and our conceptions of the modern state and its institutions are far-reaching,11 for the liberal democratic polity that considers itself in a state of perpetual war is also a state that is in a permanent state of mobilization, where every aspect of public life is geared towards combat against potential enemies, internal and external.

One of the most significant lessons we learn from Michel Foucault’s writings is that war, or ‘the distant roar of battle’ (Foucault, 1977: 308), is never quite so distant from liberal governmentality. Conceived in Foucaultian terms, war and counter-terrorist measures come to be seen not as discontinuity from liberal government, but as emergent from the enabling conditions that liberal government and the modern state has historically set in place. On reading Foucault’s renditions on the emergence of the disciplinary society, what we see is the continuation of war in society and not, as in Hobbes and elsewhere in the history of thought, the idea that wars happen at the outskirts of society and its civil order. The disciplinary society is not simply an accumulation of institutional and bureaucratic procedures that permeate the everyday and the routine; rather, it has running through its interstices the constitutive elements of war as continuity, including confrontation, struggle and the corporeal removal of those deemed enemies of society. In Society Must Be Defended (Foucault, 2003) and the first volume of the History of Sexuality (Foucault, 1998), we see reference to the discursive and institutional continuities that structurate war in society. Reference to the ‘distant roar of battle’ suggests confrontation and struggle; it suggests the ever-present construction of threat accrued to the particular other; it suggests the immediacy of threat and the construction of fear of the enemy; and ultimately it calls for the corporeal removal of the enemy as source of threat. The analytic of war also encompasses the techniques of the military and their presence in the social sphere – in particular, the control and regulation of bodies, timed precision and instrumentality that turn a war machine into an active and live killing machine. In the matrix of war, there is hence the level of discourse and the level of institutional practices; both are mutually implicating and mutually enabling. There is also the level of bodies and the level of population. In Foucault’s (1998: 152) terms: ‘the biological and the historical are not consecutive to one another . . . but are bound together in an increasingly complex fashion in accordance with the development of the modern technologies of power that take life as their objective’.

What the above suggests is the idea of war as a continuity in social and political life. The matrix of war suggests both discursive and institutional practices, technologies that target bodies and populations, enacted in a complex array of locations. The critical moment of this form of analysis is to point out that war is not simply an isolated occurrence taking place as some form of interruption to an existing peaceful order. Rather, this peaceful order is imbricated with the elements of war, present as continuities in social and political life, elements that are deeply rooted and enabling of the actuality of war in its traditional battlefield sense. This implies a continuity of sorts between the disciplinary, the carceral and the violent manifestations of government.

#### Our alternative is to refuse technical debates about war powers in favor of subjecting the 1ac’s discourse to rigorous democratic scrutiny

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But this mode of popular involvement comes at a key cost. Secret information is generally treated as worthy of a higher status than information already present in the public realm—the shared collective information through which ordinary citizens reach conclusions about emergency and defense. Yet, oftentimes, as with the lead up to the Iraq War in 2003, although the actual content of this secret information is flawed,197 its status as secret masks these problems and allows policymakers to cloak their positions in added authority. This reality highlights the importance of approaching security information with far greater collective skepticism; it also means that security judgments may be more ‘Hobbesian’—marked fundamentally by epistemological uncertainty as opposed to verifiable fact—than policymakers admit.

If both objective sociological claims at the center of the modern security concept are themselves profoundly contested, what does this mean for reform efforts that seek to recalibrate the relationship between liberty and security? Above all, it indicates that the central problem with the procedural solutions offered by constitutional scholars—emphasizing new statutory frameworks or greater judicial assertiveness—is that they mistake a question of politics for one of law. In other words, such scholars ignore the extent to which governing practices are the product of background political judgments about threat, democratic knowledge, professional expertise, and the necessity for insulated decision-making. To the extent that Americans are convinced that they face continuous danger from hidden and potentially limitless assailants—danger too complex for the average citizen to comprehend independently—it is inevitable that institutions (regardless of legal reform initiatives) will operate to centralize power in those hands presumed to enjoy military and security expertise. Thus, any systematic effort to challenge the current framing of the relationship between security and liberty must begin by challenging the underlying assumptions about knowledge and security upon which legal and political arrangements rest. Without a sustained and public debate about the validity of security expertise, its supporting institutions, and the broader legitimacy of secret information, there can be no substantive shift in our constitutional politics. The problem at present, however, is that no popular base exists to raise these questions. Unless such a base emerges, we can expect our prevailing security arrangements to become ever more entrenched.

### 1NC DA 1

#### Obama is selling the Iranian deal now – Stars are aligned – needs to hold off congress from more action

PARSI 2/18/14—President of the National Iranian American Council [Trita Parsi, US-Iran deal: Compromise is key, http://www.aljazeera.com/indepth/opinion/2014/02/us-iran-deal-compromise-key-201421845935181913.html]

As a new phase of nuclear talks begins between Iran and the five permanent members of the UN Security Council plus Germany (P5+1) in Vienna on February 18, one thing is clear: From here onwards, diplomacy depends primarily on the ability of the presidents of Iran and the US to absorb and sell compromise.

The stars could not be better aligned for a US-Iran breakthrough. Regional developments - from the instability following the Arab spring to the civil war in Syria - have significantly increased the cost of continued conflict, as has the escalation of the nuclear issue with steadily growing Iranian capabilities and ever tightening economic sanctions.

Domestically, developments are also favourable for a deal. Iran's hardliners and proponents of a narrative of resistance have been put on the defensive by Hassan Rouhani's election victory in June 2013. And Iran's Supreme Leader Ayatollah Ali Khamenei has thus far firmly backed Rouhani's negotiation strategy.

In Washington, proponents of Israeli Prime Miinister Benjamin Netanyahu's line have suffered several defeats over the past year, from the nomination of Senator Chuck Hagel for Secretary of Defense, to the call for military action in Syria, to the failure to pass new sanctions on Iran, rendering their influence less decisive. All three defeats were, in no small part, due to the mobilisation of pro-diplomacy groups in the US. Timing-wise, striking a deal during Rouhani's first year and during Obama's last years in office is also ideal.

That doesn't mean, however, that negotiations will be easy. On the contrary, the hard part begins now.

In the interim deal, the main concessions exchanged were increased transparency and inspections of Iran's nuclear facilities, halting the expansion of the enrichment program, and ending it at the 20 percent level. In return, Iran would get Western acceptance of enrichment on Iranian soil, and agreement that Iran eventually will enjoy all rights granted by the Non-Proliferation Treaty (NPT), as well as some minor sanctions relief.

Going forward, Obama will face severe difficulties offering relief on key sanctions such as those on oil and banking, since these are controlled by Congress.

Obama can temporarily waive Congressional sanctions, but the utility of waivers is questionable due to the proportionality principle established in the Istanbul talks in the spring of 2012.

Reversible Western concessions, the Istanbul talks established, will have to be exchanged for reversible Iranian measures and vice versa. To extract irreversible concessions, similarly irreversible measures have to be offered.

Sanctions waivers are fundamentally reversible. They usually last only six months and have to be actively renewed by the president - including by whoever occupies the White House after 2016.

If Obama can only offer Iran waivers, Tehran will likely respond in kind. Its implementation of the Additional Protocol - a pivotal transparency instrument - would be time limited and subject to continuous renewal (just like the waivers) rather than being permanent. This is tantamount to adding a self-destruction mechanism to the deal. Such a deal is harder to sell, and even harder to keep. To be durable, the deal must have strong elements of permanence to it, which requires irreversible measures. It is foreseeable that waivers could be used during the first phase of the implementation of a final deal; partly to test Iranian intentions, partly because actually lifting sanctions can take years.

Washington, however, will push for the implementation phase of the final deal to be very lengthy - up to 25 years - and for waivers to be used throughout this period. According to this plan, sanctions wouldn't be fully lifted until a quarter century after the final deal has been agreed upon, i.e. when Iran's nuclear file has been fully normalised.

#### Obama will fight the plan. But fiat means Obama’s a loser

Pushaw 4—Professor of law @ Pepperdine University [Robert J. Pushaw, Jr., “Defending Deference: A Response to Professors Epstein and Wells,” Missouri Law Review, Vol. 69, 2004]

Civil libertarians have urged the Court to exercise the same sort of judicial review over war powers as it does in purely domestic cases—i.e., independently interpreting and applying the law of the Constitution, despite the contrary view of the political branches and regardless of the political repercussions.54 This proposed solution ignores the institutional differences, embedded in the Constitution, that have always led federal judges to review warmaking under special standards. Most obviously, the President can act with a speed, decisiveness, and access to information (often highly confidential) that cannot be matched by Congress, which must garner a majority of hundreds of legislators representing multiple interests.55 Moreover, the judiciary by design acts far more slowly than either political branch. A court must wait for parties to initiate a suit, oversee the litigation process, and render a deliberative judgment that applies the law to the pertinent facts.56 Hence, by the time federal judges (particularly those on the Supreme Court) decide a case, the action taken by the executive is several years old. Sometimes, this delay is long enough that the crisis has passed and the Court’s detached perspective has been restored.57 At other times, however, the war rages, the President’s action is set in stone, and he will ignore any judicial orders that he conform his conduct to constitutional norms.58 In such critical situations, issuing a judgment simply weakens the Court as an institution, as Chief Justice Taney learned the hard way.59

Professor Wells understands the foregoing institutional differences and thus does not naively demand that the Court exercise regular judicial review to safeguard individual constitutional rights, come hell or high water. Nonetheless, she remains troubled by cases in which the Court’s examination of executive action is so cursory as to amount to an abdication of its responsibilities—and a stamp of constitutional approval for the President’s actions.60 Therefore, she proposes a compromise: requiring the President to establish a reasonable basis for the measures he has taken in response to a genuine risk to national security.61 In this way, federal judges would ensure accountability not by substituting their judgments for those of executive officials (as hap-pens with normal judicial review), but rather by forcing them to adequately justify their decisions.62

This proposal intelligently blends a concern for individual rights with pragmatism. Civil libertarians often overlook the basic point that constitutional rights are not absolute, but rather may be infringed if the government has a compelling reason for doing so and employs the least restrictive means to achieve that interest.63 Obviously, national security is a compelling governmental interest.64 Professor Wells’s crucial insight is that courts should not allow the President simply to assert that “national security” necessitated his actions; rather, he must concretely demonstrate that his policies were a reasonable and narrowly tailored response to a particular risk that had been assessed accurately.65

Although this approach is plausible in theory, I am not sure it would work well in practice. Presumably, the President almost always will be able to set forth plausible justifications for his actions, often based on a wide array of factors—including highly sensitive intelligence that he does not wish to dis-close.66 Moreover, if the President’s response seems unduly harsh, he will likely cite the wisdom of erring on the side of caution. If the Court disagrees, it will have to find that those proffered reasons are pretextual and that the President overreacted emotionally instead of rationally evaluating and responding to the true risks involved. But are judges competent to make such determinations? And even if they are, would they be willing to impugn the President’s integrity and judgment? If so, what effect might such a judicial decision have on America’s foreign relations? These questions are worth pondering before concluding that “hard look” review would be an improvement over the Court’s established approach.

Moreover, such searching scrutiny will be useless in situations where the President has made a wartime decision that he will not change, even if judicially ordered to do so. For instance, assume that the Court in Korematsu had applied “hard look” review and found that President Roosevelt had wildly exaggerated the sabotage and espionage risks posed by Japanese-Americans and had imprisoned them based on unfounded fears and prejudice (as appears to have been the case). If the Court accordingly had struck down FDR’s order to relocate them, he would likely have disobeyed it.

#### Losing causes internal Democrat defection

LOOMIS 7—Visiting Fellow at the Center for a New American Security, and Department of Government at Georgetown University [Dr. Andrew J. Loomis, “Leveraging legitimacy in the crafting of U.S. foreign policy”, March 2, 2007, pg 36-37, http://citation.allacademic.com//meta/p\_mla\_apa\_research\_citation/1/7/9/4/8/pages179487/p179487-36.php

Declining political authority encourages defection. American political analyst Norman Ornstein writes of the domestic context, In a system where a President has limited formal power, perception matters. The reputation for success—the belief by other political actors that even when he looks down, a president will find a way to pull out a victory—is the most valuable resource a chief executive can have. Conversely, the widespread belief that the Oval Office occupant is on the defensive, on the wane or without the ability to win under adversity can lead to disaster, as individual lawmakers calculate who will be on the winning side and negotiate accordingly. In simple terms, winners win and losers lose more often than not. Failure begets failure. In short, a president experiencing declining amounts of political capital has diminished capacity to advance his goals. As a result, political allies perceive a decreasing benefit in publicly tying themselves to the president, and an increasing benefit in allying with rising centers of authority. A president’s incapacity and his record of success are interlocked and reinforce each other. Incapacity leads to political failure, which reinforces perceptions of incapacity. This feedback loop accelerates decay both in leadership capacity and defection by key allies. The central point of this review of the presidential literature is that the sources of presidential influence—and thus their prospects for enjoying success in pursuing preferred foreign policies—go beyond the structural factors imbued by the Constitution. Presidential authority is affected by ideational resources in the form of public perceptions of legitimacy. The public offers and rescinds its support in accordance with normative trends and historical patterns, non-material sources of power that affects the character of U.S. policy, foreign and domestic.

#### New sanctions will cause war – prefer newest comprehensive study

ARMBRUSTER 2/18/14—National Security Editor for ThinkProgress.org at the Center for American Progress Action Fund [Ben Armbruster, Bipartisan Expert Group Says New Iran Sanctions Will Undermine Diplomacy, http://thinkprogress.org/world/2014/02/18/3300741/iran-project-sanctions-diplomacy/]

A new report from a bipartisan group of experts at the Iran Project released on Tuesday finds that opponents of new sanctions on Iran at this time are largely correct in that they would lead to a break-down of diplomacy, isolate the U.S. from its negotiating partners and embolden hard-liners in Tehran.

The Iran sanctions battle in the Senate has stalled for now, but it’s unclear if the House will take up the matter again, as Majority Leader Eric Cantor (R-VA) is reportedly working on language with other House leaders.

The Iran Project’s report analyzes arguments for and against the Senate Iran sanctions bill that was introduced last December by Sens. Mark Kirk (R-IL) and Robert Menendez (D-NJ), who have argued that new sanctions will give the U.S. more leverage in nuclear talks with Iran.

But, the report says, “It is diﬃcult to argue that a new sanctions bill is intended to support the negotiations when all the countries doing the negotiating oppose it.”

