## \*\*\* 1NC

### 1NC—GSpec

#### Court affs must specify the grounds of the ruling. Evaluate this through competing interpretations.

#### Best for education—the rationale is the most important part—they moot a huge percentage of the literature

SUTTON 1—Circuit Judge, United States Court of Appeals for the Sixth Circuit [Sutton, Jeffrey S. Michigan Law Review April 2010]

The opinion-writing process provides another constraint. Unlike the democratically elected branches of the federal government, federal appellate judges must explain their decisions in writing. The processnot only improves the decision-making process, but it also disciplines judges to ensure that their votes amount to more than intuition and impulse. No doubt, as Posner rightly points out, this still leaves considerable room for rationalization and "fig-leafing" (p. 350)--giving decisions the veneer, if not the substance, of legal reasoning. Iagree with Posner that the courts should be more candid about the key explanations for their decisions. All too often opinions amount to a blurring array of citations, which **obscure rather than highlight the critical choices made by the court.** Most issues in most cases usually turn on one point, whether a pragmatic or a legalistic one. Posneris right to suggest that judges should feature and develop these points rather than bury them in a haystack of citations. One reason Posner's opinions are so influential is that they do just that. Others should follow his example.

#### Key to ground—all court arguments about the rulings—not abstract deicisons—not specifying structurally biases the literature for the aff.

#### Takes out solves—vote neg on presumpti-no ground to model

### 1NC CP

#### Text:

#### United States Congress should restrict the authority of the President of the United States to detain individuals indefinitely by repealing the provisions of the National Defense Authorization Act of 2012 which authorize indefinite detention.

#### Congressional opposition to the authority curbs Presidential action—robust statistical and empirical proof

KRINER 10 Assistant professor of political science at Boston University [Douglas L. Kriner, “After the Rubicon: Congress, Presidents, and the Politics of Waging War”, page 228-231]

Conclusion

The sequence of events leading up to the sudden reversal of administration policy and the dramatic withdrawal of U.S. Marines from Lebanon clearly demonstrates that open congressional opposition to Reagan's conduct of the mission in Beirut was critically important in precipitating the change in course. By tracing the pathways of congressional in- fluence, the case study achieves two important objectives. First, it vividly illustrates Congress's capacity to influence the scope and duration of a use of force independent of major shifts in public opinion and changing conditions on the ground. The analysis makes clear that there was no dramatic shift in public opinion after the Beirut barracks bombing that compelled the Reagan administration to withdraw the Marines; in fact, in the wake of the attack the public rallied behind the president. As such, opponents of Reagan's policies in Congress initially fought against the tide of public opinion, and the modest decline in popular support for the president's handling of the Lebanon mission occurred only after a sustained campaign against the deployment on Capitol Hilt.89 Similarly, the administration's own internal analysis of the situation in early January 1984 makes clear that changing conditions on the ground did not necessitate a dramatic change in the nature of the Marine mission. Indeed, by the National Security Council's own estimate, some conditions in the region were actually improving. Instead, administration officials repeatedly emphasized domestic pressures to curtail the scope and duration of the Marine mission.90 Moreover, as the political and military situation in Lebanon worsened in late January and early February 1984, it is interesting that a number of key administration officials publicly and privately believed that there was a direct link between congressional opposition at home and the deterioration of the situation on the ground in the Middle East.

Second, the case study illustrates how the formal and informal congressional actions examined in the statistical analyses of chapter 4 affected presidential decision-making through the proposed theoretical mechanisms for congressional influence over presidential conduct of military affairs developed in chapter 2. Vocal opposition to the president in Congress-expressed through hearings and legislative initiatives to curtail presidential authority, and the visible defection from the White House of a number of prominent Republicans and erstwhile Democratic allies-raised the political stakes of staying the course in Lebanon. Nothing shook Reagan's basic belief in the benefits to be gained from a strong, defiant stand in Beirut. But the political pressure generated by congressional opposition to his policies on both sides of the aisle raised the likely political costs of obtaining these policy benefits. Congressional opposition also influenced the Reagan administration's decision-making indirectly by affecting its estimate of the military costs that would have to be paid to achieve American objectives. In the final analysis, through both the domestic political costs and signaling mechanisms discussed in chapter 2 , congressional opposition contributed to the administration's ultimate judgment that the benefits the United States might reap by continuing the Marine mission no longer outweighed the heightened political and military costs necessary to obtain them.

Finally, while the Marine mission in Lebanon is admittedly but one case, it is a case that many in the Reagan administration believed had important implications for subsequent military policymaking. In a postmortem review, Don Fortier of the National Security Council and Steve Sestanovich at the State Department warned that the debacle in Lebanon raised the possibility that, in the future, the decision to use force might be akin to an all-or-nothing decision. "If the public and Congress reject any prolonged U.S. role (even when the number of troops is small)," the administration analysts lamented, "we will always be under pressure to resolve problems through briefer, but more massive involvements-or to do nothing at all." Thus, from the administration's "conspicuously losing to the Congress" over Lebanon policy, Fortier and Sestanovich argued that the White House would have to anticipate costly congressional opposition if similar actions were launched in the future and adjust its conduct of military operations accordingly, with the end result being a "narrowing of options" on the table and more "limited flexibility" when deploying major contingents of American military might abroad.91 This last point echoes the first anticipatory mechanism posited in chapter 2, and reminds us that Congress need not overtly act to rein in a military action of which it disapproves for it to have an important influence on the scope and duration of a major military endeavor. Rather, presidents, having observed Congress's capacity to raise the political and tangible costs of a given course of military action, may anticipate the likelihood of congressional opposition and adjust their conduct of military operations accordingly.

### 1NC K

#### Imperialist framing of non-liberal societies as unstable threats justifies eliminating non-liberal forms of life.

Adam David MORTON Politics @ Nottingham 5 [“The ‘Failed State’ of International Relations” *New Political Economy* 10.3 p. 372-374]

A pathology of deviancy, aberration and breakdown

Emergent across a host of contemporary institutions is a policy-making consensus linked to the threat posed by ‘failed states’ and the new set of associated security, development and humanitarian challenges. Hilary Benn, Secretary of State for International Development in the UK, has recently stated that ‘weak states present a challenge to our system of global governance. For the international system to work, it depends on strong states . . . that are able to deliver services to their populations, to represent their citizens, to control activities on their territory, and to uphold international norms, treaties, and agreements.’ By contrast, ‘weak and failing states provide a breeding ground for international crime’, harbour terrorists and threaten the achievement of the Millennium Development Goals with the spread of HIV/AIDS, refugee flows and poverty.3 This identified perfusion of warlords, criminals, drug barons and terrorists within ‘failed states’ has become a central policy-making concern within the UK and the US.4 Institutions in the UK such as the Foreign and Commonwealth Office (FCO), the Ministry of Defence (MOD), the Department for International Development (DfID) and the Overseas Development Institute (ODI) support the view of ‘failed states’ as representing deviancy from the norms of Western statehood. The aforementioned CRI programme emerging from Tony Blair’s Strategy Unit develops a focus on ‘fragile states’ in conditions of crisis. Preliminary policy documents have highlighted the breakdown of political, economic and social institutions; the loss of territorial control; civil unrest; mass population displacement; and violent internal conflict in states as diverse as Somalia, the Democratic Republic of Congo (DRC), Sudan, the Central African Republic, Liberia, Sierra Leone and Coˆte d’Ivoire. At the centre of the most recently launched Commission for Africa report, Our Common Interest, is also ‘the long-term vision for international engagement in fragile states . . . to build legitimate, effective and resilient state institutions’.6 As Blair indicated in launching this report, ‘to tackle the instability, conflict, and despair which disfigures too much of Africa and which can fuel extremism and violence, is to help build our own long-term peace and prosperity’.7 Elsewhere, the putative ‘better effects of empire’ (such as inward investment, pacification and impartial administration) have been heralded as central to United Nations strategy on state-building within weak states based on a re-consideration of models of trusteeship.8 The United States National Security Strategy has also announced that ‘America is now threatened less by conquering states than we are by failing ones’, and the United States Agency for International Development (USAID) has similarly produced a ‘Fragile States Strategy’ focusing on the problems of governance and civil conflict arising from poor state capacity and effectiveness.9 This policy-making approach represents a pathological view of conditions in colonial states as characterised by deviancy, aberration and breakdown from the norms of Western statehood.10 It is a view perhaps most starkly supported in the scholarly community by Robert Kaplan’s vision of the ‘coming anarchy’ in West Africa as a predicament that will soon confront the rest of the world. In his words: The coming upheaval, in which foreign embassies are shut down, states collapse, and contact with the outside world takes place through dangerous, disease-ridden coastal trading posts, will loom large in the century we are entering.11 Hence a presumed reversion ‘to the Africa of the Victorian atlas’, which ‘consists now of a series of coastal trading posts . . . and an interior that, owing to violence, and disease, is again becoming . . . “blank” and “unexplored”’.12 Similarly, Samuel Huntington has referred to ‘a global breakdown of law and order, failed states, and increasing anarchy in many parts of the world’, yielding a ‘global Dark Ages’ about to descend on humanity. The threat here is characterised as a resurgence of non-Western power generating conflictual civilisational faultlines. For Huntington’s supposition is that ‘the crescent-shaped Islamic bloc . . . from the bulge of Africa to central Asia . . . has bloody borders’ and ‘bloody innards’.13 In the similar opinion of Francis Fukuyama: Weak or failing states commit human rights abuses, provoke humanitarian disasters, drive massive waves of immigration, and attack their neighbours. Since September 11, it also has been clear that they shelter international terrorists who can do significant damage to the United States and other developed countries.14 Finally, the prevalence of warlords, disorder and anomic behaviour is regarded by Robert Rotberg as the primary causal factor behind the proliferation of ‘failed states’. The leadership faults of figures such as Siakka Stevens (Sierra Leone), Mobutu Sese Seko (Zaıre), Siad Barre (Somalia) or Charles Taylor (Liberia) are therefore condemned. Again, though, the analysis relies on an internalist account of the ‘process of decay’, of ‘shadowy insurgents’, of states that exist merely as ‘black holes’, of ‘dark energy’ and ‘forces of entropy’ that cast gloom over previous semblances of order.15 Overall, within these representations of deviancy, aberration and breakdown, there is a significant signalling function contained within the metaphors: of darkness, emptiness, blankness, decay, black holes and shadows. There is, then, a dominant view of postcolonial states that is imbued with the imperial representations of the past based on a discursive economy that renews a focus on the postcolonial world as a site of danger, anarchy and disorder. In response to such dangers, Robert Jackson has raised complex questions about the extent to which international society should intervene in ‘quasi-’ or ‘failed states’ to restore domestic conditions of security and freedom.16 Indeed, he has entertained the notion of some form of international trusteeship for former colonies that would control the ‘chaos and barbarism from within’ such ‘incorrigibly delinquent countries’ as Afghanistan, Cambodia, Haiti and Sudan with a view to establishing a ‘reformation of decolonisation’.17 Andrew Linklater has similarly stated that ‘the plight of the quasi-state may require a bold experiment with forms of international government which assume temporary responsibility for the welfare of vulnerable populations’.18 In the opinion of some specialists, this is because ‘such weak states are not able to stand on their own feet in the international system’.19 Whilst the extreme scenario of sanctioning state failure has been contemplated, the common response is to rejuvenate forms of international imperium through global governance structures.20 Backers of a ‘new humanitarian empire’ have therefore emerged, proposing the recreation of semi-permanent colonial relationships and the furtherance of Western ‘universal’ values, and, in so doing, echoing the earlier mandatory system of imperial rule.21 In Robert Keohane’s view, ‘future military actions in failed states, or attempts to bolster states that are in danger of failing, may be more likely to be described both as self-defence and as humanitarian or public-spirited’.22

#### It’s try or die—this new colonialism dehumanizes populations resulting in unending violence

Batur 7 [Pinar, PhD @ UT-Austin – Prof. of Sociology @ Vassar, *The Heart of Violence: Global Racism, War, and Genocide*, Handbook of The Sociology of Racial and Ethnic Relations, eds. Vera and Feagin, p. 441-3]

War and genocide are horrid, and taking them for granted is inhuman. In the 21st century, our problem is not only seeing them as natural and inevitable, but even worse: not seeing, not noticing, but ignoring them. Such act and thought, fueled by global racism, reveal that racial inequality has advanced from the establishment of racial hierarchy and institutionalization of segregation, to the confinement and exclusion, and elimination, of those considered inferior through genocide. In this trajectory, global racism manifests genocide. But this is not inevitable. This article, by examining global racism, explores the new terms of exclusion and the path to permanent war and genocide, to examine the integrality of genocide to the frame-work of global antiracist confrontation. GLOBAL RACISM IN THE AGE OF “CULTURE WARS” Racist legitimization of inequality has changed from presupposed biological inferiority to assumed cultural inadequacy. This defines the new terms of impossibility of coexistence, much less equality. The Jim Crow racism of biological inferiority is now being replaced with a new and modern racism (Baker 1981; Ansell 1997) with “culture war” as the key to justify difference, hierarchy, and oppression. The ideology of “culture war” is becoming embedded in institutions, defining the workings of organizations, and is now defended by individuals who argue that they are not racist, but are not blind to the inherent differences between African-Americans/Arabs/Chinese, or whomever, and “us.” “Us” as a concept defines the power of a group to distinguish itself and to assign a superior value to its institutions, revealing certainty that **affinity with “them” will be harmful to its existence** (Hunter 1991; Buchanan 2002). How can we conceptualize this shift to examine what has changed over the past century and what has remained the same in a racist society? Joe Feagin examines this question with a theory of systemic racism to explore societal complexity of interconnected elements for longevity and adaptability of racism. He sees that systemic racism persists due to a “white racial frame,” defining and maintaining an “organized set of racialized ideas, stereotypes, emotions, and inclinations to discriminate” (Feagin 2006: 25). The white racial frame arranges the routine operation of racist institutions, which enables social and economic repro-duction and amendment of racial privilege. It is this frame that defines the political and economic bases of cultural and historical legitimization. While the white racial frame is one of the components of systemic racism, it is attached to other terms of racial oppression to forge systemic coherency. It has altered over time from slavery to segregation to racial oppression and now frames “culture war,” or “clash of civilizations,” to legitimate the racist oppression of domination, exclusion, war, and genocide. The concept of “culture war” emerged to define opposing ideas in America regarding privacy, censorship, citizenship rights, and secularism, but it has been globalized through conflicts over immigration, nuclear power, and the “war on terrorism.” Its discourse and action articulate to flood the racial space of systemic racism. Racism is a process of defining and building communities and societies based on racial-ized hierarchy of power. The expansion of capitalism cast new formulas of divisions and oppositions, fostering inequality even while integrating all previous forms of oppressive hierarchical arrangements as long as they bolstered the need to maintain the structure and form of capitalist arrangements (Batur-VanderLippe 1996). In this context, the white racial frame, defining the terms of racist systems of oppression, enabled the globalization of racial space through the articulation of capitalism (Du Bois 1942; Winant 1994). The key to understanding this expansion is comprehension of the synergistic relationship between racist systems of oppression and the capitalist system of exploitation. Taken separately, these two systems would be unable to create such oppression independently. However, the synergy between them is devastating. In the age of industrial capitalism, this synergy manifested itself imperialism and colonialism. In the age of advanced capitalism, it is war and genocide. The capitalist system, by enabling and maintaining the connection between everyday life and the global, buttresses the processes of racial oppression, and synergy between racial oppression and capitalist exploitation begets violence. Etienne Balibar points out that the connection between everyday life and the global is established through thought, making global racism a way of thinking, enabling connections of “words with objects and words with images in order to create concepts” (Balibar 1994: 200). Yet, global racism is not only an articulation of thought, but also a way of knowing and acting, framed by both everyday and global experiences. Synergy between capitalism and racism as systems of oppression enables this perpetuation and destruction on the global level. As capitalism expanded and adapted to the particularities of spatial and temporal variables, global racism became part of its legitimization and accommodation, first in terms of colonialist arrangements. In colonized and colonizing lands, global racism has been perpetuated through racial ideologies and discriminatory practices under capitalism by the creation and recreation of connections among memory, knowledge, institutions, and construction of the future in thought and action. What makes racism global are the bridges connecting the particularities of everyday racist experiences to the universality of racist concepts and actions, maintained globally by myriad forms of prejudice, discrimination, and violence (Balibar and Wallerstein 1991; Batur 1999, 2006). Under colonialism, colonizing and colonized societies were antagonistic opposites. Since colonizing society portrayed the colonized “other,” as the adversary and challenger of the “the ideal self,” not only identification but also segregation and containment were essential to racist policies. The terms of exclusion were set by the institutions that fostered and maintained segregation, but the intensity of exclusion, and redundancy, became more apparent in the age of advanced capitalism, as an extension of post-colonial discipline. The exclusionary measures when tested led to war, and genocide. Although, more often than not, genocide was perpetuated and fostered by the post-colonial institutions, rather than colonizing forces, the colonial identification of the “inferior other” led to segregation, then exclusion, then war and genocide. Violence glued them together into seamless continuity. Violence is integral to understanding global racism. Fanon (1963), in exploring colonial oppression, discusses how divisions created or reinforced by colonialism guarantee the perpetuation, and escalation, of violence for both the colonizer and colonized. Racial differentiations, cemented through the colonial relationship, are integral to the aggregation of violence during and after colonialism: “Manichaeism [division of the universe into opposites of good and evil] goes to its logical conclusion and dehumanizes” (Fanon 1963:42). Within this dehumanizing framework, Fanon argues that the violence resulting from the destruction of everyday life, sense of self and imagination under colonialism continues to infest the post-colonial existence by integrating colonized land into the violent destruction of a new “geography of hunger” and exploitation (Fanon 1963: 96). The “geography of hunger” marks the context and space in which oppression and exploitation continue. The historical maps drawn by colonialism now demarcate the boundaries of post-colonial arrangements. The white racial frame restructures this space to fit the imagery of symbolic racism, modifying it to fit the television screen, or making the evidence of the necessity of the politics of exclusion, and the violence of war and genocide, palatable enough for the front page of newspapers, spread out next to the morning breakfast cereal. Two examples of this “geography of hunger and exploitation” are Iraq and New Orleans.