Kirk, Menendez and other supporters of the bill say the sanctions have a delayed trigger and will kick in in six months or if Iran backs out of the deal. Not so, the Iran Project says. “After carefully reading the bill line by line and consulting with both current and retired Senate staff the relevant committees, it appears that the critics are correct: the change in sanctions law takes effect upon passage,” the report says, which would most likely put the United States in violation of the interim nuclear agreement reached in Geneva in November

On whether new sanctions will weaken the international coalition on imposing existing sanctions, “some countries would continue to honor some sanctions,” the Iran Project says if the Senate sanctions bill passes. “Still, it would seem that on balance, the net result would be less pressure on Iran.” The report also says that unilateral congressional action on sanctions now “would feed an unwelcome narrative” to America’s partners, the U.K., France, China, Russia, Germany and others, that the U.S. can’t live up to its promises and is an unreliable partner.

Many, like Sen. Patrick Murphy (D-CT), have argued that placing new sanctions on Iran will undermine relative moderate Iranian President Hassan Rouhani, who supports a diplomatic approach with the U.S. The Iran Project agrees. “It is very diﬃcult to imagine that the sanctions bill would do anything but undermine Rouhani, as he attempts to steer Iran on a diﬀerent path. This is an assessment shared not only by Iran experts, and Iranian expats who have opposed the regime, but also by Israeli military intelligence, which has concluded that Rouhani may represent a fundamental shift in Iranian politics.”

“[I]t is difficult to escape the conclusion that a new sanctions bill would increase the probability of war, even if it does not guarantee such an outcome,” the report says.

The bipartisan Iran Project has issued several reports on the Iran nuclear issue. In 2012, the group concluded that attacking Iran would risk an “all out regional war” lasting “several years” and that In order to achieve regime change, the report says, “the occupation of Iran would require a commitment of resources and personnel greater than what the U.S. has expended over the past 10 years in the Iraq and Afghanistan wars combined.”

#### That escalates to World War III

**Reuveny 10** - Professor of political economy @ Indiana University [Dr. Rafael Reuveny (PhD in Economics and Political Science from the University of Indiana), “Guest Opinion: Unilateral strike on Iran could trigger world depression,” McClatchy Newspaper, Aug 9, 2010, pg. http://www.indiana.edu/~spea/news/speaking\_out/reuveny\_on\_unilateral\_strike\_Iran.shtml]

BLOOMINGTON, Ind. -- A unilateral Israeli strike on Iran’s nuclear facilities would likely have dire consequences, including a regional war, global economic collapse and a major power clash.
For an Israeli campaign to succeed, it must be quick and decisive. This requires an attack that would be so overwhelming that Iran would not dare to respond in full force.
Such an outcome is extremely unlikely since the locations of some of Iran’s nuclear facilities are not fully known and known facilities are buried deep underground.
All of these widely spread facilities are shielded by elaborate air defense systems constructed not only by the Iranians, but also the Chinese and, likely, the Russians as well. By now, Iran has also built redundant command and control systems and nuclear facilities, developed early-warning systems, acquired ballistic and cruise missiles and upgraded and enlarged its armed forces.
Because Iran is well-prepared, a single, conventional Israeli strike — or even numerous strikes — could not destroy all of its capabilities, giving Iran time to respond.
A regional war
Unlike Iraq, whose nuclear program Israel destroyed in 1981, Iran has a second-strike capability comprised of a coalition of Iranian, Syrian, Lebanese, Hezbollah, Hamas, and, perhaps, Turkish forces. Internal pressure might compel Jordan, Egypt, and the Palestinian Authority to join the assault, turning a bad situation into a regional war.
During the 1973 Arab-Israeli War, at the apex of its power, Israel was saved from defeat by President Nixon’s shipment of weapons and planes. Today, Israel’s numerical inferiority is greater, and it faces more determined and better-equipped opponents.
Despite Israel’s touted defense systems, Iranian coalition missiles, armed forces, and terrorist attacks would likely wreak havoc on its enemy, leading to a prolonged tit-for-tat.
In the absence of massive U.S. assistance, Israel’s military resources may quickly dwindle, forcing it to use its alleged nuclear weapons, as it had reportedly almost done in 1973.
An Israeli nuclear attack would likely destroy most of Iran’s capabilities, but a crippled Iran and its coalition could still attack neighboring oil facilities, unleash global terrorism, plant mines in the Persian Gulf and impair maritime trade in the Mediterranean, Red Sea and Indian Ocean.
Middle Eastern oil shipments would likely slow to a trickle as production declines due to the war and insurance companies decide to drop their risky Middle Eastern clients. Iran and Venezuela would likely stop selling oil to the United States and Europe.
The world economy would head into a tailspin; international acrimony would rise; and Iraqi and Afghani citizens might fully turn on the United States, immediately requiring the deployment of more American troops. Russia, China, Venezuela, and maybe Brazil and Turkey — all of which essentially support Iran — could be tempted to form an alliance and openly challenge the U.S. hegemony.
Replaying Nixon’s nightmare
Russia and China might rearm their injured Iranian protege overnight, just as Nixon rearmed Israel, and threaten to intervene, just as the U.S.S.R. threatened to join Egypt and Syria in 1973. President Obama’s response would likely put U.S. forces on nuclear alert, replaying Nixon’s nightmarish scenario.

Iran may well feel duty-bound to respond to a unilateral attack by its Israeli archenemy, but it knows that it could not take on the United States head-to-head. In contrast, if the United States leads the attack, Iran’s response would likely be muted.

If Iran chooses to absorb an American-led strike, its allies would likely protest and send weapons but would probably not risk using force.

While no one has a crystal ball, leaders should be risk-averse when choosing war as a foreign policy tool. If attacking Iran is deemed necessary, Israel must wait for an American green light. A unilateral Israeli strike could ultimately spark World War III.

### 1NC DA 2

#### The Solicitor General is pushing the Court to uphold the EPA’s authority to regulate GHGs. The vote will be close but in favor of the EPA

**Doyle 2/20**/14 – McClatchy Washington Bureau [Michael Doyle, “Supreme Court asked to clear the air about greenhouse gas rules,” Sacramento Bee, Published: Thursday, Feb. 20, 2014 - 10:41 am, http://tinyurl.com/ow5s3a6

WASHINGTON -- The Supreme Court’s hottest environmental case of the year pits Texas against California on Monday, and that’s just for starters.

More than half of the nation’s states have taken sides in a dispute over federal authority to regulate stationary greenhouse gas emissions. Conservative lawmakers such as Senate Minority Leader Mitch McConnell, R-Ky., hold one position. Southern California air pollution managers defend another.

Miners and frozen food industry leaders serve up their arguments; respiratory health care experts counter them.

“It’s the big one,” said Washington, D.C.-based attorney Peter S. Glaser, an energy law expert, adding that greenhouse gas regulation “seems to have become this central, major, international issue.”

Underscoring the potential stakes, the unusually long 90-minute oral argument, set for Monday morning, consolidates six lawsuits that challenge Environmental Protection Agency rules. The lawsuits have been boiled down to one central question: Did the EPA overstep its bounds in regulating stationary greenhouse gas emissions based on an earlier determination that it could regulate such emissions from motor vehicles?

Texas Solicitor General Jonathan F. Mitchell says the EPA went too far. He’ll be one of two attorneys Monday attacking the environmental agency’s regulations.

“EPA believes it can disregard unambiguous, agency-constraining statutory rules and unilaterally establish a new regulatory regime to deal with novel environmental challenges,” Mitchell declared in one key legal brief, filed along with Texas Attorney General Greg Abbott.

**The Obama administration is defending the EPA**, supported by a number of states and environmental organizations.

“EPA has the authority to determine how best to protect public health and welfare while devising mechanisms to ease the regulatory burden on the states,” according to a legal brief filed on behalf of California, New York, Washington and 12 other states.

The case is complicated and the outcome far from clear-cut, though Glaser stressed that even if industry wins, “I don’t see the decision cutting off greenhouse gas regulations completely.” Still, the case is the crucial next step in clarifying an important Supreme Court environmental decision from 2007.

In that earlier case, a closely divided court held that the Clean Air Act gave the EPA authority to regulate greenhouse gases, which contribute to global climate change. A hotter planet, in turn, has been linked to worsening ozone pollution, more intense forest fires, increased drought, extreme storms and a host of human respiratory problems, among other things.

“The EPA determined that greenhouse-gas emissions endanger public health and welfare in ways that may prove to be more widespread, longer-lasting and graver than the effects of any other pollutant” regulated under the Clean Air Act, Solicitor General Donald Verrilli Jr. noted on behalf of the Obama administration.

Targeting six greenhouse gases, including carbon dioxide and methane, the EPA set tailpipe emission standards for cars and light trucks.

Here it gets a little tricky.

The EPA further reasons that since the six greenhouse gases have been deemed dangerous enough to regulate as tailpipe emissions, they must also fall under the pre-construction permit requirements for stationary emission sources, such as small industrial plants and agricultural facilities.

The new requirements for stationary emission sources started in 2011.

“This is a procedural and a bureaucratic nightmare, with no benefits in sight,” Washington, D.C.-based attorney C. Boyden Gray said Thursday.

Gray, a former White House counsel for President George H.W. Bush, authored a brief opposing the EPA regulations on behalf of Kansas and five other states.

Texas has asked the Supreme Court to consider overturning its 5-4 decision in the 2007 case, an aggressive step that the precedent-conscious court probably will be loath to consider. Rather, the court seems likely to look most seriously at how the EPA expanded on the tailpipe emission regulations.

The Clean Air Act sets 100 or 250 tons per year, depending on the source, as the pollutant emissions threshold for when permits are needed. For greenhouse gas emissions, which are emitted from many sources, the EPA changed this to a more lenient 100,000 tons per year.

Keeping the stricter emission permit standards would have meant that tens, if not hundreds, of thousands of additional sources would face more regulatory burdens, according to the EPA.

Conservatives objected, even though the less onerous EPA standard imposed a smaller burden on industry. Regulators, GOP lawmakers say, shouldn’t rewrite congressional work. Besides, skeptics warn, the standards will get stricter eventually.

“The power asserted by the EPA here is nothing less than a unilateral power to change the text of duly enacted statutes,” attorney Charles J. Cooper wrote in a brief filed for McConnell and other Republicans.

Potentially foreshadowing another 5-4 decision, Chief Justice John Roberts Jr. joined Justices Antonin Scalia, Clarence Thomas and Samuel Alito in a 2007 dissent opposing the court’s decision that the EPA can regulate greenhouse gases.

#### The plan’s fight will destroy Solicitor General’s influence with the Court

**Pacelle 03** [Richard Pacelle is an associate professor of political science and legal studies coordinator at the University of Missouri—Saint Louis. A specialist in judicial politics, he has authored two books and a number of articles on the U.S. Supreme Court. He holds a Ph.D. from The Ohio State University. ] Between Law and Politics: The Solicitor General and the Structuring of Race, Gender, and Reproductive Rights Litigation

The solicitor general’s activities may be **constrained or enhanced by legislation** precedent, and judicial doctrine. Despite the fact that the solicitor general is appointed by the president, the office must cultivate a long-standing relationship with the Court. **Thus, to push the president’s agenda too aggressively runs the risk of alienating the Court.** The solicitor general is often referred to as the “tenth justice of the Supreme Court.” A number of solicitors general have remarked that the office’s relationship with and duties to the Court **are more important than winning individual cases.** 16 Solicitors general also have some responsibility to Congress in that they **may be obligated to defend legislation that conflicts with the administration’s position**. The need to serve two or more masters imposes constraints on the solicitor general. I will discuss the solicitor general’s relations with these institutions in Chapter 2. Now, I turn to the goal and the norms that influence the solicitor general and the office’s different roles.

**Court supported EPA prevents warming acceleration**

**Pooley 12** – Senior vice president for strategy and communications @ Environmental Defense Fund. [Eric Pooley, “Natural Gas – A Briefing Paper for Candidates,” Environmental Defense Fund, Published: August 10, 2012, pg. http://tinyurl.com/buveju2

Reducing Methane Leakage

In the absence of responsible natural gas oversight, increased reliance on the resource could result in a future in which the U.S. emits as much or more climate disrupting pollution as it does with our current energy mix.

This outcome is possible if enough uncombusted natural gas is allowed to leak into the atmosphere from well sites, gas processing plants, pipelines and distribution systems. Though it burns cleaner than coal, uncombusted natural gas is extremely damaging to the climate: It is mostly made up of methane, a greenhouse gas far more potent than carbon dioxide. (For the first 20 years after it is emitted, a pound of methane is 72 times more potent as a heat-trapping emission than a pound of carbon dioxide. Over 100 years, a pound of methane is 25 times more potent as a greenhouse gas than a pound of carbon dioxide.) Small amounts of natural gas are lost into the air as it makes its way from the wells and through the processing and pipeline system that brings it to consumers; the cumulative impact of those leaks is highly significant.

The potential for damaging methane leakage will only grow if, as expected, the use of natural gas expands in the coming years. Now and in the future, the United States cannot afford to be wasting a valuable American energy resource by allowing unchecked leakage to occur. As Americans, none of us should be content to stand idly by and let this important resource be squandered through fugitive emissions and unnecessary venting. Nor can we ignore the national security consequences of allowing our climate to deteriorate through easily avoidable greenhouse gas pollution. Reducing methane emissions isn’t just an environmental issue, it’s an important part of any candidate's plan for domestic energy security.

Uncertainty remains about just how much methane is currently being emitted along the supply chain, from the well site to the end-user. Estimates vary widely — from less than 2% to more than 7% of total production. The Environmental Protection Agency (EPA) has estimated the methane leak rate at about 2.3%, while a study by the National Oceanic and Atmospheric Administration (NOAA) suggested that in northern Colorado it might be roughly twice as high. If the higher estimates turn out to be correct, the leaks could eat up the short-term climate benefit equivalent to closing one-third of the nation’s coal plants. If the lower EPA estimate is correct, leak rates of two to three percent still leave significant and cost-effective greenhouse gas reductions on the table. Accurate measurement of actual leakage rates is a crucial next step.

A recent paper by Alvarez et al. published in the Proceedings of the National Academy of Sciences identified the critical leak rates at which use of natural gas would produce climate benefits at all points in time. The study found that natural gas can always produce a greenhouse gas advantage over other fossil fuels for electric power and transportation, including the conversion of much of the nation’s 3.2 million big rig trucks, if methane leakage rates are capped at 1%.\*

Though methane is a far more potent climate disruptor than carbon dioxide, it is also more short-lived; it breaks down in the atmosphere over time. The permanent, long-term solution to climate change involves stabilizing CO2 emissions. However, the shorter time frames affected by methane emissions are also crucially important because they increase the risk of undesirable climate outcomes **in the near future**. Accelerated rates of warming mean ecosystems and humans have **less time to adapt** to climate change. Given the dire need for concerted global action on climate change, current energy policy should, at a minimum, abide by a "Do No Harm" policy: no policy should contribute to increased climate forcing on any time frame.

There is **no tech**nological **barrier** to reducing leakage. We just have to do it. That's enormously encouraging. As mentioned above, many practices and technologies are **already being used** in states such as Colorado and Wyoming to reduce gas losses, which result in greater recovery and sale of natural gas, and thus increased economic gains. The return on the initial investment for many of these practices *is* sometimes as short as a few months and almost always less than two years. In these tough economic times, it would seem wise to eliminate waste, save money and reduce environmental impact.

Candidates should come out in favor of **rules to** measure and **limit methane leakage** at a level that avoids short term climate damage. In the coming days, Environmental Defense Fund would be pleased to present the elements of a possible approach. As crucial voices in the public debate, candidates have the opportunity to take a leadership position on the methane leakage issue; if influential office-seekers choose to do so, others will likely follow. This **would mark a major step on the road to safe and sustainable development of America's shale gas resource**.

The first order of business is getting the data necessary to better understand where the leaks are occurring and under what conditions, then using that data to reduce leaks and ensure that natural gas will help mitigate climate change. Such as strategy could yield enormous environmental and health benefits on a global basis.

No candidate in 2012 can afford to stand against transparency and public access to data. Such a candidate would be out of step with the public mood and the public interest. We need to get information on methane leakage out there. It needs to be presented in useful, user-friendly formats so the public can look at it and start to understand what’s going on. We need our regulators to be able to slice and dice this data, so they can identify challenges and opportunities.

As mentioned, the good news is that leaks can be detected, measured – and reduced. EDF is currently collaborating with industry and academic partners on a series of five major scientific studies designed to quantify the methane leakage rate across the natural gas supply chain. The five studies are on: the production of natural gas, natural gas processing, long-distance pipelines and storage, local distribution systems and natural gas vehicles. For the production study, we are working with the University of Texas and nine major natural gas companies to determine the leak rates from their wells. For the local distribution module we are working with Duke University, Harvard University and Boston University. EDF aims to complete the entire study by December 2013 and to submit the results of each module for publication.

Conclusion: Improving Corporate Performance

The natural gas industry has a **credibility problem**. This diverse industry, made up of hundreds of drilling companies ranging from tiny operations to huge multinationals, cannot afford to regard strong environmental performance as a luxury or a marketing strategy. It is a public right, and a **requirement for continued corporate operation**.

Improved performance is clearly in industry’s bottom-line interest, whether by reducing wasted product lost to leaks, reducing regulatory and financial risk, or earning back the public trust.

Companies will benefit from this too. First, because good data and good science lays the foundation for having fact-based conversations about risks and how to mitigate them. And second, because transparency is an end in itself.

Candidates should encourage natural gas executives not to wait for slow-moving producer associations to reach agreement. By speaking in favor of common-sense environmental strategies, such as disclosure and green completions, some leaders in the natural gas industry are already charting the path forward. They are proving that industry can meet new standards, such as the **EPA’s air quality rules** for oil and gas drilling, and thrive. Pg. 5-8

**Warming acceleration risks Russia-NATO war.**

**Rogate & Ferrara 12**—Master of Arts candidate @ The Johns Hopkins University’s SAIS Bologna Center & Master of Arts in International Affairs candidate @ The Johns Hopkins University’s SAIS Bologna Center [Chiara Rogate & Marco Ferrara, “Climate Change and Power Shifts in the Arctic Region,” Bologna Center Journal of International Affairs, Volume 15—Spring 2012, pg. http://bcjournal.org/volume-15/climate-change-and-power-shifts-in-the-arctic-region.html

Conflict vs. Cooperation

The political situation in the Arctic is at once nebulous and complex, with international law appearing to be little more than an instrument that nations use to justify their claims rather than a tool to resolve new and longstanding disagreements. Even though all parties agreed in 2008 to abide by and use international law as a regulatory framework through which to resolve their disputes in the Arctic, 43 they simultaneously appear to be hedging against possible adverse scenarios by strengthening their military presence in the area. For example, Canada is building a fleet of armed icebreakers, while Russia has recently resumed strategic bomber patrols over the region. 44 At the moment it is unclear whether issues pending in the Arctic can be settled via international arbitration, or by improving existing legal instruments with a dimension of political cooperation. 45 Such an outcome appears plausible as long as Canadian and Russian claims do not overlap, so that a settlement could be reached through the UN Commission on the Limits of the Continental Shelf.

Conversely, issues in the Arctic may evolve into a reflection of the developing political and military balance in the region, evading mediated resolution and resulting in conflict and unilateral actions. In such a case, the commission would be powerless to intervene as it does not have the authority to adjudicate disputes. Ultimately, one can observe that the situation is fast approaching a critical juncture. Without regard to the conclusions of the UN’s technical commission, the Arctic powers soon must decide whether to cooperate in joint administration of the region, or to engage in a struggle for supremacy. Given the approaching submission deadline for Canada, the window for a mediated solution may not remain open past 2013.

Conclusions

The Arctic has experienced rapid and drastic change as a consequence of rising temperatures. Therefore, international cooperation would be advantageous to achieving a lasting solution to the climatic, social and political issues facing this delicate region. Unfortunately, the potential for reaching multilateral arrangements is fragile, and the political will for achieving them could easily fall second to the prospect of obtaining access to valuable resource deposits. Climate change in this region has engendered a series of unpredicted spillover effects in the political realm by acting as a conflict catalyst. Specifically, climate change has aided the creation of physical conditions that facilitate international conflict, while simultaneously reducing the incentives for cooperation, thus exacerbating disputes that will determine future power balances///

, especially those concerning energy markets, which are already enveloped in a tumultuous political situation presently affecting both countries that produce and those that consume natural resources.

The Arctic provides an example of how climate change can shift geopolitical attention as well as amplify the strategic importance of geographic areas, perhaps causing old rivalries to resurface as in the case of Russia and NATO member countries. A non-traditional phenomenon is indeed leading to the emergence of traditional security dilemmas in the form of competition for resources and territory, resulting in the development of tensions among states. Climate change in the Arctic is literally defrosting regional security conundrums that risk extending well beyond the region. Moreover, not only is the physical environment being modified, but legal and institutional environments are changing as well, posing new challenges to inter-state relations and the ability to manage the unclaimed parts of the Arctic, referred to as the commons.46

Climate change can only be tackled with long-term emissions mitigation policies, while the emergence of the security dilemma in the region requires short-term solutions to avoid further militarization of the Arctic. The need to act rapidly is particularly urgent since the situation is developing within a precarious institutional, legal, and political framework. Though skepticism concerning the veracity of climate change continues to abound in public opinion and political arenas, recent developments in the Arctic demonstrate how such changes already are adversely affecting international politics. Future developments are no longer limited to scientific discourse, but now extend to conflict prevention. As noted by Machiavelli, once foreseen, such issues must be addressed before they develop to the point that no satisfactory remedy can be found.

### 1NC No Solvency—Prez reject

#### Obama will disregard the Court. He is on record

Pyle 12—Professor of constitutional law and civil liberties @ Mount Holyoke College [Christopher H. Pyle, “Barack Obama and Civil Liberties,” Presidential Studies Quarterly, Volume 42, Issue 4, December 2012, Pg. 867–880]

Preventive Detention

But this is not the only double standard that Obama's attorney general has endorsed. Like his predecessors, Holder has chosen to deny some prisoners any trials at all, either because the government lacks sufficient evidence to guarantee their convictions or because what “evidence” it does have is fatally tainted by torture and would deeply embarrass the United States if revealed in open court. At one point, the president considered asking Congress to pass a preventive detention law. Then he decided to institute the policy himself and defy the courts to overrule him, thereby forcing judges to assume primary blame for any crimes against the United States committed by prisoners following a court-ordered release (Serwer 2009).

According to Holder, courts and commissions are “essential tools in our fight against terrorism” (Holder 2009). If they will not serve that end, the administration will disregard them. The attorney general also assured senators that if any of the defendants are acquitted, the administration will still keep them behind bars. It is difficult to imagine a greater contempt for the rule of law than this refusal to abide by the judgment of a court. Indeed, it is grounds for Holder's disbarment.

As a senator, Barack Obama denounced President Bush's detentions on the ground that a “perfectly innocent individual could be held and could not rebut the Government's case and has no way of proving his innocence” (Greenwald 2012). But, three years into his presidency, Obama signed just such a law. The National Defense Authorization Act of 2012 authorized the military to round up and detain, indefinitely and without trial, American citizens suspected of giving “material support” to alleged terrorists. The law was patently unconstitutional, and has been so ruled by a court (Hedges v. Obama 2012), but President Obama's only objection was that its detention provisions were unnecessary, because he already had such powers as commander in chief. He even said, when signing the law, that “my administration will not authorize the indefinite military detention without trial of American citizens,” but again, that remains policy, not law (Obama 2011). At the moment, the administration is detaining 40 innocent foreign citizens at Guantanamo whom the Bush administration cleared for release five years ago (Worthington 2012b).

Thus, Obama's “accomplishments” in the administration of justice “are slight,” as the president admitted in Oslo, and not deserving of a Nobel Prize. What little he has done has more to do with appearances than substance. Torture was an embarrassment, so he ordered it stopped, at least for the moment. Guantanamo remains an embarrassment, so he ordered it closed. He failed in that endeavor, but that was essentially a cosmetic directive to begin with, because a new and larger offshore prison was being built at Bagram Air Base in Afghanistan—one where habeas petitions could be more easily resisted. The president also decided that kidnapping can continue, if not in Europe, then in Ethiopia, Somalia, and Kenya, where it is less visible, and therefore less embarrassing (Scahill 2011). Meanwhile, his lawyers have labored mightily to shield kidnappers and torturers from civil suits and to run out the statute of limitations on criminal prosecutions. Most importantly, kidnapping and torture remain options, should al-Qaeda strike again. By talking out of both sides of his mouth simultaneously, Obama keeps hope alive for liberals and libertarians who believe in equal justice under law, while reassuring conservatives that America's justice will continue to be laced with revenge.

It is probably naïve to expect much more of an elected official. Few presidents willingly give up power or seek to leave their office “weaker” than they found it. Few now have what it takes to stand up to the national security state or to those in Congress and the corporations that profit from it. Moreover, were the president to revive the torture policy, there would be insufficient opposition in Congress to stop him. The Democrats are too busy stimulating the economies of their constituents and too timid to defend the rule of law. The Republicans are similarly preoccupied, but actually favor torture, provided it can be camouflaged with euphemisms like “enhanced interrogation techniques” (Editorial 2011b).

### AT: Legitimacy I/L

#### Legitimacy not key to heg—popularity isn’t a factor

Brooks and Wohlforth 9—\*Stephen G. Brooks is Associate Professor of Government at Dartmouth College. \*\*William C. Wohlforth is the Daniel Webster Professor of Government at Dartmouth College [March-April, 2009, “Reshaping the world order: how Washington should reform international institutions,” *Foreign Affairs*, Emory]

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

### 1NC—Hege D

#### US decline will not spark wars.

MacDonald & Parent 11—Professor of Political Science at Williams College & Professor of Political Science at University of Miami [Paul K. MacDonald & Joseph M. Parent, “Graceful Decline? The Surprising Success of Great Power Retrenchment,” International Security, Vol. 35, No. 4 (Spring 2011), pp. 7–44]

Our findings are directly relevant to what appears to be an impending great power transition between China and the United States. Estimates of economic performance vary, but most observers expect Chinese GDP to surpass U.S. GDP sometime in the next decade or two. 91 This prospect has generated considerable concern. Many scholars foresee major conflict during a Sino-U.S. ordinal transition. Echoing Gilpin and Copeland, John Mearsheimer sees the crux of the issue as irreconcilable goals: China wants to be America’s superior and the United States wants no peer competitors. In his words, “[N]o amount of goodwill can ameliorate the intense security competition that sets in when an aspiring hegemon appears in Eurasia.” 92

Contrary to these predictions, our analysis suggests some grounds for optimism. Based on the historical track record of great powers facing acute relative decline, the United States should be able to retrench in the coming decades. In the next few years, the United States is ripe to overhaul its military, shift burdens to its allies, and work to decrease costly international commitments. It is likely to initiate and become embroiled in fewer militarized disputes than the average great power and to settle these disputes more amicably. Some might view this prospect with apprehension, fearing the steady erosion of U.S. credibility. Yet our analysis suggests that retrenchment need not signal weakness. Holding on to exposed and expensive commitments simply for the sake of one’s reputation is a greater geopolitical gamble than withdrawing to cheaper, more defensible frontiers.

Some observers might dispute our conclusions, arguing that hegemonic transitions are more conflict prone than other moments of acute relative decline. We counter that there are deductive and empirical reasons to doubt this argument. Theoretically, hegemonic powers should actually find it easier to manage acute relative decline. Fallen hegemons still have formidable capability, which threatens grave harm to any state that tries to cross them. Further, they are no longer the top target for balancing coalitions, and recovering hegemons may be influential because they can play a pivotal role in alliance formation. In addition, hegemonic powers, almost by definition, possess more extensive overseas commitments; they should be able to more readily identify and eliminate extraneous burdens without exposing vulnerabilities or exciting domestic populations.