#### Alternative—Challenge to *conceptual* framework of national security and legal modeling. Only our alternative displaces the source of executive overreach. Legal restraint without conceptual change is futile.

Aziz RANA Law at Cornell 11 [“Who Decides on Security?” Cornell Law Faculty Working Papers, Paper 87, http://scholarship.law.cornell.edu/clsops\_papers/87 p. 45-51]

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

#### Clean Debt Ceiling vote will pass

BLOOMBERG 9 – 20 – 13 Senate Budget Chief Sees Republican Yield on Debt Lifting, http://www.bloomberg.com/news/2013-09-19/senate-budget-chief-sees-republican-yield-on-debt-lifting.html

Republicans seeking to curb President Barack Obama’s health-care law probably will capitulate to demands from Democrats to enact a “clean” bill raising the nation’s debt ceiling, the Senate’s top Democratic budget writer said.

“I see no deals on the debt ceiling,” Senator Patty Murray of Washington state, who leads the Budget Committee, said in an interview on Bloomberg Television’s “Political Capital with Al Hunt” airing this weekend.

“The downside of not paying our bills is our credit-rating tanks,” Murray said. “That affects every family, every business, every community. It affects Main Street. It affects Wall Street.”

Murray said she also expects Republicans to relent on their demands for stripping spending from Obama’s health plan as part of action on a spending bill needed to keep the government running after Sept. 30.

Republicans led by House Speaker John Boehner of Ohio have clashed with Obama over the debt ceiling, with the lawmakers demanding changes to spending programs as a condition of raising the $16.7 trillion federal borrowing limit.

Republicans “will come together with some mishmash policy of everything in the bag they’ve ever promised” to anti-tax Tea Party activists, though “they haven’t been able to get the votes for anything yet,” said Murray, 62, fourth-ranking Democrat in the Senate’s leadership.

#### Courts link

Mirengoff 10 [Paul E. Mirengoff, JD Stanford, Attorney in DC, http://webcache.googleusercontent.com/search?q=cache:aNOGdaFrKhYJ:www.fed-soc.org/debates/dbtid.41/default.asp+obama+minimalism+blame+court+confirmation&cd=1&hl=en&ct=clnk&gl=us&client=firefox-a, 6-23-10]

There's a chance that the Democrats' latest partisan innovation will come back to haunt them. Justice Sotomayor and soon-to-be Justice Kagan are on record having articulated a traditional, fairly minimalist view of the role of judges. If a liberal majority were to emerge -- or even if the liberals prevail in a few high profile cases -- the charge of "deceptive testimony" could be turned against them. And if Barack Obama is still president at that time, he likely will receive some of the blame.

#### Restricting detention links

CCR 11 Center for Constitutional Rights [Detained Man Describes Peaceful Protests Against Indefinite Detention at Guantánamo, http://yubanet.com/usa/Detained-Man-Describes-Peaceful-Protests-Against-Indefinite-Detention-at-Guant-namo.php#.Ujn\_vMbYuYQ]

Upon the anniversary of President Obama's broken promise to close Guantánamo, the Center for Constitutional Rights (CCR) reported that a man detained at the prison, who prefers to remain anonymous, told his attorney during an unclassified call of a spontaneous peaceful protest that has swept through Camp 6, where most of the remaining detainees are currently being held. He described signs the men have posted demanding justice and humane treatment. The protest began because the government has been transferring—sometimes by force—detainees from the communal facility that had previously held most of the men, Camp 4, to the solitary-celled, Supermax-style facility of Camp 6. The detained man said the protest was inspired by news of the recent revolution in Tunisia. The detainees object to the move because of worse conditions in Camp 6, and because of their accurate perception that the move is a signal that the Obama administration has no plans to send them home anytime soon. See below for more information on the protest, language from the protest signs and excerpts from the unclassified attorney call with the detained man who reported the protest. CCR also released the following statement:

In the last presidential election, both candidates campaigned on a promise to close Guantánamo—an international symbol of injustice that both men acknowledged was damaging U.S. foreign policy and national security interests. Today, on the eve of the first anniversary of President Obama's failed deadline to close Guantánamo, it is clear that all three branches of government have effectively abandoned that goal.

The President continues to make hollow assertions that closing Guantánamo is the right thing to do and will make the U.S. safer. Yet, he has shown no willingness to use political capital to pursue that goal against strident opposition from demagogues in Congress and the media. In the absence of presidential leadership, both parties in Congress continue to block transfers out of Guantánamo, even for men who have successfully challenged the legality of their detention or who have been cleared for release by the administration's own thorough review process. With the Supreme Court now largely removed from the picture, thanks to the likely recusal of Justice Elena Kagan from cases involving detainee affairs because of her previous role as Solicitor General, the Court of Appeals for D.C.—the most deferential in the country to executive claims of authority—has raised the burden on detained men seeking relief through the courts to levels even higher than the government has requested.

#### Losing authority would embolden the GOP on the debt ceiling fight

SEEKING ALPHA 9 – 10 – 13 [“Syria Could Upend Debt Ceiling Fight” http://seekingalpha.com/article/1684082-syria-could-upend-debt-ceiling-fight]

Unless President Obama can totally change a reluctant public's perception of another Middle-Eastern conflict, it seems unlikely that he can get 218 votes in the House, though he can probably still squeak out 60 votes in the Senate. This defeat would be totally unprecedented as a President has never lost a military authorization vote in American history. To forbid the Commander-in-Chief of his primary power renders him all but impotent. At this point, a rebuff from the House is a 67%-75% probability.

I reach this probability by looking within the whip count. I assume the 164 declared "no" votes will stay in the "no" column. To get to 218, Obama needs to win over 193 of the 244 undecided, a gargantuan task. Within the "no" column, there are 137 Republicans. Under a best case scenario, Boehner could corral 50 "yes" votes, which would require Obama to pick up 168 of the 200 Democrats, 84%. Many of these Democrats rode to power because of their opposition to Iraq, which makes it difficult for them to support military conflict. The only way to generate near unanimity among the undecided Democrats is if they choose to support the President (recognizing the political ramifications of a defeat) despite personal misgivings. The idea that all undecided Democrats can be convinced of this argument is relatively slim, especially as there are few votes to lose. In the best case scenario, the House could reach 223-225 votes, barely enough to get it through. Under the worst case, there are only 150 votes. Given the lopsided nature of the breakdown, the chance of House passage is about one in four.

While a failure in the House would put action against Syria in limbo, I have felt that the market has overstated the impact of a strike there, which would be limited in nature. Rather, investors should focus on the profound ripple through the power structure in Washington, which would greatly impact impending battles over spending and the debt ceiling. Currently, the government loses spending authority on September 30 while it hits the debt ceiling by the middle of October. Markets have generally felt that Washington will once again strike a last-minute deal and avert total catastrophe. Failure in the Syrian vote could change this. For the Republicans to beat Obama on a President's strength (foreign military action), they will likely be emboldened that they can beat him on domestic spending issues. Until now, consensus has been that the two sides would compromise to fund the government at sequester levels while passing a $1 trillion stand-alone debt ceiling increase. However, the right wing of Boehner's caucus has been pushing for more, including another $1 trillion in spending cuts, defunding of Obamacare, and a one year delay of the individual mandate. Already, Conservative PACs have begun airing advertisements, urging a debt ceiling fight over Obamacare. With the President rendered hapless on Syria, they will become even more vocal about their hardline resolution, setting us up for a showdown that will rival 2011's debt ceiling fight.

I currently believe the two sides will pass a short-term continuing resolution to keep the government open, and then the GOP will wage a massive fight over the debt ceiling. While Obama will be weakened, he will be unwilling to undermine his major achievement, his healthcare law. In all likelihood, both sides will dig in their respective trenches, unwilling to strike a deal, essentially in a game of chicken. If the House blocks Syrian action, it will take America as close to a default as it did in 2011. Based on the market action then, we can expect massive volatility in the final days of the showdown with the Dow falling 500 points in one session in 2011. As markets panicked over the potential for a U.S. default, we saw a massive risk-off trade, moving from equities into Treasuries. I think there is a significant chance we see something similar this late September into October. The Syrian vote has major implications on the power of Obama and the far-right when it comes to their willingness to fight over the debt ceiling. If the Syrian resolution fails, the debt ceiling fight will be even worse, which will send equities lower by upwards of 10%.

Investors must be prepared for this "black swan" event. Looking back to August 2011, stocks that performed the best were dividend paying, less-cyclical companies like Verizon (VZ), Wal-Mart (WMT), Coca-Cola (KO) and McDonald's (MCD) while high beta names like Netflix (NFLX) and Boeing (BA) were crushed. Investors also flocked into treasuries despite default risk while dumping lower quality bonds as spreads widened. The flight to safety helped treasuries despite U.S. government issues. I think we are likely to see a similar move this time. Assuming there is a Syrian "no" vote, I would begin to roll back my long exposure in the stock market and reallocate funds into treasuries as I believe yields could drop back towards 2.50%. Within the stock market, I think the less-cyclical names should outperform, making utilities and consumer staples more attractive. For more tactical traders, I would consider buying puts against the S&P 500 and look toward shorting higher-beta and defense stocks like Boeing and Lockheed Martin (LMT). I also think lower quality bonds would suffer as spreads widen, making funds like JNK vulnerable. Conversely, gold (GLD) should benefit from the fear trade. I would also like to address the potential that Congress does not vote down the Syrian resolution. First, news has broken that Russia has proposed Syria turn over its chemical stockpile. If Syria were to agree (Syria said it was willing to consider), the U.S. would not have to strike, canceling the congressional vote. The proposal can be found here. I strongly believe this is a delaying tactic rather than a serious effort. In 2005, Libya began to turn over chemical weapons; it has yet to complete the hand-off. Removing and destroying chemical weapons is an exceptionally challenging and dangerous task that would take years, not weeks, making this deal seem unrealistic, especially because a cease-fire would be required around all chemical facilities. The idea that a cease-fire could be maintained for months, essentially allowing Assad to stay in office, is hard to take seriously. I believe this is a delaying tactic, and Congress will have to vote within the next two weeks. The final possibility is that Democrats back their President and barely ram the Syria resolution through. I think the extreme risk of a full-blown debt stand-off to dissipate. However, Boehner has promised a strong fight over the debt limit that the market has largely ignored. I do believe the fight would still be worse than the market anticipates but not outright disastrous. As such, I would not initiate short positions, but I would trim some longs and move into less cyclical stocks as the risk would still be the debt ceiling fight leading to some drama not no drama. Remember, in politics everything is connected. Syria is not a stand-alone issue. Its resolution will impact the power structure in Washington. A failed vote in Congress is likely to make the debt ceiling fight even worse, spooking markets, and threatening default on U.S. obligations unless another last minute deal can be struck.

#### Destroys the global economy

DAVIDSON 9 – 15 – 13 co-founder and co-host of Planet Money, a co-production of the NYT and NPR [Adam Davidson, Our Debt to Society, http://www.nytimes.com/2013/09/15/magazine/our-debt-to-society.html?pagewanted=all&\_r=1&]

The Daily Treasury Statement, a public accounting of what the U.S. government spends and receives each day, shows how money really works in Washington. On Aug. 27, the government took in $29 million in repaid agricultural loans; $75 million in customs and duties; $38 million in the repayment of TARP loans; some $310 million in taxes; and so forth. That same day, the government also had bills to pay: $247 million in veterans-affairs programs; $2.5 billion to Medicare and Medicaid; $1.5 billion each to the departments of Education and Defense. By the close of that Tuesday, when all the spending and the taxing had been completed, the government paid out nearly $6 billion more than it took in.

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

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

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

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

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

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

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

### 1NC Solvency

#### 1. Turn—Deference. Judicial involvement in war power authority debates turns and escalates every impact

POSNER & VERMEULE 7—\*Eric A. Posner, Professor of Law at the University of Chicago Law School AND \*\*Adrian Vermeule, Professor of Law at Harvard [*Terror in the Balance: Security, Liberty, and the Courts*, Oxford University Press, pg. 17-18]

Whatever the doctrinal formulation, the basic distinction between the two views is that our view counsels courts to provide high deference during emergencies, as courts have actually done, whereas the civil libertarian view does not. During normal times, the deferential view and the civil libertarian view permit the same kinds of executive action, and during war or other emergencies, the deferential view permits more kinds of executive action than the civil libertarian view does. We assume that courts have historically provided extra deference during an emergency or war because they believe that deference enables the government, especially the executive, to act quickly and decisively. Although deference also permits the government to violate rights, violations that are intolerable during normal times become tolerable when the stakes are higher. Civil libertarians, on the other hand, claim either that government action is likely to be worse during emergencies than during normal times, or at least that no extra deference should be afforded to government decisionmaking in times of emergency-and that therefore the deferential position that judges have historically taken in emergencies is a mistake.

The deferential view does not rest on a conceptual claim; it rests on a claim about relative institutional competence and about the comparative statics of governmental and judicial performance across emergencies and normal times. In emergencies, the ordinary life of the nation, and the bureaucratic and legal routines that have been developed in ordinary times, are disrupted. In the case of wars, including the "war on terror," the government and the public are not aware of a threat to national security at time 0. At time 1, an invasion or declaration of war by a foreign power reveals the existence of the threat and may at the same time cause substantial losses. At time 2, an emergency response is undertaken.

Several characteristics of the emergency are worthy of note. First, the threat reduces the social pie-both immediately, to the extent that it is manifested in an attack, and prospectively, to the extent that it reveals that the threatened nation will incur further damage unless it takes costly defensive measures. Second, the defensive measures can be more or less effective. Ideally, the government chooses the least costly means of defusing the threat; typically, this will be some combination of military engagement overseas, increased intelligence gathering, and enhanced policing at home. Third, the defensive measures must be taken quickly, and-because every national threat is unique, unlike ordinary crime-the defensive measures will be extremely hard to evaluate. There are standard ways of preventing and investigating street crime, spouse abuse, child pornography, and the like; and within a range, these ways are constant across jurisdictions and even nation-states. Thus, there is always a template that one can use to evaluate ordinary policing. By contrast, emergency threats vary in their type and magnitude and across jurisdictions, depending heavily on the geopolitical position of the state in question. Thus, there is no general template that can be used for evaluating the government's response.

In emergencies, then, judges are at sea, even more so than are executive officials. The novelty of the threats and of the necessary responses makes judicial routines and evolved legal rules seem inapposite, even obstructive. There is a premium on the executive's capacities for swift, vigorous, and secretive action. Of course, the judges know that executive action may rest on irrational assumptions, or bad motivations, or may otherwise be misguided. But this knowledge is largely useless to the judges, because they cannot sort good executive action from bad, and they know that the delay produced by judicial review is costly in itself. In emergencies, the judges have no sensible alternative but to defer heavily to executive action, and the judges know this.

#### Effective fast response and mission planning is key to deterring every conflict globally

KAGAN & O’HANLON 7—\*Frederick Kagan, resident scholar at AEI & \*\*Michael O’Hanlon, senior fellow in foreign policy at Brookings [“The Case for Larger Ground Forces”, April 2007, <http://www.aei.org/files/2007/04/24/20070424_Kagan20070424.pdf>]

We live at a time when wars not only rage in nearly every region but threaten to erupt in many places where the current relative calm is tenuous. To view this as a strategic military challenge for the United States is not to espouse a specific theory of America’s role in the world or a certain political philosophy. Such an assessment flows directly from the basic bipartisan view of American foreign policy makers since World War II that overseas threats must be countered before they can directly threaten this country’s shores, that the basic stability of the international system is essential to American peace and prosperity, and that no country besides the United States is in a position to lead the way in countering major challenges to the global order. Let us highlight the threats and their consequences with a few concrete examples, emphasizing those that involve key strategic regions of the world such as the Persian Gulf and East Asia, or key potential threats to American security, such as the spread of nuclear weapons and the strengthening of the global Al Qaeda/jihadist movement. The Iranian government has rejected a series of international demands to halt its efforts at enriching uranium and submit to international inspections. What will happen if the US—or Israeli—government becomes convinced that Tehran is on the verge of fielding a nuclear weapon? North Korea, of course, has already done so, and the ripple effects are beginning to spread. Japan’s recent election to supreme power of a leader who has promised to rewrite that country’s constitution to support increased armed forces—and, possibly, even nuclear weapons— may well alter the delicate balance of fear in Northeast Asia fundamentally and rapidly. Also, in the background, at least for now, Sino Taiwanese tensions continue to flare, as do tensions between India and Pakistan, Pakistan and Afghanistan, Venezuela and the United States, and so on. Meanwhile, the world’s nonintervention in Darfur troubles consciences from Europe to America’s Bible Belt to its bastions of liberalism, yet with no serious international forces on offer, the bloodletting will probably, tragically, continue unabated. And as bad as things are in Iraq today, they could get worse. What would happen if the key Shiite figure, Ali al Sistani, were to die? If another major attack on the scale of the Golden Mosque bombing hit either side (or, perhaps, both sides at the same time)? Such deterioration might convince many Americans that the war there truly was lost—but the costs of reaching such a conclusion would be enormous. Afghanistan is somewhat more stable for the moment, although a major Taliban offensive appears to be in the offing.

Sound US grand strategy must proceed from the recognition that, over the next few years and decades, the world is going to be a very unsettled and quite dangerous place, with Al Qaeda and its associated groups as a subset of a much larger set of worries. The only serious response to this international environment is to develop armed forces capable of protecting America’s vital interests throughout this dangerous time. Doing so requires a military capable of a wide range of missions—including not only deterrence of great power conflict in dealing with potential hotspots in Korea, the Taiwan Strait, and the Persian Gulf but also associated with a variety of Special Forces activities and stabilization operations. For today’s US military, which already excels at high technology and is increasingly focused on re-learning the lost art of counterinsurgency, this is first and foremost a question of finding the resources to field a large-enough standing Army and Marine Corps to handle personnel intensive missions such as the ones now under way in Iraq and Afghanistan. Let us hope there will be no such large-scale missions for a while. But preparing for the possibility, while doing whatever we can at this late hour to relieve the pressure on our soldiers and Marines in ongoing operations, is prudent. At worst, the only potential downside to a major program to strengthen the military is the possibility of spending a bit too much money. Recent history shows no link between having a larger military and its overuse; indeed, Ronald Reagan’s time in office was characterized by higher defense budgets and yet much less use of the military, an outcome for which we can hope in the coming years, but hardly guarantee. While the authors disagree between ourselves about proper increases in the size and cost of the military (with O’Hanlon preferring to hold defense to roughly 4 percent of GDP and seeing ground forces increase by a total of perhaps 100,000, and Kagan willing to devote at least 5 percent of GDP to defense as in the Reagan years and increase the Army by at least 250,000), we agree on the need to start expanding ground force capabilities by at least 25,000 a year immediately. Such a measure is not only prudent, it is also badly overdue.

#### 2. Turn—legitimacy—wartime means Obama will ignore the decision. Noncompliance undermines the Court’s legitimacy and makes the plan worthless

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.

Professor Wells could reply that this result would have been better than what happened, which was that the Court engaged in “pretend” review and stained its reputation by upholding the constitutionality of the President’s odious and unwarranted racial discrimination. I would agree. But I submit that the solution in such unique situations (i.e., where a politically strong President has made a final decision and will defy any contrary court judgment) is not judicial review in any form—ordinary, deferential, or hard look. Rather, the Court should simply declare the matter to be a political question and dismiss the case. Although such Bickelian manipulation of the political question doctrine might be legally unprincipled and morally craven, 67 at least it would avoid giving the President political cover by blessing his unconstitutional conduct and instead would force him to shoulder full responsibility. Pg. 968-970

#### Fight with President devastates court legitimacy. Two centuries of judicial decisions prove they can’t solve without his support

Devins & Fisher 98—Professor of Law and Government @ College of William and Mary & Senior Specialist in Separation of Powers @ Congressional Research Service [Neal Devins & Louis Fisher, “Judicial Exclusivity and Political Instability,” Virginia Law Review Vol. 84, No. 1 (Feb. 1998), pp. 83-106]

Lacking the power to appropriate funds or command the military, 73 the Court understands that it must act in a way that garners public acceptance." In other words, as psychologists Tom Tyler and Gregory Mitchell observed, the Court seems to believe "that public acceptance of the Court's role as interpreter of the Constitution that is, the public belief in the Court's institutional legitimacy enhances public acceptance of controversial Court decisions."75 This emphasis on public acceptance of the judiciary seems to be conclusive proof that Court decisionmaking cannot be divorced from a case's (sometimes explosive) social and political setting.

A more telling manifestation of how public opinion affects Court decisionmaking is evident when the Court reverses itself to conform its decisionmaking to social and political forces beating against it.76 Witness, for example, the collapse of the Lochner era under the weight of changing social conditions. Following Roosevelt's 1936 election victory in all but two states, the Court, embarrassed by populist attacks against the Justices, announced several decisions upholding New Deal programs.' In explaining this transformation, Justice Owen Roberts recognized the extraordinary importance of public opinion in undoing the Lochner era: "Looking back, it is difficult to see how the Court could have resisted the popular urge for uniform standards throughout the country-for what in effect was a unified economy.""8

Social and political forces also played a defining role in the Court's reconsideration of decisions on sterilization and the eugenics movement," state-mandated flag salutes,' the Roe v. Wade trimester standard, 8 the death penalty,' states' rights, 3 and much more.' It did not matter that some of these earlier decisions commanded an impressive majority of eight to one." Without popular support, these decisions settled nothing. Justice Robert Jackson instructed us that "[t]he practical play of the forces of politics is such that judicial power has often delayed but never permanently defeated the persistent will of a substantial majority.""6 As such, for a Court that wants to maximize its power and legitimacy, taking social and political forces into account is an act of necessity, not cowardice. Correspondingly, when the Court gives short shrift to populist values or concerns, its decisionmaking is unworkable and destabilizing.87

The Supreme Court may be the ultimate interpreter in a particular case, but not in the larger social issues of which that case is a reflection. Indeed, it is difficult to locate in the more than two centuries of rulings from the Supreme Court a single decision that ever finally settled a transcendent question of constitutional law. When a decision fails to persuade or otherwise proves unworkable.' elected officials, interest groups, academic commentators, and the press will speak their minds and the Court, ultimately, will listen."

Even in decisions that are generally praised, such as Brown, the Court must calibrate its decisionmaking against the sentiments of the implementing community and the nation. In an effort to temper Southern hostility to its decision, the Court did not issue a remedy in the first Brown decision.' A similar tale is told by the Court's invocation of the so-called "passive virtues," that is, procedural and jurisdictional mechanisms that allow the Court to steer clear of politically explosive issues.91 For example, the Court will not "anticipate a question of constitutional law in advance of the necessity of deciding it," not "formulate a rule of constitutional law broader than is required," nor "pass upon a constitutional question... if there is... some other ground," such as statutory construction, upon which to dispose of the case.' This deliberate withholding of judicial power reflects the fact that courts lack ballot-box legitimacy and need to avoid costly collisions with the general public and other branches of government.'

It is sometimes argued that courts operate on principle while the rest of government is satisfied with compromises." This argument is sheer folly. A multimember Court, like government, gropes incrementally towards consensus and decision through compromise, expediency, and ad hoc actions. "No good society," as Alexander Bickel observed, "can be unprincipled; and no viable society can be principle-ridden."'95

Courts, like elected officials, cannot escape "[t]he great tides and currents which engulf" the rest of us.96 Rather than definitively settling transcendent questions, courts must take account of social movements and public opinion.' When the judiciary strays outside and opposes the policy of elected leaders, it does so at substantial risk. The Court maintains its strength by steering a course that fits within the permissible limits of public opinion. Correspondingly, "the Court's legitimacy-indeed, the Constitution's-must ultimately spring from public acceptance," for ours is a "political system ostensibly based on consent."98 pg. 93-98

#### Weakening the court prevents sustainable development—turns their environment impact

Stein 5—Former Judge of the New South Wales Court of Appeal and the New South Wales Land and Environment Court [Justice Paul Stein (International Union for Conservation of Nature (IUCN) Specialist Group on the Judiciary), “Why judges are essential to the rule of law and environmental protection,” Judges and the Rule of Law: Creating the Links: Environment, Human Rights and Poverty, IUCN Environmental Policy and Law Paper No. 60, Edited by Thomas Greiber, 2006]

The Johannesburg Principles state:

“We emphasize that the fragile state of the global environment requires the judiciary, as the guardian of the Rule of Law, to boldly and fearlessly implement and enforce applicable international and national laws, which in the field of environment and sustainable development will assist in alleviating poverty and sustaining an enduring civilization, and ensuring that the present generation will enjoy and improve the quality of life of all peoples, while also ensuring that the inherent rights and interests of succeeding generations are not compromised.”

There can be no argument that environmental law, and sustainable development law in particular, are vibrant and dynamic areas, both internationally and domestically. Judge Weeramantry (of the ICJ) has reminded us that we judges, as custodians of the law, have a major obligation to contribute to its development. Much of sustainable development law is presently making the journey from soft law into hard law. This is happening internationally but also it is occurring in many national legislatures and courts.

Fundamental environmental laws relating to water, air, our soils and energy are critical to narrowing the widening gap between the rich and poor of the world. Development may be seen as the bridge to narrow that gap but it is one that is riddled with dangers and contradictions. We cannot bridge the gap with materials stolen from future generations. Truly sustainable development can only take place in harmony with the environment. Importantly we must not allow sustainable development to be duchessed and bastardized.

A role for judges?

It is in striking the balance between development and the environment that the courts have a role. Of course, this role imposes on judges a significant trust. The balancing of the rights and needs of citizens, present and future, with development, is a delicate one. It is a balance often between powerful interests (private and public) and the voiceless poor. In a way judges are the meat in the sandwich but, difficult as it is, we must not shirk our duty. Pg. 53-54

#### 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).

#### Article III trials will encourage Congress to pass a Comstock statute for terrorist. They will remain indefinitely detained

Wedel 11—JD Candidate @ Stanford Law School [Collin P. Wedel (Prospective Law Clerk to the Honorable Ruggero J. Aldisert, United States Court of Appeals for the Third Circuit), “War Courts: Terror's Distorting Effects on Federal Courts,” Legislation and Policy Brief, Volume 3 1 Issue 1, 1-6-2011]

Article III trials, therefore, seem to offer the greatest protection against arbitrary and indefinite detention. Regardless what process the courts followed, alleged terrorists would still receive a sentence matching the crime for which they were convicted. But a recent Supreme Court decision and a proposed rule from the Bureau of Prisons cast doubt on whether Article III trials—and, more importantly, Article III sentences—will continue to protect against indefinite detention.

The Supreme Court's ruling in United States v. Comstock sets a disturbing precedent for terrorist-detainees. 89 Comstock involved sentencing issues for sex offenders, a topic seemingly unrelated to terrorism. Yet the Court held that Congress may use its Necessary and Proper Clause powers to permanently detain dangerous sex offenders if they appear to pose a threat to the surrounding community upon release." That Congress may order the civil commitment of dangerous prisoners after completing their sentences sets the stage for transplanting an indefinite detention regime into the criminal sphere. The possibility that this reasoning would or could be extended to cover terrorists subject to Article III criminal sentencing is far from remote. Indeed, many commentators noticed instantly Comstock's potential impact on terror connected inmates.91

The statute at issue in Comstock authorizes a court to civilly commit a soon-to-be-released prisoner if he (1) previously "engaged or attempted to engage in sexually violent conduct or child molestation," (2) "suffers from a serious mental illness, abnormality, or disorder," and (3) as a result of the disorder, remains "sexually dangerous to others" such that "he would have serious difficulty in refraining from sexually violent conduct or child molestation if released." 92 If a court finds all of these factors, it may commit the prisoner to the Attorney General's custody, who must make "all reasonable efforts" to return the prisoner to the state in which he was tried or in which he is domiciled.9 3 If the Attorney General is unsuccessful in this endeavor, the prisoner is sent to a federal treatment facility and remains there until he is no longer dangerous.94

By its terms, this statute applies to sex criminals, not terrorists.

Nevertheless, this opinion, which garnered the support of seven justices, clears away any foreseeable barriers to Congress issuing a similar statute aimed at terrorists. After Comstock, Congress may authorize the Attorney General to detain "dangerous" criminals in perpetuity after the termination of their sentences under its Necessary and Proper Clause powers. A statute codifying that notion would alter terrorism prosecutions radically. Pg. 24

#### 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

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#### No modeling

**Law & Versteeg 12**—Professor of Comparative Constitutional Law @ Washington University & Professor of Comparative Constitutional Law @ University of Virginia [David S. Law & Mila Versteeg, “The Declining Influence of the United States Constitution,” New York University Law Review, Vol. 87, 2012

The appeal of American constitutionalism as a model for other countries appears to be waning in more ways than one. Scholarly attention has thus far focused on global judicial practice: There is a growing sense, backed by more than purely anecdotal observation, that foreign courts cite the constitutional jurisprudence of the U.S. Supreme Court less frequently than before.267 But the behavior of those who draft and revise actual constitutions exhibits a similar pattern. Our empirical analysis shows that the content of the U.S. Constitution is¶ becoming increasingly atypical by global standards. Over the last three decades, other countries have become less likely to model the rights-related provisions of¶ their own constitutions upon those found in the Constitution. Meanwhile, global adoption of key structural features of the Constitution, such as federalism, presidentialism, and a decentralized model of judicial review, is at best stable and at worst declining. In sum, rather than leading the way for global¶ constitutionalism, the U.S. Constitution appears instead to be losing its appeal as¶ a model for constitutional drafters elsewhere. The idea of adopting a constitution may still trace its inspiration to the United States, but the manner in which constitutions are written increasingly does not.

If the U.S. Constitution is indeed losing popularity as a model for other countries, what—or who—is to blame? At this point, one can only speculate as to the actual causes of this decline, but four possible hypotheses suggest themselves: (1) the advent of a superior or more attractive competitor; (2) a general decline in American hegemony; (3) judicial parochialism; (4) constitutional obsolescence; and (5) a creed of American exceptionalism.

With respect to the first hypothesis, there is little indication that the U.S. Constitution has been displaced by any specific competitor. Instead, the notion that a particular constitution can serve as a dominant model for other countries may itself be obsolete. There is an increasingly clear and broad consensus on the types of rights that a constitution should include, to the point that one can articulate the content of a generic bill of rights with considerable precision.269 Yet it is difficult to pinpoint a specific constitution—or regional or international human rights instrument—that is clearly the driving force behind this emerging paradigm. We find only limited evidence that global constitutionalism is following the lead of either newer national constitutions that are often cited as influential, such as those of Canada and South Africa, or leading international and regional human rights instruments such as the Universal Declaration of Human Rights and the European Convention on Human Rights. Although Canada in particular does appear to exercise a quantifiable degree of constitutional influence or leadership, that influence is not uniform and global but more likely reflects the emergence and evolution of a shared practice of constitutionalism among common law countries.270 Our findings suggest instead that the development of global constitutionalism is a polycentric and multipolar¶ process that is not dominated by any particular country.271 The result might be likened to a global language of constitutional rights, but one that has been collectively forged rather than modeled upon a specific constitution.

Another possibility is that America’s capacity for constitutional leadership is at least partly a function of American “soft power” more generally.272 It is reasonable to suspect that the overall influence and appeal of the United States and its institutions have a powerful spillover effect into the constitutional arena. The popularity of American culture, the prestige of American universities, and the efficacy of American diplomacy can all be expected to affect the appeal of American constitutionalism, and vice versa. All are elements of an overall American brand, and the strength of that brand helps to determine the strength of each of its elements. Thus, any erosion of the American brand may also diminish the appeal of the Constitution for reasons that have little or nothing to do with the Constitution itself. Likewise, a decline in American constitutional influence of the type documented in this Article is potentially indicative of a broader decline in American soft power.