We believe the empirical record supports these conclusions. In particular, periods of hegemonic transition do not appear more conflict prone than those of acute decline. The last reversal at the pinnacle of power was the AngloAmerican transition, which took place around 1872 and was resolved without armed confrontation. The tenor of that transition may have been influenced by a number of factors: both states were democratic maritime empires, the United States was slowly emerging from the Civil War, and Great Britain could likely coast on a large lead in domestic capital stock. Although China and the United States differ in regime type, similar factors may work to cushion the impending Sino-American transition. Both are large, relatively secure continental great powers, a fact that mitigates potential geopolitical competition. 93 China faces a variety of domestic political challenges, including strains among rival regions, which may complicate its ability to sustain its economic performance or engage in foreign policy adventurism. 94

Most important, the United States is not in free fall. Extrapolating the data into the future, we anticipate the United States will experience a “moderate” decline, losing from 2 to 4 percent of its share of great power GDP in the five years after being surpassed by China sometime in the next decade or two. 95 Given the relatively gradual rate of U.S. decline relative to China, the incentives for either side to run risks by courting conflict are minimal. The United States would still possess upwards of a third of the share of great power GDP, and would have little to gain from provoking a crisis over a peripheral issue. Conversely, China has few incentives to exploit U.S. weakness. 96 Given the importance of the U.S. market to the Chinese economy, in addition to the critical role played by the dollar as a global reserve currency, it is unclear how Beijing could hope to consolidate or expand its increasingly advantageous position through direct confrontation. In short, the United States should be able to reduce its foreign policy commitments in East Asia in the coming decades without inviting Chinese expansionism. Indeed, there is evidence that a policy of retrenchment could reap potential benefits. The drawdown and repositioning of U.S. troops in South Korea, for example, rather than fostering instability, has resulted in an improvement in the occasionally strained relationship between Washington and Seoul. 97 U.S. moderation on Taiwan, rather than encouraging hard-liners in Beijing, resulted in an improvement in cross-strait relations and reassured U.S. allies that Washington would not inadvertently drag them into a Sino-U.S. conflict. 98 Moreover, Washington’s support for the development of multilateral security institutions, rather than harming bilateral alliances, could work to enhance U.S. prestige while embedding China within a more transparent regional order. 99 A policy of gradual retrenchment need not undermine the credibility of U.S. alliance commitments or unleash destabilizing regional security dilemmas. Indeed, even if Beijing harbored revisionist intent, it is unclear that China will have the force projection capabilities necessary to take and hold additional territory. 100 By incrementally shifting burdens to regional allies and multilateral institutions, the United States can strengthen the credibility of its core commitments while accommodating the interests of a rising China. Not least among the benefits of retrenchment is that it helps alleviate an unsustainable financial position. Immense forward deployments will only exacerbate U.S. grand strategic problems and risk unnecessary clashes. 101

### AT: Terror Impact

#### Terror threat has markedly declined—most recent study proves

**Bergen 12/3**/13 - CNN's national security analyst [Peter Bergen, “Hyping the terror threat?,” CNN, updated 2:16 PM EST, Tue December 3, 2013, http://www.cnn.com/2013/12/03/opinion/bergen-u-s-terror-risk/]

Both Feinstein and Rogers are able public servants who, as the heads of the two U.S. intelligence oversight committees, are paid to worry about the collective safety of Americans, and they are two of the most prominent defenders of the NSA's controversial surveillance programs, which they defend as necessary for American security.

But is there any real reason to think that Americans are no safer than was the case a couple of years back? Not according to a study by the New America Foundation of every militant indicted in the United States who is affiliated with al Qaeda or with a like-minded group or is motivated by al Qaeda's ideology.

In fact, the total number of such indicted extremists has declined substantially from 33 in 2010 to nine in 2013. And the number of individuals indicted for plotting attacks within the United States, as opposed to being indicted for traveling to join a terrorist group overseas or for sending money to a foreign terrorist group, also declined from 12 in 2011 to only three in 2013.

Of course, a declining number of indictments doesn't mean that the militant threat has disappeared. One of the militants indicted in 2013 was Dzhokhar Tsarnaev, who is one of the brothers alleged to be responsible for the Boston Marathon bombings in April. But a sharply declining number of indictments does suggest that fewer and fewer militants are targeting the United States.

Recent attack plots in the United States also do not show signs of direction from foreign terrorist organizations such as al Qaeda, but instead are conducted by individuals who are influenced by the ideology of violent jihad, usually because of what they read or watch on the Internet.

None of the 21 homegrown extremists known to have been involved in plots against the United States between 2011 and 2013 received training abroad from a terrorist organization -- the kind of training that can turn an angry, young man into a deadly, well-trained, angry, young man.

Of these extremists, only Tamerlan Tsarnaev, one of the alleged Boston bombers, is known to have had any contact with militants overseas, but it is unclear to what extent, if any, these contacts played in the Boston Marathon bombings.

In short, the data on al-Qaeda-linked or -influenced militants indicted in the United States suggests that the threat of terrorism has actually markedly declined over the past couple of years.

Where Feinstein and Rogers were on much firmer ground in their interview with Crowley was when they pointed to the resurgence of a number of al Qaeda groups in the Middle East.

Al Qaeda's affiliates in Syria control much of the north of the country and are the most effective forces fighting the regime of Bashar al-Assad.

In neighboring Iraq, al Qaeda has enjoyed a renaissance of late, which partly accounts for the fact that the violence in Iraq today is as bad as it was in 2008.

The Syrian war is certainly a magnet for militants from across the Muslim world, including hundreds from Europe, and European governments are rightly concerned that returning veterans of the Syrian conflict could foment terrorism in Europe.

But, at least for the moment, these al Qaeda groups in Syria and Iraq are completely focused on overthrowing the Assad regime or attacking what they regard as the Shia-dominated government of Iraq. And, at least so far, these groups have shown no ability to attack in Europe, let alone in the United States.

### Ilaw

#### adherence to treaties does not bind other nations to international norms

**Posner 3** [Eric A., Federal Circuit Court Judge, Kirkland & Ellis Professor of Law, University of Chicago, Matthew Adler, Brian Bix, Jack Goldsmith, David Golove, Michael Moore, David Strauss, Ed Swaine, Adrian Vermeule, Alex Wendt, The Sarah Scaife Foundation Fund, and The Lynde and Harry Bradley Foundation Fund, Do States Have a Moral Obligation to Obey International Law?, The Board of Trustees of Leland Stanford Junior University, Stanford Law Review, 55 Stan. L. Rev. 1901]

We thus expect that states would violate legal obligations more often than individuals do. International law scholars like to say that states almost always obey the law. 28 Franck even argues that international law prevents states from shooting down civilian airliners - the Soviet Union's destruction of Korean Airlines flight 007 only shows how frequently it and other states respect the law. 29 But states would gain nothing by shooting down civilian airplanes. The most plausible reason why states do not violate international law more often than they do is that the law is so exceedingly weak - the rules are vague, states can withdraw from treaties, and so forth - and when the law is not weak, states frequently violate it. 30 Imagine a society where there are only a few, weak laws that already reflect people's interests - you must eat at least once every day, you must wear clothes on cold days. The observation that people in this society frequently obey the law is of little value. Perhaps, they have an obligation to obey their own laws, but if we know that they would violate laws that impose significant costs - tax laws, for example - then their obligations would extend only to the weak laws that are generally respected and not the strong laws that are routinely flouted. International law scholars confuse two separate ideas: (1) a moral obligation on the part of states to promote the good of all individuals in the world, regardless of their citizenship; and (2) a moral obligation to comply with international law. The two are not the same; indeed, they are in tension as long as governments focus their efforts on helping their own citizens (or their own [\*1915] supporters or officers). If all states did have the first obligation (which is an attractive but utopian idea), and they did comply with that obligation, then they would agree to treaties that implement, and engage in customary practices that reflect, the world good; and then they might have an obligation to comply with international law in the same rough sense that individuals have an obligation to comply with laws issued by a good government, or most of them. But this is not our world. In our world, we cannot say that if a particular state complies with international law - regardless of the normative value of the law, and regardless of what other states do, and maybe regardless of the interests of its own citizens, and so forth - or even treated compliance as a presumptive duty, the world would be a better place. 31 It should be clear by now that my argument is confined to the existing international system, where powerful states have more influence than weak states and compliance is rare. I do not argue that there is no alternative international system that could generate moral obligations on the part of individuals or states. Indeed, one interpretation of international-law scholarship, and perhaps some veins of political-science scholarship, is that states should comply with international law because doing so would create a culture of international legality, one in which international cooperation would flourish. If states entered into more treaties with stronger and more precise obligations; if they yielded more of their sovereignty to international organizations; if they submitted to multilateral rather than bilateral obligations; and if they relied on better and more transparent international decisionmaking procedures; then international law would be stronger as well as better, and compliance would be deeper and more uniform. I do not have the space to discuss this larger project, but it is worth noting because so much criticism these days is directed at the United States for not entering treaties (like the International Criminal Court treaty) or for (legally) withdrawing from treaties (like the Anti-Ballistic Missile treaty), rather than for violating treaties. It needs to be understood that the assumption that respect for international law, whether in the sense of complying with it or in the sense of creating more of it, will create a culture of international legality does not have [\*1916] any empirical support. A government that takes its responsibility to be that of protecting the national interest///

, and even one that cares about the well-being of citizens in other nations, would be ill advised to comply with laws that do neither in the hope that the compliance by itself would help create a culture of international legality.

## \*\*\* 2NC

### Vladeck

#### Congress will backlash. It will functionally bar the Court from exercising its authority

Vladeck 11—Professor of Law and Associate Dean for Scholarship @ American University [Stephen I. Vladeck, “Why Klein (Still) Matters: Congressional Deception and the War on Terrorism,” Journal of National Security Law, Volume 5, 6/16/2011, 9:38 AM

Six weeks later, Congress enacted the USA PATRIOT Act, which included a series of controversial revisions to immigration, surveillance, and other law enforcement authorities.34 But it would be over four years before Congress would again pass a key counterterrorism initiative, enacting the Detainee Treatment Act of 2005 (DTA)35 after—and largely in response to—the Supreme Court’s grant of certiorari in Hamdan v. Rumsfeld.36 In the five years since, Congress had enacted a handful of additional antiterrorism measures, including the Military Commissions Act (MCA) of 2006,37 as amended in 2009,38 the Protect America Act of 2007,39 and the 2008 amendments40 to the Foreign Intelligence Surveillance Act of 1978, known in shorthand as the FAA.41 And yet, although Congress has spoken in these statutes both to the substantive authority for military commissions and to the scope of the government’s wiretapping and other surveillance powers, it has otherwise left some of the central debates in the war on terrorism completely unaddressed.42 Thus, Congress has not revisited the scope of the AUMF since September 18, 2001, even as substantial questions have been raised about whether the conflict has extended beyond that which Congress could reasonably be said to have authorized a decade ago.43 Nor has Congress intervened, despite repeated requests that it do so, to provide substantive, procedural, or evidentiary rules in the habeas litigation arising out of the military detention of noncitizen terrorism suspects at Guantánamo.44

As significantly, at the same time as Congress has left some of these key questions unanswered, it has also attempted to keep courts from answering them. Thus, the DTA and the MCA purported to divest the federal courts of jurisdiction over habeas petitions brought by individuals detained at Guantánamo and elsewhere.45 Moreover, the 2006 MCA precluded any lawsuit seeking collaterally to attack the proceedings of military commissions,46 along with “any other action against the United States or its agents relating to any aspect of the detention, transfer, treatment, trial, or conditions of confinement of an alien who is or was detained by the United States and has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.”47 And although the Supreme Court in Boumediene invalidated the habeas-stripping provision as applied to the Guantánamo detainees,48 the same language has been upheld as applied elsewhere,49 and the more general non-habeas jurisdiction-stripping section has been repeatedly enforced by the federal courts in other cases.50

Such legislative efforts to forestall judicial resolution of the merits can also be found in the telecom immunity provisions of the FAA,51 which provided that telecom companies could not be held liable for violations of the Telecommunications Act committed in conjunction with certain governmental surveillance programs.52 Thus, in addition to changing the underlying substantive law going forward, the FAA pretermitted a series of then-pending lawsuits against the telecom companies.53

Analogously, Congress has attempted to assert itself in the debate over civilian trials versus military commissions by barring the use of appropriated funds to try individuals held at Guantánamo in civilian courts,54 and by also barring the President from using such funds to transfer detainees into the United States for continuing detention or to other countries, as well.55 Rather than enact specific policies governing criteria for detention, treatment, and trial, Congress’s modus operandi throughout the past decade has been to effectuate policy indirectly by barring (or attempting to bar) other governmental actors from exercising their core authority, be it judicial review or executive discretion.

Wasserman views these developments as a period of what Professor Blasi described as “constitutional pathology,” typified by “an unusually serious challenge to one or more of the central norms of the constitutional regime.” Nevertheless, part of how Wasserman defends the “Klein vulnerable” provisions of the MCA and FAA is by concluding that the specific substantive results they effectuate can be achieved by Congress, and so Klein does not stand in the way. But if Redish and Pudelski’s reading of Klein is correct, then the fact that Congress could reach the same substantive results through other means is not dispositive of the validity of these measures. To the contrary, the question is whether any of these initiatives were impermissibly “deceptive,” such that Congress sought to “vest the federal courts with jurisdiction to adjudicate but simultaneously restrict the power of those courts to perform the adjudicatory function in the manner they deem appropriate.”56 pg. 257-259

### Congress Key

#### Congress is necessary to implement any judicial restriction on the President. Even if the aff has ev that says the Courts can restrict the President, force them to provide a piece of evidence saying implementation will be successful. It won’t be—Congress has no evidence in strengthening its war powers vis-à-vis the President. This card means you vote neg on presumption

NZELIBE 6—Assistant Professor of Law, Northwestern University Law School [Jide Nzelibe, A Positive Theory of the War-Powers Constitution, Iowa Law Review, March, 2006, 91 Iowa L. Rev. 993]

B. Why the Courts Are Unlikely to Tip the Balance of War powers in Congress's Favor

Congress has, for prudent political reasons, often declined to use its formal powers to constrain the President in war-powers issues. But even if members of Congress seem to face significant domestic-audience constraints in participating in war-powers issues, one might ask why the courts do not intervene to level the policy-making playing field. Indeed, one oft-cited antidote to the perceived "imperial" actions of the President in the war-powers realm is judicial intervention. n291 Judicial intervention, it is commonly argued, will tip the institutional balance of powers in Congress's favor and encourage it to exercise its war-powers prerogative. n292

There are two compelling reasons why courts have resisted, and will likely continue to resist, intervening in war-powers disputes. First, due to the political calculus that many members of Congress face, the courts usually assume that it is unlikely that there is a genuine confrontation between the two political branches on war-powers disputes. Second, the courts are probably reluctant to intervene in inter-branch disputes in a sphere where they might have low institutional authoritativeness.

On the first point, the courts have been generally reluctant to protect legislative prerogatives in war powers when members of Congress have failed to do so. Indeed, many members of Congress often have political incentives not to confront the President on war-powers controversies. As such, many of the disputes regarding the division of **war power**s that come before the courts routinely involve what are essentially intra-legislative disputes, where a segment of Congress (often a minority) seems to disagree with the majority's decision. In most such cases, a majority of Congress has either explicitly accepted the President's national-security agenda or has implicitly acquiesced to the agenda without taking formal legislative action. In other words, in those cases there has not been a genuine constitutional impasse that might appropriately trigger court scrutiny. Courts, probably anticipating the political spoils at stake, decline to participate in a "political pass the [\*1060] blame" game by insisting that the courts will not do what Congress refuses to do for itself. n293

Where members of Congress are unwilling to constrain executive-branch authority through legislation, courts understandably recognize that judicial intervention might prove to be meaningless. First, where there is insufficient congressional support for a court decision that favors congressional intervention in war powers, members of Congress will very likely lack the political will to implement such a decision. In other words, members of Congress who fear that greater congressional intervention will expose them to electoral risks will have every incentive to sidestep a judicial ruling that awards them more powers in national-security affairs.