There are also factors specific to American constitutionalism that may be¶ reducing its appeal to foreign audiences. Critics suggest that the Supreme Court has undermined the global appeal of its own jurisprudence by failing to acknowledge the relevant intellectual contributions of foreign courts on questions of common concern,273 and by pursuing interpretive approaches that lack acceptance elsewhere.274 On this view, the Court may bear some responsibility for the declining influence of not only its own jurisprudence, but also the actual U.S. Constitution: one might argue that the Court’s approach to constitutional issues has undermined the appeal of American constitutionalism more generally, to the point that other countries have become unwilling to look either to American constitutional jurisprudence or to the U.S. Constitution itself for inspiration.275

It is equally plausible, however, that responsibility for the declining appeal of American constitutionalism lies with the idiosyncrasies of the Constitution itself rather than the proclivities of the Supreme Court. As the oldest formal constitution still in force, and one of the most rarely amended constitutions in the world,276 the U.S. Constitution contains relatively few of the rights that have become popular in recent decades,277 while some of the provisions that it does contain may appear increasingly problematic, unnecessary, or even undesirable with the benefit of two hundred years of hindsight.278 It should therefore come as little surprise if the U.S. Constitution¶ strikes those in other countries–or, indeed, members of the U.S. Supreme Court279–as out of date and out of line with global practice.280 Moreover, even if the Court were committed to interpreting the Constitution in tune with global fashion, it would still lack the power to update the actual text of the document.

Indeed, efforts by the Court to update the Constitution via interpretation may actually reduce the likelihood of formal amendment by rendering such amendment unnecessary as a practical matter.281 As a result, there is only so much that the U.S. Supreme Court can do to make the U.S. Constitution an¶ attractive formal template for other countries. The obsolescence of the Constitution, in turn, may undermine the appeal of American constitutional jurisprudence: foreign courts have little reason to follow the Supreme Court’s lead on constitutional issues if the Supreme Court is saddled with the interpretation of an unusual and obsolete constitution.282 No amount of ingenuity or solicitude for foreign law on the part of the Court can entirely divert attention from the fact that the Constitution itself is an increasingly atypical document.

One way to put a more positive spin upon the U.S. Constitution’s status as a global outlier is to emphasize its role in articulating and defining what is unique about American national identity. Many scholars have opined that formal constitutions serve an expressive function as statements of national identity.283 This view finds little support in our own empirical findings, which suggest instead that constitutions tend to contain relatively standardized packages of rights.284 Nevertheless, to the extent that constitutions do serve such a function, the distinctiveness of the U.S. Constitution may simply reflect the uniqueness of America’s national identity. In this vein, various scholars have argued that the U.S. Constitution lies at the very heart of an “American creed of exceptionalism,” which combines a belief that the United States occupies a unique position in the world with a commitment to the qualities that set the United States apart from other countries.285 From this perspective, the Supreme Court’s reluctance to make use of foreign and international law in constitutional cases amounts not to parochialism, but rather to respect for the exceptional character of the nation and its constitution.286

Unfortunately, it is clear that the reasons for the declining influence of American constitutionalism cannot be reduced to anything as simple or attractive as a longstanding American creed of exceptionalism. Historically, American exceptionalism has not prevented other countries from following the example set by American constitutionalism. The global turn away from the American model is a relatively recent development that postdates the Cold War. If the U.S. Constitution does in fact capture something profoundly unique about the United States, it has surely been doing so for longer than the last thirty years. A complete explanation of the declining influence of American constitutionalism in other countries must instead be sought in more recent history, such as the wave of constitution-making that followed the end of the Cold War.287 During this period, America’s newfound position as lone superpower might have been expected to create opportunities for the spread of American constitutionalism. But this did not come to pass.

Once global constitutionalism is understood as the product of a polycentric evolutionary process, it is not difficult to see why the U.S. Constitution is playing an increasingly peripheral role in that process. No evolutionary process favors a specimen that is frozen in time. At least some of the responsibility for the declining global appeal of American constitutionalism lies not with the Supreme Court, or with a broader penchant for exceptionalism, but rather with the static character of the Constitution itself. If the United States were to revise the Bill of Rights today—with the benefit of over two centuries of experience, and in a manner that addresses contemporary challenges while remaining faithful to the nation’s best traditions—there is no guarantee that other countries would follow its lead. But the world would surely pay close attention. Pg. 78-83

#### 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

#### 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

#### No disease can cause human extinction—burnout

Posner 5—judge on the U.S. Court of Appeals, Seventh Circuit, and senior lecturer at the University of Chicago Law School [Richard A, Winter, “Catastrophe: the dozen most significant catastrophic risks and what we can do about them,” http://findarticles.com/p/articles/mi\_kmske/is\_3\_11/ai\_n29167514/pg\_2?tag=content;col1]

Yet the fact that Homo sapiens has managed to survive every disease to assail it in the 200,000 years or so of its existence is a source of genuine comfort, at least if the focus is on extinction events. There have been enormously destructive plagues, such as the Black Death, smallpox, and now AIDS, but none has come close to destroying the entire human race. There is a biological reason. Natural selection favors germs of limited lethality; they are fitter in an evolutionary sense because their genes are more likely to be spread if the germs do not kill their hosts too quickly. The AIDS virus is an example of a lethal virus, wholly natural, that by lying dormant yet infectious in its host for years maximizes its spread. Yet there is no danger that AIDS will destroy the entire human race. The likelihood of a natural pandemic that would cause the extiinction of the human race is probably even less today than in the past (except in prehistoric times, when people lived in small, scattered bands, which would have limited the spread of disease), despite wider human contacts that make it more difficult to localize an infectious disease. The reason is improvements in medical science. But the comfort is a small one. Pandemics can still impose enormous losses and resist prevention and cure: the lesson of the AIDS pandemic. And there is always a lust time.

### 1nc terror

#### Zero risk of terrorism- their impact is alarmism

Mueller ’12 (John, Senior Research Scientist at the Mershon Center for International Security Studies and Adjunct Professor in the Department of Political Science, both at Ohio State University, and Senior Fellow at the Cato Institute. Mark G. Stewart is Australian Research Council Professorial Fellow and Professor and Director at the Centre for Infrastructure Performance and Reliability at the University of Newcastle in Australia, The Terrorism Delusion, International Security, Vol. 37, No. 1, pp. 81–110, Summer 2012)

Over the course of time, such essentially delusionary thinking has been internalized and institutionalized in a great many ways. For example, an extrapolation of delusionary proportions is evident in the common observation that, because terrorists were able, mostly by thuggish means, to crash airplanes into buildings, they might therefore be able to construct a nuclear bomb. In 2005 an FBI report found that, despite years of well-funded sleuthing, the Bureau had yet to uncover a single true al-Qaida sleeper cell in the United States. The report was secret but managed to be leaked. Brian Ross, “Secret FBI Report Questions Al Qaeda Capabilities: No ‘True’ Al Qaeda Sleeper Agents Have Been Found in U.S.,” ABC News, March 9, 2005. Fox News reported that the FBI, however, observed that “just because there’s no concrete evidence of sleeper cells now, doesn’t mean they don’t exist.” “FBI Can’t Find Sleeper Cells,” Fox News, March 10, 2005. Jenkins has run an internet search to discover how often variants of the term “al-Qaida” appeared within ten words of “nuclear.” There were only seven hits in 1999 and eleven in 2000, but the number soared to 1,742 in 2001 and to 2,931 in 2002. 47 By 2008, Defense Secretary Robert Gates was assuring a congressional committee that what keeps every senior government leader awake at night is “the thought of a terrorist ending up with a weapon of mass destruction, especially nuclear.” 48 Few of the sleepless, it seems, found much solace in the fact that an al-Qaida computer seized in Afghanistan in 2001 indicated that the group’s budget for research on weapons of mass destruction (almost all of it focused on primitive chemical weapons work) was $2,000 to $4,000. 49 In the wake of the killing of Osama bin Laden, officials now have many more al-Qaida computers, and nothing in their content appears to suggest that the group had the time or inclination, let alone the money, to set up and staff a uranium-seizing operation, as well as a fancy, super-high-technology facility to fabricate a bomb. This is a process that requires trusting corrupted foreign collaborators and other criminals, obtaining and transporting highly guarded material, setting up a machine shop staffed with top scientists and technicians, and rolling the heavy, cumbersome, and untested finished product into position to be detonated by a skilled crew—all while attracting no attention from outsiders. 50 If the miscreants in the American cases have been unable to create and set off even the simplest conventional bombs, it stands to reason that none of them were very close to creating, or having anything to do with, nuclear weapons—or for that matter biological, radiological, or chemical ones. In fact, with perhaps one exception, none seems to have even dreamed of the prospect; and the exception is José Padilla (case 2), who apparently mused at one point about creating a dirty bomb—a device that would disperse radiation—or even possibly an atomic one. His idea about isotope separation was to put uranium into a pail and then to make himself into a human centrifuge by swinging the pail around in great arcs. Even if a weapon were made abroad and then brought into the United States, its detonation would require individuals in-country with the capacity to receive and handle the complicated weapons and then to set them off. Thus far, the talent pool appears, to put mildly, very thin. There is delusion, as well, in the legal expansion of the concept of “weapons of mass destruction.” The concept had once been taken as a synonym for nuclear weapons or was meant to include nuclear weapons as well as weapons yet to be developed that might have similar destructive capacity. After the Cold War, it was expanded to embrace chemical, biological, and radiological weapons even though those weapons for the most part are incapable of committing destruction that could reasonably be considered “massive,” particularly in comparison with nuclear ones. 52

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### AT: Retal

#### No Retaliation

Jenks-Smith and Herron ‘5 (Hank and Kerry, Professor and adjunct professor at George Bush School of Government and Public Service at Texas A&M University. “United States Public Response to Terrorism: Fault Lines or Bedrock?”, Review of Policy Research, Lexis, September 2005)

Our final contrasting set of expectations relates to the degree to which the public will support or demand retribution against terrorists and supporting states. Here our data show that support for using conventional United States military force to retaliate against terrorists initially averaged above midscale, but did not reach a high level of demand for military action. Initial support declined significantly across all demographic and belief categories by the time of our survey in 2002. Furthermore, panelists both in 2001 and 2002 preferred that high levels of certainty about culpability (above 8.5 on a scale from zero to ten) be established before taking military action. Again, we find the weight of evidence supporting revisionist expectations of public opinion. Overall, these results are inconsistent with the contention that highly charged events will result in volatile and unstructured responses among mass publics that prove problematic for policy processes. The initial response to the terrorist strikes demonstrated a broad and consistent shift in public assessments toward a greater perceived threat from terrorism, and greater willingness to support policies to reduce that threat. But even in the highly charged context of such a serious attack on the American homeland, the overall public response was quite measured. On average, the public showed very little propensity to undermine speech protections, and initial willingness to engage in military retaliation moderated significantly over the following year.

### Overview

#### Extinction of all complex life

Barry 13—Political ecologist with expert proficiencies in old forest protection, climate change, and environmental sustainability policy [Dr. Glen Barry (Ph.D. in "Land Resources" and Masters of Science in "Conservation Biology and Sustainable Development” from the University of Wisconsin-Madison), “ECOLOGY SCIENCE: Terrestrial Ecosystem Loss and Biosphere Collapse,” Forests.org, February 4, 2013, pg. http://forests.org/blog/2013/02/ecology-science-terrestrial-ec.asp

Blunt, Biocentric Discussion on Avoiding Global Ecosystem Collapse and Achieving Global Ecological Sustainability

Science needs to do a better job of considering worst-case scenarios regarding continental- and global-scale ecological collapse. The loss of biodiversity, ecosystems, and landscape connectivity reviewed here shows clearly that ecological collapse is occurring at spatially extensive scales. The collapse of the biosphere and complex life, or eventually even all life, is a possibility that needs to be better understood and mitigated against. A tentative case has been presented here that terrestrial ecosystem loss is at or near a planetary boundary. It is suggested that a 66% of Earth's land mass must be maintained in terrestrial ecosystems, to maintain critical connectivity necessary for ecosystem services across scales to continue, including the biosphere. Yet various indicators show that around 50% of Earth's terrestrial ecosystems have been lost and their services usurped by humans. Humanity may have already destroyed more terrestrial ecosystems than the biosphere can bear. There exists a major need for further research into how much land must be maintained in a natural and agroecological state to meet landscape and bioregional sustainable development goals while maintaining an operable biosphere.

It is proposed that a critical element in determining the threshold where terrestrial ecosystem loss becomes problematic is where landscape connectivity of intact terrestrial ecosystems erodes to the point where habitat patches exist only in a human context. Based upon an understanding of how landscapes percolate across scale, it is recommended that 66% of Earth's surface be maintained as ecosystems; 44% as natural intact ecosystems (2/3 of 2/3) and 22% as agroecological buffer zones. Thus nearly half of Earth must remain as large, connected, intact, and naturally evolving ecosystems, including old-growth forests, to provide the context and top-down ecological regulation of both human agroecological, and reduced impact and appropriately scaled industrial activities.

Given the stakes, it is proper for political ecologists and other Earth scientists to willingly speak bluntly if we are to have any chance of averting global ecosystem collapse. A case has been presented that Earth is already well beyond carrying capacity in terms of amount of natural ecosystem habitat that can be lost before the continued existence of healthy regional ecosystems and the global biosphere itself may not be possible. Cautious and justifiably conservative science must still be able to rise to the occasion of global ecological emergencies that may threaten our very survival as a species and planet.

Those knowledgeable about planetary boundaries—and abrupt climate change and terrestrial ecosystem loss in particular—must be more bold and insistent in conveying the range and possible severity of threats of global ecosystem collapse, while proposing sufficient solutions. It is not possible to do controlled experiments on the Earth system; all we have is observation based upon science and trained intuition to diagnose the state of Earth's biosphere and suggest sufficient ecological science–based remedies.

If Gaia is alive, she can die. Given the strength of life-reducing trends across biological systems and scales, there is a need for a rigorous research agenda to understand at what point the biosphere may perish and Earth die, and to learn what configuration of ecosystems and other boundary conditions may prevent her from doing so. We see death of cells, organisms, plant communities, wildlife populations, and whole ecosystems all the time in nature—extreme cases being desertification and ocean dead zones. There is no reason to dismiss out of hand that the Earth System could die if critical thresholds are crossed. We need as Earth scientists to better understand how this may occur and bring knowledge to bear to avoid global ecosystem and biosphere collapse or more extreme outcomes such as biological homogenization and the loss of most or even all life. To what extent can a homogenized Earth of dandelions, rats, and extremophiles be said to be alive, can it ever recover, and how long can it last?

The risks of global ecosystem collapse and the need for strong response to achieve global ecological sustainability have been understated for decades. If indeed there is some possibility that our shared biosphere could be collapsing, there needs to be further investigation of what sorts of sociopolitical responses are valid in such a situation. Dry, unemotional scientific inquiry into such matters is necessary—yet more proactive and evocative political ecological language may be justified as well. We must remember we are speaking of the potential for a period of great dying in species, ecosystems, humans, and perhaps all being. It is not clear whether this global ecological emergency is avoidable or recoverable. It may not be. But we must follow and seek truth wherever it leads us.

Planetary boundaries have been quite anthropocentric, focusing upon human safety and giving relatively little attention to other species and the biosphere's needs other than serving humans. Planetary boundaries need to be set that, while including human needs, go beyond them to meet the needs of ecosystems and all their constituent species and their aggregation into a living biosphere. Planetary boundary thinking needs to be more biocentric.

I concur with Williams (2000) that what is needed is an Earth System–based conservation ethic—based upon an "Earth narrative" of natural and human history—which seeks as its objective the "complete preservation of the Earth's biotic inheritance." Humans are in no position to be indicating which species and ecosystems can be lost without harm to their own intrinsic right to exist, as well as the needs of the biosphere. For us to survive as a species, logic and reason must prevail (Williams 2000).

Those who deny limits to growth are unaware of biological realities (Vitousek 1986). There are strong indications humanity may undergo societal collapse and pull down the biosphere with it. The longer dramatic reductions in fossil fuel emissions and a halt to old-growth logging are put off, the worse the risk of abrupt and irreversible climate change becomes, and the less likely we are to survive and thrive as a species. Human survival—entirely dependent upon the natural world—depends critically upon both keeping carbon emissions below 350 ppm and maintaining at least 66% of the landscape as natural ecological core areas and agroecological transitions and buffers. Much of the world has already fallen below this proportion, and in sum the biosphere's terrestrial ecosystem loss almost certainly has been surpassed, yet it must be the goal for habitat transition in remaining relatively wild lands undergoing development such as the Amazon, and for habitat restoration and protection in severely fragmented natural habitat areas such as the Western Ghats.

The human family faces an unprecedented global ecological emergency as reckless growth destroys the ecosystems and the biosphere on which all life depends. Where is the sense of urgency, and what are proper scientific responses if in fact Earth is dying? Not speaking of worst-case scenarios—the collapse of the biosphere and loss of a living Earth, and mass ecosystem collapse and death in places like Kerala—is intellectually dishonest. We must consider the real possibility that we are pulling the biosphere down with us, setting back or eliminating complex life.

The 66% / 44% / 22% threshold of terrestrial ecosystems in total, natural core areas, and agroecological buffers gets at the critical need to maintain large and expansive ecosystems across at least 50% of the land so as to keep nature connected and fully functional. We need an approach to planetary boundaries that is more sensitive to deep ecology to ensure that habitable conditions for all life and natural evolutionary change continue. A terrestrial ecosystem boundary which protects primary forests and seeks to recover old-growth forests elsewhere is critical in this regard. In old forests and all their life lie both the history of Earth's life, and the hope for its future. The end of their industrial destruction is a global ecological imperative.

Much-needed dialogue is beginning to focus on how humanity may face systematic social and ecological collapse and what sort of community resilience is possible. There have been ecologically mediated periods of societal collapse from human damage to ecosystems in the past (Kuecker and Hall 2011). What makes it different this time is that the human species may have the scale and prowess to pull down the biosphere with them. It is fitting at this juncture for political ecologists to concern themselves with both legal regulatory measures, as well as revolutionary processes of social change, which may bring about the social norms necessary to maintain the biosphere. Rockström and colleagues (2009b) refer to the need for "novel and adaptive governance" without using the word revolution. Scientists need to take greater latitude in proposing solutions that lie outside the current political paradigms and sovereign powers.

Even the Blue Planet Laureates' remarkable analysis (Brundtland et al. 2012), which notes the potential for climate change, ecosystem loss, and inequitable development patterns neither directly states nor investigates in depth the potential for global ecosystem collapse, or discusses revolutionary responses. UNEP (2012) notes abrupt and irreversible ecological change, which they say may impact life-support systems, but are not more explicit regarding the profound human and ecological implications of biosphere collapse, or the full range of sociopolitical responses to such predictions. More scientific investigations are needed regarding alternative governing structures optimal for pursuit and achievement of bioregional, continental, and global sustainability if we are maintain a fully operable biosphere forever. An economic system based upon endless growth that views ecosystems necessary for planetary habitability primarily as resources to be consumed cannot exist for long.   
Planetary boundaries offer a profoundly difficult challenge for global governance, particularly as increased scientific salience does not appear to be sufficient to trigger international action to sustain ecosystems (Galaz et al. 2012). If indeed the safe operating space for humanity is closing, or the biosphere even collapsing and dying, might not discussion of revolutionary social change be acceptable? Particularly, if there is a lack of consensus by atomized actors, who are unable to legislate the required social change within the current socioeconomic system. By not even speaking of revolutionary action, we dismiss any means outside the dominant growth-based oligarchies.

In the author's opinion, it is shockingly irresponsible for Earth System scientists to speak of geoengineering a climate without being willing to academically investigate revolutionary social and economic change as well. It is desirable that the current political and economic systems should reform themselves to be ecologically sustainable, establishing laws and institutions for doing so. Yet there is nothing sacrosanct about current political economy arrangements, particularly if they are collapsing the biosphere. Earth requires all enlightened and knowledgeable voices to consider the full range of possible responses now more than ever.

One possible solution to the critical issues of terrestrial ecosystem loss and abrupt climate change is a massive and global, natural ecosystem protection and restoration program—funded by a carbon tax—to further establish protected large and connected core ecological sustainability areas, buffers, and agro-ecological transition zones throughout all of Earth's bioregions. Fossil fuel emission reductions must also be a priority. It is critical that humanity both stop burning fossil fuels and destroying natural ecosystems, as fast as possible, to avoid surpassing nearly all the planetary boundaries.

In summation, we are witnessing the collective dismantling of the biosphere and its constituent ecosystems which can be described as ecocidal. The loss of a species is tragic, of an ecosystem widely impactful, yet with the loss of the biosphere all life may be gone. Global ecosystems when connected for life's material flows provide the all-encompassing context within which life is possible. The miracle of life is that life begets life, and the tragedy is that across scales when enough life is lost beyond thresholds, living systems die.

### 2NC/1NR Impact—JI

#### Conflict with Congress destroys judicial independence impairs the court’s ability to protect individual liberty

**Keynes 81** – Professor of Political Science @ The Pennsylvania State University [Keynes, Edward, “Democracy, Judicial Review, and the War Powers,” Ohio Northern University Law Review, Vol. 8, Issue 1 (1981), pp. 69-101

Not unlike later theories of judicial self-restraint, Thayer also advances prudential reasons for judicial abstention that go beyond the doctrine of the clear mistake. Even when a case meets his requirements for exercising judicial power, Thayer suggests that the courts should refuse to entertain cases that provoke conflict with Congress.2 Since Congress has ample disciplinary powers over the federal courts, including the power to alter their jurisdiction, the judiciary should not invite legislative attacks on judicial independence. In addition to destroying judicial independence, legislative interference with the judiciary could impair its ability to defend individual liberty and constitutional government. Hence, Thayer's appeal for judicial self-restraint arises from constitutional principle as well as the principle of self-preservation. Pg. 78

### Turns Case—No Model

#### \*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: It will come back

#### It will take a long time for legitimacy to be restored

Dutra 10—JD from Boston University School of Law [Anthony Dutra, “NOTE: MEN COME AND GO, BUT ROE ABIDES: WHY ROE V. WADE WILL NOT BE OVERRULED,” Boston University Law Review 90 B.U.L. Rev. 1261, June 2010

The legitimacy of the Court is particularly important because the Justices are appointed for life. Unlike the other branches of government, if the Court's legitimacy is undermined, it cannot be quickly restored through the elections. n132 The continued legitimacy of the Court is therefore critical because "the legitimacy of the Court must be earned over time." n133

 [\*1278]  Although judges are supposed to be immune to political pressure, the continued legitimacy of the judiciary demands that judges at least be cognizant of principles that Americans widely hold. n134 This is even more important for Supreme Court Justices. Ultimately, the Court's legitimacy will be more secure when its decisions do not seem activist, contrary to the concepts of federalism, or aligned with counter-majoritarian views. n135 The majority of Americans support a restricted right to abortion, n136 and the current status of the abortion right reflects the popular will of the American people. n137 Maintaining the status quo is critical because "the most certain consequence of overruling Roe would be a massive political upheaval." n138

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### Ext Pyle—Prez reject

#### 3. The court is a paper tiger. Preponderance of the lit is on our side

Wheeler 9—Professor of political science @ Ball State University [Darren A. Wheeler, “Checking Presidential Detention Power in the War on Terror: What Should We Expect from the Judiciary?” Presidential Studies Quarterly, December 2009, pg. 677–700]

However, a closer examination of the process that followed the Supreme Court's detainee decisions reveals that the Bush administration was actually quite adept at retaining significant power over detainee matters (Ball 2007; Fisher 2008; Schwarz and Huq 2007; Wheeler 2008). Consequently, it is possible to make the argument that, despite media and Bush administration rhetoric to the contrary, the Supreme Court actually serves as a poor check on presidential detention power in the war on terror. A significant body of academic literature, amassed over a considerable period of time, lends support to this alternative argument, as these authors conclude that the courts are generally a poor check on executive war powers (Fisher 2005; Henkin 1996; Howell 2003; Koh 1990; Rossiter and Longaker 1976; Scigliano 1971). Which view on judicial power in the war on terror is accurate? Is the Supreme Court severely limiting the president's detention powers, or are the courts merely a paper tiger—at worst, an inconvenience to presidential administrations determined to retain control over detainees in the war on terror? This article examines the question, does the Supreme Court serve as a significant check on presidential detention power in the war on terror? It concludes that there are important institutional and political factors that mitigate the Court's ability to be a significant check on presidential detention power in this context.

#### 4. No tag can do this card justice—I’ll read it slowly instead because it wins us the debate

Scheppele 12—Professor of Sociology and Public Affairs @ Princeton University [Kim Lane Scheppele (Dir. of the Program in Law and Public Affairs @ Princeton University), “The New Judicial Deference,” Boston University Law Review, 92 B.U.L. Rev. 89, January 2012]

In this Article, I will show that American courts have often approached the extreme policies of the anti-terrorism campaign by splitting the difference between the two sides—the government and suspected terrorists. One side typically got the ringing rhetoric (the suspected terrorists), and the other side got the facts on the ground (the government). In major decisions both designed to attract public attention and filled with inspiring language about the reach of the Constitution even in times of peril, the Supreme Court, along with some lower courts, has stood up to the government and laid down limits on anti-terror policy in a sequence of decisions about the detention and trial of suspected terrorists. But, at the same time, these decisions have provided few immediate remedies for those who have sought the courts' protection. As a result, suspected terrorists have repeatedly prevailed in their legal arguments, and yet even with these court victories, little changed in the situation that they went to court to challenge. The government continued to treat suspected terrorists almost as badly as it did before the suspected terrorists "won" their cases. And any change in terrorism suspects' conditions that did result from these victorious decisions was slow and often not directly attributable to the judicial victories they won.

Does this gap between suspected terrorists' legal gains and their unchanged fates exist because administration officials were flouting the decisions of the courts? The Bush Administration often responded with sound and fury and attempted to override the Supreme Court's decisions or to comply minimally with them when they had to. n6 But, as this Article will show, these decisions did not actually require the government to change its practices very quickly. The decisions usually required the government to change only its general practices in the medium term. Judges had a different framework for analyzing the petitioners' situation than the petitioners themselves did; judges generally couched their decisions in favor of the suspected terrorists as critiques of systems instead of as solutions for individuals. In doing so, however, courts allowed a disjuncture between rights and remedies for those who stood before them seeking a vindication of their claims. Suspected terrorists may have won  [\*92]  in these cases—and they prevailed overwhelmingly in their claims, especially at the Supreme Court—but courts looked metaphorically over the suspects' heads to address the policies that got these suspects into the situation where the Court found them. Whether those who brought the cases actually got to benefit from the judgments, either immediately or eventually, was another question.

Bad though the legal plight of suspected terrorists has been, one might well have expected it to be worse. Before 9/11, the dominant response of courts around the world during wars and other public emergencies was to engage in judicial deference. n7 Deference counseled courts to stay out of matters when governments argued that national security concerns were central. As a result, judges would generally indicate that they had no role to play once the bullets started flying or an emergency was declared. If individuals became collateral damage in wartime, there was generally no judicial recourse to address their harms while the war was going on. As the saying goes, inter arma silent leges: in war, the law is mute. After 9/11, however, and while the conflict occasioned by those attacks was still "hot," courts jumped right in, dealing governments one loss after another. n8 After 9/11, it appears that deference is dead.

 [\*93]  But, I will argue, deference is still alive and well. We are simply seeing a new sort of deference born out of the ashes of the familiar variety. While governments used to win national security cases by convincing the courts to decline any serious review of official conduct in wartime, now governments win first by losing these cases on principle and then by getting implicit permission to carry on the losing policy in concrete cases for a while longer, giving governments a victory in practice. n9 Suspected terrorists have received  [\*94]  from courts a vindication of the abstract principle that they have rights without also getting an order that the abusive practices that have directly affected them must be stopped immediately. Instead, governments are given time to change their policies while still holding suspected terrorists in legal limbo. As a result, despite winning their legal arguments, suspected terrorists lose the practical battle to change their daily lives.

Courts may appear to be bold in these cases because they tell governments to craft new policies to deal with terrorism. But because the new policies then have to be tested to see whether they meet the new criteria courts have laid down, the final approval may take years, during which time suspected terrorists may still be generally subjected to the treatment that courts have said was impermissible. Because judicial review of anti-terrorism policies itself drags out the time during which suspected terrorists may be detained, suspected terrorists win legal victories that take a very long time to result in change that they can discern. As a result, governments win the policy on the ground until court challenges have run their course and the courts make decisions that contribute to the time that the litigation takes. This is the new face of judicial deference.

This Article will explore why and how American courts have produced so many decisions in which suspected terrorists appear to win victories in national security cases. As we will see, many judges have handled the challenges that terrorism poses for law after 9/11 by giving firm support, at least in theory, to both separation of powers and constitutional rights. Judges have been very active in limiting what the government can do, requiring substantial adjustments of anti-terrorism policy and vindicating the claims of those who have been the targets. But the solutions that judges have crafted—often bold, ambitious, and brave solutions—nonetheless fail to address the plights of the specific individuals who brought the cases.

This new form of judicial deference has created a slow-motion brake on the race into a constitutional abyss. But these decisions give the government leeway to tackle urgent threats without having to change course right away with respect to the treatment of particular individuals. New deference, then, is a mixed bag. It creates the appearance of doing something—an appearance not entirely false in the long run—while doing far less in the present to bring counter-terrorism policy back under the constraint of constitutionalism.

### Ext Vladeck 11—Cngrs Bklsh (Overview)

#### 3. 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.

### Impact d

#### Africa war wont escalate

Straus ’13 (Scott Straus for African Arguments, part of the Guardian Africa Network, Scott Straus is a professor in the Department of Political Science at the University of Wisconsin, “Africa is becoming more peaceful, despite the war in Mali”, <http://www.guardian.co.uk/world/2013/jan/30/africa-peaceful-mali-war>, January 30, 2013)

The bigger point is that we may be witnessing significant shifts in the nature of political violence on the continent. Wars are on the decline since the 1990s, but the character of warfare is also changing. Today there are fewer big wars fought for state control in which insurgents maintain substantial control of territory and put up well-structured armies to fight their counterparts in the state – Mali not withstanding. Such wars were modal into the 1990s. From southern Africa in Angola, Mozambique, Namibia, and even Zimbabwe to the long wars in the Horn in Ethiopia, Eritrea, and Sudan to the Great Lakes wars in Rwanda and Uganda, the typical armed conflict in Africa involved two major, territory-holding armies fighting each other for state control. Today's wars typically are smaller. They most often involve small insurgencies of factionalised rebels on the peripheries of states. Today's wars also play out differently. They exhibit cross-border dimensions, and rather than drawing funding from big external states they depend on illicit trade, banditry, and international terrorist networks. Typical of today's wars are the rebels in Casamance, in the Ogaden region of Ethiopia, various armed groups in Darfur, and the Lord's Resistance Army. The latter typifies an emerging trend of trans-national insurgents. The LRA moves across multiple states in the Great Lakes region. Northern Mali is another case in point – prior to seizing control of the north, the Islamists moved across multiple countries in the Sahel. Once they gained territorial control in 2012, they attracted fighters from Nigeria and across North Africa. Moreover, these are not non-ideological wars, as Gettleman claims. The jihadis in Mali and Somalia, the separatists in Casamance, and the rebels in Darfur are certainly fighting for a cause.

### AT: Latin Instability

#### No impact to Latin American instability – no nukes

Cárdenas, ‘11 [Mauricio, senior fellow and director of the Latin America Initiative at the Brookings Institution, 3-17, “Think Again Latin America,” Foreign Policy, http://www.foreignpolicy.com/articles/2011/03/17/think\_again\_latin\_america?page=full]

"Latin America is violent and dangerous." Yes, but not unstable. Latin American countries have among the world's highest rates of crime, murder, and kidnapping. Pockets of abnormal levels of violence have emerged in countries such as Colombia -- and more recently, in Mexico, Central America, and some large cities such as Caracas. With 140,000 homicides in 2010, it is understandable how Latin America got this reputation. Each of the countries in Central America's "Northern Triangle" (Guatemala, Honduras, and El Salvador) had more murders in 2010 than the entire European Union combined. Violence in Latin America is strongly related to poverty and inequality. When combined with the insatiable international appetite for the illegal drugs produced in the region, it's a noxious brew. As strongly argued by a number of prominent regional leaders -- including Brazil's former president, Fernando H. Cardoso, and Colombia's former president, Cesar Gaviria -- a strategy based on demand reduction, rather than supply, is the only way to reduce crime in Latin America. Although some fear the Mexican drug violence could spill over into the southern United States, Latin America poses little to no threat to international peace or stability. The major global security concerns today are the proliferation of nuclear weapons and terrorism. No country in the region is in possession of nuclear weapons -- nor has expressed an interest in having them. Latin American countries, on the whole, do not have much history of engaging in cross-border wars. Despite the recent tensions on the Venezuela-Colombia border, it should be pointed out that Venezuela has never taken part in an international armed conflict. Ethnic and religious conflicts are very uncommon in Latin America. Although the region has not been immune to radical jihadist attacks -- the 1994 attack on a Jewish Community Center in Buenos Aires, for instance -- they have been rare. Terrorist attacks on the civilian population have been limited to a large extent to the FARC organization in Colombia, a tactic which contributed in large part to the organization's loss of popular support.

## \*\*\* 1NR

### Overview

#### Extinction

Asahi Shimbun 13 [The Asahi Shimbun, “EDITORIAL: We all must confront the ferocious destructive power of nuclear energy,” August 06, 2013, pg. http://tinyurl.com/n637acb]

A recent study by Alan Robock, an environmental scientist at Rutgers University, and others showed that a regional nuclear war in which India and Pakistan each uses 50 Hiroshima-size nuclear weapons, or half of their nuclear arsenals, could cause global “nuclear famine.” While these weapons account for only 0.03 percent of total destructive capability of the global nuclear arsenal, the study said that detonating them would cause massive pillars of black smoke and dust to rise high into the atmosphere, resulting in sharp declines in temperature around the world and serious depletion of the ozone layer. That would lead to a significant increase in harmful ultraviolet rays hitting the planet’s surface.