Second, courts will often lack the opportunity to effectively monitor the successful implementation of a bright-line judicial rule regarding the allocation of war powers. Judicial monitoring will often be difficult because there are so many procedural and jurisdictional hurdles to bringing a legal challenge to the allocation of **war power**s. Since most citizens will lack standing to bring the lawsuit, most such lawsuits will probably have to come from members of Congress. Even if disaffected members of Congress are able to overcome significant standing obstacles of their own, n294 they are still likely to face a slew of other procedural obstacles, including ripeness, n295 mootness, n296 and the political-question doctrine. n297

Furthermore, the risk of non-compliance with judicial decisions also implicates the institutional legitimacy of the courts to adjudicate on war-powers claims. As some commentators have observed, courts seem to be especially wary about intervening in separation-of-powers issues in foreign affairs, because the popular legitimacy that underlies judicial resolution of domestic constitutional disputes does not tend to extend to foreign-affairs [\*1061] disputes. n298 In other words, when issues involve the adjudication of individual-rights claims or domestic separation-of-powers disputes, courts can often tap into the popular acceptance of their role in resolving such disputes. n299 In disputes regarding the allocation of war powers, however, it is unlikely that the judicial branch will be able to draw on the popular underpinnings of its legitimacy to secure political-branch compliance with its decisions. This is because there does not seem to be much of a public appetite for increased judicial involvement in foreign-affairs disputes. n300 Moreover, unlike in the domestic realm where the courts play a key legitimating function in separation-of-powers disputes, the political branches have very little incentive to embrace a more active judicial role in disputes over the allocation of war powers. n301

In any event, even if greater judicial intervention in war-powers disputes were politically feasible, it is not clear that such intervention would compel Congress to play a more active role on war-powers issues. In other words, members of Congress are not likely to embrace a war-powers role that has significant electoral risks simply because such a role has been judicially sanctioned. Indeed, not only will members of Congress lack an incentive to comply with such judicial decisions, but judicial monitoring of legislative compliance will often prove very difficult to carry out. At most, if compelled to take on a more active role by a judicial decision when it is not in their political interest to do so, members of Congress will likely substitute legislative rubberstamping for silent acquiescence as the preferred response to the President's use-of-force initiatives. In sum, if greater political accountability for use-of-force decisions is the end goal, there is little evidence that judicially prompted congressional intervention will change the current war-powers landscape.

### AT: Obama wants the plan

#### Obama can hate detention—but love the authority—proves will circumvent

Pious 11—Professor of political science @ Barnard College [Richard M. Pious (Chair in History and American Studies @ Barnard College), “Prerogative Power in the Obama Administration: Continuity and Change in the War on Terrorism,” Presidential Studies Quarterly 41, no. 2 (June)]

Obama has taken some steps to recede from the extreme claims of the Bush administration but seems to be developing a variant of “soft prerogative,” in which he keeps the option to act through prerogative power in reserve. In the court cases that have carried over from the Bush administration, he seems to be acting in accordance with the observation of Brad Berenson, a former associate counsel in the Bush White House who pointed out that “The dirty little secret here is that the United States government has enduring institutional interests that carry over from administration to administration and almost always dictate the position the government takes” (Gerstein 2009b). Similarly a law professor at Columbia University, Matthew Waxman, who served as deputy assistant secretary of defense for detainee affairs in the Bush administration, has noted “These are long-standing institutional positions of the executive branch that have historically transcended partisan divides” (Waxman 2010).

Hugh Heclo has analyzed the “deep structure” of the presidency as an institution (i.e., those parts that do not change when an administration changes) (Heclo 1999). In a related sense, there is a “deep structure” of prerogative claims, which do not change—or change slowly—when partisan control of the White House changes. These include claims of sovereign immunity, official immunities involving duties of officials, testimonial privileges (executive, departmental, lawyer-client, protective service), and state secrets doctrines, all of which the Obama administration has attempted to extend in court filings. And when there is movement, it seems always to be in the direction of extending claims rather than retracting them. The prerogative claims are then employed to justify (in courts of law and in the court of public opinion) presidential efforts to prevent prosecution of former officials and prevent the establishment of commissions of inquiry.

The Obama administration, in its court filings involving the Bush administration, has distinguished between policy (which is not defended) and privilege. The “deep structure” is not substantive as much as it is a set of privileges that prevent accountability. Obama seems to have made a “non-decision” about most of these privileges, with extensions of some—which not only help the Bush officials, but also may help members of his administration once they leave office. By failing to push for the Dawn Johnsen nomination, and by allowing the acting chief, David Barron, to remain as the top official, Obama has signaled that there will be a great deal of continuity with the Bush administration. Pg. 286-287

### Ext. Legit Not k2 Heg

#### Legitimacy doesn’t affect the structural reasons why heg solves war

Maher 11—Richard Maher, adjunct prof of political science at Brown [The Paradox of American Unipolarity: Why the United States May Be Better Off in a Post-Unipolar World, Orbis 55;1]

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

### 2NC—No Transition Impact

#### The only comprehensive study proves no transition impact.

MacDonald & Parent 11—Professor of Political Science at Williams College & Professor of Political Science at University of Miami [Paul K. MacDonald & Joseph M. Parent, “Graceful Decline? The Surprising Success of Great Power Retrenchment,” International Security, Vol. 35, No. 4 (Spring 2011), pp. 7–44]

In this article, we question the logic and evidence of the retrenchment pessimists. To date there has been neither a comprehensive study of great power retrenchment nor a study that lays out the case for retrenchment as a practical or probable policy. This article fills these gaps by systematically examining the relationship between acute relative decline and the responses of great powers. We examine eighteen cases of acute relative decline since 1870 and advance three main arguments.

First, we challenge the retrenchment pessimists’ claim that domestic or international constraints inhibit the ability of declining great powers to retrench. In fact, when states fall in the hierarchy of great powers, peaceful retrenchment is the most common response, even over short time spans. Based on the empirical record, we find that great powers retrenched in no less than eleven and no more than fifteen of the eighteen cases, a range of 61–83 percent. When international conditions demand it, states renounce risky ties, increase reliance on allies or adversaries, draw down their military obligations, and impose adjustments on domestic populations.

Second, we find that the magnitude of relative decline helps explain the extent of great power retrenchment. Following the dictates of neorealist theory, great powers retrench for the same reason they expand: the rigors of great power politics compel them to do so.12 Retrenchment is by no means easy, but necessity is the mother of invention, and declining great powers face powerful incentives to contract their interests in a prompt and proportionate manner. Knowing only a state’s rate of relative economic decline explains its corresponding degree of retrenchment in as much as 61 percent of the cases we examined.

Third, we argue that the rate of decline helps explain what forms great power retrenchment will take. How fast great powers fall contributes to whether these retrenching states will internally reform, seek new allies or rely more heavily on old ones, and make diplomatic overtures to enemies. Further, our analysis suggests that great powers facing acute decline are less likely to initiate or escalate militarized interstate disputes. Faced with diminishing resources, great powers moderate their foreign policy ambitions and offer concessions in areas of lesser strategic value. Contrary to the pessimistic conclusions of critics, retrenchment neither requires aggression nor invites predation. Great powers are able to rebalance their commitments through compromise, rather than conflict. In these ways, states respond to penury the same way they do to plenty: they seek to adopt policies that maximize security given available means. Far from being a hazardous policy, retrenchment can be successful. States that retrench often regain their position in the hierarchy of great powers. Of the fifteen great powers that adopted retrenchment in response to acute relative decline, 40 percent managed to recover their ordinal rank. In contrast, none of the declining powers that failed to retrench recovered their relative position. Pg. 9-10

### AT: Trade Blocs

#### Trade won’t be disrupted.

Preble 10 [Christopher Preble, director of foreign policy studies at the Cato Institute, August 2010 “U.S. Military Power: Preeminence for What Purpose?” http://www.cato-at-liberty.org/u-s-military-power-preeminence-for-what-purpose/]

Most in Washington still embraces the notion that America is, and forever will be, the world’s indispensable nation. Some scholars, however, questioned the logic of hegemonic stability theory from the very beginning. A number continue to do so today. They advance arguments diametrically at odds with the primacist consensus. Trade routes need not be policed by a single dominant power; the international economy is complex and resilient. Supply disruptions are likely to be temporary, and the costs of mitigating their effects should be borne by those who stand to lose — or gain — the most. Islamic extremists are scary, but hardly comparable to the threat posed by a globe-straddling Soviet Union armed with thousands of nuclear weapons. It is frankly absurd that we spend more today to fight Osama bin Laden and his tiny band of murderous thugs than we spent to face down Joseph Stalin and Chairman Mao. Many factors have contributed to the dramatic decline in the number of wars between nation-states; it is unrealistic to expect that a new spasm of global conflict would erupt if the United States were to modestly refocus its efforts, draw down its military power, and call on other countries to play a larger role in their own defense, and in the security of their respective regions. But while there are credible alternatives to the United States serving in its current dual role as world policeman / armed social worker, the foreign policy establishment in Washington has no interest in exploring them. The people here have grown accustomed to living at the center of the earth, and indeed, of the universe. The tangible benefits of all this military spending flow disproportionately to this tiny corner of the United States while the schlubs in fly-over country pick up the tab.

### 2NC—Compliance

#### AND it is toothless and lacks an enforcement mechanism—that a state could comply, does not mean they will—this turns all of their offense because it makes cooperation impossible

**Posner 3** [Eric A., Federal Circuit Court Judge, Kirkland & Ellis Professor of Law, University of Chicago, Matthew Adler, Brian Bix, Jack Goldsmith, David Golove, Michael Moore, David Strauss, Ed Swaine, Adrian Vermeule, Alex Wendt, The Sarah Scaife Foundation Fund, and The Lynde and Harry Bradley Foundation Fund, Do States Have a Moral Obligation to Obey International Law?, The Board of Trustees of Leland Stanford Junior University, Stanford Law Review, 55 Stan. L. Rev. 1901]

On the first view, international law is a source of expectations about how states will act under various conditions. If an international law forbids behavior X, then states might retaliate against someone who engages in X. But whether they do so or not depends on their own interests and capacities. Each state makes a cost-benefit decision, albeit a sophisticated one that takes account of the reputational consequences of that decision, and it makes such a decision both when deciding whether to comply with an international law and whether to retaliate against another state that violates international law. On the second view, international law is a source of moral obligations that influence states by constraining their prudential decisions. In the Eichmann case, the likelihood that Argentina would be too embarrassed to raise forceful objections to Israel's violation of international law, and that other nations would have no strong interest in keeping Eichmann in Argentina, are legitimate considerations under the prudential view but not the moral view. Under this view it is wrong to break the law even when one can escape sanctions. This Article argues that states do not have a general moral obligation to comply with international law.

### Overview – Nato-Russia

#### Finish Rogate

, especially those concerning energy markets, which are already enveloped in a tumultuous political situation presently affecting both countries that produce and those that consume natural resources.

The Arctic provides an example of how climate change can shift geopolitical attention as well as amplify the strategic importance of geographic areas, perhaps causing old rivalries to resurface as in the case of Russia and NATO member countries. A non-traditional phenomenon is indeed leading to the emergence of traditional security dilemmas in the form of competition for resources and territory, resulting in the development of tensions among states. Climate change in the Arctic is literally defrosting regional security conundrums that risk extending well beyond the region. Moreover, not only is the physical environment being modified, but legal and institutional environments are changing as well, posing new challenges to inter-state relations and the ability to manage the unclaimed parts of the Arctic, referred to as the commons.46

Climate change can only be tackled with long-term emissions mitigation policies, while the emergence of the security dilemma in the region requires short-term solutions to avoid further militarization of the Arctic. The need to act rapidly is particularly urgent since the situation is developing within a precarious institutional, legal, and political framework. Though skepticism concerning the veracity of climate change continues to abound in public opinion and political arenas, recent developments in the Arctic demonstrate how such changes already are adversely affecting international politics. Future developments are no longer limited to scientific discourse, but now extend to conflict prevention. As noted by Machiavelli, once foreseen, such issues must be addressed before they develop to the point that no satisfactory remedy can be found.

#### It goes nuclear

Krieger & Starr 12—President of the Nuclear Age Peace Foundation & Senior Scientist for Physicians for Social Responsibility [David Krieger & Steven Starr, “A Nuclear Nightmare in the Making: NATO, Missile Defense and Russian Insecurity,” Nuclear Age Peace Foundation, January 03, 2012, http://www.wagingpeace.org/articles/db\_article.php?article\_id=321]

This is a dangerous scenario, no matter which NATO we are talking about, the real one or the hypothetical one.  Continued US indifference to Russian security concerns could have dire consequences: a breakdown in US-Russian relations; regression to a new nuclear-armed standoff in Europe; Russian withdrawal from New START; a new nuclear arms race between the two countries; a breakdown of the Nuclear Non-Proliferation Treaty leading to new nuclear weapon states; and a higher probability of nuclear weapons use by accident or design.  This is a scenario for nuclear disaster, and it is being provoked by US hubris in pursuing missile defenses, a technology that is unlikely ever to be effective, but which Russian leaders must view in terms of a worst-case scenario.

In the event of increased US-Russian tensions, the worst-case scenario from the Russian perspective would be a US first-strike nuclear attack on Russia, taking out most of the Russian nuclear retaliatory capability.  The Russians believe the US would be emboldened to make a first-strike attack by having the US-NATO missile defense installations located near the Russian border, which the US could believe capable of shooting down any Russian missiles that survived its first-strike attack.

The path to a US-Russian nuclear war could also begin with a conventional military confrontation via NATO. The expansion of NATO to the borders of Russia has created the potential for a local military conflict with Russia to quickly escalate into a nuclear war.  It is now Russian policy to respond with tactical nuclear weapons if faced with overwhelmingly superior conventional forces, such as those of NATO.   In the event of war, the “nuclear umbrella” of NATO guarantees that NATO members will be protected by US nuclear weapons that are already forward-based in Europe.