The effects would be long-lasting, eventually triggering a devastating global famine. In short, we are still on the brink of wholesale destruction through nuclear warfare.

#### Economic decline causes war—strong statistical support.

Royal 10 — Jedidiah Royal, Director of Cooperative Threat Reduction at the U.S. Department of Defense, M.Phil. Candidate at the University of New South Wales, 2010 (“Economic Integration, Economic Signalling and the Problem of Economic Crises,” *Economics of War and Peace: Economic, Legal and Political Perspectives*, Edited by Ben Goldsmith and Jurgen Brauer, Published by Emerald Group Publishing, ISBN 0857240048, p. 213-215)

Less intuitive is how periods of economic decline may increase the likelihood of external conflict. Political science literature has contributed a moderate degree of attention to the impact of economic decline and the security and defence behaviour of interdependent states. Research in this vein has been considered at systemic, dyadic and national levels. Several notable contributions follow.

First, on the systemic level, Pollins (2008) advances Modelski and Thompson's (1996) work on leadership cycle theory, finding that rhythms in the global economy are associated with the rise and fall of a pre-eminent power and the often bloody transition from one pre-eminent leader to the next. As such, exogenous shocks such as economic crises could usher in a redistribution of relative power (see also Gilpin. 1981) that leads to uncertainty about power balances, increasing the risk of miscalculation (Feaver, 1995). Alternatively, even a relatively certain redistribution of power could lead to a permissive environment for conflict as a rising power may seek to challenge a declining power (Werner. 1999). Separately, Pollins (1996) also shows that global economic cycles combined with parallel leadership cycles impact the likelihood of conflict among major, medium and small powers, although he suggests that the causes and connections between global economic conditions and security conditions remain unknown.

Second, on a dyadic level, Copeland's (1996, 2000) theory of trade expectations suggests that 'future expectation of trade' is a significant variable in understanding economic conditions and security behaviour of states. He argues that interdependent states are likely to gain pacific benefits from trade so long as they have an optimistic view of future trade relations. However, if the expectations of future trade decline, particularly for difficult [end page 213] to replace items such as energy resources, the likelihood for conflict increases, as states will be inclined to use force to gain access to those resources. Crises could potentially be the trigger for decreased trade expectations either on its own or because it triggers protectionist moves by interdependent states.4

Third, others have considered the link between economic decline and external armed conflict at a national level. Blomberg and Hess (2002) find a strong correlation between internal conflict and external conflict, particularly during periods of economic downturn. They write,

The linkages between internal and external conflict and prosperity are strong and mutually reinforcing. Economic conflict tends to spawn internal conflict, which in turn returns the favour. Moreover, the presence of a recession tends to amplify the extent to which international and external conflicts self-reinforce each other. (Blomberg & Hess, 2002. p. 89)

Economic decline has also been linked with an increase in the likelihood of terrorism (Blomberg, Hess, & Weerapana, 2004), which has the capacity to spill across borders and lead to external tensions.

Furthermore, crises generally reduce the popularity of a sitting government. “Diversionary theory" suggests that, when facing unpopularity arising from economic decline, sitting governments have increased incentives to fabricate external military conflicts to create a 'rally around the flag' effect. Wang (1996), DeRouen (1995). and Blomberg, Hess, and Thacker (2006) find supporting evidence showing that economic decline and use of force are at least indirectly correlated. Gelpi (1997), Miller (1999), and Kisangani and Pickering (2009) suggest that the tendency towards diversionary tactics are greater for democratic states than autocratic states, due to the fact that democratic leaders are generally more susceptible to being removed from office due to lack of domestic support. DeRouen (2000) has provided evidence showing that periods of weak economic performance in the United States, and thus weak Presidential popularity, are statistically linked to an increase in the use of force.

In summary, recent economic scholarship positively correlates economic integration with an increase in the frequency of economic crises, whereas political science scholarship links economic decline with external conflict at systemic, dyadic and national levels.5 This implied connection between integration, crises and armed conflict has not featured prominently in the economic-security debate and deserves more attention.

This observation is not contradictory to other perspectives that link economic interdependence with a decrease in the likelihood of external conflict, such as those mentioned in the first paragraph of this chapter. [end page 214] Those studies tend to focus on dyadic interdependence instead of global interdependence and do not specifically consider the occurrence of and conditions created by economic crises. As such, the view presented here should be considered ancillary to those views.

### Turns

#### Economic decline turns the checks nad balances/ji

Tilford 8 — Earl Tilford, military historian and fellow for the Middle East and terrorism with The Center for Vision & Values at Grove City College, served as a military officer and analyst for the Air Force and Army for thirty-two years, served as Director of Research at the U.S. Army’s Strategic Studies Institute, former Professor of History at Grove City College, holds a Ph.D. in History from George Washington University, 2008 (“Critical Mass: Economic Leadership or Dictatorship,” Published by The Center for Vision & Values, October 6th, Available Online at http://www.visionandvalues.org/2008/10/critical-mass-economic-leadership-or-dictatorship/, Accessed 08-23-2011)

Nevertheless, al-Qaeda failed to seriously destabilize the American economic and political systems. The current economic crisis, however, could foster critical mass not only in the American and world economies but also put the world democracies in jeopardy.

Some experts maintain that a U.S. government economic relief package might lead to socialism. I am not an economist, so I will let that issue sit. However, as a historian I know what happened when the European and American economies collapsed in the late 1920s and early 1930s. The role of government expanded exponentially in Europe and the United States. The Soviet system, already well entrenched in socialist totalitarianism, saw Stalin tighten his grip with the doctrine of "socialism in one country," which allowed him to dispense with political opposition real and imagined. German economic collapse contributed to the Nazi rise to power in 1933. The alternatives in the Spanish civil war were between a fascist dictatorship and a communist dictatorship. Dictatorships also proliferated across Eastern Europe.

In the United States, the Franklin Roosevelt administration vastly expanded the role and power of government. In Asia, Japanese militarists gained control of the political process and then fed Japan's burgeoning industrial age economy with imperialist lunges into China and Korea; the first steps toward the greatest conflagration in the history of mankind ... so far ... World War II ultimately resulted. That's what happened the last time the world came to a situation resembling critical mass. Scores upon scores of millions of people died.

Could it happen again? Bourgeois democracy requires a vibrant capitalist system. Without it, the role of the individual shrinks as government expands. At the very least, the dimensions of the U.S. government economic intervention will foster a growth in bureaucracy to administer the multi-faceted programs necessary for implementation. Bureaucracies, once established, inevitably become self-serving and self-perpetuating. Will this lead to "socialism" as some conservative economic prognosticators suggest? Perhaps. But so is the possibility of dictatorship. If the American economy collapses, especially in wartime, there remains that possibility. And if that happens the American democratic era may be over. If the world economies collapse, totalitarianism will almost certainly return to Russia, which already is well along that path in any event. Fragile democracies in South America and Eastern Europe could crumble.

A global economic collapse will also increase the chance of global conflict. As economic systems shut down, so will the distribution systems for resources like petroleum and food. It is certainly within the realm of possibility that nations perceiving themselves in peril will, if they have the military capability, use force, just as Japan and Nazi Germany did in the mid-to-late 1930s. Every nation in the world needs access to food and water. Industrial nations -- the world powers of North America, Europe, and Asia -- need access to energy. When the world economy runs smoothly, reciprocal trade meets these needs. If the world economy collapses, the use of military force becomes a more likely alternative. And given the increasingly rapid rate at which world affairs move; the world could devolve to that point very quickly.

#### Decline spurs terrorism.

Warrick 8—Joby Warrick, Washington Post Staff Writer [November 15, 2008, “Experts Warn of Security Risks in Financial Downturn,” http://www.washingtonpost.com/wp-dyn/content/article/2008/11/14/AR2008111403864.html]

Intelligence officials say they have no hard evidence of a pending terrorist attack, and CIA Director Michael V. Hayden said in a news conference Thursday that his agency has not detected increased al-Qaeda communications or other signs of an imminent strike.

But many government and private terrorism experts say the financial crisis has given al-Qaeda an opening, and judging from public statements and intercepted communications, senior al-Qaeda leaders are elated by the West's economic troubles, which they regard as a vindication of their efforts and a sign of the superpower's weakness.

"Al-Qaeda's propaganda arm is constantly banging the drum saying that the U.S. economy is on the precipice -- and it's the force of the jihadists that's going to push us over the edge," said Bruce Hoffman, a former scholar-in-residence at the CIA and now a professor at Georgetown University.

Whether terrorist leader Osama bin Laden is technically capable of another Sept. 11-style attack is unclear, but U.S. officials say he has traditionally picked times of transition to launch major strikes. The two major al-Qaeda-linked attacks on U.S. soil -- the World Trade Center bombing in 1993 and the 2001 hijackings -- occurred in the early months of new administrations.

This year, the presidential transition is occurring as American households and financial institutions are under severe economic strain, and political leaders are devoting great time and effort to that crisis. Frances Fragos Townsend, who previously served as Bush's homeland security adviser, told a gathering of terrorism experts last month that the confluence of events is "not lost" on bin Laden.

"We know from prior actions that this is a period of vulnerability," Townsend said.

As bad as economic conditions are in the United States and Europe, where outright recessions are expected next year, they are worse in developing countries such as Pakistan, a state that was already struggling with violent insurgencies and widespread poverty. Some analysts warn that a prolonged economic crisis could trigger a period of widespread unrest that could strengthen the hand of extremists and threaten Pakistan's democratically elected government -- with potentially grave consequences for the region and perhaps the planet.

Pakistanis were hit by soaring food and energy prices earlier in the year, and the country's financial problems have multiplied since late summer. Islamabad's currency reserves have nearly evaporated, forcing the new government to seek new foreign loans or risk defaulting on the country's debt. The national currency, the rupee, has been devalued, and inflation is squeezing Pakistan's poor and middle class alike.

Shahid Javed Burki, a native Pakistani and former World Bank official, said job cuts and higher food costs are behind much of the anger and desperation he witnessed during a recent trip. "I'm especially worried about the large urban centers," said Burki, author of several books on Pakistan's economy. "If they are badly hurt, it creates incentives for people to look to the extremists to make things better. It's a very dicey situation."

### U Wall

#### AND – THE LINK DETERMINES the way you read Uniqueness - Obama’s POLITICAL STANDING determines the momentum – it’s conclusive – he’s trying to set the agenda and will succeed. Plan flips uniqueness.

PACE 9 – 12 – 13 AP White House Correspondent [Julie Pace, Syria debate on hold, Obama refocuses on agenda, <http://www.fresnobee.com/2013/09/12/3493538/obama-seeks-to-focus-on-domestic.html>

With a military strike against Syria on hold, President Barack Obama tried Thursday to reignite momentum for his second-term domestic agenda. But his progress could hinge on the strength of his standing on Capitol Hill after what even allies acknowledge were missteps in the latest foreign crisis.

"It is still important to recognize that we have a lot of things left to do here in this government," Obama told his Cabinet, starting a sustained White House push to refocus the nation on matters at home as key benchmarks on the budget and health care rapidly approach.

"The American people are still interested in making sure that our kids are getting the kind of education they deserve, that we are putting people back to work," Obama said.

The White House plans to use next week's five-year anniversary of the 2008 financial collapse to warn Republicans that shutting down the government or failing to raise the debt limit could drag down the still-fragile economy. With Hispanic Heritage Month to begin Monday, Obama is also expected to press for a stalled immigration overhaul and urge minorities to sign up for health care exchanges beginning Oct. 1.

Among the events planned for next week is a White House ceremony highlighting Americans working on immigrant and citizenship issues. Administration officials will also promote overhaul efforts at naturalization ceremonies across the country. On Sept. 21, Obama will speak at the Congressional Black Caucus Gala, where he'll trumpet what the administration says are benefits of the president's health care law for African-Americans and other minorities.

Two major factors are driving Obama's push to get back on track with domestic issues after three weeks of Syria dominating the political debate. Polls show the economy, jobs and health care remain Americans' top concerns. And Obama has a limited window to make progress on those matters in a second term, when lame-duck status can quickly creep up on presidents, particularly if they start losing public support.

Obama already is grappling with some of the lowest approval ratings of his presidency. A Pew Research Center/USA Today poll out this week put his approval at 44 percent. That's down from 55 percent at the end of 2012.

Potential military intervention in Syria also is deeply unpopular with many Americans, with a Pew survey finding that 63 percent opposing the idea. And the president's publicly shifting positions on how to respond to a deadly chemical weapons attack in Syria also have confused many Americans and congressional lawmakers.

"In times of crisis, the more clarity the better," said Sen. Lindsey Graham, R-S.C., a strong supporter of U.S. intervention in Syria. "This has been confusing. For those who are inclined to support the president, it's been pretty hard to nail down what the purpose of a military strike is."

For a time, the Obama administration appeared to be barreling toward an imminent strike in retaliation for the Aug. 21 chemical weapons attack. But Obama made a sudden reversal and instead decided to seek congressional approval for military action.

Even after administration officials briefed hundreds of lawmakers on classified intelligence, there appeared to be limited backing for a use-of-force resolution on Capitol Hill. Rather than face defeat, Obama asked lawmakers this week to postpone any votes while the U.S. explores the viability of a deal to secure Syria's chemical weapons stockpiles.

That pause comes as a relief to Obama and many Democrats eager to return to issues more in line with the public's concerns. The most pressing matters are a Sept. 30 deadline to approve funding to keep the government open — the new fiscal year begins Oct. 1 — and the start of sign-ups for health care exchanges, a crucial element of the health care overhaul.

On Wednesday, a revolt by tea party conservatives forced House Republican leaders to delay a vote on a temporary spending bill written to head off a government shutdown. Several dozen staunch conservatives are seeking to couple the spending bill with a provision to derail implementation of the health care law.

The White House also may face a fight with Republicans over raising the nation's debt ceiling this fall. While Obama has insisted he won't negotiate over the debt limit, House Speaker John Boehner on Thursday said the GOP will insist on curbing spending.

"You can't talk about increasing the debt limit unless you're willing to make changes and reforms that begin to solve the spending problem that Washington has," the Ohio Republican said.

#### Will pass – multiple warrants -

#### A. Obama controls the message

EASLEY 9 – 18 – 13 Politics USA Staff [Jason Easley, Obama’s Genius Labeling of GOP Demands Extortion Has Already Won The Debt Ceiling Fight, <http://www.politicususa.com/2013/09/18/obamas-genius-labeling-gop-demands-extortion-won-debt-ceiling-fight.html>]

Obama use of the term extortion to describe the House Republican debt ceiling demands was a step forward in a strategy that has already made it a near certainty that he will win this standoff.

President Obama effectively ended any Republican hopes of getting a political victory on the debt ceiling when he called their demands extortion. Nobody likes being extorted. The American people don’t like feeling like they are being shaken down. The White House knows this, which is why they are using such strong language to criticize the Republicans. Obama is doing the same thing to House Republicans that he has been doing to the entire party for the last few years. The president is defining them before they can define themselves.

Obama is taking the same tactics that he used to define Mitt Romney in the summer of 2012 and applying them to John Boehner and his House Republicans. While Republicans are fighting among themselves and gearing up for another pointless run at defunding Obamacare, the president is already winning the political battle over the debt ceiling. His comments today were a masterstroke of strategy that will pay political dividends now and in the future. If the president is successful anytime a Republican talks about defunding Obamacare, the American people will think extortion. Republicans keep insisting on unconstitutional plots to kill Obamacare, and the president is calling them out on it.

Republicans haven’t realized it yet, but while they are chasing the fool’s gold of defunding Obamacare they have already lost on the debt ceiling. By caving to the lunatic fringe in his party, John Boehner may have handed control of the House of Representatives back to Democrats on a silver platter.

While Republicans posture on Obamacare, Obama is routing them on the debt ceiling.

#### B. Investors optimistic

FT 9 – 18 – 13 <http://www.ft.com/intl/cms/s/0/5a7b6c58-2065-11e3-b8c6-00144feab7de.html#axzz2fJ6iQF48>

Chris Krueger of Guggenheim Securities, a financial services and advisory firm, said his group was raising “our odds of a government shutdown in 14 days to 40 per cent from a one to three probability”.

“We are basing the 60 per cent odds that there will not be a government shutdown on blind faith because there is little to no evidence to suggest that the House, Senate, and White House can agree to a stopgap measure in time.”

The two issues – the budget and the debt ceiling – may be dealt with together, or Congress may agree to pass a temporary budget extension, setting the stage for the Obamacare fight over approval for new borrowings.

The House Republicans have already voted about 40 times to repeal or emasculate Obamacare since early 2011, to no end.

Republicans, and conservative activist groups, are split over the tactics the Tea Party in the House have forced on Mr Boehner, with many saying they will not work.

Some of the most conservative Republican senators, including Jeff Flake (Arizona), Tom Coburn (Oklahoma) and Pat Toomey (Pennsylvania), have opposed the “defund Obamacare” push, because they say it raises unrealistic expectations it can be achieved.

#### C. The House will fold

BOLTON 9 – 12 – 13 [Alexander Bolton, "Reid 'really frightened' over potential for government shutdown ," The Hill, <http://thehill.com/homenews/senate/321923-reid-really-frightened-of-possible-government-shutdown-after-meeting-with-boehner>]

Senate Majority Leader Harry Reid (D-Nev.) said he is scared of a possible government shutdown after meeting with Speaker John Boehner (R-Ohio) Thursday morning. “I’m really frightened,” he told reporters after a press conference to discuss the morning meeting he had with Boehner, Senate Republican Leader Mitch McConnell (R-Ky.) and House Democratic Leader Nancy Pelosi (D-Calif.). “I think they’re looking like the House is having trouble controlling themselves,” he said. Earlier in the day, Reid declared that the lower chamber had been taken over by anarchists after an energy efficiency bill stalled on the Senate floor. “We’re diverted totally from what this bill is about. Why? Because the anarchists have taken over,” he said. “They’ve taken over the House and now they’ve taken over the Senate. Reid on Thursday delivered a blunt message to Boehner that he will not delay the 2010 Affordable Care Act in exchange for keeping the government open past the end of the month. Reid also made clear he will not grant Republicans any concessions in order to pass legislation to raise the debt limit. Reid told reporters that he will strip out any language defunding or delaying the new healthcare law included in House-passed legislation funding government beyond Sept. 30. “Go to something else, get away from ObamaCare. Send us something else,” he said. He plans to pass a “clean” stopgap spending measure to keep the government open through year’s end. Reid characterized Thursday morning’s bicameral leadership meeting as cordial and said he offered to help Boehner circumvent Tea Party-affiliated conservatives who are threatening a government shutdown. “I said to him, ‘What can I do to help?’,” Reid said. “It was not a yelling-at-each-other meeting. It was a very nice meeting we had. Hey listen, I like John Boehner.” Sen. Charles Schumer (N.Y.), the third-ranking Senate Democratic leader, predicted House Republican leaders will fold before allowing the government to shut down. “I still think at the last minute they’ll have to blink,” Schumer said. “The fact that Boehner came up with his sort-of concoction shows that he knows that a government shutdown plays badly for him,” he added, referring to the stopgap spending measure House GOP leaders presented to their colleagues on Tuesday. “Should he go forward and let the Tea Party win on the government shutdown, then everyone will come down on him and say, ‘Why’d you allow them to do it?’.”

#### D. Tea party placated – majority will come together

BUSINESSWEEK 9 – 18 – 13 Boehner Gets It Over With, Agrees to Tie Overall Budget to Obamacare Funding, <http://www.businessweek.com/articles/2013-09-18/boehner-gets-it-over-with-agrees-to-tie-overall-budget-to-obamacare-funding>

Bad news for anybody hoping to avoid another budget crisis: Late Tuesday afternoon, National Review‘s Robert Costa broke the news that House Speaker John Boehner (R-Ohio) will cave to the Republican Party’s right wing and introduce a continuing resolution that strips funding for Obamacare. Senate Democrats will block this, and then … well, nobody knows for sure. If somebody doesn’t figure out something by Sept. 30, the government will shut down.

Here’s the good news about the bad news: Boehner ‘s latest move was almost preordained. It doesn’t necessarily mean that national parks, DMVs, or the U.S. Army will have to put up “Closed” signs, come Oct. 1.

It isn’t that Boehner and House GOP leaders prefer to put their names behind a measure that stands almost no chance of becoming law. It’s that they never had a choice. Enough Tea Party conservatives are adamant about attaching a defunding provision to any continuing resolution that they can stymie any Boehner alternative. (They did so last week.) When I spoke to Representative Tom Graves (R-Ga.) shortly before this news broke on Tuesday, he said that more than 60 Republicans had signed on to his one-year defunding plan.

The reason this development isn’t as bad as first appears is that it was bound to happen at some point in the process—and there’s still time to pass the Graves plan (or some variant), see it fail in the Senate, and then come up with a more palatable alternative to keep everything running smoothly. That probably won’t happen without lots of threats, drama and anger. This is Congress, after all. But at least theoretically, indulging the right wing’s desire to pursue its defunding strategy ought to make it easier for Boehner to cobble together a majority for whatever funding bill comes in its wake.

### 2NC Courts Link

#### Obama’s appointments give him a judicial legacy

Reuters 8/5/10 ("Senate approves Obama nominee Kagan to top court," http://webcache.googleusercontent.com/search?q=cache:8oM3T-dMCDYJ:www.reuters.com/article/idUSTRE6744YW20100805+obama+kagan+supreme+court+2+appointees&cd=3&hl=en&ct=clnk&gl=us)

(Reuters)—President Barack Obama's nomination of Elena Kagan to the Supreme Court won Senate approval on Thursday, his second appointment to the court that decides abortion, death penalty and other contentious cases. The Democratic-led Senate voted largely along party lines, 63-37, to confirm the former Harvard Law School dean as the fourth female justice in U.S. history and the 112th high court member. Kagan was Obama's solicitor general, arguing government cases before the Supreme Court, when he named her in May as his choice to replace the retiring liberal Justice John Paul Stevens. The 50-year-old Kagan, who will be the third woman on the current court, is not expected to change the ideological balance of power on the closely divided panel, which for years has been dominated by a 5-4 conservative majority. All Democratic senators but one voted for her, two independent senators voted for her and five Republicans voted for her. All other Republican senators opposed her nomination. OBAMA'S JUDICIAL LEGACY Kagan becomes Obama's second lifetime appointee on the nine-member Supreme Court, allowing him to reshape the court and leave a judicial legacy that could last long after he leaves office. U.S. appeals court Judge Sonia Sotomayor was confirmed last year by a 68-31 vote as the first Hispanic Supreme Court justice. The two appointments underscore an effort by Obama to move the court to the left after Republican President George W. Bush nominated a pair of conservative judges to the bench.

#### Supreme Court rulings get blamed on Obama

Harrison 5—Professor of Law—University of Miami, FL [Lindsay, “Does the Court Act as "Political Cover" for the Other Branches?,” http://legaldebate.blogspot.com/]

While the Supreme Court may have historically been able to act as political cover for the President and/or Congress, that is not true in a world post-Bush v. Gore. The Court is seen today as a politicized body, and especially now that we are in the era of the Roberts Court, with a Chief Justice hand picked by the President and approved by the Congress, it is highly unlikely that Court action will not, at least to some extent, be blamed on and/or credited to the President and Congress. The Court can still get away with a lot more than the elected branches since people don't understand the technicalities of legal doctrine like they understand the actions of the elected branches; this is, in part, because the media does such a poor job of covering legal news. Nevertheless, it is preposterous to argue that the Court is entirely insulated from politics, and equally preposterous to argue that Bush and the Congress would not receive at least a large portion of the blame for a Court ruling that, for whatever reason, received the attention of the public.

### AT: NO RISK it’ll actually ever happen

#### Don’t assume the tea party is rational – they’ll do it – they are like the Joker, just want to see the world burn. This is from our Davidson card

DAVIDSON 9 – 15 – 13 co-founder and co-host of Planet Money, a co-production of the NYT and NPR [Adam Davidson, Our Debt to Society, <http://www.nytimes.com/2013/09/15/magazine/our-debt-to-society.html?pagewanted=all&_r=1&>]

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

#### GOP isn’t afraid of a debt limit – Boehner’s spokesman proves

FOX NEWS 9 – 19 – 13 <http://www.foxnews.com/politics/2013/09/19/white-house-threatens-to-veto-de-fund-obamacare-bill/>

Republicans are under pressure from some of their most conservative members to link government funding measures to cuts or delays to Obamacare.

A measure to link government funding for a year to a year's delay in Obamacare had been gaining traction in Congress. Last week House Republicans rejected a proposal put forward by House Speaker John Boehner and Majority Leader Eric Cantor as not strong enough.

Brendan Buck, a spokesman for Boehner, said Republicans are not threatening a debt default.

"The president only uses these scare tactics to avoid having to show the courage needed to deal with our debt crisis. Every major deficit deal in the last 30 years has been tied to a debt limit increase, and this time should be no different," Buck said.

#### It’ll get worked out – but it is POSSIBLE.

CNN MONEY 9 – 12 – 13 <http://money.cnn.com/2013/09/12/news/economy/budget-showdown/index.html?iid=EL>

Budget experts are worried: The chances of a government shutdown and a harrowing ride to raising the debt limit have gone up in the past few weeks.

That's due in part to a fractured Republican Party in the House and perceptions that President Obama is more vulnerable or unpredictable in the wake of the Syria debate.

"We continue to believe disaster will be avoided across each of these issues, but the risk of negative outcomes has increased," Sean West, U.S. policy director for the Eurasia Group, said in a research note Thursday.

Congress, of course, had a full agenda and a tight schedule before Syria took center stage. It must agree to spending levels for fiscal year 2014 -- or at least a short term extension of funding past Oct. 1, the first day of the fiscal year.

If it fails to do so, non-essential parts of the federal government would shut down.

It also must approve a debt ceiling increase by mid-October. If it doesn't, an independent think tank now estimates that the Treasury Department would not have enough cash coming in to pay all the country's bills in full sometime between Oct. 18 and Nov. 5. After the so-called "X" date, barring a higher debt ceiling, the country would default on some of its obligations.

In both cases, many conservatives in the House want to make the defunding or delay of Obamacare a condition for their support to fund the government and raise the debt limit. That's a non-starter for Democrats and President Obama. What's more the administration has insisted it won't negotiate over the raising the debt limit.

And, of course, there's the perennial disagreement over spending levels between the Republicans and Democrats, an old argument made much more complicated by the existence of the much-maligned sequester.

When it comes to the deals that will be cut to assure approval of funding and a higher debt limit, budget experts aren't expecting much. "Big- and medium-term deals don't seem attainable now," said Robert Greenstein, executive director of the Center on Budget and Policy Priorities, at a National Journal event Thursday

William Hoagland, senior vice president of the Bipartisan Policy Center, also is not holding his breath. "I've given up on grand bargains."

Funding the government and raising the country's legal borrowing limit, of course, are among the legislature's most basic functions.

And yet, in recent years, both efforts have been stymied by political demands and brinksmanship.

"It's extraordinary how dysfunctional our system has become and how casually we accept it," said Rudolph Penner, a former director of the Congressional Budget Office speaking at the same National Journal event.

West and others who joined Greenstein, Hoagland and Penner think a short-term funding bill is likely to get through. But beyond that is anyone's guess.

Republican Sen. Orrin Hatch, a keynote speaker at the event, was asked whether he thought there was a chance for a Christmastime crisis. "It's very possible," he said.

### AT: Not announced Yet

#### Immediate decisions are possible, even if they’re the exception—and speeding up the decision uniquely draws the Court into political battles

**Herz, 02**—professor of law at Cardozo School of Law, Yeshiva University (Michael, 35 Akron L. Rev. 185, “THE SUPREME COURT IN REAL TIME: HASTE, WASTE, AND BUSH V. GORE,” lexis)

Exactly that sort of advantage is usually enjoyed by the Supreme Court. In Bush v. Gore, unfortunately, the Court put itself in the role of the television reporters who were fumbling in the dark rather than those who could read first and report later, in the clear light of day. The Court attempted the judicial equivalent of instantaneousness, operating in real time. The fiasco that resulted will not cause the Court irreparable harm (to use language with which the nation became familiar over that weekend), but it is a reminder of the importance of the Court keeping some distance from the disputes it decides. In particular, the episode highlights the increased risks of both actual and perceived politicization when the Court is in the middle of the fray, participating in an event in the present rather than evaluating it after the fact.[\*187]

II  
The conventional wisdom is that distance enhances the Court's decisionmaking. Many factors ensure a separation between a particular controversy and its participants, on the one hand, and the Court, on the other. The Justices' political insulation (life tenure, salary protections, no need to please a boss or an electorate), their lack of a personal stake in the controversy, and training and a turn of mind that, generally and relatively speaking, incline toward considerations of law and principle rather than politics and expediency are all part of the picture. No less important, however, is the time lag between a particular event or legislative or judicial decision and the Court's subsequent review of it. n5

Normally, a Supreme Court case involves events that occurred years ago, and legal issues that have percolated through the lower courts. Bush v. Gore was just the opposite--a mad dash. Although preceded and surrounded by other lawsuits, n6 the specific case that became Bush v. Gore began on November 27, 2000, after the Florida Secretary of State certified George Bush as the winner of that state's electoral votes. This was an election contest action brought by Vice President Gore against Governor Bush and others under Florida Statutes' 102.168 seeking the inclusion of certain Gore votes and a recount in specified counties. Following a two-day trial, on December 4, 2000, the trial court entered judgment for the defendants. n7 The next day, the Florida Supreme Court  [\*188]  agreed to hear a direct appeal; briefs were due by noon December 6; oral argument was set for the morning of December 7. The court decided the case the next day, December 8, reversing in part and affirming in part. n8 Critically, it ordered a statewide manual recount, under the supervision of a state circuit court judge, pursuant to which observers would seek to determine the "intent of the voter" in all cases where machine-counting had not indicated any vote for President.

That day, President Bush sought a stay of the state Supreme Court's ruling from the United States Supreme Court. The lawyers argued that the recounts mandated by the state supreme court would run past the December 12 "deadline," were inconsistent with the state election statutes, and were arbitrary and standardless. Accordingly, they violated (1) the federal statutory provision governing congressional counting of electoral votes, n9 (2) the constitutional allocation of authority to the state legislature to determine the manner in which the state selects its electors, n10 and (3) the equal protection and due process clauses. n11 The Court granted the stay the next day, Saturday, December 9, and, treating the petition for a stay as a petition for certiorari, granted certiorari as well. n12 Briefs were due by 4:00 p.m. on December 10, and oral argument set for 10:00 a.m. Monday, December 11. n13 The Court handed down its decision at a little before 10:00 p.m. the following evening. n14

Only four similar instances come to mind in which the modern Court considered cases involving matters of great national importance on a highly expedited schedule. The steel seizure case, n15 the Nixon tapes case, n16 the Iranian assets case, n17 and the Pentagon Papers case n18 were all  [\*189]  litigated in a matter of weeks or months and produced almost instant opinions from the Supreme Court (19, 16, 8, and 4 days after oral argument, respectively). But these are rarities. And even by these standards Bush v. Gore set new records for speed--for the overall litigation, for the briefing schedule, and for the period within which the Court reached its decision.

The speed of Bush v. Gore is less striking when compared to the standards of an earlier time. The Supreme Court once decided cases much more quickly than is the current norm. During the period from 1815 to 1835, for example, the Court decided 66 constitutional cases with full opinion; 17 of those opinions were handed down within five days of the argument, including several of the Court's most significant rulings. n19 "By contemporary standards, the Marshall Court was breathtakingly swift to render decisions." n20 By the following century, the pace had slowed. Robert Post has calculated that during the 1912-1920 Terms the Court averaged 63.7 days from the argument of a case to the announcement of a full opinion. n21 In contrast, during the 1993-1998 Terms the Court took an average of 91.1 days after argument to hand down its decision. n22

Even by Marshall Court standards, however, Bush v. Gore was something astonishing. Compare, for example, McCulloch v. Maryland. n23 Oral argument in McCulloch ended on March 3, 1819; Marshall handed down his opinion for the Court a mere three days later, on March 6. The turnaround time was so quick, and the opinion so lengthy and complex, that some have speculated that Marshall had written it before the argument. Such was the supposition of Albert Beveridge, who deemed it "not unlikely" and "reasonably probable" that Marshall worked out the framework, if not the actual text, well in advance. n24 Speedy though this is, the scenario is still quite different  [\*190]  from Bush v. Gore. The fact that Marshall took three days rather than a day and a half is the least of it. More important, McCulloch was decided after nine days of oral argument, n25 it concerned a completely familiar legal issue that had been argued by leading figures for decades n26 and whose resolution was not seriously in doubt, n27 and the decision was unanimous. n28 Most important, the only rush in McCulloch was between argument and opinion; the overall litigation had proceeded at a quick but not at all extraordinary pace. n29

The risks of the mad dash are several, and all were painfully on display in Bush v. Gore. First, rather than giving their considered judgment, the Justices were shooting from the hip on extremely difficult legal issues. They were completely without time for reflection, study, or debate, all the things one wants when faced with a difficult problem. In addition, the Court was without the usual assistance from the parties or  [\*191]  other judges. The parties themselves had had very little time to develop, refine, and brief the issues. The equal protection issue, on which the case turned, had received no consideration from any other court or individual judge before it was laid before the Supreme Court. n30 As the Court in other circumstances has emphasized, it benefits from the "percolation" of legal issues in the lower courts before it decides them. n31 Thus, many basic structures designed to give the Court the best chance of getting it right were absent.