### UQ/L

#### Court will ultimately rule in favor of EPA now because of deference.

Robert Percival, 2/6/2014. Robert F. Stanton Professor of Law and Director of the Environmental Law Program at the University of Maryland Francis King Carey School of Law. “Symposium: The climate wars return to the Court as a narrower skirmish,” SCOTUS Blog, http://www.scotusblog.com/2014/02/symposium-the-climate-wars-return-to-the-court-as-a-narrower-skirmish/#more-204967.

The starting point for handicapping the greenhouse gas cases is to consider the line-up of Justices in the Court’s previous GHG decisions.  The four dissenters in Massachusetts v. EPA remain on the Court.  In American Electric Power they continued to assert their belief that climate change did not give rise to standing, though only Justices Alito and Thomas registered continuing disagreement with the Massachusetts holding that GHGs are covered by the CAA.  Two Justices from the Massachusetts majority (Justices Stevens and Souter) no longer are on the Court, but their successors (Justices Kagan and Sotomayor) are likely to adhere to the same views.  This could leave Justice Kennedy in his familiar position as the decisive vote.

**If the Court applies normal doctrines of judicial deference**, this should not produce another five-to-four decision.  The Justices do not relish delving into the intricacies of the CAA because it is one of the most complex regulatory statutes on the planet.  Indeed CAA regulations are what spawned the Chevron doctrine of deference to agency decisions. The papers of the late Justice Blackmun reveal that Justice Stevens, the author of Chevron, declared at conference “when I get so confused, I go with the agency.”

Congress gave the D.C. Circuit exclusive venue to review challenges to CAA regulations.  The D.C.  Circuit panel that heard the case included Chief Judge Sentelle, who is no fan of environmental regulation, and it unanimously upheld the EPA’s actions.

The cert. grant here likely was inspired by Judge Kavanaugh’s dissent from the denial of rehearing en banc, which Judge Brown joined.   Kavanaugh concluded that the phrase “any air pollutant” should not be interpreted to refer to any pollutant regulated under the CAA but rather only to the six pollutants for which EPA has promulgated national ambient air quality standards (NAAQS).  While acknowledging that EPA’s interpretation initially appears “plausible,” he concluded that it cannot be correct because it would produce absurd results by requiring millions of small sources to obtain permits.  But this is precisely why the EPA promulgated the Tailoring Rule, which avoids this problem by initially applying PSD permit requirements only to the largest sources of GHGs.  Even if the Court views the statutory language “any air pollutant” to be ambiguous, **the EPA’s position should be entitled to**Chevron **deference**.

### 2NC EPA UQ/Deference IL

#### Court will err in favor of EPA now because of deference.

Howard Learner, 12/13/2013. Executive director of the Environmental Law and Policy Center. “Q&A: Reading the tea leaves as EPA rules go to court,” Midwest Energy News, http://www.midwestenergynews.com/2013/12/13/qa-reading-the-tea-leaves-as-epa-rules-go-to-court/.

The Supreme Court’s opinion in American Electric Power vs. Connecticut (2009) recognizes the EPA’s scientific and technical expertise to which courts should defer in reasonable cases. Reading the tea leaves here and reading what was said in oral arguments, there seems to be at least some inclination among the judges on the D.C. Circuit that they recognize that this mercury pollution standards case is appropriate for deferring to the agency’s expertise.

### I Lk: SG = Pro-environment decision

#### Solicitor General will align the Court’s decisions with Obama’s environmental agenda

Koons 9 [Jennifer Koons, “Environmental policy a specialty of Obama's solicitor general,” Greenwire, Thursday, March 26, 2009, pg. http://tinyurl.com/o9je2hn

Nicknamed the "10th justice," the solicitor general plays a role in about two-thirds of the Supreme Court's cases, and the justices often invite the counsel to provide an opinion on whether to take a pending appeal.

"A basic role of the solicitor general is to defend the laws duly enacted by Congress and the agencies, not just of the administration that appointed him or her," said Jay Austin, who heads [of] the Environmental Law Institute's program monitoring Supreme Court environmental litigation.

"Still, the solicitor general's office can shape the flow of legal issues, by deciding when to petition for [review], or by arguing that the court should deny cert on cases that the administration might prefer not to defend," Austin said. "Like her predecessors, Dean Kagan will doubtless deploy these tools to bring environmental and other legal policies more closely in line with the current administration.'"

## \*\*\* 1NR

### Turns Case

#### Sanctions kills US cred and alliances—leads to US-Iran war and prolif

Nader 13 [Alirez, “Pause on additional Iran sanctions crucial to negotiations” 11-5-13 http://thehill.com/opinion/op-ed/189371-pause-on-additional-iran-sanctions-crucial-to-negotiations]

Iran has demonstrated a different tone and approach to nuclear negotiations since the June 14 election of Hassan Rouhani as president. Nothing concrete has emerged yet, but the U.S. negotiating team, headed by Undersecretary of State Wendy Sherman, has described the last round of negotiations as positive and different from previous sessions with the Iranian team under former President Mahmoud Ahmadinejad. ADVERTISEMENT Rouhani’s election and, more importantly, Iran’s dire economic condition are the reasons for Tehran’s new approach. Some have taken this to mean that more sanctions are needed. However, just because Tehran is seeking to ease the pressure brought on by the sanctions that exist today does not mean that it will yield to new sanctions tomorrow. Rouhani has a limited mandate to solve the nuclear crisis and lift sanctions. However, more radical elements of the Iranian political system, marginalized for now, are waiting for him to fail. They believe that the American government is either duplicitous or will be unable to deliver a deal. New sanctions would confirm their view and further their goals of ending negotiations and sidelining Rouhani. New sanctions passed before a true test of Iran’s intentions could result in a bleak future: a risky and costly war with Iran with no guarantee of success, or the acceptance of an increasingly embittered, isolated, repressive and nuclear capable Islamic Republic. The Iranian people have borne the brunt of sanctions, but it would be hard to argue that the Iranian regime has not felt the pressure as well. And it is this crucial portfolio that could determine his fate. He has the support of Supreme Leader Ayatollah Ali Khamenei and the Revolutionary Guard, without which he would not be able to negotiate or even run his government. But Khamenei and the Guard are under no illusion that negotiations are sure to succeed; nor are they willing to continue negotiations under humiliating conditions. Sanctions are a danger to their rule, but weakness in the face of pressure might be no less a threat. They must give Rouhani a chance because the Iranian people and key political constituents support negotiations. The viability of Rouhani’s platform of moderation and engagement with the West hangs in balance. Khamenei and hard-line Guard are willing to “test” America as much as the Obama administration is willing to “test” Tehran. New sanctions under consideration by Congress could lead to a weakening of the overall U.S. position. First, Rouhani could lose his mandate to continue negotiations. Second, Iran could begin to undermine the international coalition that has created the harshest peacetime sanctions in history. Rouhani, weakened at home but still respected abroad, could persuade major Iranian oil buyers such as China, India, Japan and even European that Iran attempted to negotiate in good faith but was rebuffed by the United States. Third, Iran could successfully cause a split between the group. China and Russia might believe that Congress wants regime change in Iran instead of a diplomatic solution. Germany, which has close business ties with Iran, could become unhappy about its economic sacrifices. And even the U.K. and France could begin to doubt U.S. intentions. Congress deserves credit for pressuring the Iranian regime, but it should pause the march toward new sanctions to give the negotiations a chance. Current sanctions against Iran are effective, and new sanctions can always be imposed if Iran does not budge. A smart approach toward Iran does not only entail creating pressure but using it correctly, and for the right goals.

### AT: Israel Won’t Strike—WALL

#### Bill passage green-lights Israel strikes and commits the US to war

Merry 1/1/14—Robert W. Merry, political editor of the National Interest, is the author of books on American history and foreign policy [“Obama may buck the Israel lobby on Iran” Washington Times, factiva]

Presidential press secretary Jay Carney uttered 10 words the other day that represent a major presidential challenge to the American Israel lobby and its friends on Capitol Hill. Referring to Senate legislation designed to force President Obama to expand economic sanctions on Iran under conditions the president opposes, Mr. Carney said: “If it were to pass, the president would veto it.”

For years, there has been an assumption in Washington that you can’t buck the powerful Israel lobby, particularly the American Israel Public Affairs Committee, or AIPAC, whose positions are nearly identical with the stated aims of Israeli Prime Minister Benjamin Netanyahu. Mr. Netanyahu doesn’t like Mr. Obama’s recent overture to Iran, and neither does AIPAC. The result is the Senate legislation, which is similar to a measure already passed by the House.

With the veto threat, Mr. Obama has announced that he is prepared to buck the Israel lobby — and may even welcome the opportunity. It isn’t fair to suggest that everyone who thinks Mr. Obama’s overtures to Iran are ill-conceived or counterproductive is simply following the Israeli lobby’s talking points, but Israel’s supporters in this country are a major reason for the viability of the sanctions legislation the president is threatening to veto.

It is nearly impossible to avoid the conclusion that the Senate legislation is designed to sabotage Mr. Obama’s delicate negotiations with Iran (with the involvement also of the five permanent members of the U.N. Security Council and Germany) over Iran’s nuclear program. The aim is to get Iran to forswear any acquisition of nuclear weapons in exchange for the reduction or elimination of current sanctions. Iran insists it has a right to enrich uranium at very small amounts, for peaceful purposes, and Mr. Obama seems willing to accept that Iranian position in the interest of a comprehensive agreement.

However, the Senate measure, sponsored by Sens. Robert Menendez, New Jersey Democrat; Charles E. Schumer, New York Democrat; and Mark Kirk, Illinois Republican, would impose potent new sanctions if the final agreement accords Iran the right of peaceful enrichment. That probably would destroy Mr. Obama’s ability to reach an agreement. Iranian President Hasan Rouhani already is under pressure from his country’s hard-liners to abandon his own willingness to seek a deal. The Menendez-Schumer-Kirk measure would undercut him and put the hard-liners back in control.

Further, the legislation contains language that would commit the United States to military action on behalf of Israel if Israel initiates action against Iran. This language is cleverly worded, suggesting U.S. action should be triggered only if Israel acted in its “legitimate self-defense” and acknowledging “the law of the United States and the constitutional responsibility of Congress to authorize the use of military force,” but the language is stunning in its brazenness and represents, in the view of Andrew Sullivan, the prominent blogger, “an appalling new low in the Israeli government’s grip on the U.S. Congress.”

While noting the language would seem to be nonbinding, Mr. Sullivan adds that “it’s basically endorsing the principle of handing over American foreign policy on a matter as grave as war and peace to a foreign government, acting against international law, thousands of miles away.”

That brings us back to Mr. Obama’s veto threat. The American people have made clear through polls and abundant expression (especially during Mr. Obama’s flirtation earlier this year with military action against Bashar Assad’s Syrian regime) that they are sick and weary of American military adventures in the Middle East. They don’t think the Iraq and Afghanistan wars have been worth the price, and they don’t want their country to engage in any other such wars.

That’s what the brewing confrontation between Mr. Obama and the Israel lobby comes down to — war and peace. Mr. Obama’s delicate negotiations with Iran, whatever their outcome, are designed to avert another U.S. war in the Middle East. The Menendez-Schumer-Kirk initiative is designed to kill that effort and cedes to Israel America’s war-making decision in matters involving Iran, which further increases the prospects for war. It’s not even an argument about whether the United States should come to Israel’s aid if our ally is under attack, but whether the decision to do so and when that might be necessary should be made in Jerusalem or Washington.

2014 will mark the 100th anniversary of beginning of World War I, a conflict triggered by entangling alliances that essentially gave the rulers of the Hapsburg Empire power that forced nation after nation into a war they didn’t want and cost the world as many as 20 million lives. Historians have warned since of the danger of nations delegating the power to take their people into war to other nations with very different interests.

AIPAC’s political power is substantial, but this is Washington power, the product of substantial campaign contributions and threats posed to re-election prospects. According to the Center for Responsive Politics’ Open Secrets website, Sens. Kirk, Menendez and Schumer each receives hundreds of thousands of dollars a year in pro-Israel PAC money and each of their states includes concentrations of pro-Israel voters who help elect and re-elect them.

Elsewhere in the country, AIPAC’s Washington power will collide with the country’s clear and powerful political sentiment against further U.S. adventurism in the Middle East, particularly one as fraught with as much danger and unintended consequence as a war with Iran. If the issue gets joined, as it appears that it will, Mr. Obama will see that it gets joined as a matter of war and peace. If the Menendez-Schumer-Kirk legislation clears Congress and faces a presidential veto, the war-and-peace issue could galvanize the American people as seldom before.

If that happens, the strongly held opinions of a democratic public are liable to overwhelm the mechanisms of Washington power, and the vaunted influence of the Israel lobby may be seen as being not quite what it has been cracked up to be.

#### New sanctions make war inevitable—

#### One—the bill lowers the threshold for war and green-lights Israeli attack. Their ev doesn’t assume U.S. support

Lennard 13 (Natasha, assistant news editor, “Senate resolution would greenlight Israeli attack,” Salon, 3-1, http://www.salon.com/2013/03/01/senate\_resolution\_would\_greenlight\_israeli\_attack\_on\_iran/)

Senate resolution would greenlight Israeli attack

On Thursday, Ali Gharib at the Daily Beast drew attention to a resolution set to be introduced in the Senate, which declares U.S. support for an Israeli military strike against Iran’s nuclear program. The resolution, to be introduced by Sens. Lindsey Graham, R-S.C., and Robert Menendez, D-N.J., has bipartisan support and the backing of AIPAC. Via Gharib:

With prominent liberal Democrats already signing on, AIPAC’s lobbying heft will likely propel a bill that, in Congressional sentiment at least, commits the U.S. to active support of a potential Israeli attack that experts think could have consequences as grave as further destabilization in the region, adverse global economic consequences, and even a hardening of Iranian resolve to get a weapon.

Although the bill’s supporters have stressed that it is does not advocate war or use of force, the non-binding resolution’s language is strong. Gharib cites a passage that reads, “if the Government of Israel is compelled to take military action in self-defense, the United States Government should stand with Israel and provide diplomatic, military, and economic support to the Government of Israel in its defense of its territory, people, and existence.”

A CIA official dismissed the resolution’s geopolitical importance. He told Gharib that “the discussions between the Obama administration and the Israelis about potential military action on Iran have nothing to do with these kinds of resolutions.” However, Gharib, who has reported U.S. foreign policy and the Middle East for many years sees these non-binding resolutions, although not policy decisions, as among the many incremental pushes that create the conditions for conflict. He explained:

While non-binding Congressional resolutions don’t directly make policy, the language therein often manifests itself both in later, binding legislative efforts and, more frequently, in the public discourse. In this case, the resolution builds steam for a hawkish push against Iran at a time when the Islamic Republic and world powers are amid a negotiating process over the former’s nuclear program, which is widely believed to be aimed at producing weapons.