The point is not just that slow work is sure work, though that is part of it. n32 The point is also that when the Court's consideration is so rapid the chances increase that the decision will rest on purely political considerations. Deciding a case based on one's initial, impressionistic reaction; being all too aware of how different outcomes will affect a current emergency; not having the chance to let the problem sit and then come back to it--all these make it more likely that one's decision will reflect intuition, prejudice, and preference. Now, judicial decisionmaking always reflects intuition, prejudice, and preference;  [\*192]  nonetheless, it can do so in varying degrees, and those tendencies are often mitigated simply by giving a problem some time.

This risk is particularly acute when the case involves unfamiliar legal issues. Bush v. Gore was not one more search and seizure case, or one more free speech case, arising in an area with which the Justices are familiar and already have a doctrinal framework and a jurisprudential worldview within which to fit the specific dispute. Compare, for example, McCulloch, which involved an utterly familiar and longstanding constitutional question. n33 A more contemporary example is United States v. Eichman, n34 in which the Court struck down the federal Flag Protection Act of 1989, n35 handing down its decision a mere 27 days after argument, on direct appeal from the District Court, after expedited briefing and a special late-Term oral argument, all under pressure of a statute requiring expedited review. n36 From the date the Court took the case to the date it decided it was only 73 days. n37 While still a far cry from Bush v. Gore, that was pretty fast. But the case itself was largely a  [\*193]  reprise of the previous Term's decision in Texas v. Johnson, n38 to which the Flag Protection Act was a response. The Justices were on well-trod turf, having only to consider whether the slight differences between the federal law and the state law they had just struck down in Johnson justified a different result. The specific problem and the overall setting were familiar. In utter contrast, Bush v. Gore presented novel issues. It is no slight to the Justices' erudition to suggest that none was familiar with the intricacies of the Electoral College provisions in Title 3 of the U.S. Code or with the Florida contest and protest statutes.

Finally, by rushing into the maelstrom rather than reviewing it in the calm light of day, the Court did much to further the perception that it had become a purely political actor. The decision has been overwhelmingly attacked as partisan. n39 This reaction stems primarily from the 5-4 conservative/liberal split, combined with an apparent abandonment by all nine Justices of their usual positions on "neutral principles" such as federalism, respect for state courts, and narrow or broad readings of constitutional rights. The validity of the ubiquitous political-operatives-in-robes attack is beyond the scope of this essay. My narrower point is that the extraordinary speed with which the Court acted significantly added to the overwhelming impression of the Court as a partisan institution. At a minimum, it eliminated an important barrier to hyper-legal-realist cynicism; it may have contributed to that  [\*194]  cynicism. If the Court accelerates its ordinary processes in order to solve a political crisis, it will inescapably be perceived as deciding on political grounds, for that is how political problems are decided. Not only was the Court in Bush v. Gore ruling on a political battle, it had become a participant in that battle. The usual insulation and distance had evaporated.

#### Bush v. Gore released its opinion a day and half after it was decided

**Herz, 02**—professor of law at Cardozo School of Law, Yeshiva University (Michael, 35 Akron L. Rev. 185, “THE SUPREME COURT IN REAL TIME: HASTE, WASTE, AND BUSH V. GORE,” lexis)

All of which is not to say that we should be wholly sanguine about Bush v. Gore. For one thing, to say these four cases were not embarrassments is a pretty low standard. And dodging bullets does not mean that the bullets are not dangerous. More important, there are real differences between these prior cases and Bush v. Gore. Bush v. Gore was the fastest of all; to release full opinions a day-and-a-half after argument and a week after the lower court decision beats all records. Moreover, the lower court litigation had been significantly more extensive in each of the earlier cases. n56 As a result, there was a more  [\*199]  developed record, the attorneys had had more time to think through the issues; the Justices had the benefit of more considered judicial views. Furthermore, in the earlier cases the Court at least knew what the case was about when it agreed to hear it. Here, the Court (and the lawyers) initially thought that Bush v. Gore was, in essence, a statutory case about the meaning of the Florida election laws and the fairness of the state Supreme Court's interpretation thereof, and about 3 U.S.C. 5. Indeed, the Court denied cert on the equal protection and due process questions in Bush I. Only at the very last minute did it discover that this was an equal protection case after all.

### Yes PC

#### Issue specific uniqueness trumps – they’ll get it done – Obama’s pressure is necessary, means he has enough.

#### AND – he’s pressuring businesses to keep the GOP in line – so none of their the GOP doesn’t care about Obama cards make any sense

NYT 9 – 19 – 13 http://www.nytimes.com/2013/09/19/us/politics/obama-will-highlight-fiscal-risks-in-addressing-business-group.html

President Obama tried to raise the pressure on Republicans in Congress on Wednesday, telling a national business group that threats of a fiscal default by his political adversaries risk throwing the United States economy back into crisis.

Mr. Obama used an appearance before the group, the Business Roundtable, to call out House Republicans who have said they will not raise the nation’s debt ceiling unless they succeeded in repealing Mr. Obama’s signature health care law.

In his remarks, Mr. Obama accused what he called “a faction” of Republicans in the House of trying to “extort” him by refusing to raise the nation’s debt ceiling unless the president’s health care plan is repealed.

“You have never in the history of the United States seen the threat of not raising the debt ceiling to extort a president or a governing party,” Mr. Obama said. “It’s irresponsible.”

Mr. Obama called upon the business leaders to try to convince lawmakers to avoid the kind of “brinks~~man~~ship” that would lead to promises of “apocalypse” every few months.

“What I will not do is to create a habit, a pattern whereby the full faith and credit of the united states ends up being a bargaining chip to make policy,” he said.

“I’m tired of it,” he added. “And I suspect you are too.”

Congress will soon face two major budget deadlines. The stopgap “continuing resolution” that finances the federal government runs out at the end of September, and the Treasury Department has said that unless Congress raises the debt ceiling, it expects to lose the ability to pay the government’s bills in mid-October.

The Republican House speaker, John A. Boehner, has argued that the debt limit should be increased only as part of broader concessions by the president to reduce the deficit and make other spending reforms.

But a group of conservative Tea Party Republicans want to go further by explicitly refusing to raise the debt ceiling without repealing the health care law. Mr. Obama made it clear on Wednesday that he had no intention of negotiating over the debt limit.

Mr. Obama also raised the specter of another economic downturn if Republicans do not raise the debt ceiling, aides said, and he noted that in 2011 — the last time Washington clashed over a debt ceiling increase — the stock market dropped 17 percent, the country’s credit rating was downgraded and consumer confidence dropped.

#### Obama has capital – vis-à-vis House Republicans

THE HILL 8 – 19 – 13 http://thehill.com/blogs/blog-briefing-room/news/317571-obama-returns-from-vacation-to-face-crucial-second-term-challenges

The president will also look to rally support for his budget priorities during a two-day tour of Northeastern colleges late next week. During the trip, which includes stops in Buffalo, Syracuse, Binghamton, and Scranton, the president will detail proposals for reducing college costs.

The events are a continuation of the economic push that Obama launched last month at Knox College in Illinois, where he argued his agenda helped the country battle back from the recession.

But the president’s ability to rally support behind his economic agenda could prove difficult, with recent polls suggesting Obama’s post-election political capital has dissipated.

A survey released last week by Gallup found that only 35 percent of the country approved of the president’s handling of the economy, despite his campaign-style tour and solid jobs growth. A Fox News poll released ahead of Obama’s vacation found that just 42 percent approved of the president’s job performance overall.

Polls, though, also show Republicans in Congress have even less support than the president. And a Quinnipiac survey released last month showed that voters are more likely to say members of the GOP are doing too little to compromise, and more likely to blame Republicans for gridlock.

Reports say Republican leadership could favor a short-term budget extension that would push the federal budget battle back until November — when the nation will once again come up against the debt ceiling. While the White House has maintained that the president won’t negotiate over raising that limit, which ensures that the government does not default on its bills, combining government funding with the debt ceiling could give Republicans greater leverage to extract concessions.

If Obama proves unable to regain his momentum after his return to Washington, Republicans will be emboldened in their efforts to dismantle signature first-term achievements like the Affordable Care Act and government spending programs that Democrats say aid the recovery.

### 2nc/1nr PC is Key – Overview

#### AND – Obama needs a strong hand to keep them focused

LANGENKAMP 13 Global political analyst at ECR Research and Interest & Currency Consultants [Andy Langenkamp, Obama to Take Over Baton From Fed?, 7-12-13, <http://www.huffingtonpost.com/andy-langenkamp/obama-to-take-over-baton-_b_3571885.html>]

Risky fiscal fall

As the U.S. Fed is not planning to boost the asset markets for much longer, growth will have to come from the private sector albeit with help from the government. However, it remains to be seen if politicians in the United States will be able to contribute to a healthy base for economic growth later this year.

As growth has picked up, concerns over the fiscal health of the United States have receded into the background. The fiscal problems may be out of the limelight, but they have not gone away. A relatively quiet summer will be followed by a hectic fall. Democrats and Republicans will cross fiscal swords. On October 1st, the U.S. federal budget runs out, the sequester for the fiscal year 2014 takes effect, and the U.S. will hit the debt ceiling. In 2014 too, the U.S. federal government may well need a so-called "continuing resolution" just to keep going.

Political hot potatoes

The fiscal debate is not the only "interesting" item on the agenda in the last part of the year. Political issues that could make waves in Q4 are the Keystone XL pipeline from Canada to the U.S., immigration law reform, the ongoing story of Obamacare, and the nomination of the next Fed chairperson.

The above issues give the president some bargaining chips as he attempts to strike a fiscal deal. Maybe he can deliver a grand bargain via package deals. But equally, debate will then spiral out of control and create an (even more) poisonous atmosphere in Washington.

Scandals threat to Obama?

Lately, Obama has been under attack from various sides. Several scandals threaten to undermine his reputation. AP and Fox journalists have been spied upon and the Internal Revenue Service has deliberately targeted organizations linked to the Tea Party for extra scrutiny. Meanwhile, the effects of the affair surrounding the deadly assault on the U.S. consulate in Benghazi (Libya) are lingering on. The latest uproar of course concerns the National Security Agency's snooping activities. This has led to a global outcry and has undermined Obama's reputation and political power abroad.

Obama's weakened hand reduces the chance that he can move the fiscal agenda forward. Meanwhile, Mr. Obama seems increasingly preoccupied with his legacy. U.S. presidents want to leave their mark on world affairs as the end of their last term approaches. Several have tried to solve the thorny Israeli-Palestinian problem (Clinton made a brave but ultimately naive and fruitless attempt). Obama appears to focus on, among others, reducing the world's nuclear stockpile -- witness his recent speech in Berlin -- and closing Guantánamo Bay.

Still some cards up his sleeves?

The U.S. president still has some political capital at his disposal. His approval rating (50 percent) may not be spectacular but it exceeds the dismal endorsement of Congress (15 percent). Many voters still give him the benefit of the doubt; just 26 percent of Americans are satisfied with the direction the U.S. is taking, but Obama's ratings indicate many do not believe he is to blame for their disappointment. In any case, the presidential "approval premium" has not been this high since Reagan. Perhaps this will give Mr. Obama the courage to get down to business in Q4 and take decisive steps towards restoring the fiscal health of America.

#### Persuasion and mobilization skills are key

AP 9 – 9 – 13 <http://www.denverpost.com/politics/ci_24046750/syria-budget-could-become-obamas-make-or-break>

The tasks stacking up before President Barack Obama over the coming weeks will test his persuasive powers and his mobilizing skills more than at any other time in his presidency.

How well Obama handles the challenges could determine whether he leads from a position of strength or whether he becomes a lame duck one year into his second term.

Between now and the end of October, Obama must persuade wary lawmakers that they should grant him authority to take military action against Syria; take on Congress in an economy-rattling debate over spending and the nation's borrowing limit; and oversee a crucial step in putting in place his prized health care law.

The Syria vote looms as his first, biggest and perhaps most defining challenge. His mission is persuading Congress to approve armed action against the Syrian government in response to a chemical attack that Obama blames on President Bashar Assad's government.

"It's conceivable that, at the end of the day, I don't persuade a majority of the American people that it's the right thing to do," Obama said in a news conference Friday.

His chief of staff, Denis McDonough, was asked on "Fox News Sunday" whether a congressional rejection might endanger Obama's presidency. He said, "Politics is somebody else's concern. The president is not interested in the politics of this."

Presidents tend to have an advantage on issues of national security, a tradition demonstrated by the support Obama has won for action in Syria from the bipartisan leadership of the House. But that has not translated into support among the rank and file.

"Congress can look presidents in the eye on a level gaze regarding the budget," said presidential historian H.W. Brands. "But on war and peace, they have to look up to the president; he's the commander in chief.

"If he does lose, even if the loss comes about partly as a result from negative Democratic **vote**s, the Republicans are going to get the bit in their teeth and say 'We're not going to give this guy anything,' " said Brands, a professor at the University of Texas at Austin.

By that reasoning, success on Syria could give Obama some momentum.

"If he gets the authority, it shows that he's not a lame duck," said John Feehery, a Republican strategist and former House GOP leadership aide. "If he doesn't get the authority, it's devastating. People see him as the lamest of lame ducks."

At the White House, Syria has eclipsed all other matters for now. Win or lose, Obama and lawmakers next will run headlong into a budget debate.

Congress has a limited window to continue government operations before the new budget year begins Oct. 1.

Congressional leaders probably will agree to hold spending at current budget levels for about two or three months. That would delay a confrontation with the White House and pair a debate over 2014 spending levels with the government's need to raise its current $16.7 trillion borrowing limit. The Treasury says the government will hit that ceiling in mid-October.

#### BAD BLOOD could disrupt everything

SAHADI 9 – 12 – 13 CNN Money Staff [Jeanne Sahadi, The never-ending charade of debt ceiling fights, CNN MONEY 9 – 12 – 13 http://money.cnn.com/2013/09/12/news/economy/debt-ceiling/index.html?iid=EL]

Lawmakers are tied up in knots over increasing the debt ceiling this fall. But they eventually will. The only question is how messy the process will be.

Why assume they'll raise it? Because they have no real choice if they want to avoid a U.S. default. A default would hurt the economy and markets, and most lawmakers know this. That's why they regularly raise the debt ceiling before it comes to that.

In fact, since 1940, Congress has effectively approved 79 increases to the debt ceiling. That's an average of more than one a year.

How do they raise it? Sometimes lawmakers have raised it by small amounts, other times by large amounts. And sometimes they've raised it "temporarily" with provisions for a "snap-back" to a lower level.

Since it's a politically tough vote, they occasionally devise clever ways to tacitly approve increases without ever having to publicly record a "yes" vote.

For example, as part of the deal to resolve the 2011 debt ceiling war, Congress approved a plan that let President Obama raise the debt limit three times unless both the House and Senate passed a "joint resolution of disapproval." Such a measure never materialized. And even if it had, the president could have vetoed it.

Then this past February, lawmakers decided to temporarily "suspend" the debt ceiling.

Under this scheme, Treasury was able to continue borrowing to pay the country's bills until May 19. At that point, the debt limit automatically reset to the old cap plus whatever Treasury borrowed during the suspension period.

What does raising the debt ceiling accomplish? Despite some politicians' incorrect assertions, raising the debt ceiling does not give the government a "license to spend more."

It simply lets Treasury borrow the money it needs to pay all U.S. bills in full and on time. Those bills are for services already performed and entitlement benefits already approved by Congress. In other words, it's a license to pay the bills the country incurs as a result of past decisions made by lawmakers from both parties over the years.

Refusing to raise the debt ceiling is "not like cutting up your credit cards. It's like cutting up your credit card bills," said historian Joseph Thorndike, who has written about past debt crises.

How high is it today? The debt ceiling was reset at $16.699 trillion on May 19, up from the $16.394 trillion where it was before the suspension.

Since then, Treasury has been forced to use "extraordinary measures" to keep the country from breaching the limit.

Treasury Secretary Jack Lew said those measures will be exhausted by mid-October, after which he will only have $50 billion on hand, plus incoming revenue to pay what's owed. Sounds like a lot, but it won't last long.

How long will it last? An analysis by the Bipartisan Policy Center estimates that the Treasury will no longer be able to pay all bills in full and on time at some point between Oct. 18 and Nov. 5.

So, you're saying they only have a few weeks to work this out? Yup.

House Republicans say they will demand spending cuts and fiscal reforms in exchange for their support of a debt ceiling increase. The White House, meanwhile, has said it won't negotiate quid pro quos.

The question is when will Republicans or the White House -- or both - bend in the standoff? If recent history is any guide it likely will be just in the nick of time.

And there's no telling how creative the deal they cut will be.

But any bad blood created along the way almost certainly would poison other budget negotiations.