Indeed, with strong AIPAC support, these resolutions have in the past had profound impact on the public discourse on Israel and Iran, in turn impacting policy frameworks. Gharib highlights as exemplar the shift in the U.S. “red line” on Iran moving from Tehran acquiring a weapon to having the “capability” to do so:

Like a previous Graham effort, the new resolution misstates U.S. policy as “to prevent Iran from acquiring a nuclear weapon capability” (my emphasis)—phrasing the Senate overwhelmingly approved in another AIPAC-backed measure last September. The “capability” language sets a lower threshold for war than Barack Obama’s stated policy to “prevent Iran from obtaining a nuclear weapon,” fullstop—a distinction at the heart of Obama’s flaplast autumn with Israeli Prime Minister Benjamin Netanyahu.

#### Two—negotiations should frame the debate. Right now, negotiations will work, but new sanctions will cause Iran to walkout, bring hardliners to power, and increase the chances of prolif. This makes the options between either accepting war or accepting a nuclear Iran

LEVINE 14 Former Professional Staff to the Senate Select Committee on Intelligence & member of the Center for Arms Control and Non-Proliferation’s National Advisory Board [Edward Levine, Analysis of Faults in the Menendez-Kirk Iran Sanctions Bill (S. 1881), http://armscontrolcenter.org/issues/iran/articles/analysis\_of\_faults\_in\_the\_menendez-kirk\_iran\_sanctions\_bill\_s\_1881/]

S.1881, the “Nuclear Weapon Free Iran Act of 2013,” will undercut President Obama’s efforts to obtain a comprehensive solution to Iran’s nuclear activities. To the extent that it removes the diplomatic option, moreover, it will leave the United States closer to a Hobson’s choice between going to war with Iran and accepting Iran as an eventual nuclear weapons state.

Supporters of the bill, which was introduced on December 19 by Senators Menendez (D-NJ) and Kirk (R-IL), claim that enactment of it would not impede the E3+3 (AKA the P5+1) negotiations with Iran, but the text of Title III of the bill manifestly contradicts such claims. Specifically:

Section 301(a)(2)(I) requires the President to certify, in order to suspend application of the new sanctions, that “Iran has not conducted any tests for ballistic missiles with a range exceeding 500 kilometers.” While this objective may be consistent with a UN Security Council resolution, it moves the goalposts by making the new sanctions contingent not just on Iran’s nuclear activities, but also on its missile programs. This paragraph also does not specify a time period (although the requirement in section 301(a)(1) for a certification every 30 days might imply one), so Iran’s past missile tests beyond 500 km might make it impossible for the President ever to make this certification.

Section 301(a)(2)(H) requires the President also to certify that “Iran has not directly, or through a proxy, supported, financed, planned, or otherwise carried out an act of terrorism against the United States or United States persons or property anywhere in the world.” Once again, there is no time period specified, so Iran’s past support of terrorism might make it impossible for the President ever to make this certification. Even if a time period were clear, however, this language would mean that if, say, Hezbollah were to explode a bomb outside a U.S. firm’s office in Beirut, the sanctions would go into effect (because Iran gives financial and other support to Hezbollah) even if Iran’s nuclear activities and negotiations were completely in good faith. So, once again, the goalposts are being moved.

Section 301(a)(2)(F) requires the President to certify that the United States seeks an agreement “that will dismantle Iran’s illicit nuclear infrastructure.” But while Iran may agree in the end to dismantle some of its nuclear infrastructure, there is no realistic chance that it will dismantle all of its uranium enrichment capability. In order for the President to make this certification, therefore, he will have to argue either that “you didn’t say all of Iran’s illicit nuclear infrastructure” (although that is clearly the bill’s intent) or that “if the negotiators agree to allow some level of nuclear enrichment in Iran, then the facilities are no longer illicit” (which begins to sound like statements by Richard Nixon or the Queen of Hearts).

Section 301(a)(3), regarding a suspension of sanctions beyond 180 days, adds the requirement that an agreement be imminent under which “Iran will...dismantle its illicit nuclear infrastructure...and other capabilities critical to the production of nuclear weapons.” This raises the same concerns as does the paragraph just noted, plus the new question of what those “other capabilities” might be. At a minimum, such ill-defined requirements invite future partisan attacks on the President.

Section 301(a)(4) reimposes previously suspended sanctions if the President does not make the required certifications. This paragraph applies not only to the sanctions mandated by this bill, but also to “[a]ny sanctions deferred, waived, or otherwise suspended by the President pursuant to the Joint Plan of Action or any agreement to implement the Joint Plan of Action.” Thus, it moves the goalposts even for the modest sanctions relief that the United States is currently providing to Iran. To the extent that the currently-provided sanctions relief relates to sanctions imposed pursuant to the President’s own powers, moreover, section 301(a)(4) may run afoul of the separation of powers under the United States Constitution.

Section 301(b) allows the President to suspend the bill’s sanctions annually after a final agreement is reached with Iran, but only if a resolution of disapproval of the agreement is not enacted pursuant to section 301(c). The primary effect of this insertion of Congress into the negotiating process will be to cast doubt upon the ability of the United States to implement any agreement that the E3+3 reaches with Iran. The provision is also unnecessary, as most of the sanctions relief that would be sought in a final agreement would require statutory changes anyway.

Section 301(b)(1) imposes a certification requirement to suspend the bill’s new sanctions after a final agreement with Iran has been reached, even if a resolution of disapproval has been defeated. This certification requirement imposes maximalist demands upon the E3+3 negotiators. Paragraph (A) requires that the agreement include dismantlement of Iran’s “enrichment and reprocessing capabilities and facilities, the heavy water reactor and production plant at Arak, and any nuclear weapon components and technology.” How one dismantles technology is left to the imagination. Paragraph (B) requires that Iran come “into compliance with all United Nations Security Council resolutions related to Iran’s nuclear program,” which would require its suspension, at least, of all uranium enrichment. In all likelihood, however, the complete suspension of enrichment either will be impossible to achieve through diplomacy or will be achieved only for a short time before Iran is permitted to resume an agreed level of enrichment of an agreed quantity of uranium under international verification. Paragraph (C) requires that all the IAEA’s issues regarding past or present Iranian nuclear activities be resolved – an objective that the United States and its allies surely share, but that may prove difficult to achieve even if the other objectives are realized. Paragraph (D) requires “continuous, around the clock, on-site inspection...of all suspect facilities in Iran,” which would likely be inordinately expensive and unnecessary, and might also impose safety hazards.

Taken as a whole, these requirements, however desirable in theory, build a bridge too far for the E3+3 to reach. If they are enacted, all parties to the negotiations will interpret them as barring the United States from implementing the sanctions relief proposed in any feasible agreement. Rather than buttressing the U.S. position in the negotiations, therefore, they will bring an end to those negotiations. Worse yet, they will create large fissures in the E3+3 coalition that has imposed international sanctions on Iran. Thus, even though the bill purports to support sanctions, it may well result in the collapse of many of them.

It is in that context that one should read the sense of Congress, in section 2(b)(5) of the bill, that if Israel is compelled to take military action against Iran’s nuclear weapon program, the United States should provide “military support” to Israel. While such support could be limited to intelligence and arms sales, there would be great pressure for the United States to take a more active military role. So this bill, by its many steps to close the window for diplomacy with Iran, could end the international sanctions regime and lead either to a nuclear-armed Iran or to a war in which U.S. armed forces might well be active participants.

#### Israeli strike options have postponed pending negotiations. They haven’t been tabled. Negotiations failure is the only scenario for attack—prefer Israeli statements rather than American speculation

BERMAN 1/22/2014—Ilan Berman, Contributor to Forbes [“Israel Keeps Its Options Open On Iran,” http://www.forbes.com/sites/ilanberman/2014/01/22/israel-keeps-its-options-open-on-iran/]

Is an Israeli military attack against Iran truly off the table? Conventional wisdom certainly seems to think that it is. In the aftermath of the signing of an interim nuclear deal in Geneva this past November, the foreign policy cognoscenti in Washington, as elsewhere, have been vocal about the fact that they believe the bell has effectively tolled on the possibility of Israeli military action.

The view from Israel, however, is far less settled. Take a new report in Israel Defense, a well-regarded strategic intelligence newsletter, which suggests that planning for a military option against Iran hasn’t been tabled, just postponed pending the outcome of the current negotiating track between Iran and the P5+1 powers (the U.S., France, Russia, China, Great Britain and Germany). As the analysis points out, for Israel the operative element of the diplomatic thaw now underway between the Islamic Republic and the West is whether it truly results in an end to Tehran’s pursuit of the atomic bomb.

For the moment, at least, Tehran appears to be playing ball with the international community. On Monday, the UN’s nuclear watchdog, the International Atomic Energy Agency, certified that the Iranian government had ceased enriching uranium above five percent purity, as mandated under the terms of the so-called “joint plan of action” hammered out with the West in Geneva. That deal also stipulates a number of other conditions that Iran will need to fulfill, including a cessation of work at its plutonium reactor at Arak, in exchange for a lifting of some economic sanctions.

### AT: But Obama hates the Policy

#### Obama can hate the policy—but love the authority—proves it’s a loss

Pious 11—Professor of political science @ Barnard College [Richard M. Pious (Chair in History and American Studies @ Barnard College), “Prerogative Power in the Obama Administration: Continuity and Change in the War on Terrorism,” Presidential Studies Quarterly 41, no. 2 (June)]

Obama has taken some steps to recede from the extreme claims of the Bush administration but seems to be developing a variant of “soft prerogative,” in which he keeps the option to act through prerogative power in reserve. In the court cases that have carried over from the Bush administration, he seems to be acting in accordance with the observation of Brad Berenson, a former associate counsel in the Bush White House who pointed out that “The dirty little secret here is that the United States government has enduring institutional interests that carry over from administration to administration and almost always dictate the position the government takes” (Gerstein 2009b). Similarly a law professor at Columbia University, Matthew Waxman, who served as deputy assistant secretary of defense for detainee affairs in the Bush administration, has noted “These are long-standing institutional positions of the executive branch that have historically transcended partisan divides” (Waxman 2010).

Hugh Heclo has analyzed the “deep structure” of the presidency as an institution (i.e., those parts that do not change when an administration changes) (Heclo 1999). In a related sense, there is a “deep structure” of prerogative claims, which do not change—or change slowly—when partisan control of the White House changes. These include claims of sovereign immunity, official immunities involving duties of officials, testimonial privileges (executive, departmental, lawyer-client, protective service), and state secrets doctrines, all of which the Obama administration has attempted to extend in court filings. And when there is movement, it seems always to be in the direction of extending claims rather than retracting them. The prerogative claims are then employed to justify (in courts of law and in the court of public opinion) presidential efforts to prevent prosecution of former officials and prevent the establishment of commissions of inquiry.

The Obama administration, in its court filings involving the Bush administration, has distinguished between policy (which is not defended) and privilege. The “deep structure” is not substantive as much as it is a set of privileges that prevent accountability. Obama seems to have made a “non-decision” about most of these privileges, with extensions of some—which not only help the Bush officials, but also may help members of his administration once they leave office. By failing to push for the Dawn Johnsen nomination, and by allowing the acting chief, David Barron, to remain as the top official, Obama has signaled that there will be a great deal of continuity with the Bush administration. Pg. 286-287

### 2NC Courts Link

#### Prez backlash jacks their modeling advantage. Presidential actions determine the image of the nation

**Marshall 08** – Professor of Law @ University of North Carolina [ William P. Marshall, “Eleven Reasons Why Presidential Power Inevitably Expands and Why It Matters,” Boston University Law Review, Vol. 88, Issue 2 (April 2008), pp. 505-522

As Justice Jackson recognized in Youngstown, the power of the Presidency has also been magnified by the nature of media coverage. This coverage, which focuses on the President as the center of national power,66 has only increased since Jackson's day as the dominance of television has increasingly identified the image of the nation with the image of the particular President holding office. 67 The effects of this image are substantial. Because the President is seen as speaking for the nation, the Presidency is imbued with a unique credibility. The President thereby holds an immediate and substantial advantage in any political confrontation. 68 Additionally, unlike the Congress or the Court, the President is uniquely able to demand the attention of the media and, in that way, can influence the Nation's political agenda to an extent that no other individual, or institution, can even approximate. Pg. 516

### AT: U Overhwelms

#### Vote switching possible based on Obama’s standing

KRASUHAAR 13 political editor for National Journal [Josh Krasuhaar, National Journal, “The Iran Deal Puts Pro-Israel Democrats in a Bind” http://www.nationaljournal.com/magazine/the-iran-deal-puts-pro-israel-democrats-in-a-bind-20131121]

All of this puts Democrats, who routinely win overwhelming support from Jewish Americans on Election Day, in an awkward position. Do they stand with the president on politically sensitive foreign policy issues, or stake their own course? That difficult dynamic is currently playing out in Congress, where the Obama administration is resisting a Senate push to maintain tough sanctions against Iran. This week, Obama met with leading senators on the Banking and Foreign Relations committees to dissuade them from their efforts while diplomacy is underway. "There's a fundamental disagreement between the vast majority of Congress and the president when it comes to increasing Iran sanctions right now," said one Democratic operative involved in the advocacy efforts. "Pro-Israel groups, like AIPAC, try to do things in a bipartisan way; they don't like open confrontation. But in this instance, it's hard." That awkwardness has been evident in the lukewarm reaction from many of Obama's Senate Democratic allies to the administration's outreach to Iran. Senate Foreign Relations Committee Chairman Robert Menendez of New Jersey said last week he was concerned that the administration seems "to want the deal almost more than the Iranians." Normally outspoken Sen. Chuck Schumer of New York, a reliable ally of Israel, has been conspicuously quiet about his views on the negotiations. In a CNN interview this month, Democratic Rep. Debbie Wasserman Schultz of Florida, whose job as chairwoman of the Democratic National Committee is to defend the president, notably declined to endorse the administration's approach, focusing instead on Obama's past support of sanctions. This, despite the full-court press from Secretary of State John Kerry, a former congressional colleague. On Tuesday, after meeting with Obama, Menendez and Schumer signed a bipartisan letter to Kerry warning the administration about accepting a deal that would allow Iran to continue its nuclear program. The letter was also signed by Sens. John McCain, R-Ariz., Lindsey Graham, R-S.C., Susan Collins, R-Maine, and Robert Casey, D-Pa. Democrats, of course, realize that the president plays an outsized role in the policy direction of his party. Just as George W. Bush moved the Republican Party in a more hawkish direction during his war-riven presidency, Obama is nudging Democrats away from their traditionally instinctive support for the Jewish state. "I can't remember the last time the differences [between the U.S. and Israel] were this stark," said one former Democratic White House official with ties to the Jewish community. "There's now a little more freedom [for progressive Democrats] to say what they want to say, without fear of getting their tuchus kicked by the organized Jewish community." A Gallup survey conducted this year showed 55 percent of Democrats sympathizing with the Israelis over the Palestinians, compared with 78 percent of Republicans and 63 percent of independents who do so. A landmark Pew poll of American Jews, released in October, showed that 35 percent of Jewish Democrats said they had little or no attachment to Israel, more than double the 15 percent of Jewish Republicans who answered similarly. At the 2012 Democratic National Convention, many delegates booed a platform proposal supporting the move of the U.S. Embassy in Israel from Tel Aviv to Jerusalem. In 2011, Democrats lost Anthony Weiner's heavily Jewish, solidly Democratic Brooklyn House seat because enough Jewish voters wanted to rebuke the president's perceived hostility toward Israel. Pro-Israel advocacy groups rely on the mantra that support for Israel carries overwhelming bipartisan support, a maxim that has held true for decades in Congress. But most also reluctantly acknowledge the growing influence of a faction within the Democratic Party that is more critical of the two countries' close relationship. Within the Jewish community, that faction is represented by J Street, which positions itself as the home for "pro-Israel, pro-peace Americans" and supports the Iran negotiations. "Organizations that claim to represent the American Jewish community are undermining [Obama's] approach by pushing for new and harsher penalties against Iran," the group wrote in an action alert to its members. Some supporters of Israel view J Street with concern. "There's a small cadre of people that comes from the progressive side of the party that are in the business of blaming Israel first. There's a chorus of these guys," said a former Clinton administration foreign policy official. "But that doesn't make them the dominant folks in the policy space of the party, or the Hill." Pro-Israel activists worry that one of the ironies of Obama's situation is that as his poll numbers sink, his interest in striking a deal with Iran will grow because he'll be looking for any bit of positive news that can draw attention away from the health care law's problems. Thus far, Obama's diminished political fortunes aren't deterring Democrats from protecting the administration's prerogatives. Congressional sources expect the Senate Banking Committee, chaired by South Dakota Democrat Tim Johnson, to hold off on any sanctions legislation until there's a resolution to the Iranian negotiations. But if Obama's standing continues to drop, and negotiations produce a deal that Israel doesn't like, don't be surprised to see Democrats become less hesitant about going their own way.

#### Dems are on the fence—Obama’s standing is key to make them hold the line

WIENER 2 – 12 – 14 NJ Jewish News Staff Writer [Robert Wiener, Sen. Menendez defends approach on Iran, http://www.njjewishnews.com/article/21479/sen.-menendez-defends-approach-on-iran#.UwPm3vk\_CQA]

Of the 33 original sponsors of the bill when it was first introduced in mid-December, 15 were Democrats. In subsequent weeks, the Obama administration, which opposes new sanctions, lobbied hard against the bill, and almost no new Democrats signed on.

With that as background, Menendez said on Feb. 6 that dealing with Iran deserved “a spirit of bipartisanship and unity” and rejected bids to make it a partisan issue. “I hope that we will not find ourselves in a partisan process trying to force a vote on a national security matter before its appropriate time,” he said.

Following his lead, the American Israel Public Affairs Committee backed away from pressing for the bill’s passage, saying in a statement: “We agree with the chairman that stopping the Iranian nuclear program should rest on bipartisan support and that there should not be a vote at this time on the measure.”

Nevertheless, Menendez continued to insist in his speech that the deal that led to the six-month interim talks between Iran and the major powers gives up too much in terms of sanctions relief for little of substance. “We have placed our incredibly effective international sanctions regime on the line without clearly defining the parameters of what we expect in a final agreement,” he said.

Menendez also rejected the notion that the bill’s backers were itching for military action against Iran. “The concerns I have raised here are legitimate,” he said. “They are not — as the president’s press secretary has said — ‘war-mongering.’ This is not saber-rattling. It is not Congress wanting to ‘march to war,’ as another White House spokeswoman said — but exactly the opposite.”

Finally, Menendez — unlike a number of Republicans and the Netanyahu government — outlined a goal that would require Iran to cripple although not totally dismantle its nuclear program. “Any final deal must require Iran to dismantle large portions of its illicit nuclear program,” he said. “Any final deal must require Iran to halt its advanced centrifuge R&D activities, reduce the vast majority of its 20,000 centrifuges, close the Fordow facility, stop the heavy-water reactor at Arak from ever possibly coming on-line.

“And it should require Iran’s full disclosure of its nuclear activities — including its weaponization activities.”

‘Beginning to sway’

Opponents of new sanctions say they could scuttle talks between Iran and the major powers and rupture the international alliance that nudged Iran to the table.

Doni Remba of Westfield, cochair of the Central Jersey branch of J Street, called proposed new sanctions “a counterproductive strategy that would backfire.”

Remba said the sanctions bill carried “a very serious risk that we would be empowering the hardliners in Iran to torpedo these negotiations. We would be giving the hardliners a real basis to believe that the United States was not honoring its agreement with Iran and that we are not willing to give them the opportunity to negotiate with them in good faith. It makes no sense to follow a path that satisfies our gut need to be tough on Iran if in fact the most likely outcome of that approach would be to shoot ourselves in the foot.”

Some local observers, however, lamented the demise of the Kirk-Menendez bill, sharing the New Jersey senator’s concerns that the U.S. and Western powers are not negotiating with Iran from a position of strength.

“Because of the administration’s insistence that ‘we are all for peace’ people are beginning to sway. The people who say they are on the fence might be swaying toward the more leftist position. But the people who are pro-Israel are becoming more supportive of Menendez,” said Jim Daniels of Short Hills, the Iranian-born chair of the Stop Iran Now Task Force of the Community Relations Committee of Greater MetroWest NJ.

### 2NC/1NR AT: Thumpers

#### It’s not a capital disad—random fights won’t trigger the link. It’s a foreign policy cred disad—with a losers-lose warrant for why voters would defect.

#### PLUS—a fight doesn’t mean a loss for Obama—no reason he’ll lose standing to the degree of the plan. LOOMIS is far more specific—plan is a major shot at the presidency.

#### No thumpers – election mode means all controversies being put off

THE HILL 2 – 12 – 14 [Election mode hits the Capitol, http://thehill.com/homenews/198160-election-mode-hits-the-capitol]

Democrats and Republicans are clearing the decks of dangerous political issues that could sink their chances in the midterm elections.

This unusually cautious approach comes nine months before Election Day and illustrates how both parties are reluctant to tackle anything that doesn’t poll well. With the battle for control of the Senate projected to be extremely close, neither side wants to drift into a sudden political storm.

Speaker John Boehner (R-Ohio), who is likely to hold his majority in the House, made clear Tuesday he does not want to squander his political capital in another vicious fiscal fight///

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The GOP’s approval rating dropped to historically low levels in October, after a conservative rebellion helped lead to a government shutdown.

Last week, Boehner all but pronounced immigration reform — another dangerous issue for the GOP — dead for the remainder of 2014.

Senate Majority Leader Harry Reid (D-Nev.) is using the same playbook.

He slammed the brakes on trade promotion authority legislation — which labor unions staunchly oppose — less than a day after President Obama called for it at the State of the Union address. And Reid is not expected to bring a Democratic budget resolution to the floor this year, either.

Obama, meanwhile, has postponed various facets of the implementation of the unpopular Affordable Care Act, including yet another delay to the employer mandate.

Political operatives say the actions of both parties show there no longer is a respite from election-year maneuvering.

“The pattern has always been closer to the election, the less controversial activity takes place,” said Stuart Roy, a Republican strategist who formerly worked for Senate and House GOP leaders. “Instead of happening a few months out from the election, now we’re seeing the entire legislative year becoming a legislative and regulatory graveyard.”

Obama on Tuesday downplayed the delay of the employer mandate as something that would give businesses a chance “to get right with the law” and said it would affect only a “small percentage” of them.

“Any negative impact of the employer mandate, in terms of companies changing or dropping insurance coverage, those notices would have gone out to employees in some fashion prior to the election and caused problems and turmoil,” Roy said. “Delaying the employer mandate is absolutely tied to November.”

### AT: NSA, etc. Thumpers

#### Obama isn’t making NSA changes – wants to save capital

BURNETT 1 – 10 – 14 Berkeley Writer [Bob Burnett, THE PUBLIC EYE: Why Hasn’t Obama Reined in NSA?, http://www.berkeleydailyplanet.com/issue/2014-01-18/article/41763?headline=THE-PUBLIC-EYE-Why-Hasn-t-Obama-Reined-in-NSA---By-Bob-Burnett]

After the 2008 election, Barack Obama supporters had high expectations for his national-security policy. We thought he’d end US involvement in Iraq and Afghanistan, and open talks with Iran. We expected he would close down Guantanamo and end the National Security Agency’s (NSA) domestic surveillance program that collects Americans’ phone and e-mail data. He’s accomplished some of these objectives but he hasn’t reined in the NSA. Why not?

Writing in the New Yorker, Ryan Lizza observed that before becoming President, Obama was inconsistent on national security policy and the NSA. “In 2003, as a Senate candidate, he called the Patriot Act ‘shoddy and dangerous.’ And at the 2004 Democratic Convention… he took aim at the ‘library records’ provision of the law.“ Nonetheless, in in 2006 Obama voted for a renewal of the Patriot Act.

As a presidential candidate, Obama’s attitude appeared to shift. In 2007, Obama criticized Bush, "This administration acts like violating civil liberties is the way to enhance civil liberties. It is not. There are no shortcuts to protecting America." In an August 2007, campaign speech Obama criticized, “unchecked presidential power” and vowed a change in national security policy: “that means no more illegal wiretapping of American citizens, no more national-security letters to spy on citizens who are not suspected of a crime… [and] no more ignoring the law when it is inconvenient.”

Nonetheless, Obama’s presidential record has been disappointing. Lizza noted:

It is evident from the Snowden leaks that Obama inherited [from George Bush] a regime of dragnet surveillance that often operated outside the law and raised serious constitutional questions. Instead of shutting down or scaling back the programs, Obama has worked to bring them into narrow compliance with rules—set forth by a court that operates in secret—that often contradict the views on surveillance that he strongly expressed when he was a senator and a Presidential candidate.

 A recent New York Times editorial noted:

■ The N.S.A. broke federal privacy laws, or exceeded its authority, thousands of times per year, according to the agency’s own internal auditor. ■ The agency broke into the communications links of major data centers around the world, allowing it to spy on hundreds of millions of user accounts and infuriating the Internet companies that own the centers. ■ The N.S.A. systematically undermined the basic encryption systems of the Internet, making it impossible to know if sensitive banking or medical data is truly private, damaging businesses that depended on this trust.

 There are three explanations for the President’s weak NSA policy.

1. Obama decided not to expend political capital changing it. Given the economic problems he inherited from George Bush, plus the difficulty of working with a divided Congress, Obama may have decided it was not worth the effort////

 to rein in the NSA. That’s been true of national security in general. Obama had increased defense spending, expanded the national-security state, and maintained the hundreds of US military bases that dot the globe. Obama tried to shut down Guantanamo but was thwarted by Congress.

2. Since becoming President, Obama has been in a national security bubble. Writing in the New York Times, Peter Baker reported that “the evening before he was sworn into office, Barack Obama [was informed] of a major terrorist plot to attack his inauguration.” (This turned out to be a false alarm.) In December of 2009, the President was shaken by the failed attack of Umar Farouk Abdulmutallab who tried to detonate an underwear bomb as his plane landed in Detroit.

Over the past five years, the intelligence community has alerted Obama to dozens of potential attacks. That’s affected him. This past June Obama defended NSA surveillance, saying, “We know of at least 50 threats that have been averted because of this information.” (Pro Publica reports that the NSA has provided specifics on only four of these cases and there is little support for the President’s contention that NSA surveillance actually “averted” these threats.)

3. The National Security State is too powerful to change. The President may have decided that it was impossible to make major changes to NSA, and the gargantuan national-security state, so he opted to “bring them into narrow compliance with rules.” Obama inherited a pit bull and decided to handle it with extreme care.

Both the New York Times and Ryan Lizza reported that James Clapper, the director of National Intelligence who oversees NSA, lied to Congress, in March, when he denied that NSA was collecting data on millions of Americans. It wasn’t the first time the national-security state deceived us. Their litany of falsehoods and screw-ups stretches from Pearl Harbor through the Vietnam War to the 9/11 attacks and the decision to invade Iraq.

We may never know why President Obama has continued the Bush-era domestic surveillance programs. Whatever his reasoning, it’s time for him to rein in the NSA.

## \*\*\* 2NR

### Yes Strikes

#### No defense—Israeli anxiety is extreme and even defensive measures escalate

Ehud Eiran 13 is an Assistant Professor at the University of Haifa and an Affiliate of the Middle East Negotiation Initiative at the Program on Negotiation, Harvard Law School. Eiran is also a former Assistant to the Foreign Policy Advisor to Israel’s Prime Minister. The Sum of all Fears: Israel’s Perception of a Nuclear-Armed Iran, http://live.belfercenter.org/files/thesumofallfears.pdf, The Washington Quarterly • 36:3 pp. 7789

First, Israel not only has a particular view of the threat posed by the military dimension of the Iranian nuclear program, it also has an independent means of taking action to alleviate its fears. Although Israel is less capable than the United States, if Israel were to launch strikes on Iran to set back the nuclear program, the effects would ripple across the region and beyond. Meir Dagan, former head of Israel’s external intelligence agency, the Mossad, warned a number of times that an Israeli attack on Iran would ‘‘ignite a regional war.’’1

Second, Israel’s anxieties over Iran could produce a series of defensive moves and escalating responses which spiral out of control in a manner that neither side intends. As the history of war and conflict in the Middle East from the June 1967 Six-Day War to the November 2012 round of violence between Israel and the Gaza-based Hamas reminds us, the Middle East is a tinderbox where a few sparks could all too easily ignite a major conflagration.

Finally, as President Obama’s March 2013 visit to Israel demonstrated, Israel’s fears of Iran have become an inescapable and urgent concern for U.S. policy in the Middle East. Given the U.S.—Israeli friendship, President Obama will need to pay close attention to these sensitivities toward Iran. A clear understanding of Israeli perceptions of Iran will remain essential to U.S. policy toward Tehran.